

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERIC TYLER FREEMAN,

Defendant-Appellant.

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UNPUBLISHED

October 26, 2010

No. 292317

Kent Circuit Court

LC No. 08-002946-FC

Before: O'CONNELL, P.J., and BANDSTRA and MARKEY, JJ.

PER CURIAM.

Defendant appeals by right his conviction for manslaughter, MCL 750.321, which resulted in the imposition of a sentence of 27 months to 15 years' imprisonment. We affirm.

Defendant argues that, during closing arguments, the prosecutor misstated the testimony of Alexander Chavez and used that misstated testimony to support the theory that defendant aided and abetted. In addition, defendant argues that contrary to the prosecutor's position during closing arguments, there was no evidence that defendant intentionally aided or abetted second-degree murder, manslaughter, or assault with the intent to do great bodily harm less than murder. Defendant asserts that because the prosecutor argued facts not in evidence, we must reverse. We disagree.

We review issues of prosecutorial misconduct de novo to determine if the defendant was denied a fair and impartial trial. *People v Thomas*, 260 Mich App 450, 453; 678 NW2d 631 (2004).

While a prosecutor may not argue facts that are not in evidence or mischaracterize the evidence, he or she may argue reasonable inferences arising from the evidence. *People v Watson*, 245 Mich App 572, 588; 629 NW2d 411 (2001). Indeed, "[p]rosecutors are typically afforded great latitude regarding their arguments and conduct at trial. They are generally free to argue the evidence and all reasonable inferences from the evidence as it relates to their theory of the case." *People v Unger*, 278 Mich App 210, 236; 749 NW2d 272 (2008).

We conclude that the prosecutor did not misstate Chavez's testimony. The prosecutor specifically argued that after Casey Therriault punched the victim, Jonathan Krystiniak, defendant turned to Benjamin Mansfield, Krystiniak's friend, and punched him in the nose, thus

preventing Mansfield from aiding Krystiniak and stopping the attack on Krystiniak. The record reflects that Chavez's testimony specifically provided that after Therriault hit Krystiniak, Mansfield immediately darted toward defendant. Chavez's testimony was consistent, using reasonable inferences, with the prosecutor's theory that defendant hit Mansfield in order to prevent aid from getting to Krystiniak and to prevent Mansfield from stopping the attack on Krystiniak. In addition, Mansfield testified that after Krystiniak was struck, Mansfield was immediately struck three to five times. Hence, Mansfield's testimony also supported the prosecutor's theory that defendant was preventing aid from getting to Krystiniak and preventing Mansfield from stopping the attack on Krystiniak. The prosecutor did not engage in misconduct because his argument was based on the evidence and reasonable inferences from the evidence. Moreover, when defense counsel objected to the prosecutor's argument, the trial court reminded the jury that an attorney's statements are not evidence. "Jurors are presumed to follow their instructions, and instructions are presumed to cure most errors." *People v Abraham*, 256 Mich App 265, 279; 662 NW2d 836 (2003). Defendant was not denied a fair trial and impartial trial.

In addition, we conclude reasonable inferences from the evidence would have supported the factfinder in determining that defendant intentionally aided and abetted the charged crimes of second-degree murder, manslaughter, or assault with the intent to do great bodily harm less than murder. To be convicted of aiding and abetting, the prosecution must show that (1) someone committed the crime, (2) defendant must have done something to assist in the commission of the crime, and (3) defendant intended the crime be committed or knew the perpetrator intended to commit the crime. *People v Izarraras-Placante*, 246 Mich App 490, 495-496; 633 NW2d 18 (2001). The phrase "aiding and abetting" describes "all forms of assistance rendered to the perpetrator of a crime . . . [and] comprehends all words or deeds which may support, encourage or incite the commission of a crime." *People v Palmer*, 392 Mich 370, 378; 220 NW2d 393 (1974). Generally, an aider and abettor must possess the same requisite intent as that required of a principal in order to support a conviction for aiding and abetting. *People v Mass*, 464 Mich 615, 628; 628 NW2d 540 (2001). But "when the Legislature abolished the distinction between principals and accessories, it intended for all offenders to be convicted of the intended offense . . . as well as the natural and probable consequences of that offense." *People v Robinson*, 475 Mich 1, 9; 715 NW2d 44 (2006). Thus, a defendant can be convicted as an aider and abettor if defendant possessed the same intent as the principal or if the crime committed by the principal was the natural and probable consequence of the intended wrong. *Id.* In other words, conviction as an aider and abettor "does not require a higher level of intent with regard to the commission of the crime than that required for conviction as a principal." *Mass*, 464 Mich at 628. The state of mind of an aider and abettor may be inferred from all the facts and circumstances in evidence. *People v Hart*, 161 Mich App 630, 635; 411 NW2d 803 (1987); *People v Eggleston*, 149 Mich App 665, 668; 386 NW2d 637 (1986).

We initially note that the evidence supported a finding that Therriault committed second-degree murder as well as manslaughter and assault with intent to do great bodily harm less than murder. See *People v Goecke*, 457 Mich 442, 463-464; 579 NW2d 868 (1998), *People v Datema*, 448 Mich 585; 533 NW2d 272 (1995), and *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997), for the elements of second-degree murder, manslaughter and assault with intent to do great bodily harm less than murder, respectively. Further, evidence in the record supports finding that defendant did something to assist in the commission of the crimes of second-degree murder, manslaughter, and assault with the intent to do great bodily harm less

than murder. *Palmer*, 392 Mich at 378. The evidence supports a reasonable inference that defendant, by punching Krystiniak's friend Mansfield, aided the assault on Krystiniak by preventing Mansfield from intervening. Thus, the prosecutor's argument was proper. *Unger*, 278 Mich App at 236. Moreover, evidence showed that defendant kicked Krystiniak when he was on the ground.

In addition, evidence supported the prosecutor's arguing and the factfinder's reasonably inferring that defendant possessed the requisite intent to be convicted of aiding and abetting second-degree murder, manslaughter, and assault with the intent to do great bodily harm less than murder. With regard to second-degree murder, the intent required to support a conviction is the intent to kill, or the intent to do great bodily harm, or knowingly creating a very high risk of death or great bodily harm, knowing death or such harm could result. *Goecke*, 457 Mich at 464. Here, the testimony established that Therriault hit Krystiniak on the left side of his face or head with such extreme force that a reasonable inference could be drawn that Therriault intended to do great bodily harm to Krystiniak or Therriault knowingly created a very high risk of death or great bodily harm, knowing death or such harm could result. It may reasonably be inferred from evidence that defendant prevented Mansfield from helping Krystiniak and evidence that defendant participated in the attack on Krystiniak by kicking his head, that defendant shared the same intent as Therriault. *Mass*, 464 Mich at 628. An assault with such malice that results in death is second-degree murder. *Goecke*, 457 Mich at 463-464. Based on the foregoing, the prosecutor properly argued from reasonable inferences that defendant possessed the requisite intent to be convicted of aiding and abetting second-degree murder. *Unger*, 278 Mich App at 236; *Hart*, 161 Mich App at 635.

With regard to manslaughter, an assault committed with the intent to injure that proximately causes death is at least involuntary manslaughter. *Datema*, 448 Mich at 588, 606. Here, the testimony established that Therriault assaulted and injured Krystiniak and that defendant immediately followed up that by punching Mansfield twice in the face, then kicking the lifeless body of Krystiniak, which lay on the ground. Hence, the evidence supported a reasonable inference that defendant intended to injure Krystiniak. *Id.* In addition, the death of Krystiniak was a natural and probable consequence of an assault and battery that defendant committed or which he aided and abetted. A "defendant is criminally liable as long as the crime is within the natural and probable consequences of the intended assaultive crime." *Robinson*, 475 Mich at 13. Consequently, the evidence supported a reasonable inference that defendant possessed the requisite intent to be convicted of aiding and abetting the crime of manslaughter. *Datema*, 448 Mich at 588, 606; *Mass*, 464 Mich at 628.

With regard to assault with the intent to do great bodily harm less than murder, the intent required to support a conviction is the intent to cause great bodily harm. *Parcha*, 227 Mich App at 239. As set forth above, a reasonable inference could be made that defendant intended to cause great bodily harm. *Mass*, 464 Mich at 628; *Eggleston*, 149 Mich App 665, 668. Consequently, the record supported a reasonable inference that defendant possessed the requisite intent to be convicted of assault with intent to do great bodily harm less than murder.

Accordingly, the prosecutor's argument that defendant intentionally aided or abetted second-degree murder, manslaughter, and assault with the intent to do great bodily harm less than murder, did not exceed the bounds of the evidence or reasonable inference from the

evidence. *Unger*, 278 Mich App at 236. Consequently, the prosecutor did not engage in misconduct. Defendant was not denied a fair and impartial trial. *Thomas*, 260 Mich App at 453.

We affirm.

/s/ Peter D. O'Connell  
/s/ Richard A. Bandstra  
/s/ Jane E. Markey