

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRIAN STEVEN TRUDEAU,

Defendant-Appellant.

UNPUBLISHED

July 22, 2004

No. 246938

Wayne Circuit Court

LC No. 02-010931-03

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEREMY ALLEN MADDOX,

Defendant-Appellant.

No. 247601

Wayne Circuit Court

LC No. 02-010931-02

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES LEE CROWLEY,

Defendant-Appellant.

No. 247602

Wayne Circuit Court

LC No. 02-010931-01

Before: Jansen, P.J., and Meter and Cooper, JJ.

PER CURIAM.

Defendants Brian Trudeau, Jeremy Maddox, and James Crowley were tried jointly before a single jury. Mr. Trudeau and Mr. Maddox were each convicted of assault with intent to commit murder.¹ Mr. Crowley was convicted of assault with intent to commit murder and possession of a firearm during the commission of a felony.² Mr. Trudeau was sentenced to five to twenty years' imprisonment, and Mr. Maddox was sentenced to ten to twenty-five years' imprisonment. Mr. Crowley was sentenced to fifteen to thirty years' imprisonment for his assault conviction and a consecutive two-year term for his felony-firearm conviction. Mr. Trudeau appeals as of right in Docket No. 246938; Mr. Maddox in Docket No. 247601; and Mr. Crowley in Docket No. 247602. We affirm.

I. Underlying Facts

Defendants' convictions arise from the shooting of Wald Griswold during the robbery of an automotive body shop in the city of Detroit on August 19, 2002. Mr. Griswold both worked and resided at the body shop where Mr. Maddox was a part-time employee. Mr. Griswold also knew Mr. Trudeau and Mr. Crowley, as they frequently accompanied Mr. Maddox to work.

On the night of the shooting, Maurice Gee, the shop owner, closed and locked the shop at approximately 6:00 p.m. He instructed Mr. Griswold not to let anyone in and left for the evening. At 10:00 p.m., Mr. Maddox and Mr. Trudeau visited Mr. Gee at home and asked him twice whether he intended to return to the shop later that night. Mr. Gee informed them that he had no plans to return to the shop.

Mr. Griswold was preparing to go to bed around 11:00 p.m., when the doorbell rang. He lifted the rollup door to the shop and saw Mr. Maddox. As he proceeded to open the door for Mr. Maddox, he saw Mr. Trudeau and Mr. Crowley as well. Mr. Griswold knew Mr. Maddox by his first name "Jeremy," Mr. Trudeau by his nickname "B," and Mr. Crowley by his nickname "Spanky." Mr. Maddox told Mr. Griswold that he wanted to look at a van that he was planning to buy from Mr. Gee. Mr. Griswold relocked the front door after the defendants entered. He then let Mr. Maddox and Mr. Trudeau into the car lot. Mr. Griswold and Mr. Crowley stayed in the office while Mr. Maddox and Mr. Trudeau inspected the van.

Several minutes later, Mr. Trudeau came back into the office and Mr. Griswold turned to speak to him. Mr. Trudeau then turned around as if to go back outside to the lot. As Mr. Griswold turned back to face Mr. Crowley, Mr. Crowley pulled out a gun. Mr. Crowley shot Mr. Griswold in the chest and Mr. Griswold fell to the floor facedown. Seconds later, Mr. Griswold was shot again. After the second shot, Mr. Griswold remembered hearing voices, but could not make out the conversation. He also heard equipment being moved around the shop. At some point, Mr. Griswold awoke and remembered someone taking a set of keys from his pocket. He heard a car start and someone came into the office and shot him a third time. The person locked the office from the inside when leaving. Mr. Griswold also heard someone shut the rollup door.

¹ MCL 750.83.

² MCL 750.227b.

Mr. Griswold then gathered the strength to walk down the street to a nearby restaurant where someone called 911.

Detroit police officer Steven Coykendall arrived at the restaurant and attempted to speak with Mr. Griswold. Although Mr. Griswold was in and out of consciousness, he was able to clearly tell Officer Coykendall that “Jeremy” and “B” shot him. Officer Coykendall testified that the third name was unclear and sounded like “Spike” or “Spiky.” The police noted that there were no signs of forced entry at the shop. They also collected three spent .22 caliber shell casings. When Mr. Gee arrived at the shop the next day he noticed that a car had been stolen and another was missing its 20-inch rims. After learning of the shooting, Mr. Gee visited Mr. Griswold in the hospital. Later that day, Mr. Gee called Mr. Maddox to arrange a meeting to sell a car to the defendants. All three defendants arrived at the meeting and were arrested.

At trial, Mr. Maddox and Mr. Trudeau presented several alibi witnesses placing all three defendants in the city of Romulus on the evening of August 19, 2002. The witnesses were all family and friends of the defendants who lived in the same neighborhood. According to the witnesses, defendants were in Romulus from 9:00 p.m. until at least midnight. Mr. Crowley did not present any of his own witnesses, but Mr. Maddox and Mr. Trudeau’s witnesses provided an alibi for him as well.

II. Defendant Trudeau’s Issue in Docket No. 246938

Mr. Trudeau claims that insufficient evidence was presented to support his conviction. Specifically, Mr. Trudeau asserts that the evidence failed prove that he knew Mr. Crowley intended to shoot Mr. Griswold, agreed to participate in the shooting or assisted or encouraged the shooter. We disagree.

In sufficiency of the evidence claims, this Court reviews 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.³ This Court will not interfere with the trier of fact’s determination as to the weight of the evidence or witness credibility.⁴ Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of the crime.⁵

To obtain a conviction for assault with intent to murder, the prosecution must establish beyond a reasonable doubt that the defendant committed: “(1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder.”⁶ At trial, the prosecution

³ *People v Hunter*, 466 Mich 1, 6; 643 NW2d 218 (2002).

⁴ *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992).

⁵ *People v Lee*, 243 Mich App 163, 167-168; 622 NW2d 71 (2000).

⁶ *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997); see also MCL 750.83.

argued that Mr. Trudeau aided and abetted Mr. Crowley who actually shot Mr. Griswold. To support a finding that a defendant aided and abetted:

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 he gave aid and encouragement.^[7]

Aiding and abetting describes all forms of assistance rendered to the perpetrator and includes all words or deeds that might support, encourage, or incite the commission of a crime.⁸ The amount of aid or advice provided to the perpetrator “is immaterial as long as it had the effect of inducing the crime.”⁹ The aider and abettor’s state of mind may be inferred from all the facts and circumstances, including 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.¹⁰ A person who aids or abets the commission of a crime may be convicted and punished as if he directly committed the offense.¹¹

The record shows that Mr. Trudeau went to Mr. Gee’s home the night of the murder to determine if he planned to return to the shop that night. Once assured that Mr. Griswold would be alone in the shop, Mr. Trudeau accompanied Mr. Maddox and Mr. Crowley to the shop and gained entrance under the pretext of inspecting a vehicle to purchase. Mr. Trudeau and Mr. Maddox left the victim alone in the office with Mr. Crowley. Mr. Trudeau returned to the office and diverted Mr. Griswold’s attention while Mr. Crowley pulled a gun. Mr. Griswold recalled hearing more than one voice after being shot and heard equipment being moved around. There is also evidence that Mr. Trudeau left the shop with Mr. Crowley and Mr. Maddox. Lastly, both Mr. Griswold and Mr. Gee knew Mr. Trudeau from his frequent visits to the shop, and therefore, could easily identify him. Viewing this evidence in the light most favorable to the prosecution, a rational trier of fact could infer that Mr. Trudeau aided and abetted Mr. Crowley in his assault against Mr. Griswold.

III. Defendant Maddox’s Issues in Docket No. 247601

A. Sufficiency of the Evidence

Mr. Maddox also claims that insufficient evidence was presented to support his conviction. Specifically, Mr. Maddox asserts that the evidence failed to prove that he knew Mr.

⁷ *People v Izarraras-Placante*, 246 Mich App 490, 495-496; 633 NW2d 18 (2001).

⁸ *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999).

⁹ *People v Lawton*, 196 Mich App 341, 352; 492 NW2d 810 (1992).

¹⁰ *Carines*, *supra* at 758.

¹¹ MCL 767.39.

Crowley intended to shoot Mr. Griswold, that he agreed to participate in the shooting, or that he assisted or encouraged the shooter. We disagree.

Mr. Maddox also accompanied Mr. Trudeau on the evening of the assault. He visited Mr. Gee's home, he arrived at the shop with Mr. Crowley and Mr. Trudeau, and could have been the second voice heard by Mr. Griswold. The evidence against Mr. Maddox is actually stronger than that against Mr. Trudeau. Mr. Maddox was a part-time employee at the body shop. It is only through Mr. Maddox's employment that Mr. Gee and Mr. Griswold knew the other defendants. Furthermore, Mr. Maddox was in the best position to know that the keys to the shop would be located in Mr. Griswold's pocket. As we found this evidence sufficient to support Mr. Trudeau's conviction, we also find this evidence sufficient to support the conviction of Mr. Maddox.

B. Reopening of Proofs

Mr. Maddox also argues that the trial court abused its discretion by failing to allow him to reopen the proofs for defense counsel to clarify a defense witness's testimony. We disagree. We review a trial court's decision whether to permit the reopening of proofs for an abuse of discretion.¹² Relevant considerations include whether the moving party would take any undue advantage and whether the nonmoving party can show surprise or prejudice.¹³ The prosecutor did not object to Mr. Maddox's request on the grounds of surprise or prejudice. However, relevant evidence may be excluded on the basis of needless presentation of cumulative evidence.¹⁴

At trial the defense called Daryl Nicholson. Mr. Nicholson testified that Mr. Maddox was at his house on the night of the assault until 9:50 or 10:00 p.m. On cross-examination, Mr. Nicholson stated that Mr. Maddox went home after leaving his house, although he admitted that he did not watch Mr. Maddox walk home. Mr. Nicholson was certain that Mr. Maddox went home because, fifteen minutes later, he called Mr. Maddox's home and heard him speaking in the background. Defense counsel wished to recall Mr. Nicholson in order to reconcile his testimony with that of the other alibi witnesses.¹⁵ However, it was undisputed among the witnesses that Mr. Maddox went home after leaving Mr. Nicholson's home, before going to work on a neighbor's car, and that Mr. Maddox was at home at 11:00 p.m., the time of the shooting. As the testimony presented by the alibi witnesses was substantially similar and placed Mr. Maddox in Romulus at the time of the shooting, it is unlikely that further clarification of Mr. Nicholson's testimony would have affected the outcome of the trial. Furthermore, as the trial court questioned Mr. Nicholson to clarify his testimony, further questioning would have been

¹² *People v Herndon*, 246 Mich App 371, 419; 633 NW2d 376 (2001).

¹³ *Id.* at 420.

¹⁴ MRE 403.

¹⁵ Mr. Maddox's fiancé testified that when Mr. Maddox returned home at 10:00 p.m., she was talking to a neighbor about a fellow neighbor needing help with her car. Mr. Maddox went to help the neighbor and returned home at 10:30 or 10:45 p.m.

repetitive. Accordingly, the trial court properly denied Mr. Maddox's request to reopen the proofs as the evidence sought would have been cumulative.

IV. Defendant Crowley's Issue in Docket No. 247602

Defendant Crowley's sole claim is that his conviction was against the great weight of the evidence, as Mr. Griswold told Officer Coykendall immediately following the shooting that the perpetrators were "Jeremy," "B," and "Spike" or "Spiky," while Mr. Crowley's nickname is Spanky.

As Mr. Crowley failed to preserve this issue by moving for a new trial, our review is limited to plain error affecting defendant's substantial rights.¹⁶ Generally, we review a great weight of the evidence claim to determine whether the evidence preponderates heavily against the verdict so that it would be a miscarriage of justice to allow the verdict to stand.¹⁷ Conflicting testimony and questions of witness credibility are insufficient grounds for granting a new trial.¹⁸ "[U]nless it can be said that directly contradictory testimony was so far impeached that it 'was deprived of all probative value or that the jury could not believe it,' or contradicted indisputable physical facts or defied physical realities, the trial court must defer to the jury's determination."¹⁹

Officer Coykendall testified that at the time Mr. Griswold told him the name of the perpetrators, he had just been shot and was in and out of consciousness. Furthermore, Mr. Griswold's speech was unclear when he gave the third name. The day after the shooting, Mr. Griswold again identified the same three men as his assailants. At trial, Mr. Griswold testified that there was no doubt in his mind that Mr. Crowley shot him. Therefore, Mr. Crowley's conviction is consistent with the evidence presented at trial.

We also reject Mr. Crowley's assertion that his conviction is against the great weight of the evidence, as alibi witnesses testified that he was in Romulus at the time of the shooting. This is an issue of witness credibility, which is within the exclusive province of the jury, and is not a ground for granting a new trial.²⁰

Affirmed.

/s/ Kathleen Jansen
/s/ Patrick M. Meter
/s/ Jessica R. Cooper

¹⁶ *Carines, supra* at 763-764.

¹⁷ *People v Lemmon*, 456 Mich 625, 627; 576 NW2d 129 (1998).

¹⁸ *Id.* at 643.

¹⁹ *Id.* at 645-646 (citation omitted).

²⁰ *Id.* at 642-643.