STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of KAWAYNE LAMONT POWELL, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

V

KAWAYNE LAMONT POWELL,

Respondent-Appellant.

UNPUBLISHED
January 17, 2012

No. 301057
Wayne Circuit Court
Family Division
LC No. 07-472555

Before: DONOFRIO, P.J., and STEPHENS and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent appeals as of right his juvenile adjudications of carjacking, MCL 750.529a, receiving or concealing a stolen motor vehicle, MCL 750.535(7), and commission of a felony with a motor vehicle, MCL 257.732(7). Because the evidence in this bench trial was sufficient to support respondent's carjacking adjudication, the trial court's findings of fact were not clearly erroneous, and the trial court properly applied the law, we affirm.

Respondent first argues that there was insufficient evidence to support his carjacking adjudication. We review de novo claims of insufficient evidence. *People v Ericksen*, 288 Mich App 192, 195; 793 NW2d 120 (2010). We review the evidence in the 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 Railer*, 288 Mich App 213, 216-217; 792 NW2d 776 (2010).

In order to establish the offense of carjacking, the prosecution must show that (1) while in the course of committing a larceny of a motor vehicle, (2) a person used force or violence, or the threat of force or violence, or put in fear an operator, passenger, or person in lawful possession of the vehicle, or any person lawfully attempting to recover the motor vehicle. MCL 750.529a(1). Further, a conviction under an aiding and abetting theory requires proof that (1) the defendant or another person committed the crime charged, (2) the defendant gave encouragement or performed acts that assisted the crime's commission, and (3) the defendant intended the crime's commission or had knowledge that the principal intended its commission at the time that the

defendant gave aid or encouragement. *People v Moore*, 470 Mich 56, 67-68; 679 NW2d 41 (2004). Aiding and abetting includes all words and deeds intended to support, encourage or incite the commission of a crime. *Id.* at 63.

Here, the evidence was sufficient to support respondent's carjacking adjudication. An unidentified man took the vehicle without the owner's or the body shop's permission. The body shop had legal possession of the vehicle because its owner, Charles Grundy, had brought it to the shop to have work done on the vehicle. The man who took the car threatened violence when he told the body shop employee, Saad Hanna, to come closer to see what would happen. Hanna believed that the man had a weapon and did not approach because he was frightened. This evidence satisfied the elements of carjacking because the man, in the course of taking the vehicle, threatened the legal possessor of the vehicle with violence.

Respondent argues that no carjacking occurred because Grundy was not at the body shop when his car was taken and the prosecution failed to show that Hanna was "present" within the meaning of MCL 750.529a. Respondent erroneously relies on case law that interpreted a previous version of the statute. Under the current statute, there is no requirement that the lawful possessor be "present" at the scene. In 2004, the Legislature amended MCL 750.529a and removed the "presence" requirement.[1]

Respondent also argues that his police statement fails to establish that he aided and abetted the carjacking. To the contrary, respondent's statement to the police shows that he acted as a "backup" for Tyree Kirkland to commit the carjacking. Respondent admitted that Kirkland

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[1] The pre-amendment version of the carjacking statute provided, in relevant part:

> (1) A person who by force or violence, or by threat of force or violence, or by putting in fear robs, steals, or takes a motor vehicle as defined in section 412 from another person, in the *presence* of that person or the *presence* of a passenger or in the *presence* of any other person in lawful possession of the motor vehicle, is guilty of carjacking, a felony punishable by imprisonment for life or for any term of years. [Emphasis added.]

In 2004, the Legislature enacted 2004 PA 128, which amended MCL 750.529a(1) to read as follows:

> A person who in the course of committing a larceny of a motor vehicle uses force or violence or the threat of force or violence, or who puts in fear any operator, passenger, or person in lawful possession of the motor vehicle, or any person lawfully attempting to recover the motor vehicle, is guilty of carjacking, a felony punishable by imprisonment for life or for any term of years.

called him to "hit a lick," which respondent described as "[t]aking something that ain't yours." Respondent was aware that Kirkland had stolen a car previously. Respondent went to Kirkland's house and then accompanied Kirkland to the body shop at Kirkland's request. Respondent admitted that he was "supposed to be a backup" because Kirkland was scared and needed respondent to be with him to take the car. When asked "[w]hat happened after you and the others took the car from the shop[,]" respondent replied, "[t]he police rode up in front of us[.]" Thus, the evidence was sufficient to show that respondent aided and encouraged Kirkland with knowledge that Kirkland intended to take the vehicle.

Respondent next argues that the trial court's findings of fact were clearly erroneous and that the court erred in applying the law to the facts. We review for clear error a trial court's findings of fact following a bench trial. *People v Robinson*, 475 Mich 1, 5; 715 NW2d 44 (2006). A finding of fact is clearly erroneous if, after a review of the record, we are "left with a definite and firm conviction that a mistake has been made." *People v Lanzo Constr Co*, 272 Mich App 470, 473; 726 NW2d 746 (2006). We review a trial court's conclusions of law de novo. *Id.* "This Court will not interfere with the trier of fact's role of determining the weight of the evidence or the credibility of witnesses. *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008). Further, circumstantial evidence and reasonable inferences therefrom can establish the elements of an offense. *Id.*

Respondent argues that the trial court relied on facts not in evidence when it determined that he was at or near the auto body shop when the vehicle was taken. The trial court's inference that respondent was at or near the scene is reasonable. Respondent went to Kirkland's house before the incident, knowing that Kirkland intended to "hit a lick." The plan was for respondent to act as Kirkland's backup. After the carjacking, respondent was apprehended as he fled from the stolen vehicle. These facts support the inference that respondent was at or close to the scene of the carjacking when it occurred. In any event, respondent's presence was not necessary to support his adjudication as an aider or abettor. See generally *Moore*, 470 Mich at 67-68.

Along the same lines, respondent contends that the trial court erroneously applied the law to the facts because the carjacking jury instruction, CJI2d 18.4a, uses the term "complainant," who in this case was Grundy, the owner of the car. Grundy was out of town at the time of the incident, and no threats of force or violence were made against him Respondent's reliance on the jury instruction as a statement of the law is misplaced. Jury instructions do not have the official sanction of the Michigan Supreme Court, and a trial court is not required to use them. *People v McFall*, 224 Mich App 403, 414; 569 NW2d 828 (1997). In any event, CJI2d 18.4a(4) refers to a complainant as a "person in lawful possession" of a motor vehicle. Here, as

previously discussed, Hanna was in lawful possession of the vehicle at the time that it was taken.[2]

Affirmed.

/s/ Pat M. Donofrio
/s/ Cynthia Diane Stephens
/s/ Amy Ronayne Krause

[2] In his brief on appeal, respondent asserts in passing that the trial court failed to specify the facts in support of his adjudication of receiving and concealing a stolen motor vehicle. Respondent has abandoned appellate review of this argument by failing to properly address its merits. *People v Harris*, 261 Mich App 44, 50; 680 NW2d 17 (2004). A party may not merely announce a position and leave it to "this Court to 'discover and rationalize the basis for the claim.'" *Id.*, quoting *People v Leonard*, 224 Mich App 569, 588; 569 NW2d 663 (1997).