STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JASON BROWN,

Defendant-Appellee.

UNPUBLISHED
October 31, 2000

No. 219896
Wayne Circuit Court
LC No. 99-001485

Before: Griffin, P.J., and Cavanagh and Gage, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court order granting defendant's motion to quash following his bindover on charges of carjacking, MCL 750.529a; MSA 28.797(a), armed robbery, MCL 750.529; MSA 28.797, and assault with intent to commit murder, MCL 750.83; MSA 28.278. We affirm.

When reviewing a magistrate's decision to bind over a defendant for trial, the circuit court must consider the entire record of the preliminary examination and may reverse the magistrate's decision only if it appears that the decision was an abuse of discretion. *People v Abraham*, 234 Mich App 640, 656; 599 NW2d 736 (1999); *People v Orzame*, 224 Mich App 551, 557; 570 NW2d 118 (1997). This Court reviews the circuit court's decision de novo to determine whether the magistrate abused its discretion. *Id*.

One who procures, counsels, aids, or abets in the commission of an offense may be convicted and punished as if he committed the offense directly. MCL 767.39; MSA 28.979. To establish that a defendant aided and abetted a crime, the prosecutor must prove (1) the crime charged was committed by the defendant or some other person, (2) the defendant performed acts or gave encouragement that assisted the principal in committing the crime, and (3) the defendant intended the commission of the crime or knew the principal intended its commission at the time he gave aid or encouragement. *People v Norris*, 236 Mich App 411, 419; 600 NW2d 658 (1999); *People v Turner*, 213 Mich App 558, 568; 540 NW2d 728 (1995). Mere presence, even with knowledge that an offense is about to be committed or is being committed, is insufficient to establish that a defendant aided or abetted the commission of a crime. *Norris, supra* at 419-420.

The district judge properly recognized that the evidence against defendant was sufficient to create a jury question whether defendant's conduct constituted more than mere presence at the scene of the crime. The evidence established that defendant and the perpetrator were in the car together just before the perpetrator got out of the vehicle and committed the offenses. As the offenses were being committed, defendant moved his car to a pump further away from the gas station and faced it toward the street. Defendant was looking back and watching as the crimes were perpetrated. When the perpetrator drove off in the victims' car, defendant attempted to drive off but slid on the ice. After he was pulled from the car by the victims, he ran away.

Here, the circuit court erred in concluding that the district judge had abused its discretion in binding over defendant. The district judge properly recognized the evidence presented at the preliminary examination was sufficient to permit a reasonable inference that defendant knowingly participated in the perpetrator's plan to commit a carjacking, robbery, and assault, even if only as a lookout or getaway driver. See *People v Martin*, 150 Mich App 630; 389 NW2d 713 (1986); *People v Dickens*, 73 Mich App 150, 155; 250 NW2d 809 (1977). See also *People v Anderson*, 166 Mich App 455, 474; 421 NW2d 200 (1988). Accordingly, we reverse the circuit court's order granting defendant's motion to quash, and remand this matter to the circuit court for reinstatement of the charges.

Reversed and remanded for reinstatement of the charges. We do not retain jurisdiction.

/s/ Richard Allen Griffin
/s/ Mark J. Cavanagh
/s/ Hilda R. Gage