STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of JOSHUA DEON FENDERSON, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

JOSHUA DEON FENDERSON,

Respondent-Appellant.

UNPUBLISHED
March 3, 2009

No. 281262
Wayne Circuit Court
LC No. 07-466539-DL

Before: Owens, P.J., and Sawyer and Markey, JJ.

PER CURIAM.

Following a bench trial, respondent, a juvenile, was adjudicated guilty of breaking and entering with intent to commit larceny, MCL 750.110. He appeals and we affirm.

Respondent's adjudication arises from the theft of property from inside Gompers Elementary School. Respondent argues that there was insufficient evidence to show that he participated in the offense and that the trial court erred in denying his motion for a directed verdict. We disagree.

We review de novo the evidence that was presented up to the time that respondent moved for directed verdict and view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Gillis*, 474 Mich 105, 113; 712 NW2d 419 (2006). Similarly, in reviewing a challenge to the sufficiency of the evidence at a bench trial, we review the evidence de novo in a light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Robinson*, 475 Mich 1, 5; 715 NW2d 44 (2006). The trial court's findings of fact may not be set aside unless they are clearly erroneous. *Id*. Circumstantial evidence and reasonable inferences drawn from it may be sufficient to prove the elements of the crime. *People v Schultz*, 246 Mich App 695, 702; 635 NW2d 491 (2001).

The elements of breaking and entering a building with intent to commit larceny are: "(1) the defendant broke into a building, (2) the defendant entered the building, and (3) at the time of the breaking and entering, the defendant intended to commit a larceny therein." *People v*

Cornell, 466 Mich 335, 360-361; 646 NW2d 127 (2002). In addition, a person who aids or abets the commission of a crime may be punished as if he directly committed the offense. MCL 767.39. To support a finding that a person aided or abetted a crime, the prosecution must show

> that (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. An 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. [*People v Turner*, 213 Mich App 558, 568-569; 540 NW2d 728 (1995), overruled in part on other grounds *People v Mass*, 464 Mich 615; 628 NW2d 540 (2001) (citations omitted).]

There was no dispute that a breaking and entering occurred at Gompers Elementary School. The only question at trial was whether respondent was involved in the offense, either as a direct principal or as an aider or abettor.

The only prosecution witnesses to testify at trial were two police officers. Viewed in a light most favorable to the prosecution, their testimony established that three males were observed at a parked SUV at the school. Two of the males were loading school property into the back of the SUV, but the first responding officer did not know what the third person (respondent) was doing. When the officer approached the SUV, the two males who were outside fled; respondent was sitting in the backseat on the driver's side. The trial court found that the police officers' testimony was credible.

Defendant claims the trial court erred in denying the motion for directed verdict and that there was insufficient evidence to sustain a conviction for breaking and entering with intent to commit larceny. We disagree.

The evidence, when viewed in the light most favorable to the prosecutor, was sufficient to enable a rational trier of fact to find that the respondent participated in the offense. The police observed all three of the individuals at the SUV and the SUV was parked within 12 feet of the school that had been broken into. Inside the SUV was a big screen TV that had been placed on the tailgate and tied down. There was also a laser printer and computer in the SUV. The items were marked with the name of the school.

Respondent claimed he was walking home and saw one of the codefendants, a neighbor, and asked for a ride home. He stated he got inside the SUV and was there for only 30 seconds before police arrived. However, while respondent stated that he arrived at the SUV at 10:30 p.m., a police officer testified that it was 11:30 or 11:40 p.m. when he arrived and observed the respondent.

The trial referee, at this bench trial, did not accept the testimony of the respondent as true. We conclude that there was enough circumstantial evidence, along with the fact that the trial court did not accept the respondent's version of the events, to find the respondent responsible.

Respondent next argues that prosecutorial misconduct unfairly prejudiced him and violated his constitutional rights to due process and a fair trial. We disagree.

Generally, the standard for prosecutorial misconduct is whether the defendant was denied a fair and impartial trial. *People v Ackerman*, 257 Mich App 434, 448; 669 NW2d 818 (2003). Alleged instances of prosecutorial misconduct are reviewed on a case-by-case basis, examining the record and evaluating the prosecutor's remarks in context. *People v Thomas*, 260 Mich App 450, 454; 678 NW2d 631 (2004).

Respondent argues that several of the prosecutor's remarks to the trial court during argument were improper because they either mischaracterized the evidence or had no basis in the evidence. A prosecutor may not make a statement of fact to the jury that is unsupported by the evidence, but she is free to argue the evidence and all reasonable inferences arising from it as they relate to her theory of the case. *People v Unger*, 278 Mich App 210, 236, 241; 749 NW2d 272 (2008).

During her argument opposing respondent's directed verdict motion, the prosecutor erroneously stated "they observed" when referring to Officer Snadon's testimony. She also omitted Officer Snadon's correction regarding how many people he saw loading items into the SUV. During closing argument, the prosecutor stated that respondent wanted to run, but could not. We conclude that this is a reasonable inference based on the prosecutor's theory of the case.

Moreover, bench trials do not contain the same concerns as jury trials. A judge possesses an understanding of the law, which allows him to ignore errors. *People v Taylor*, 245 Mich App 293, 305; 628 NW2d 55 (2001). The trial court correctly summarized the evidence presented at trial. Thus, we conclude that none of the prosecutor's remarks affected respondent's substantial rights.

Affirmed.

/s/ Donald S. Owens
/s/ David H. Sawyer
/s/ Jane E. Markey