STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARIE CECELIA KRUMREY,

Defendant-Appellant.

UNPUBLISHED
May 23, 2000

No. 210801
Schoolcraft Circuit Court
LC No. 97-006138-FH

Before: Hood, P.J., and Saad and O'Connell, JJ.

PER CURIAM.

A jury convicted defendant of one count of unlawful manufacture of marijuana, MCL 333.7401(2)(d)(iii); MSA 14.15(7401)(2)(d)(iii), and one count of failure to present a pistol for safety inspection, MCL 750.228; MSA 28.425. The trial court sentenced defendant to four months' imprisonment for manufacturing marijuana or aiding and abetting her cohabitant Timothy Rice in manufacturing marijuana, with thirty days to be served immediately and the balance suspended until she completed twenty-four months' probation. The court sentenced defendant to ten days' imprisonment for the firearms safety inspection violation. Defendant appeals as of right. We affirm.

First, defendant argues that the trial court erred in denying her motion for directed verdict at the close of the prosecutor's case-in-chief. Specifically, defendant argues that the prosecutor failed to prove that she had the requisite mens rea to aid and abet in Timothy Rice's marijuana manufacturing. We review a sufficiency of the evidence claim de novo by viewing the evidence in the light most favorable to the prosecutor to determine whether a rational trier of fact could find that the prosecutor established the essential elements of the crime beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 722-723; 597 NW2d 73 (1999); *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), modified 441 Mich 1201 (1992); *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999).

We do not interfere with the jury's role in determining the weight of the evidence or the credibility of the witnesses. *Wolfe, supra* at 514; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Likewise, we leave the resolution of questions of intent to the trier of fact. *People v McBride*, 204 Mich App 678, 682; 516 NW2d 148 (1994). Intent may be inferred from all the facts

and circumstances, *People v Safiedine*, 163 Mich App 25, 29; 414 NW2d 143 (1987), and "[b]ecause of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient." *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). See also *People v Bowers*, 136 Mich App 284, 297; 356 NW2d 618 (1984).

The prosecutor charged defendant with violating MCL 333.7401(2)(d)(iii); MSA 14.15(7401)(2)(d)(iii) under a theory that she aided and abetted Rice. One who procures, counsels, aids, or abets in the commission of an offense may be convicted and punished as if she 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'" describes all forms of assistance rendered to the perpetrator of a crime and comprehends all words or deeds that might support, encourage, or incite the commission of a crime." *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999), quoting *People v Turner*, 213 Mich App 558, 568; 540 NW2d 728 (1995). The prosecutor must not only show that the defendant encouraged or assisted in the commission of the crime, but also that the defendant intended the commission of the crime or had knowledge that the principal intended its commission. *Id.* at 757-758, quoting *Turner, supra* at 568. We must determine whether defendant aided Rice in manufacturing the marijuana and whether she had the requisite intent.

In the present case, when defendant moved for a directed verdict, testimony presented to the trial court indicated that Rice had been living with defendant for approximately one year, and that the police found a total of 617.3 grams of marijuana in various locations throughout defendant's home. In the bedroom that defendant and Rice shared, the police found two plants growing next to the bed. They found marijuana under the bed, and in and on top of a night stand and dresser. In addition, they found guides to marijuana cultivation, as well as numerous photographs of marijuana plants growing in what looked like defendant's basement. In defendant's unlocked garage, the police found drying marijuana plants and a bag of dried marijuana. Behind the garage, the police found several plants growing both in containers and in the ground. Because of the volume of marijuana, the presence of growing plants and planting supplies, and the presence in the bedroom of a considerable quantity of marijuana, marijuana cultivation guides, growing marijuana plants, and photographs of growing plants, the jury could have concluded beyond a reasonable doubt that defendant knew that Rice was manufacturing marijuana. *Johnson, supra* at 723. Additionally, since defendant permitted Rice to engage in marijuana manufacture in her home and garage, a rational trier of fact could conclude that she helped him to conceal his activity in her garage, basement, and bedroom. Thus, the prosecutor demonstrated sufficient circumstantial evidence of intent to support a conviction of defendant as an aider and abettor.

Next, defendant argues that the trial court erred in refusing to suppress the search warrant that was based on information obtained by Martin Rice, Timothy Rice's thirteen-year-old son. In particular, she argues that the search violated her constitutional rights because Martin acted as an agent of the police when he entered the bedroom that she and Rice shared. We disagree. We review de novo a trial court's determination on a motion to suppress evidence, but we review the underlying findings of fact for clear error. *People v Powell*, 235 Mich App 557, 560; 599 NW2d 499 (1999); *People v Darwich*, 226 Mich App 635, 637; 575 NW2d 44 (1997). A finding is clearly erroneous if it leaves

the appellate court with a definite and firm conviction that the trial court made a mistake. *People v Parker*, 230 Mich App 337, 339; 584 NW2d 336 (1998).

Both the United States and Michigan Constitutions prohibit unreasonable searches. US Const, Am IV; Const 1963, art 1, § 11. However, this prohibition does not apply to a search or seizure, even an unreasonable one, conducted by a private person who is not acting as an agent of the government or with the government's participation or knowledge. *People v McKendrick*, 188 Mich App 128, 141; 468 NW2d 903 (1991). The Fourth Amendment is not violated by the admission of evidence obtained by a private individual who acted without the knowledge of the police and was not encouraged or authorized by the police. *People v Oswald (After Remand)*, 188 Mich App 1, 7; 469 NW2d 306 (1991), *People v DeLeon*, 103 Mich App 225, 228; 303 NW2d 447 (1981); *People v Langley*, 63 Mich App 339, 344; 234 NW2d 513 (1975).

In *McKendrick, supra* at 142-143 (citations omitted), we set forth the relevant test for whether a private search constitutes state action triggering the Fourth Amendment:

> To determine whether a given search is the type proscribed by the Fourth Amendment, two initial factors must be shown. First, the police must have instigated, encouraged, or participated in the search. Second, the individual must have engaged in the search with the intent of assisting the police in their investigative efforts. A person will not be deemed a police agent merely because there was some antecedent contact between that person and the police, and there is no seizure within the meaning of the Fourth Amendment when an object discovered in a private search is voluntarily turned over to the government.

After hearing testimony from various witnesses, the trial court found that Timothy Rice's ex-wife, Emily Kleiber, initiated all the contacts between the police and her children. The court thus concluded that no evidence was presented to show that an agency existed between Martin and the police. We decline to disturb the trial court's determination of the credibility of witnesses. *People v McElhaney*, 215 Mich App 269, 278; 545 NW2d 18 (1996). The testimony supported the trial court's finding that Kleiber initiated all contacts with the police, as well as its conclusion that no agency between Martin and the police existed. Defendant presented no evidence that the police instigated, encouraged, or participated in Martin's search of the bedroom. *McKendrick, supra* at 142. Mere antecedent contact with the police does not turn a private searcher into an agent of the police. *Id*. at 143. Thus, we find no error in the court's refusal to suppress the evidence.

Finally, defendant argues that her right to present an agency defense at the suppression hearing was infringed when the trial court denied her the right to call Martin as a witness and declined to adjourn the hearing. We disagree. We review a trial court's decision to grant or deny a continuance for an abuse of discretion. *People v Echavarria*, 233 Mich App 356, 368; 592 NW2d 737 (1999). An abuse of discretion exists if an unprejudiced person would conclude that the ruling had no justification or excuse. *People v Snider*, 239 Mich App 393, 419; 608 NW2d 502 (2000).

At the suppression hearing, defense counsel examined Emily Kleiber and two police officers without limitation by the court. The testimony lasted for approximately 1½hours. Defense counsel attempted to call Martin, who was not under subpoena, and the trial court called an in-chambers meeting stating, "I'm very concerned about – if there is any way possible to, consistent with your duties, [defense counsel], to avoid calling these – these children, I think we should explore it." The court then called a recess so that defense counsel could talk to Martin. Upon return to the record, defense counsel reported that he interviewed Martin with his mother present and after a "brief period" she ended the interview. Counsel also reported that Kleiber had returned to work, taking her children with her. He agreed that he had not informed her that as a subpoenaed witness she had to remain in court, but noted that she offered to bring the children back at another time. The court closed the proofs and stated that "[i]f there is to be any reopening of proofs, it will have to be accompanied by petition and showing of some reason to – to reopen."

A trial court has a duty to limit the introduction of evidence and the arguments of counsel to relevant and material matters. MCL 768.29; MSA 28.1052. The court must also ensure that all parties receive a fair trial. *People v Ullah*, 216 Mich App 669, 674; 550 NW2d 568 (1996). Even relevant evidence may be excluded if its probative value is substantially outweighed by the danger of undue delay, waste of time, or needless presentation of cumulative evidence. MRE 403; *People v Mills*, 450 Mich 61, 75; 537 NW2d 909 (1995), modified 450 Mich 1212 (1995).

Defendant's due process rights were protected at the evidentiary hearing. She was given a sufficient opportunity to develop constitutionally significant facts, and the court was given an opportunity to assess the credibility of the witnesses. Although Martin might have provided the most direct evidence of his intent in undertaking his search of the bedroom, defendant failed to produce evidence to support the other prong of the agent search analysis, i.e., that police knew and acquiesced to the search, or instigated, encouraged, or participated in it. *McKendrick, supra* at 142. If defense counsel had elicited some significant information from Martin during his interview, then he could have sought to reopen the proofs and subpoena Martin for a subsequent evidentiary hearing. No fundamental unfairness appears on this record. Rather, the court balanced its concerns about the harm of calling thirteen-year-old Martin to testify, the court's crowded and delayed docket, and the consistent failure of defense counsel to elicit any indication that the police were involved in soliciting or encouraging Martin's search, against the possible harm to defendant of closing proofs subject to reopening for cause. The trial court did not abuse its discretion in deny an adjournment and defendant was not denied due process.

Affirmed.

/s/ Harold Hood
/s/ Henry William Saad
/s/ Peter D. O'Connell