STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 14, 2000
v	No. 215401 Wayne Circuit Court
ELAINE PEEK, Defendant-Appellant.	Criminal Division LC No. 98-002174

Before: Markey, P.J., and Murphy and Collins, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of larceny over $100, MCL 750.356; MSA 28.588, and false report of a felony MCL 750.411a(1)(b); MSA 28.643(1)(b). She was sentenced to two years' probation and ordered to pay $1,570 in restitution. Defendant appeals as of right. We reverse.

Defendant argues first on appeal that the evidence was insufficient to support her conviction for larceny. We agree. We review a claim of insufficient evidence de novo, viewing the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992); *People v Simpson*, 207 Mich App 560, 562; 526 NW2d 33 (1994). Circumstantial evidence and reasonable inferences arising from the evidence may constitute satisfactory proof of the elements of the offense. *People v Greenwood*, 209 Mich App 470, 472; 531 NW2d 771 (1995).

In order to support a conviction for larceny, the prosecution must produce sufficient evidence to prove each of the following elements:

> (1) an actual or constructive taking of goods or property, (2) a carrying away or asportation, (3) the carrying away must be with a felonious intent, (4) the subject matter must be the goods or personal property of another, (5) the taking must be without the consent and against the will of the owner. [*People v Cain*, 238 Mich App 95, 120; 605 NW2d 28 (1999), quoting *People v Anderson*, 7 Mich App 513, 516; 152 NW2d 40 (1967).]

Also, a defendant may be charged as a principal but convicted as an aider and abettor. *People v Turner*, 213 Mich App 558, 568; 540 NW2d 728 (1995). The elements of aiding and abetting are:

> (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.* Emphasis added.]

"'Aiding and abetting' encompasses all forms of assistance to the principal and all words and deeds that might support, encourage, or incite the commission of a crime." *Id.* The amount of assistance is immaterial. *People v Usher*, 121 Mich App 345, 350; 328 NW2d 628 (1982). "One aids or abets when he takes conscious action to make the criminal venture succeed." *Id*. at 350-351. However, "[m]ere 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 assisted in the commission of the crime." *People v Norris*, 236 Mich App 411, 419-420; 600 NW2d 658 (1999).

In this case, the circumstantial and eyewitness evidence did not support an inference that defendant participated in the alleged larceny. No physical evidence linked defendant to the crime. Although an eyewitness placed defendant at the scene, her testimony revealed that defendant was merely present at the time of the larceny. The eyewitness, a neighbor, testified that she saw defendant "standing . . . at the front of the house at the gate" when she looked out of her bedroom window. Although she saw people carrying objects that she could not identify from the front of the yard toward the back alley, the neighbor testified that defendant did not have anything in her hands; defendant did not give anything to anyone or receive anything from anyone. When asked if defendant was interacting with the other people in the yard, the witness stated "[defendant] was just standing there by the fence."

Although reasonable inferences may prove the elements of a crime, *Greenwood, supra* at 472, those inferences must arise from the evidence. Here, the evidence simply does not support an inference that defendant acted as a principal or as an aider and abettor. None of the evidence suggested that defendant actually or constructively took personal property and carried it away, and the eyewitness did not describe any conduct that could be construed as being helpful or encouraging to others moving the objects through the yard. Rather, the evidence shows that, at most, defendant was merely present when the larceny occurred. Accordingly, defendant's larceny conviction is reversed.

Defendant argues next that there was insufficient proof to support her conviction for making a false report of a felony. We agree. Falsity of the report is an element of the crime. See MCL 750.411a; MSA 28.691; *People v Lay*, 336 Mich 77, 82; 57 NW2d 453 (1953). Here, no evidence suggests that defendant's report was false in any respect. To the contrary, there was clear evidence that a felony had occurred and that the items that defendant reported as stolen had, in fact, been stolen. Therefore, defendant's conviction for making a false felony report also is reversed.

In light of our resolution of the preceding issues, we need not resolve defendant's remaining claim on appeal.

Reversed.

/s/ Jane E. Markey
/s/ William B. Murphy
/s/ Jeffrey G. Collins