

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES B. BERMUDEZ,

Defendant-Appellant.

UNPUBLISHED

March 24, 2000

No. 209521

Wayne Circuit Court

LC No. 97-002589

Before: Griffin, P.J., and Holbrook, Jr., and J. B. Sullivan*, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of armed robbery, MCL 750.529; MSA 28.797, and assault with intent to do great bodily harm, MCL 750.84; MSA 28.279. Defendant was sentenced to three to ten years for each conviction, the sentences to run concurrently. Defendant now appeals as of right. We affirm.

On January 21, 1997, Gus Eggers drove to an apartment complex on Harrison Street in Detroit and, as he walked to the door, he was struck on the back of the head with a baseball bat wielded by Efrain Rivera, codefendant in the trial below. As Eggers crawled to his car after regaining consciousness, defendant turned him over and punched him in the face. Before police arrived, Eggers was also shot once in the chest and \$800 was taken from his pocket. When police reached the scene, Rivera and defendant stood over Eggers' severely injured body, which lay in the street. Rivera was convicted as a principal for armed robbery and assault with intent to do great bodily harm and defendant was convicted of both crimes on an aiding and abetting theory.

Defendant contends there was insufficient evidence to support his convictions and that the verdict of the trial court was against the great weight of the evidence. We disagree.

A person who counsels, aids, or abets in the commission of a crime is prosecuted as if he had directly committed the offense. MCL 767.39; MSA 28.979; *People v Spicer*, 216 Mich App 270, 274; 548 NW2d 245 (1996). Aiding and abetting includes "all forms of assistance rendered to the

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

perpetrator of a crime, and includes all words or deeds which might support, encourage, or incite the commission of a crime.” *People v Turner*, 213 Mich App 558, 568; 540 NW2d 728

(1995). Specifically, 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 he gave aid and encouragement.” *Id.*

The elements of armed robbery are: “(1) an assault, (2) a felonious taking of property from the victim's person or presence, and (3) while the defendant is armed with a weapon described in the statute.” *Id.* at 569. Defendant first contends that the prosecutor failed to prove defendant assisted in the commission of the crime because there was insufficient evidence that defendant's assault on Eggers occurred before or during the robbery.

Eggers' testimony indicates that defendant's assault occurred after Eggers was hit on the head with the bat and while Eggers crawled to his car. Eggers also testified that he felt his money “dragging” through his pants as he crawled to his car. A close reading of the record does not reveal the exact point at which defendant punched Eggers and when the money was actually removed from Eggers' pocket. This detail is of no consequence, however, since robbery is a continuous offense which is not completed until the perpetrator reaches a place of temporary safety. *People v Velasquez*, 189 Mich App 14, 17; 472 NW2d 289 (1991). Defendant punched Eggers during the commission of the crime because the robbery continued until the police arrived. Rivera and defendant had not retreated to safety so, regardless whether the money was removed from Eggers' pocket before or after defendant's punch, his assault took place during the commission of the robbery.

There was also sufficient evidence that defendant either intended the commission of the armed robbery or knew Rivera's intent while giving assistance. For a conviction under an aiding and abetting theory, the person must possess the required intent of the crime or must participate with the knowledge that the principal had the required intent. *People v Wilson*, 196 Mich App 604, 614; 493 NW2d 471 (1992). This intent may be shown by logical and reasonable inference from the defendant's conduct and surrounding circumstances. *People v Lawton*, 196 Mich App 341, 349; 492 NW2d 810 (1992). Armed robbery is a specific intent crime. *People v King*, 210 Mich App 425, 428; 534 NW2d 534 (1995). Therefore, the prosecutor was required to prove that defendant intended to commit armed robbery or knew that Rivera so intended.

A defendant's close association with the principal is evidence of a defendant's state of mind while assisting in the commission of a crime. *Turner, supra* at 569. Defendant's close association with Rivera was evident because the two lived at the same address. The association was also clear during the crime. Both Rivera and defendant stood over Eggers' severely wounded body lying in the street and, as the police drove up, both walked away from the body. Defendant then stood with Rivera, who had blood on his sweatshirt and was carrying Eggers' money.

Furthermore, it is a logical inference that defendant punched Eggers to intentionally prevent him from continuing toward his car while Rivera took Eggers' money. As discussed, *supra*, Eggers was punched at nearly the same time that his money was removed from his pocket. As the court noted, to have punched Eggers after seeing him so severely injured indicates an intent to join the robbery or to further its commission. Defendant did not merely happen by and hit Eggers spontaneously. The trial

court's inference was more logical: that defendant was assisting Rivera in committing the crime by subduing Eggers. An inculpatory inference is also logical, not only because defendant's assault occurred during the ongoing robbery, but because he remained until the crime's end, when the police arrived. From this continued participation in the robbery, one may extrapolate defendant's specific intent to help rob Eggers. Whether an act was within the intended scope of a common criminal enterprise is a factual issue. *Id.* at 567. The evidence was sufficient for the court to find that defendant's act of punching Eggers was, indeed, part of a common criminal plan.

Defendant also contends that there was insufficient evidence that he had the requisite intent for his conviction for assault with intent to do great bodily harm. The elements of assault with intent to do great bodily harm are: "(1) an assault through an attempt or offer with force and violence to do corporal hurt to another coupled with (2) a specific intent to do great bodily harm less than murder." *People v Bailey*, 451 Mich 657, 669-670; 549 NW2d 325 (1996), amended 453 Mich 1204; 551 NW2d 163 (1996).

Defendant's participation after Eggers was hit and before he was shot suggests that defendant observed Rivera's efforts to severely injure Eggers. Moreover, Eggers had a severe head injury, had lost consciousness, and was literally crawling to his car when defendant stepped forward and punched him. This evidence is sufficient to show that defendant knew of Rivera's intent to injure Eggers and his participation in the ongoing assault was part of a joint effort to cause Eggers severe injury.

Further, defendant's blow to Eggers was so severe, or Eggers was already so injured, that defendant's punch caused Eggers to again lose consciousness. That defendant punched Eggers in the head after such an obvious, brutal injury evidences his own specific intent to cause Eggers great bodily harm. Defendant contends that, because he did not cause Eggers' most severe wounds (e.g., the major head injury or the gunshot wound), his assault conviction was improper. However, to be convicted of aiding and abetting, the amount of aid "is immaterial if it had the effect of inducing the crime." *Lawton*, *supra* at 352. This argument, therefore, is without merit.

Taken in the light most favorable to the prosecution, the evidence was sufficient to support defendant's convictions beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 722-723; 597 NW2d 73 (1999).

In addition to his sufficiency of the evidence claim, defendant argues, in the alternative, that the verdict was against the great weight of the evidence, although he presented no separate analysis of that claim. With regard to this issue, this Court considers whether the evidence at trial preponderated heavily against the verdict reached and if a serious miscarriage of justice would result absent a new trial. *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998), citing *State v Ladabouche*, 146 Vt 279, 285; 502 A2d 852 (1985).

In this case, as proof of the crime of aiding and abetting an armed robbery, the prosecution showed that Rivera hit Eggers with a bat and took money from Eggers' pocket, that defendant assisted in the robbery by punching Eggers during the commission of the crime, and that defendant knew of Rivera's intent to rob Eggers or intended to do so himself because he punched Eggers at virtually the

same time Eggers' money was stolen and just after Rivera hit Eggers with the bat. Moreover, as discussed above, the prosecutor also showed defendant's close association with Rivera.

In regard to the crime of aiding and abetting an assault with intent to do great bodily harm, the prosecution showed, first, that Rivera hit Eggers on the head with a baseball bat, causing severe injury. The prosecutor also showed that defendant punched Eggers in the face after Eggers was hit on the head and while he was trying to crawl to his car after regaining consciousness. Finally, the prosecutor presented evidence that defendant punched Eggers so hard that Eggers again lost consciousness.

Defendant presented no evidence at all to counter the prosecution's proofs. Because the evidence at trial did not preponderate heavily against the verdict reached by the trial court, defendant's claim that the verdict was against the great weight of the evidence is without merit.

Affirmed.

/s/ Richard Allen Griffin

/s/ Donald E. Holbrook, Jr.

/s/ Joseph B. Sullivan