S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED January 31, 2013
v SHAWN ALAN HILLIER, Defendant-Appellant.	No. 307644 Genesee Circuit Court LC No. 11-028840-FC

Before: RONAYNE KRAUSE, P.J., and CAVANAGH and BOONSTRA, JJ.

PER CURIAM.

Defendant appeals as of right his jury convictions of armed robbery, MCL 750.529, and conspiracy to commit armed robbery, MCL 750.157a; MCL 750.529. We affirm.

On December 4, 2010, at about 2:00 p.m., the 70-year-old victim was walking to the entrance of a Kmart store located in Flint when defendant and Orville McNew[1] came around the corner, walked toward her, and defendant said: "Hi, how are you today?" The victim testified that defendant was wearing a black leather jacket and McNew had a "bandage" on at least his hand. Defendant kept moving toward the victim and, when he reached her, he grabbed the victim's purse and "kept jerking it back and forth until it threw me to the ground." While on the ground, the victim held on to her purse and pulled her legs back like she was going to kick defendant, but she stopped when McNew, who was standing very close to the victim, said to her: "I'm gonna shoot you." After McNew threatened to shoot her a second time, the victim let go of her purse to defendant, and the men ran away with her purse. The victim testified that it would be "better to be alive with no purse than dead with a purse."

An eyewitness, Terri Darisaw, testified that she was sitting in a vehicle and saw defendant attempt to take the victim's purse. When he did not succeed, she saw McNew, who had a cast on his arm, "hit her on the side of her face," causing the victim to fall to the ground and enabling defendant to take the purse. Darisaw called 911 before following the fleeing men in her vehicle. She saw another person who was driving a truck approach the men, but he was ultimately scared away when McNew started motioning like he had a gun in his coat. After

---

[1] McNew died in March 2011.

determining that defendant and McNew went to motel room, Darisaw advised 911 about their location. When the police arrived, Darisaw positively identified defendant and McNew as the men who attacked the victim and they were arrested.

Another eyewitness, Scott Cross, testified that he was near the front of the Kmart entrance when he heard that someone had just stolen a lady's purse. Cross then saw someone running across the parking lot. He and his girlfriend quickly returned to their truck and followed the fleeing man who was running with another man. Cross and his girlfriend watched the men and eventually saw them enter into a corner motel room. Cross' girlfriend called 911 to report their location and two other witnesses pulled up to the motel in their vehicles; thus, there were three vehicles parked near defendant's motel room. After the police arrived, defendant and McNew were arrested. Cross positively identified both men; he said they were "definitely" the men he saw running away from Kmart.

A third eyewitness, Loren Frost, testified that he was in the Kmart parking lot with his wife when he saw two men "coming across" the parking lot. He then heard a lady scream and as he ran toward the woman, he saw two men "trying to steal her purse." One man had a cast on his arm. The other man was "pulling on it trying to get it away from her" and he "finally knocked her on the ground." Frost also heard a man say that if she did not let go of the purse, "I'm gonna shoot," but he did not know which man made the threat. The one man without a cast on his arm was able to get the purse from the lady and both men then ran across the parking lot. Frost returned to his Chevy Blazer and followed them to a parking lot near another business. Then the man with the cast turned around, "made a motion like he had a gun in his pocket and said I'm gonna shoot you and put his hand in his pocket." Frost, who was ten to 15 feet away from the man, put his Blazer in reverse and left the parking lot. But Frost continued to follow both men and watched them go to a motel. While he was parked, another witness told Frost that the men were in a specific motel room and so he waited for the police to arrive. Frost positively identified defendant as the man he saw take the lady's purse and defendant was taken into custody. Frost also identified McNew as the second man involved in the robbery.

Flint Police Officer Michael Dumanois testified that he responded to a call that suspects of a robbery were at a motel. When he arrived, a witness identified defendant, who was walking outside the motel without a jacket on, and defendant was arrested. The witness advised that the other suspect was in a certain motel room and he had a cast on his arm. Officer Dumanois waited for back-up to arrive and then went to the room and took that suspect into custody. A purse was inside the room and its contents were scattered about, including a checkbook in the victim's name. A black leather jacket was also recovered from the room. Officer Dumanois then spoke to several eyewitnesses outside, including Frost, Cross, and Darisaw, who identified the suspects as the men who robbed the lady of her purse and ran through the Kmart parking lot. Flint Police Officer Christopher Bigelow testified that, after the suspects were arrested, he drove the victim to the motel and she positively identified both defendant and McNew. Further, the motel owner testified that defendant had rented the motel room using photo identification, a copy of which was provided to police.

Before the trial, defendant moved to suppress McNew's statement to the victim that he would shoot her if she did not release her purse. Defendant argued that the hearsay statement could not be admitted to prove that there was a conspiracy to commit armed robbery because

there was no independent evidence of such a conspiracy. The prosecution disagreed, arguing that the challenged statement was not hearsay because it was made by a coconspirator during the course of and in furtherance of the conspiracy. Further, the prosecution argued, there was independent proof of the conspiracy; defendant and McNew were both involved in this robbery, they fled the scene together, running in the same direction, to a motel room that was in defendant's name and where the victim's purse was located. The trial court agreed that the disputed statement was not hearsay because it was made in the furtherance of a conspiracy to commit a crime and that the conspiracy was established by a preponderance of the evidence independent of the statement. Consequently, McNew's statement to the victim that he would shoot her if she did not release her purse was admitted into evidence.

On appeal, defendant argues that he was denied his right to confrontation when McNew's hearsay statement was admitted into evidence because, other than that statement, there was insufficient proof of a conspiracy to commit armed robbery. After review of this evidentiary ruling for an abuse of discretion, we disagree. See *People v Jenkins*, 244 Mich App 1, 21; 624 NW2d 457 (2000).

During the victim's struggle with defendant over her purse, McNew told the victim: "I'm gonna shoot you." Fearing that she would be shot, the victim then released her purse to defendant. Over defendant's hearsay objection, McNew's statement to the victim was admitted into evidence pursuant to MRE 801(d)(2)(E) which provides that a statement is not hearsay if it was made "by a coconspirator of a party during the course and in the furtherance of the conspiracy on independent proof of the conspiracy." This rule of evidence was explained in *People v Martin*, 271 Mich App 280; 721 NW2d 815 (2006), as follows:

> In order to qualify under the exclusion for statements by a coconspirator, the proponent of the statements must establish three things. First, the proponent must establish by a preponderance of the evidence that a conspiracy existed through independent evidence. A conspiracy exists where two or more persons combine with the intent to accomplish an illegal objective. It is not necessary to offer direct proof of the conspiracy. Instead, it is sufficient if the circumstances, acts, and conduct of the parties establish an agreement in fact. Circumstantial evidence and inference may be used to establish the existence of the conspiracy. Second, the proponent must establish that the statement was made during the course of the conspiracy. The conspiracy continues until the common enterprise has been fully completed, abandoned, or terminated. Third, the proponent must establish that the statement furthered the conspiracy. The requirement that the statement further the conspiracy has been construed broadly. Although idle chatter will not satisfy this requirement, statements that prompt the listener, who need not be one of the conspirators, to respond in a way that promotes or facilitates the accomplishment of the illegal objective will suffice. [*Id.* at 316-317 (quotation marks and citations omitted).]

Defendant argues that the first requirement for admission of the statement was not satisfied because there was insufficient evidence that a conspiracy to commit armed robbery existed.

To establish criminal conspiracy, the prosecutor must prove that the defendant intended to combine with another and intended to accomplish an illegal objective. *People v Mass*, 464 Mich 615, 629; 628 NW2d 540 (2001). The crime is complete upon formation of the agreement. *People v Justice (After Remand)*, 454 Mich 334, 345-346; 562 NW2d 652 (1997). More specifically, the prosecutor must prove that the intended future conduct agreed upon by the conspirators included all the elements of the substantive crime. *Mass*, 464 Mich at 629 n 19. In this case, the substantive crime was armed robbery. The elements of armed robbery, relevant here, include that the defendant (1) was engaged in the course of committing a larceny, (2) used force or violence, and (3) represented that he possessed a dangerous weapon. See *People v Chambers*, 277 Mich App 1, 7; 742 NW2d 610 (2007).

Here, the evidence included that defendant and McNew were together when they targeted a vulnerable victim, they were together when the victim was approached, they were together when defendant grabbed the victim's purse, and McNew watched the violent struggle between the victim and defendant, which resulted in the victim being thrown to the ground where she continued to fight defendant. Defendant still did not stop the assault. After defendant had the purse, defendant and McNew fled the scene, running together in the same direction to a motel room in defendant's name where the contents of the victim's purse were examined. Although there was no direct proof, the circumstances, acts, and conduct of defendant and McNew establish by a preponderance of the evidence, independent of McNew's statement to the victim, that they agreed to commit an armed robbery. Circumstantial evidence together with reasonable inferences lead to the conclusions that defendant and McNew agreed to: target a vulnerable victim, approach the victim together in an intimidating manner, and employ brute force, violence, and convincing grievous threats of injury by a dangerous weapon to accomplish their criminal objective, armed robbery. Accordingly, McNew's statement made during the course and in furtherance of the conspiracy was properly admitted under MRE 801(d)(2)(E). Although the trial court's analysis of this issue erroneously concluded that a conspiracy to commit any crime, rather than armed robbery, was sufficient to admit McNew's disputed statement, reversal is not warranted because the statement was properly admitted into evidence. See *People v Bauder*, 269 Mich App 174, 187; 712 NW2d 506 (2005).

Next, defendant argues that there was insufficient evidence to support his armed robbery and conspiracy to commit armed robbery convictions; thus, his motion for directed verdict should have been granted. We disagree.

With regard to a trial court's decision on a motion for directed verdict, we review the record de novo. *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999). This Court views 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 proved beyond a reasonable doubt. *Id*. "Circumstantial evidence and reasonable inferences that arise from the evidence can constitute sufficient proof of the elements of the crime." *People v Akins*, 259 Mich App 545, 554; 675 NW2d 863 (2003).

As discussed above, the elements of armed robbery include that the defendant (1) was engaged in the course of committing a larceny, (2) used force or violence, and (3) represented that he possessed a dangerous weapon. See *Chambers*, 277 Mich App at 7. At trial, the prosecutor argued that defendant aided and abetted McNew in committing the armed robbery. A

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. To establish that a defendant aided and 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 that [the defendant] gave aid and encouragement." *People v Moore*, 470 Mich 56, 67-68; 679 NW2d 41 (2004), quoting *People v Carines*, 460 Mich 750, 768; 597 NW2d 130 (1999). "Aiding and abetting" describes all forms of assistance rendered and comprehends all words and deeds that might support, encourage, or incite the commission of a crime. *Id*. at 757, quoting *People v Turner*, 213 Mich App 558, 568-569; 540 NW2d 728 (1995), overruled in part on other grounds *Mass*, 464 Mich at 628. An aider and abettor's state of mind may be inferred from the facts and circumstances. *Turner*, 213 Mich App at 568. "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." *Id*. at 569.

Here, viewing the evidence in the light most favorable to the prosecution, a reasonable jury could conclude beyond a reasonable doubt that an armed robbery was committed by McNew, defendant assisted in the commission of the armed robbery, and defendant intended to commit the armed robbery or, at least, knew that McNew intended to commit an armed robbery at the time that he aided and encouraged the armed robbery. As discussed above, defendant and McNew selected a vulnerable victim, she was attacked by defendant and, when she fought back, defendant continued to fight the victim for her purse until McNew threatened to shoot her, which caused the victim to relinquish her purse to defendant, who took the purse and ran away with McNew.

Further, viewing the evidence in the light most favorable to the prosecution, a reasonable jury could conclude beyond a reasonable doubt that defendant and McNew conspired to commit armed robbery. Again, as discussed above, circumstantial evidence together with reasonable inferences lead to the conclusions that defendant and McNew agreed to: target a vulnerable victim, approach the victim together in an intimidating manner, and employ brute force, violence, as well as convincing threats of grievous injury by gunshot to accomplish an armed robbery. See *Martin*, 271 Mich App at 316-317. Although the victim was on the ground, defendant continued to fight the victim for her purse until she gave up the fight after McNew threatened to shoot her. Defendant then took the purse and ran away with McNew to a motel room registered in defendant's name where they examined the contents of the purse. Because the evidence viewed in the light most favorable to the prosecution was sufficient to establish both crimes beyond a reasonable doubt, the trial court properly denied defendant's motion for a directed verdict.

Affirmed.

/s/ Amy Ronayne Krause
/s/ Mark J. Cavanagh
/s/ Mark T. Boonstra