

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

---

PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellee

UNPUBLISHED  
July 18, 2013

v

DERRICK HAROLD WILLIAMS,  
  
Defendant-Appellant

No. 311038  
Wayne Circuit Court  
LC No. 11-012173-FC

---

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

PER CURIAM.

Defendant, appeals as of right his jury trial conviction of armed robbery, MCL 750.529, assault with intent to do great bodily harm less than murder, MCL 750.84, felonious assault, MCL 750.82, and felony-firearm, MCL 750.227b. Defendant was charged as an habitual offender (fourth offense). He was sentenced to 40 to 60 years in prison for armed robbery, 40 to 60 years for assault with intent to commit great bodily harm less than murder, 5 to 15 years for felonious assault, and two years for felony-firearm. For the reasons set forth below, we affirm.

Defendant raises two arguments on appeal. Defendant first argues that the evidence adduced at trial was insufficient to convict him. He next argues that his trial counsel was ineffective for failing to object to the prosecution's untimely filing of the habitual offender notice.

**I, SUFFICIENCY OF THE EVIDENCE**

**A. STANDARD OF REVIEW**

We review de novo a challenge to the sufficiency of the evidence. *People v Cline*, 276 Mich App 634, 642; 741 NW2d 563 (2007). We also review de novo whether the requirements of the aiding and abetting statute have been met. *People v Robinson*, 475 Mich 1, 6; 715 NW2d 44 (2006).

**B. ANALYSIS**

Defendant was prosecuted on an aiding and abetting theory for each offense. Defendant argues that the prosecution failed to present sufficient evidence to convict him of each offense

because the prosecution failed to demonstrate that defendant was anything more than merely present at the crime scene. We disagree.

In a challenge to the sufficiency of the evidence, this Court views the evidence in the light most favorable to the prosecution and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Tombs*, 472 Mich 446, 459; 697 NW2d 494 (2005); *People v Ericksen*, 228 Mich App 192, 196; 793 NW2d 120 (2010).

The elements of aiding and abetting are:

(1) the crime must have been committed by the defendant or another person, (2) the defendant performed acts or encouraged the commission of the crime, and (3) the defendant intended for the crime to take place or had knowledge that the crime would have taken place at the time the defendant gave aid and encouragement. [*Robinson, supra* at 6.]

Aiding and abetting” consists of all forms of assistance given to the perpetrator of a crime and includes all statements or actions that may help, encourage, or provoke the commission of a crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999) (citation omitted). A defendant “who intends to aid, abet, counsel, or procure the commission of a crime, is liable for that crime as well as the natural and probable consequences of that crime.” *Robinson, supra* at 3. Factors that may be considered include a close association between a defendant and principal, a defendant’s participation in the planning or execution of the crime, and evidence of flight after the crime. *Carines, supra* at 758.

Armed robbery is “(1) an assault and (2) taking of property from the victim’s person or presence (3) while the defendant is armed with a dangerous weapon.” *People v Norris*, 236 Mich App 411, 414; 600 NW2d 658 (1999).

Defendant entered the store along with two unidentified gunmen and Jackson, his co-defendant. Jackson and the two gunmen had been to the store earlier that evening, and Jackson and defendant were regular patrons. One of the victims testified that defendant and Jackson were known as cousins. Defendant entered the store in a raucous manner which caused one victim to leave the safety of a glass enclosure. Defendant tussled with that victim which lured the other victim to also leave the glass enclosure, leaving the door ajar. Jackson stole some wine from the store during the affray thereby completing a robbery. Contemporaneously, in furtherance of what was no doubt an attempt to rob the store, the two gunmen aimed their weapons at the two victims while defendant attempted to remove the eyeglasses of one victim and verbally taunted the other. Defendant, therefore, was familiar with and in close proximity to his co-perpetrators, encouraged them in the commission of the crime, and fled with them after the crime. *Carines, supra* at 757. Accordingly, the prosecution presented sufficient evidence that defendant was guilty of aiding and abetting armed robbery.

“Assault with intent to commit great bodily harm less than murder requires proof of (1) an attempt or threat with force or violence to do corporal harm to another (an assault), and (2) an intent to do great bodily harm less than murder.” *People v Parcha*, 227 Mich App 236, 239;

575 NW2d 316 (1998). Defendant's co-perpetrators committed this offense when they shot the victim. Defendant aided and abetted his co-perpetrators when he encouraged the gunmen to shoot the victim which they immediately did. Ultimately, the victim suffered severe bodily injuries which required surgery to several vital organs. Accordingly, the evidence was sufficient to convict defendant of aiding and abetting assault with intent to do great bodily harm less than murder.

"The elements of felonious assault are (1) an assault, (2) with a dangerous weapon, and (3) with the intent to injure or place the victim in reasonable apprehension of an immediate battery." *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999) (citation omitted). The prosecution presented sufficient evidence to convict defendant of aiding and abetting this offense. As noted above, defendant encouraged the gunmen to shoot the victim.

Finally, the elements of felony-firearm are that the defendant (1) possessed a firearm (2) during the commission of, or attempt to commit a felony. MCL750.227b. "[W]hen a defendant specifically encourages another possessing a gun during the commission of a felony to use that gun, he aids and abets the carrying or possessing of that gun." *People v Moore*, 470 Mich 56, 71; 679 NW2d 41 (2004). There is no evidence that defendant obtained the guns for the gunmen's use. However, there is evidence that he encouraged the gunmen to use the weapons when he instructed them to shoot the victim. The prosecution presented sufficient evidence that defendant "actively urg[ed] . . . [and] encourage[d]" his co-perpetrators to use their weapons. *Moore*, *supra* at 71.

## II. INEFFECTIVE ASSISTANCE OF COUNSEL

### A. ISSUE PRESERVATION AND STANDARD OF REVIEW

To preserve a claim of ineffective assistance of counsel for appellate review, a defendant must move either for a new trial or for an evidentiary hearing. *People v Davis*, 250 Mich App 357, 368; 649 NW2d 94 (2002). Defendant failed to do either; accordingly, this issue is unpreserved. Therefore, our review "is limited to mistakes apparent on the appellate record." *Id.*

Claims of ineffective assistance of counsel present mixed questions of fact and constitutional law. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). "A judge first must find the facts, and then must decide whether those facts constitute a violation of the defendant's constitutional right to effective assistance of counsel." *Id.* The court's factual findings are reviewed for clear error and questions of constitutional law are reviewed de novo. *People v Dendel*, 481 Mich 114, 124; 748 NW2d 859 (2008).

### B. ANALYSIS

Defendant's ineffective assistance of counsel argument focuses on the habitual offender notice. We are not persuaded that defendant's counsel was ineffective.

"In all criminal prosecutions, the accused shall . . . be informed of the nature and cause of the accusation . . . and to have the assistance of counsel for his defense." US Const, Am VI. In determining whether a defendant's trial counsel was ineffective, the defendant must first show that counsel's performance fell below an objective standard of reasonableness. *People v*

*Armstrong*, 490 Mich 281, 290; 806 NW2d 676 (2011), citing *Strickland v Washington*, 466 US 668, 687-688; 104 S Ct 2052; 80 L Ed 2d 674 (1984). “In doing so, the defendant must overcome the strong presumption that counsel’s assistance constituted sound trial strategy.” *Armstrong*, 490 Mich at 290, citing *People v Rice (On Remand)*, 235 Mich App 429, 444; 597 NW2d 843 (1999). Second, “the defendant must show that, but for counsel’s deficient performance, a different result would have been reasonably probable.” *Armstrong*, 490 Mich at 290, citing *Strickland*, 466 US at 694-696. Failing to offer a meritless argument or raise a useless objection does not constitute ineffective assistance of counsel. *Ericksen, supra* at 201.

The notice of an enhanced sentence must be filed with the court and served upon the defendant or his or her attorney within 21 days of the arraignment or within 21 days of the filing of the information if arraignment is waived. MCL 769.13(1), (2). The purpose of requiring a prosecutor to file the amended information during the time allotted is to provide the defendant with notice of the potential consequences if defendant is convicted of the charges. *People v Morales*, 240 Mich App 571, 582; 618 NW2d 10 (2000).

Defendant was initially charged only with armed robbery and unarmed robbery. He was later bound over for assault with intent to murder, assault with intent to do great bodily harm less than murder, assault with dangerous weapon, and felony firearm. An amended information was subsequently prepared, and served on defendant’s counsel, but apparently not filed with the court itself. Standby counsel waived defendant’s presence at the arraignment. Two days after the arraignment, defendant’s counsel acknowledged receipt of the amended information, including the sentence enhancement two days later. The court explained the consequences of an habitual offender enhancement moments after defendant rejected a plea offer from the prosecution during a final conference.

In the instant case, defendant was not prejudiced by counsel’s failure to argue that he should not be charged as an habitual offender because the enhancement was not filed with the court. This Court has held that the primary purpose of the 21-day period in MCL 769.13 is to provide a defendant notice of the enhancement, *Morales, supra* at 582, and therefore where a defendant has actual notice of the prosecution’s intent to charge him as an habitual offender, any error in failing to file with the court is harmless. *People v Walker*, 234 Mich App 299, 314-315; 593 NW2d 673 (1999). There is no dispute that defendant’s counsel was served with the amended information within the 21-day time period. Accordingly, because defendant was on notice that the prosecution intended to charge him as an habitual offender, any error resulting from the failure to file the documentation with the lower court was harmless. *Walker, supra* at 314-315. Respectively, because any error in failing to file the amended information with the lower court was harmless, any objection to it would have been futile. Consequently, defendant has failed to support his claim for ineffective assistance of counsel because counsel cannot be ineffective for failing to raise a futile objection. *Ericksen, supra* at 201.

Defendant also filed a Standard 4 brief, in which he argues that his counsel was ineffective in a number of other ways, including by: failing to obtain and test the stick with which one of the victims hit defendant; failing to secure witnesses; failing to obtain the store’s surveillance videotapes before they were tampered with by the victims; and failing to have defendant personally present at the arraignment. We have reviewed each of these arguments and conclude that each is meritless. Defendant has not offered anything concerning these claims

other than conjecture and hyperbole. There is no support for the assertion that the tapes were altered and his conviction was based upon the testimony of two victims whose identification was based on long-standing familiarity with him. The stick was not the weapon upon which any conviction was based, and no prejudice arose from his absence at the arraignment on the information.

Affirmed.

/s/ Cynthia Diane Stephens

/s/ Kurtis T. Wilder

/s/ Donald S. Owens