STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 21, 2010
v	No. 293824 Calhoun Circuit Court
JERRELL JERMAINE JONES, Defendant-Appellant.	LC No. 2009-000327-FC

Before: MARKEY, P.J., and WILDER and STEPHENS, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of assault with intent to commit murder, MCL 750.83, armed robbery, MCL 750.529, unlawful imprisonment, MCL 750.349b, felon in possession of a firearm, MCL 750.224f, and four counts of possession of a firearm during the commission of a felony, MCL 750.227b(1). Defendant was sentenced as an habitual offender, second offense, MCL 769.10, to life in prison for his assault with intent to commit murder conviction, 30 to 50 years' imprisonment for his armed robbery conviction, 10 to 22-1/2 years' imprisonment for his unlawful imprisonment conviction, 3 to 7-1/2 years' imprisonment for his felon in possession of a firearm conviction, and two years' imprisonment for each of his four felony-firearm convictions. Defendant appeals as of right. We affirm.

Defendant's convictions arose from an incident on January 23, 2009, when he and another male used a handgun and aluminum baseball bat to beat Clifton Stouder. On appeal, defendant argues that the evidence was insufficient to support his convictions for assault with intent to commit murder and armed robbery, and, alternatively, that the trial court erred by denying his motion for directed verdict as to the armed robbery and attendant felony-firearm count. In reviewing the sufficiency of the evidence in a criminal case, this Court must review the record de novo and, viewing the evidence in a light most favorable to the prosecution, determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997). "Circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to prove the elements of a crime." *People v Truong (After Remand)*, 218 Mich App 325, 337; 553 NW2d 692 (1996), quoting *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993). The standard of review for a directed verdict motion is the same as that for the sufficiency of the evidence. *People v Aldrich*, 246 Mich App 101, 122-123; 631 NW2d 67 (2001).

The elements of the crime of assault with intent to commit murder are (1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder. *Hoffman*, 225 Mich App at 111. Here, defendant argues that there was insufficient evidence of his intent to kill. We disagree. Intent to kill may be proved by inference from any facts in evidence. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). "Because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient." *Id.*

Stouder testified that on January 22, between 11:45 p.m. and midnight, he solicited a prostitute, Wendy Hale, in order to engage in sexual intercourse and "do some drugs." Stouder and Hale did not have any drugs in their possession, and Hale desired that they stop at a duplex apartment complex in the area to secure drugs. As soon as Stouder and Hale were admitted into the kitchen of the apartment, the backdoor was barricaded. Defendant and three other women, two Caucasian and one African-American, were present. Defendant immediately began accusing Stouder of being an undercover police officer, and he ordered Stouder to remove all of his clothes. When Stouder refused to do so, defendant pointed a handgun two inches from Stouder's head and said, "I said take your clothes off." Stouder complied. Defendant then called out, "Come here a minute, cuz," and a male entered the kitchen carrying an aluminum baseball bat. Defendant asked, "Well, what are we going to do with him, 'cuz,' and the male walked up to Stouder and hit him across the front of the head with the bat. Defendant ran up to Stouder and punched him in the nose, and the other male hit Stouder again on the head with the bat. Defendant hit Stouder across the back of his head with the handgun, and the men took turns beating Stouder on the head and upper body. Stouder suffered from lacerations, bruises, scrapes, and abrasions, and CAT scans were later ordered to test for possible life-threatening head injuries. The continuous beatings defendant and the other male inflicted are circumstantial evidence of defendant's intent to murder Stouder. See *Hoffman*, 225 Mich App at 111.

Defendant's actions after the beating showed he had no remorse or concern for the injuries inflicted, and in fact, he continued to inflict injury on Stouder. While holding the gun, defendant ordered one of the females to take Stouder into a bathroom, and he forced Stouder to stand in an ice-cold shower for close to an hour while the females were directed to clean up the blood in the kitchen. Defendant then ordered one of the females to "[g]et [Stouder] out of the shower" and told Stouder to get dressed. Defendant led Stouder into a bedroom and commented to the other male, "Damn, big man, look at the damage you did to this guy." Defendant eventually told two of the females, "I want you to get this guy out of here before he dies in my apartment," and Stouder was escorted out of the apartment.

Defendant argues that the evidence was sufficient only to convict him for assault with intent to commit great bodily harm less than murder, and that intent to place the victim in fear of being murdered is insufficient to satisfy the intent to kill element. Defendant points to Stouder's testimony that as defendant was walking Stouder into the bedroom, defendant said, "Don't worry. . . . [W]e're not going to hurt you no more," as evidence that he had not intended to kill Stouder. Viewing the evidence in the light most favorable to the prosecution, however, this statement made *after* the assault occurred does not detract from the circumstantial evidence of defendant's intent to kill during the assault or his recognition of the severity of the injuries he caused, specifically his recognition that he did not want defendant to die in the apartment.

Defendant next argues that the evidence was insufficient to support his conviction for armed robbery, and that the trial court should have granted his motion for directed verdict on this charge. The court instructed the jury on the elements of aiding and abetting and denied defendant's motion for directed verdict based on this theory. The offense of armed robbery includes: "(1) an assault, (2) a felonious taking of property from the victim's presence or person, (3) while the defendant is armed with a weapon described in the statute." *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). The elements of aiding and abetting include: (1) the offense charged was committed by the defendant or some other person; (2) the defendant performed acts or gave encouragement to assist the commission of the offense; and (3) the defendant intended to commit the offense or had knowledge that the principal intended its commission at the time the defendant gave aid and encouragement. *Id.* at 768.

After Stouder was forced to remove his clothes, and while defendant held the gun up to him, the African-American female grabbed Stouder's clothes and began going through the pockets, which contained his cellular telephone, wallet, and $144. The female later looked through Stouder's wallet while defendant held the gun and forced Stouder to stay in the shower. Stouder could not recall whether defendant told the female to "go through [his] belongings," and he did not observe defendant touch his wallet, the contents, or the telephone. Defendant thus argues that there was no evidence that he ordered the female to go through Stouder's pockets or performed any act or gave any encouragement to assist her, and that there was no evidence that he acquiesced in the permanent deprivation of Stouder's property. We disagree.

"'Aiding and abetting' describes all forms of assistance rendered to the perpetrator of a crime and comprehends all words or deeds that might support, encourage, or incite the commission of a crime. . . ." *People v Bulls*, 262 Mich App 618, 625; 687 NW2d 159 (2004), quoting *Carines*, 460 Mich at 757. "An aider and abettor's state of mind may be inferred from all the facts and circumstances." *People v Turner*, 213 Mich App 558, 568; 540 NW2d 728 (1995), overruled in part on other grounds *People v Mass*, 464 Mich 615; 628 NW2d 540 (2001). The evidence sufficiently showed that defendant aided and abetted the robbery where he held a gun to Stouder's head, forced him to remove his clothes, and continued holding the gun as the female went through Stouder's pockets. Although defendant did not instruct her to perform these actions, Stouder testified that the females did "what they were told to do" and did not do anything not requested by defendant. Furthermore, Stouder's property was not returned to him before he left the apartment. Viewing the evidence in the light most favorable to the prosecution, a reasonable juror could infer that defendant used the handgun in order to deprive Stouder of his property, and the trial court was correct in denying defendant's motion for directed verdict.[1]

---

[1] In light of our conclusion that there was sufficient evidence to prove that defendant aided and abetted the armed robbery, defendant's argument that the trial court erred by failing to dismiss the attendant felony-firearm count because there was insufficient evidence that he committed armed robbery also fails. *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999) ("The elements of felony-firearm are that the defendant possessed a firearm during the commission of, or the attempt to commit, a felony.").

Affirmed.

/s/ Jane E. Markey
/s/ Kurtis T. Wilder
/s/ Cynthia Diane Stephens

Defendant further argues that he was not charged in the criminal information with aiding and abetting the armed robbery, but rather was charged only with armed robbery. However, aiding and abetting is not a separate charge, but is merely a separate theory for conviction under the same charge, and the amended information provided adequate notice of the charge to defendant.