

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES RABON,

Defendant-Appellant.

UNPUBLISHED

June 17, 2003

No. 236009

Wayne Circuit Court

LC No. 00-008002-01

Before: Sawyer, P.J., and Meter and Schuette, JJ.

PER CURIAM.

Defendant appeals as of right his conviction of second-degree murder, MCL 750.317, entered after a bench trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with second-degree murder on an aiding and abetting theory in the beating death of the eighty-year-old decedent. The evidence showed that defendant and Parris Germany pushed, kicked, and struck decedent with their fists, and that defendant struck decedent about the head and chest with various objects, including a speaker, an iron, and a glass cup. The beating lasted for twenty to thirty minutes. The evidence showed that decedent died from multiple blunt force trauma to the head and chest, and that the manner of death was homicide. Defendant made a statement to police in which he admitted that he pushed, hit, and kicked decedent. He maintained that the beating was still in progress when he left the scene, and that decedent was alive at that time. Defendant contended that he beat decedent because he thought that decedent was supplying a friend with money to buy crack cocaine.

The trial court acquitted defendant of possession of a firearm during the commission of a felony, MCL 750.227b, but convicted him of second-degree murder on an aiding and abetting theory. The trial court relied heavily on defendant's statement, and concluded that the beating of decedent began before defendant arrived and continued after he left the residence. The trial court indicated that it had grappled with the issue of whether defendant's actions constituted second-degree murder or a lesser offense such as assault with intent to do great bodily harm less than murder, MCL 750.84, or felonious assault, MCL 750.82, and had concluded that based on the severity of the beating and on defendant's admission that he struck, kicked, and pushed decedent, a conviction of second-degree murder on an aiding and abetting theory was appropriate. The

trial court sentenced defendant to fifteen to thirty-one years and three months in prison, with credit for 297 days.¹

When reviewing a challenge to the sufficiency of the evidence in a bench trial, we view the evidence presented in a light most favorable to the prosecution, and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Vaughn*, 186 Mich App 376, 379; 465 NW2d 365 (1990). The trier of fact may make reasonable inferences from evidence in the record, but may not make inferences completely unsupported by any direct or circumstantial evidence; *Id.* at 380.

In a bench trial, the court must make findings of fact and state separately its conclusions of law. MCR 6.403. Findings are sufficient if it appears that the trial court was aware of the issues in the case and correctly applied the law. *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995). We review a trial court's findings of fact for clear error. MCR 2.613(C); *People v Hermiz*, 235 Mich App 248, 255; 597 NW2d 218 (1999), *aff'd* by equal division 462 Mich 71; 611 NW2d 783 (2000). A finding is considered to be clearly erroneous if, after a review of the entire record, we are left with the firm and definite conviction that a mistake was made. *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991).

As noted in *People v Werner*, 254 Mich App 528, 531; 659 NW2d 688 (2002):

The elements of second-degree murder are (1) a death; (2) caused by an act of the defendant; (3) with malice; and (4) without justification or excuse. Malice is defined as the intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and willful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm. [Citations omitted.]

To support a finding that a defendant aided and abetted a crime, the prosecutor must show that: (1) the crime was committed by 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. *People v Turner*, 213 Mich App 558, 568; 540 NW2d 728 (1995), overruled in part on other grounds *People v. Mass*, 464 Mich. 615, 627-628; 628 NW2d 540 (2001). Moreover,

[a]n aider and abettor's state of mind may be inferred from all the facts and circumstances. Factors that may be considered include a close association between the defendant and the principal, the defendant's participation in the planning or execution of the crime, and evidence of flight after the crime. [*Turner, supra* at 569 (citations omitted).]

¹ During the same proceeding the trial court sentenced defendant to a concurrent term of two and one-half to five years in prison for probation violation. In *People v Rabon*, unpublished opinion per curiam of the Court of Appeals, issued February 25, 2003 (Docket No. 236010), another panel of this Court affirmed that sentence.

Defendant argues that insufficient evidence was produced to support his conviction, and that a remand for further findings of fact regarding intent is necessary. We disagree and affirm defendant's conviction. Defendant admitted that he struck, kicked, and pushed the eighty-year-old decedent. The evidence showed that in addition to hitting decedent with his fists, defendant struck him in the head and chest with a speaker, an iron, and a glass cup. Defendant and Germany beat decedent for twenty to thirty minutes. The evidence that defendant participated in the prolonged and brutal beating of the elderly decedent supported a finding that defendant acted in wanton and willful disregard of the likelihood that the tendency of his behavior was to cause death or great bodily harm. *Werner, supra*. Defendant was charged on an aiding and abetting theory; therefore, the fact that decedent was alive when defendant left the residence is irrelevant. The evidence, viewed in a light most favorable to the prosecution, was sufficient to support defendant's conviction. *Vaughn, supra*.

We decline to remand for further findings of fact regarding defendant's intent. The nature of defendant's actions was not in dispute. The trial court's statement that it struggled with the issue of whether defendant's actions constituted second-degree murder or a lesser offense such as assault with intent to do great bodily harm less than murder indicates that it was considering what intent was demonstrated by defendant's actions. The trial court understood the issues in the case and correctly applied the law. *Smith, supra*. Its finding that defendant had the requisite intent for second-degree murder was not clearly erroneous. *Hermiz, supra*.

Affirmed.

/s/ David H. Sawyer
/s/ Patrick M. Meter
/s/ Bill Schuette