

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MAURICE WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

November 19, 1996

No. 190184

LC No. 95-003691-FC

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LYDELL OWNEY,

Defendant-Appellant.

No. 190995

LC No. 95-003691-FC

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BOBBY WILLIAMS,

Defendant-Appellant.

No. 190996

LC No. 95-003691-FC

Before: Bandstra, P.J., and Neff and M. E. Dodge,* JJ.

* Circuit judge, sitting on the Court of Appeals by assignment.

PER CURIAM.

Following a joint trial, defendant Maurice Williams was convicted by a jury, and defendants Lydell Owney (a 16-year old juvenile) and Bobby Williams (a 15-year old juvenile) were both convicted by the court, of second-degree murder, MCL 750.317; MSA 28.549. The jury also found Maurice Williams guilty of two counts of kidnapping, MCL 750.349; MSA 28.581, assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). The trial court also found defendants Lydell Owney and Bobby Williams both guilty of one count each of assault with intent to murder, MCL 750.83; MSA 28.278, and felony-firearm. Maurice Williams was sentenced to concurrent prison terms of twenty-five to fifty years each for the second-degree murder and kidnapping convictions and five to ten years for the assault with intent to do great bodily harm less than murder conviction, to be served consecutive to a two-year term for the felony-firearm conviction. Bobby Williams and Lydell Owney were both sentenced as adults to concurrent prison terms of twenty-two to thirty-five years each for the second-degree murder and assault with intent to murder convictions, to be served consecutive to a two-year term for the felony-firearm conviction. All three defendants now appeal as of right. Their appeals have been consolidated. We affirm.

I

This case arises from the shooting death of Lorenzo Harris sometime during the late evening hours or early morning hours of March 6 or 7, 1995. A second victim, Keith Mack, managed to escape under gunfire. The dispute between defendants and the victims arose when the victims exchanged cars with defendant Maurice Williams following Williams' request to borrow Mack's van. Unfortunately, for the victims, Williams' car, which had little or no value, broke down. The victims attempted to steal another car to push Maurice's car home, but were spotted by the police and fled the scene leaving both cars behind.

Because his car could not be located, Maurice Williams rounded up the victims and, with the assistance of the co-defendants, beat them and threatened to kill them. The victims were then ordered by defendants into a van in order to be taken to a remote location to be shot. During this van ride, Mack escaped. Obviously, Harris was not so lucky, and was senselessly killed as a result of losing Maurice Williams' practically worthless car.

II

Each of the three defendants argues that the evidence was insufficient to support their convictions. We disagree.

A

This Court reviews a challenge to the sufficiency of the evidence by viewing the evidence presented in a light most favorable to the prosecution and determining whether a rational trier of fact

could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hampton*, 407 Mich 354, 368; 285 NW2d 284 (1979); *People v Petrella*, 424 Mich 221, 268-270; 380 NW2d 11 (1985). Circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to prove the elements of the crime. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993). Credibility is a matter for the trier of fact to ascertain and this Court will not resolve it anew. *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988).

A person who aids and abets the commission of an offense may be convicted and punished as if he directly committed the offense. MCL 767.39; MSA 28.979. Aiding and abetting refers to all forms of assistance rendered to the perpetrator of a crime. *People v Palmer*, 392 Mich 370, 378; 220 NW2d 393 (1974). A defendant is guilty of aiding and abetting upon proof that: (1) the substantive criminal offense was committed by the defendant or another, (2) the defendant performed acts or gave encouragement which aided or 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 of the giving of aid or encouragement. *People v Rockwell*, 188 Mich App 405, 411; 470 NW2d 673 (1991). Liability may be established on agency principles where felons are acting intentionally or recklessly in pursuit of a common plan. *People v Aaron*, 409 Mich 672, 731; 299 NW2d 304 (1980). Whether a particular act or crime committed was fairly within the intended scope of a common unlawful enterprise is a question of fact for the trier of fact to decide. *People v Flowers*, 191 Mich App 169, 179; 477 NW2d 473 (1991).

B: Maurice Williams

Maurice Williams argues that the evidence was insufficient to prove that he was involved in the shooting death of Lorenzo Harris or assaulted Keith Mack with an intent to do great bodily harm less than murder. We disagree.

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Evidence was presented that, on March 6, 1995, Maurice Williams became embroiled in a dispute with both Keith Mack and Lorenzo Harris concerning the whereabouts of Maurice's car. According to both Mack and another witness, Maurice was armed with a gun and repeatedly threatened to kill both Mack and Harris if Maurice's car was not recovered. Evidence was presented that, following an unsuccessful search for Maurice's car, Maurice, together with Lydell Owney and Bobby Williams, transported Mack and Harris inside a van to another location and that Maurice, Owney and Bobby were all armed with weapons while inside the van. According to Mack, after the van stopped, Maurice stated that he wanted to "get rid" of Mack "first," whereupon Mack was removed from the van. Mack subsequently broke free and began to run, following which several gunshots were fired. A witness identified Maurice Williams as the person who was doing the shooting and claimed that he was shooting at Mack. Viewed most favorably to the prosecution, the foregoing evidence was sufficient to enable the jury to conclude beyond a reasonable doubt that Maurice Williams assaulted Mack with an intent to cause him great bodily harm.

2

Regarding the killing of Harris, in addition to the evidence described above, there was testimony that, after Mack escaped, Lydell Owney, in Maurice's presence, told Harris that he was going to kill him. A short while later, a witness observed Lydell Owney covered with blood. Harris' body was discovered the following morning, lying in the street a short distance from Maurice Williams' house. Harris had been shot twice, once in the head and once in the neck. A witness testified that when she mentioned to Bobby Williams that the police had discovered Harris' body, Bobby told her, "I shot him." Another witness testified that, sometime on the evening in question, Maurice Williams gave him a gun wrapped in a plastic bag and asked him to "put it up." That same gun was subsequently recovered by the police and was identified by a firearm's expert as the gun that fired the two bullets that killed Lorenzo Harris. Viewed in a light most favorable to the prosecution, the foregoing evidence was sufficient to enable a rational trier of fact to find beyond a reasonable doubt that Maurice was acting in concert with Lydell Owney and Bobby Williams as part of a common scheme to have Harris killed and that Harris was shot to death pursuant to this common scheme. Accordingly, there was sufficient evidence to support Maurice Williams' conviction for second-degree murder.

3

Regarding the two kidnapping convictions, Maurice Williams claims the evidence was insufficient to prove that either Keith Mack or Lorenzo Harris was forcibly confined against his will, a required element of forcible confinement kidnapping. *People v Wesley*, 421 Mich 375, 388; 365 NW2d 692 (1984). We disagree.

Keith Mack testified that, before leaving in the van, he and Lorenzo Harris were both held at gunpoint by Maurice Williams and Lydell Owney, they were both physically assaulted, they were threatened with death, and their belongings were removed from their pockets. Mack testified that, when he and Harris were taken to the van, he did not feel free to leave because of the prior threats and because Maurice and the others were armed with guns. Mack also testified that Maurice, Bobby Williams and Lydell Owney each continued to display a firearm while inside the van. The evidence also showed that, when Mack subsequently escaped, he did so under threat of gunfire from Maurice. Viewed most favorably to the prosecution, the foregoing evidence was sufficient to enable the jury to find beyond a reasonable doubt that both Keith Mack and Lorenzo Harris were forcibly confined against their will.

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Finally, because the evidence showed that Maurice Williams possessed a firearm during his commission of the foregoing offenses, there was sufficient evidence to support his conviction for felony-firearm.

C: Lydell Owney & Bobby Williams

Lydell Owney and Bobby Williams both claim there was insufficient evidence to show that they directly committed the charged crimes or that they aided and abetted in their commission. They each contend the evidence demonstrated that, at most, they were merely present. We disagree.

Both Keith Mack and another witness testified that Owney, while armed with two guns, assisted Maurice Williams in holding Mack and Harris captive at Maurice's house while Bobby Williams went out to look for Maurice's car. During this period of time, Maurice Williams, in Owney's presence, repeatedly threatened to kill both Mack and Harris. Testimony was also presented that, when Bobby Williams returned without finding Maurice's car, Owney told both Mack and Harris to empty their pockets, which they did. Afterwards, Owney pointed to some pictures of Mack's children and remarked, "It's a shame that you ain't going to be able to see the kids no more." Also, Bobby Williams took a pager that belonged to Harris and remarked, "You won't be needing this no more."

According to one witness, when Maurice Williams subsequently suggested that Mack and Harris go "for a little ride," it was Owney who stated that he knew "just where to take them." According to Mack, after everyone got into the van, Owney continued to visibly display two guns while Maurice and Bobby Williams each held one gun. Another witness testified that Owney mentioned taking Mack and Harris to the north end of town and killing them. There was also testimony that, after the van stopped, Maurice Williams said he wanted to "get rid" of Mack first, and then Maurice asked Bobby whether he wanted to "take" Mack, and Bobby responded, "Yeah." A witness claimed that Owney helped pull Mack out of the van, following which Mack broke free and ran, whereupon Maurice Williams fired several gunshots at him.

Viewed in a light most favorable to the prosecution, the foregoing evidence was sufficient to enable a rational trier of fact to find beyond a reasonable doubt that Maurice Williams, Bobby Williams and Owney were all acting in concert, that they all intended to have Mack killed, that when Maurice fired several shots at Mack during Mack's escape he did so with an intent to kill him, and that Maurice's actions were fairly within the scope of the common unlawful scheme to have Mack killed. Accordingly, Owney's and Bobby Williams' convictions for assault with intent to murder were both supported by sufficient evidence.

Regarding the murder of Lorenzo Harris, in addition to the facts described above, evidence was presented that, following Mack's escape, Owney told Harris that, since Mack got away, he was going to kill Harris. A short while later, Owney was observed covered with blood and Harris' dead body was discovered the next morning. According to the medical examiner, Harris was shot twice, once in the neck and once in the head, and the neck wound would have caused considerable bleeding, possibly even "gushing or spurting" of blood. Viewed most favorably to the prosecution, this evidence was sufficient to enable a rational trier of fact to conclude beyond a reasonable doubt that Owney participated in the killing of Lorenzo Harris, intending his death.

With respect to Bobby Williams, a witness testified that she heard Bobby admit to having shot Harris. Contrary to what Bobby argues on appeal, the record indicates that the witness was not testifying from her prior statement, but rather from her personal recollection as refreshed by the prior statement. It was her recollection at trial that Bobby told her, "I shot him." The trial court was entitled

to consider this testimony as substantive evidence of Bobby's guilt. See *People v Favors*, 121 Mich App 98, 109; 328 NW2d 585 (1982). Furthermore, apart from Bobby's statement to the witness, Bobby gave a statement to the police wherein he admitted that, with knowledge of Maurice Williams' and Lydell Owney's intent to shoot Harris, he helped both Maurice and Owney kidnap Harris, he drove the van to the location where Harris was killed, and he then supplied Owney with the gun that Owney used to shoot Harris. Accordingly, viewed most favorably to the prosecution, there was sufficient evidence to show that Bobby Williams was guilty of second-degree murder, if not directly, then as an aider and abettor.

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Finally, in view of the testimony that Owney and Bobby Williams each possessed a firearm during the commission of the offenses, there was sufficient evidence to support each of their convictions for felony-firearm.

III

Defendants Bobby Williams and Lydell Owney next challenge the trial court's decision to sentence them as adult offenders.

A

For defendant Bobby Williams, the evidence presented at the dispositional hearing supported the trial court's factual findings with respect to each of the factors enumerated in MCL 769.1(3)(a)-(f); MSA 28.1072(3)(a)-(f). Hence, those findings are not clearly erroneous. *People v Lyons (On Remand)*, 203 Mich App 465, 468; 513 NW2d 170 (1994). Furthermore, considering Bobby Williams' prior criminal history, the seriousness of the present offenses, Bobby's poor performance while on juvenile probation in the past, his receipt of thirteen incident reports during the period that proceedings were pending in this case, the likelihood that Bobby will present a danger to the public if released at age 21, the lack of success with past efforts at rehabilitation in the juvenile system, and the best interests of the public welfare and the protection of the public security, we find that the trial court did not abuse its discretion in determining that Bobby Williams and the public would be better served by sentencing him as an adult offender. *Id.*

B

Next, we reject defendant Lydell Owney's claim that the trial court erroneously focused only on factors (b) and (f) of MCL 769.1(3); MSA 28.1072(3), and ignored the remaining statutory factors. The record indicates that each of the statutory factors was considered by the trial court. Although the trial court admittedly gave some of the factors more weight than others, MCL 769.1(3); MSA 28.1072(3) expressly states that the sentencing judge is entitled to give each factor "weight as appropriate to the circumstances." The evidence submitted at the hearing supported the trial court's findings, and thus they are not clearly erroneous. Furthermore, the record supports the trial court's

conclusion that defendant Owney and the public would be better served by sentencing Owney as an adult offender and, consequently, the trial court did not abuse its discretion in doing so.

IV

Each defendant challenges the validity of his sentence under *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990), which holds that a trial court abuses its discretion by imposing a sentence that is disproportionate to the seriousness of the circumstances surrounding the offense and the background of the offender. In these cases, all three defendants were sentenced within the sentencing guidelines' recommended minimum sentence range, thereby rendering their sentences presumptively valid. *People v Fisher*, 442 Mich 560, 582; 503 NW2d 50 (1993). After reviewing the record, we hold that defendants have not overcome the presumptive validity of their sentences. Rather, the sentences are proportionate to the seriousness of the offenses and each individual offender. Accordingly, we find no abuse of discretion.

Affirmed.

/s/ Richard A. Bandstra

/s/ Janet T. Neff

/s/ Michael E. Dodge