STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 30, 2003
v	No. 242141 Oakland Circuit Court
JAMES LEE MAYS, Defendant-Appellant.	LC No. 01-176840-FC

Before: Schuette, P.J. and Murphy and Bandstra, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction of unarmed robbery, MCL 750.530. Defendant was sentenced as a third habitual offender, MCL 769.11, to thirty months to fifteen years' imprisonment. We affirm.

I. FACTS

Douglas Culbreath was working as a cashier at a Kroger store on January 20, 2001. Culbreath observed Harold Usher (whom he identified at trial) come out of the manager's office and scream. When Culbreath approached Usher, Usher held up a twelve-inch kitchen knife over Culbreath's head and instructed him to get out of the way. Culbreath observed Usher point a knife at another cashier and grab money from her cash register. Culbreath observed Usher walk out of the grocery store.

Culbreath followed Usher out of the grocery store. Usher began to run toward a red Pontiac in the parking lot. Culbreath wrote down the license plate number. Culbreath observed someone in the driver seat of the Pontiac. Culbreath was standing approximately ten feet away from the Pontiac. At trial, Culbreath identified defendant as the driver.

Police Officer Dan Edwards was the arriving officer to the grocery store on the day in question. Edwards' investigation determined that the red Pontiac was registered to Usher, who lived in Southfield. Edwards contacted the Southfield police, who located the Pontiac in Southfield Down Trailer Park. Edwards drove to the trailer park where he observed the car parked directly across from a trailer where defendant resided.

Edwards asked defendant if he knew Usher, and defendant indicated that he did. Defendant initially told Edwards that Usher had taken the car somewhere without him during the

time when the robbery occurred. When Edwards informed defendant that the police had an eyewitness who saw the driver of the getaway car, defendant became upset and admitted that he was driving the getaway car. Defendant told Edwards that he did not know there was going to be a robbery at the grocery store, until Usher came running out of the store,

After closing arguments by the attorneys, the trial court gave its ruling. The trial court, in its findings, noted that according to "[d]efendant's testimony," he may have known or suspected that there was going to be a misdemeanor, either retail fraud and/or larceny from a building, committed in the grocery store. The trial court analyzed the evidence and found that some evidence pointed towards defendant's culpability: (1) he was the driver and, (2) he parked in a secluded location. However, the trial court also noted evidence that pointed towards defendant's innocence: (1) he did not speed out of the parking lot, (2) he parked far from the entrance of the grocery store, and (3) no evidence was presented that defendant was aware that a weapon was going to be involved before Usher went into the grocery store. Ultimately, the trial court concluded that because there was evidence that defendant knew beforehand or suspected that Usher was going into the grocery store to commit a crime, the evidence established beyond a reasonable doubt that defendant was guilty of unarmed robbery because the crime was within the scope of the common enterprise. Defendant now appeals as of right.

II. SUFFICIENCY OF THE EVIDENCE

In defendant's sole issue on appeal, he asserts that the evidence was insufficient to sustain his conviction.

A. Standard of Review

This Court reviews a claim of insufficient evidence by viewing the evidence in the light most favorable to the prosecution and determining whether a rational trier of fact could find that each element of the offense was proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 722-723; 597 NW2d 73 (1999). "The standard of review is deferential: a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the . . . verdict." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

B. Analysis

To convict a defendant of unarmed robbery, the prosecution has to establish the following elements: (1) a felonious taking of property from another, (2) by force, violence, assault, or putting in fear, and (3) being unarmed. *People v Randolph*, 466 Mich 532, 536; 648 NW2d 164 (2002). To convict defendant as an aider and abettor, the prosecutor had to show "(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." MCL 767.39; *People v Carines*, 460 Mich 750, 758; 597 NW2d 130 (1999). "Aiding and abetting" describes all forms of assistance made available to the perpetrator of a crime and includes all words or deeds that might support, encourage, or incite the commission of a crime. *Id.*, 757. "The quantum of aid or advice is immaterial as long as it had the effect of inducing the crime." *People v Lawton*, 196 Mich App 341, 352; 492 NW2d 810 (1992). "An aider and abettor's state of mind may be inferred from all the facts and

circumstances." *Id*. "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." *Carines*, *supra*, 460 Mich 757.

Defendant first argues that because unarmed robbery is a specific intent crime, the prosecution had to establish that he either possessed the specific intent to take property from a person by force, violence assault or putting in fear. We disagree. This Court has held that a jury can infer an aider and abettor's knowledge of the principal's intent when the principal was carrying a gun during a burglary. See *People v Harris*, 110 Mich App 636, 643; 313 NW2d 354 (1981); *People v Poplar*, 20 Mich App 132, 139-140; 173 NW2d 732 (1969).

Further, when the evidence is viewed in the light most favorable to the prosecution, the evidence was sufficient to establish an inference that defendant had knowledge that his co-defendant, Harold Usher, had the intent to commit a robbery. Defendant acknowledged that he observed Usher exit the grocery store with a knife and cash in his hand. At no time when defendant gave his statement to the police, did he express surprise or shock at seeing the knife. Indeed, we note that when defendant asked what happened after the crime had occurred, Usher stated, "Man, I only got $50 or $60." Additionally, defendant's intent can be inferred by evidence of his close association with Usher and evidence that he attempted to elude law enforcement by driving the "getaway vehicle" on side streets after the commission of the crime.

Consequently, in light of defendant's conduct, we are not persuaded by his assertion that he could only be convicted as an accessory after the fact. "The crime of accessory after the fact is a common-law felony punishable under the catch-all provision of MCL 750.505 . . . ." *People v Cunningham*, 201 Mich App 720, 722; 506 NW2d 624 (1993). "An 'accessory after the fact,' at common law . . . is 'one who, with knowledge of the other's guilt, renders assistance to a felon in the effort to hinder his detection, arrest, trial or punishment.'" *People v Lucas*, 402 Mich 302, 304; 262 NW2d 662 (1978), quoting Perkins, Criminal Law (2d ed), p 667. We conclude that because defendant assisted with the crime before its commission, he acted as more than an accessory after the fact, and he was properly convicted as an aider and abettor.

Affirmed.

/s/ Bill Schuette
/s/ William B. Murphy
/s/ Richard A. Bandstra