

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANDRE BENFORD,

Defendant-Appellant.

UNPUBLISHED

December 28, 2001

No. 225991

Wayne Circuit Court

LC No. 99-003997

Before: Saad, P.J., and Sawyer and O’Connell, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction, following a jury trial, of assault with intent to commit murder, MCL 750.83. Defendant was prosecuted under an aiding and abetting theory, MCL 767.39. The trial court sentenced defendant to a term of seven to twenty years’ imprisonment. We affirm.

This appeal arises from the shooting of William Bryant in Detroit on December 2, 1998. Defendant’s sole issue on appeal is that the prosecution failed to present sufficient evidence to support his conviction. Specifically, defendant contends that the prosecutor proffered insufficient evidence to prove that defendant assisted in the commission of this crime or was aware that his codefendant, Stacy Jones,¹ intended to draw a gun and shoot Bryant. We disagree.

We review challenges to the sufficiency of the evidence “by considering the evidence in the light most favorable to the prosecution and determining whether a rational trier of fact could have found that the essential elements of the charged crime were proved beyond a reasonable doubt.” *People v DeKorte*, 233 Mich App 564, 567; 593 NW2d 203 (1999). The offense of assault with intent to commit murder requires (1) an assault, (2) with an actual intent to kill, (3)

¹ Defendant’s codefendant, Stacy Jones, was convicted of one count of assault with intent to commit murder, MCL 750.83, carrying a concealed weapon, MCL 750.227, and possession of a firearm during the commission of a felony, MCL 750.227b. His appeal is also before this panel in Docket No. 225988.

which, if successful, would make the killing murder. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). Defendant was prosecuted under an aiding and abetting theory. MCL 767.39 provides that “[e]very person concerned in the commission of an offense, whether he directly commits the act constituting the offense or procures, counsels, aids, or abets in its commission may hereafter be prosecuted, indicted, tried, and on conviction shall be punished as if he had directly committed such offense.”

A conviction of aiding and abetting requires proof of the following elements: (1) the underlying crime was committed by either the defendant or some other person, (2) the defendant performed acts or gave encouragement that aided and assisted the commission of the crime, and (3) the defendant intended the commission of the crime or had knowledge that the principle intended its commission at the time of giving aid or encouragement. [*People v Smielewski*, 237 Mich App 196, 207; 596 NW2d 636 (1999), citing *People v Genoa*, 188 Mich App 461, 463; 470 NW2d 447 (1991).]

Assault with the intent to commit murder is a specific intent crime. See *People v Rockwell*, 188 Mich App 405, 411; 470 NW2d 673 (1991). An individual may be convicted under an aiding and abetting theory for a specific intent crime if they possessed the specific intent required of the principal or if they know that the principal possessed that intent. *People v King*, 210 Mich App 425, 431; 534 NW2d 534 (1995). The intent to kill may be proved by inference from facts in evidence. *People v Lawton*, 196 Mich App 341, 350; 492 NW2d 810 (1992).

After viewing the record in the light most favorable to the prosecution, we are satisfied that ample record evidence existed to lead a rational trier of fact to conclude beyond a reasonable doubt that defendant assisted in the commission of this crime and was aware that Jones intended to kill Bryant. According to the record, Jones and Bryant were involved in an altercation at approximately noon on December 2, 1998. At that time heated words were exchanged, and Jones attempted to shoot Bryant and missed. Approximately an hour and a half later, defendant borrowed a 1998 black Ford Expedition from a friend and drove Jones to Bryant’s apartment. Defendant waited while Jones jumped out of the Expedition, ran over to Bryant’s apartment and forced open the door. However, on discovering that Bryant was not in his apartment, Jones ran around the Expedition and began shooting at Bryant after defendant directed Bryant’s location to Jones by honking his horn and pointing at Bryant.

Witnesses at trial observed Jones chase Bryant and shoot at him repeatedly and then return to the Expedition that defendant drove away. Defendant and Jones then returned to defendant’s home to return the Expedition to its owner. In our view, reasonable inferences arising from the record evidence supported the prosecution’s theory that defendant actively assisted Jones in the commission of this offense. Moreover, contrary to defendant’s assertion on appeal, there is ample record evidence from which a rational trier of fact could draw the reasonable inference that defendant was aware of Jones’ intent to kill Bryant. Reasonable inferences arising from the evidence can provide satisfactory evidence of the intent to kill. *Lawton, supra* at 350. Accordingly, the evidence, when viewed in the light most favorable to the

prosecution, was sufficient to convict defendant of assault with the intent to commit murder under an aiding and abetting theory.

Affirmed.

/s/ Henry William Saad

/s/ David H. Sawyer

/s/ Peter D. O'Connell