

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

RONALD JAMES PLUNKETT,

Defendant-Appellee.

FOR PUBLICATION

December 16, 2008

No. 284943

Washtenaw Circuit Court

LC No. 07-001471-FC

Advance Sheets Version

Before: Fitzgerald, P.J., and Bandstra and Schuette, JJ.

SCHUETTE, J. (*dissenting*).

I respectfully dissent from the opinion of my distinguished colleagues in the majority, Judges Fitzgerald and Bandstra. I believe that there was sufficient evidence to support a conclusion that defendant aided and abetted the delivery of the heroin to Corson. Therefore, I would reverse and remand for further proceedings.

As noted by the majority, a defendant “who aids and abets the commission of a crime may be convicted and punished as if he directly committed the offense.” *People v Izarraras-Placante*, 246 Mich App 490, 495; 633 NW2d 18 (2001).

To support a finding that a defendant aided and abetted a crime, the prosecutor must show that

“(1) the crime charged was committed by the defendant or some other person; (2) the defendant performed acts or gave encouragement that assisted the commission of the crime; and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time that [the defendant] gave aid and encouragement.” [*People v Robinson*, 475 Mich 1, 6; 715 NW2d 44 (2006) (citations omitted).]

“An aider and abettor’s state of mind may be inferred from all the facts and circumstances.” *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999), quoting *People v Turner*, 213 Mich App 558, 568; 540 NW2d 728 (1995). Here, there was evidence that Harold Spencer delivered the heroin to Tracy Corson, i.e., that the crime was committed by “some other person.” Defendant drove Corson to buy the heroin and gave her the money to do so. Thus, there is evidence that defendant “performed acts . . . that assisted the commission of the crime,” i.e., he provided the buyer and the money. That same evidence shows that defendant intended the

commission of the crime or knew that Spencer intended the crime at the time defendant gave aid. Thus, I believe that the trial court was incorrect in concluding that the bindover on the counts involving delivery of heroin was not proper under an aiding and abetting theory.

/s/ Bill Schuette