

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

LAQUAN CASEY DURANT,

Defendant-Appellee.

UNPUBLISHED
December 2, 2003

No. 243023
Jackson Circuit Court
LC No. 02-001746-FH

Before: Cooper, P.J., and Markey and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right the order dismissing defendant's jury conviction for second-degree home invasion, MCL 750.110a(3), based on insufficiency of the evidence. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In determining whether sufficient evidence has been presented to sustain a conviction, a reviewing court must view the evidence in the light most favorable to the prosecution and determine whether any rational finder of fact could have found 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). "The standard of review is deferential: a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

MCL 750.110a(3) provides:

A person who breaks and enters a dwelling with intent to commit a felony, larceny, or assault in the dwelling, a person who enters a dwelling without permission with intent to commit a felony, larceny, or assault in the dwelling, or a person who breaks and enters a dwelling or enters a dwelling without permission and, at any time while he or she is entering, present in, or exiting the dwelling, commits a felony, larceny, or assault is guilty of home invasion in the second degree.

To support a finding that a defendant aided and abetted a crime, the prosecutor must show that (1) the crime was committed, (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 the aid and encouragement. *People v Carines*, 460 Mich 750,757-758; 597 NW2d 130 (1999).

There was sufficient evidence to support the conviction. Defendant admitted that he drove his accomplice to the complainant's house to retrieve a television that belonged to defendant. The accomplice broke into the house and removed defendant's television and other items from the house. It is reasonable to infer that defendant knew neither he nor his accomplice owned those items. Defendant's act of driving away the car loaded with the additional items constituted aid and encouragement, given at a time that defendant would reasonably share the intent to commit the crime.

The dismissal was not based on prosecutorial misconduct. Defendant did not object to the prosecutor's argument that was unsupported by the evidence. To avoid forfeiture of an unpreserved claim, the defendant must demonstrate plain error that was outcome determinative. *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001). No error requiring reversal will be found if the prejudicial effect of the prosecutor's comments could have been cured by a timely instruction. *Id.* An objection could have led to an instruction to the jury to ignore the prosecutor's statement, and this would have cured the error.

Moreover, there are no double jeopardy concerns where reversal of the trial court's order would reinstate the verdict and would not require another trial. *People v Anderson*, 409 Mich 474, 483 n 10; 295 NW2d 482 (1980).

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

/s/ Jane E. Markey

/s/ Patrick M. Meter