

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HENRY J. JENKINS,

Defendant-Appellant.

UNPUBLISHED

February 10, 2011

No. 295456

Berrien Circuit Court

LC No. 2009-001834-FH

Before: MURPHY, C.J., and MURRAY and SHAPIRO, JJ.

PER CURIAM.

After a jury trial, defendant was convicted of breaking and entering a building with intent to commit a larceny, MCL 750.116, unlawfully driving away an automobile, MCL 750.413, and possession of burglary tools, MCL 750.116. Defendant was sentenced as an habitual offender, fourth offense, MCL 769.12, to three to ten years' imprisonment for each offense. Defendant appeals as of right. We affirm. This appeal is decided without oral argument. MCR 7.214(E).

Defendant's sole argument on appeal is that there was insufficient evidence to prove he aided and abetted in breaking and entering a building with intent to commit larceny, unlawfully driving away an automobile, and possession of burglary tools. Hence, the question is whether there was sufficient evidence to connect defendant with the crimes that were committed.

When reviewing de novo a sufficiency of the evidence claim, we "must view the evidence in a light most favorable to the prosecution and determine whether any rational trier 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 (1992), amended 441 Mich 1201 (1992). "Circumstantial evidence and reasonable inferences drawn from it may be sufficient to prove the elements of the crime." *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005).

"The elements of the offense of breaking and entering 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 Toole*, 227 Mich App 656, 658; 576 NW2d 441 (1998).

"The essential elements of [unlawfully driving away an automobile] are: (1) Possession of a vehicle, (2) driving the vehicle away, (3) that the act is done willfully, and (4) the possession

and driving away must be done without authority or permission.” *People v Hendricks*, 200 Mich App 68, 71; 503 NW2d 689 (1993), *aff’d* 446 Mich 435 (1994).

The elements of possession of burglary tools are that “[1] the defendant possessed tools adapted and designed for breaking and entering, [2] that defendant had knowledge that the tools were adapted and designed for that purpose, and [3] the defendant possessed them with the intent to use them for breaking and entering.” *People v Wilson*, 180 Mich App 12, 16; 446 NW2d 571 (1989).

The prosecution argued defendant was guilty because he was either directly involved or aided and abetted the commission of the charged offenses. Every person who aids and abets the commission of a crime may be convicted and punished as if he directly committed the offense. MCL 767.39. In *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; 628 NW2d 540 (2001), this Court specified that for a conviction based on the theory of aiding and abetting, the prosecution must prove:

(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.

There was ample evidence presented to the jury to convict defendant. Defendant’s conviction arises out of an incident that occurred at the Wingfoot Tire store, located in St. Joseph Township. The testimony at trial established that shortly before midnight, a police officer was conducting a routine property check when he noticed headlights on a vehicle backed up to the Wingfoot Tire loading dock. He also saw a flashlight beam near the driver’s side door of the vehicle. When he shined a spotlight on the area, he saw three people running, one of whom was wearing all black clothing and white shoes.

The police officer chased two of the men on foot and radioed their location to a responding police officer, who apprehended defendant. At that time defendant was sweating and breathing heavily as if he had just been chased. Defendant was wearing dark clothing and white shoes and possessed a flashlight. Additionally, defendant told police he travelled to Michigan from Illinois with two other men and admitted the men he was with were at the tire store. Police arrested another man, defendant’s cousin, in a wooded area close to where defendant was apprehended.

In the Wingfoot Tire loading dock area, police found two Kreamo Bakery trucks near a hole that had been cut in the garage door. There was a hand saw on the passenger seat of the truck, and one of the trucks was filled with tires from Wingfoot Tire. Police found two sets of shoeprints on the bakery premises where the stolen trucks had been parked that matched defendant’s shoes and a shoe found by the fence near Wingfoot Tire. Viewed in a light most favorable to the prosecution, this evidence supports a jury conclusion that defendant committed these crimes, or aided and abetted these crimes, beyond a reasonable doubt. While defendant argues he provided an alternate explanation as to why he was in the area where he was

apprehended, this Court views the evidence favorably to the prosecution, *Wolfe*, 440 Mich at 515.

Affirmed.

/s/ William B. Murphy
/s/ Christopher M. Murray
/s/ Douglas B. Shapiro