

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHAMU DOMINGO MARTIN,

Defendant-Appellant.

---

UNPUBLISHED

December 27, 2002

No. 236008

Wayne Circuit Court

LC No. 00-008455

Before: Hood, P.J. and Smolenski and Kelly, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of second-degree murder, MCL 750.317 as an aider and abettor, MCL 767.39. The trial court sentenced defendant to twenty to forty-five years' imprisonment. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

I. Basic Facts

On June 8, 2000, defendant visited the home of his cousin, Vincent Martin. While there, defendant used Martin's telephone. Before leaving the home, defendant instructed Martin that no matter what Martin heard, he was not to open the door. A few minutes later, Martin heard a number of "booms." While Martin initially thought the "booms" were fireworks, he realized it was gunfire. Martin looked out of his home and saw two people running down the street. One man was chasing another. The chaser had his arm extended shooting a gun. Martin called 911.

Police responded to the scene and followed a trail of blood from an idling car in front of Martin's home. The victim was found with four gunshot wounds to the body. The idling car was riddled with bullet holes. When questioned at the scene, Martin did not tell police about defendant's prior presence in his home, or the phone calls made by defendant. Later that day, Martin received a voice-mail message from defendant telling Martin "I'm okay" and "you haven't seen me."

The following day, Martin asked defendant why the victim had been shot in front of his house. Defendant responded that the victim had robbed another friend's girlfriend and defendant "had to do what he had to do." Martin's house was chosen because it was dark and overgrown with bushes. Several days after this conversation, defendant told Martin that he was leaving and would not be around for several months.

When defendant was arrested, he told police that he was in Kalamazoo at the time of the murder. He denied knowing anyone living on the street where the murder took place and denied knowing Martin. Following the preliminary examination, but before the trial, Martin received a letter from defendant asking for Martin's help. Defendant wanted Martin to testify, contrary to his testimony at the preliminary examination, that he did not talk to defendant at all before or after the shooting. Defendant wrote that he was about to get a life sentence for something he did not do because he would not talk to the police. This letter was admitted into evidence without objection.

## II. Sufficiency of Evidence

Defendant first argues that the evidence was insufficient to support a conviction of second-degree murder on an aiding and abetting theory. We disagree. In reviewing the sufficiency of the evidence, this Court views the evidence in the light most favorable to the prosecutor and determines whether a rational trier of fact could find the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999), quoting *People v Wolfe*, 440 Mich 508, 513-516; 489 NW2d 748 (1992).

The elements of second-degree murder are (1) death, (2) caused by an act of the defendant, (3) with malice, and (4) without justification or excuse. *People v Mayhew*, 236 Mich App 112, 125; 600 NW2d 370 (1999). The malice element of second-degree murder is defined as a defendant's wanton and willful disregard of the likelihood that the natural tendency of his behavior is to cause death or great bodily harm. *Id.* Additionally, "[m]alice for second-degree murder can be inferred from evidence that a defendant 'intentionally set in motion a force likely to cause death or great bodily harm.'" *Id.*, quoting *People v Djordjevic*, 230 Mich App 459, 462; 584 NW2d 610 (1998).

To support a finding that a defendant aided and abetted a crime, 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 which 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. *People v Partridge*, 211 Mich App 239, 240; 535 NW2d 251 (1995). "Circumstantial evidence and the reasonable inferences arising from the evidence can constitute satisfactory proof of the elements of a crime." *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999), quoting *People v Allen*, 201 Mich App 98, 100; 505 NW2d 869 (1993).

Here, the evidence presented established that defendant's friend was angry with the victim for robbing his girlfriend. The victim was ambushed outside of Martin's home. Evidence established that defendant made the phone call that lured the victim to the scene. Martin's house was chosen because it was dark and the front was overgrown with bushes. Shortly before the murder, defendant told Martin to stay in the home no matter what he heard. The victim was chased and shot. He died of multiple gunshot wounds. After the murder, defendant left Martin a message telling him, "you haven't seen me" and that he was leaving town for several months.

After reviewing the record, we conclude that the evidence established that death or great bodily harm was the natural tendency of the perpetrators' firing at the victim and that defendant's assistance constituted aiding and abetting. Further, we conclude that the evidence

established that defendant either had the requisite intent or knew the perpetrators had malicious intent. Thus, we find a rational trier of fact could find that the essential elements of the crime, aiding and abetting in second-degree murder, were proven beyond a reasonable doubt.

### III. Ineffective Assistance of Counsel

Defendant also argues that he was denied the effective assistance of counsel by defense counsel's failure to object to the admission of the letter allegedly sent by defendant to Martin. We disagree. In the absence of an evidentiary hearing on this issue, our review is limited to mistakes apparent from the record. *People v Barclay*, 208 Mich App 670, 672; 528 NW2d 842 (1995).

"To establish a claim of ineffective assistance of counsel, the defendant must show that counsel's performance fell below an objective standard of reasonableness and that counsel's representation prejudiced the defendant so as to deprive him of a fair trial." *Barclay, supra*. Additionally, the defendant must overcome the presumption that the challenged action is sound trial strategy. *People v Daniel*, 207 Mich App 47, 58; 523 NW2d 830 (1994). Effective assistance of counsel is presumed, and the defendant bears a heavy burden of proving otherwise. *People v Toma*, 462 Mich 281, 302-303; 613 NW2d 694 (2000).

After reviewing the record, we do not find that defense counsel's actions fell below an objective standard of reasonableness. MRE 901(a) states that the requirement of authentication as a condition precedent to admissibility "is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Here, after testifying at the preliminary examination, Martin received a letter that was addressed to him at his father's home. The letter was signed "Domingo" and referred to the events occurring on the night of the murder and the relationship between defendant and Martin. The writer did not admit participation in the murder, but did request that Martin change his testimony for trial. Although Martin could not identify the handwriting as defendant's, defense counsel conceded during closing arguments that defendant had written the letter. Clearly, any objection would have been groundless and "[c]ounsel is not obligated to make futile objections." *People v Meadows*, 175 Mich App 355, 362; 437 NW2d 405 (1989).

Affirmed.

/s/ Harold Hood  
/s/ Michael R. Smolenski  
/s/ Kirsten Frank Kelly