

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSEPH RYAN MOORING,

Defendant-Appellant.

UNPUBLISHED

October 22, 2009

No. 285562

Kalkaska Circuit Court

LC No. 07-002905-FC

Before: Hoekstra, P.J., and Bandstra and Servitto, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of armed robbery, MCL 750.529, conspiracy to commit armed robbery, MCL 750.157a; MCL 750.529, and resisting or obstructing a police officer, MCL 750.81d(1). The trial court sentenced defendant, as a habitual offender, third offense, MCL 769.11, to 240 to 720 months' imprisonment for the armed robbery and conspiracy convictions and to 32 to 48 months' imprisonment for the resisting or obstructing conviction. Defendant's sentences, while concurrent to each other, are to be served consecutive to the sentence from which defendant was on parole at the time of the armed robbery. Defendant received no credit for time served. Because the trial court did not err in denying defendant's motion for a directed verdict and because defendant was not entitled to any jail credit for time served, we affirm.

On appeal, defendant argues that the trial court erred in denying his motion for a directed verdict on the charges of armed robbery and conspiracy to commit armed robbery. Defendant concedes that the evidence establishes that Roger Demaree committed the armed robbery and that he drove Demaree to the East Lake General Store, but asserts that there is no evidence to support an inference that he knew of and intended to aid Demaree in the armed robbery. We disagree.

We review a trial court's decision on a motion for a directed verdict de novo, viewing the evidence in the 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. *People v Gillis*, 474 Mich 105, 113; 712 NW2d 419 (2006). "Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime." *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999) (quotation omitted). "An actor's intent may be inferred from all of the facts and circumstances, and because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is

sufficient.” *People v Fetterley*, 229 Mich App 511, 517-518; 583 NW2d 199 (1998) (internal citation omitted).

Defendant was convicted of armed robbery under an aiding or abetting theory. Conviction under an aiding or abetting theory requires proof of the following elements:

(1) the underlying crime was committed by either the defendant or some other person, (2) the defendant performed acts or gave encouragement that aided and 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 of giving aid or encouragement. [*People v Smielewski*, 235 Mich App 196, 207; 596 NW2d 636 (1999).]

Similarly, conviction of conspiracy requires proof of an unlawful agreement between two or more persons with a specific intent to combine with others to accomplish an illegal objective. *People v Blume*, 443 Mich 476, 481; 505 NW2d 843 (1993).

The prosecution presented evidence showing that defendant, on the evening of September 12, 2007, drove two companions, including Demaree, to the East Lake General Store. Defendant parked the Jeep he was driving in front of the gas station and went inside to buy a pop. Another customer of the gas station saw an African-American male crouched down in the passenger seat of the Jeep. After defendant returned to the Jeep, he drove it to a dark area behind the gas station. Demaree then entered the gas station, and committed the armed robbery. When police questioned defendant the next morning, defendant lied about his whereabouts on the previous evening. Viewing this evidence and the reasonable inferences arising therefrom in the light most favorable to the prosecution, a rational trier of fact could find that defendant knew of and, by acting as the “wheelman,” intended to aid Demaree in the armed robbery. The trial court did not err in denying defendant’s motion for a directed verdict.

Defendant also argues that the trial court erred in failing to award him credit for time served from the date of his arrest to the date of sentencing. We review this unpreserved error for plain error affecting defendant’s substantial rights. *Carines, supra* at 763.

Defendant was arrested while on parole for a previous offense. In *People v Idziak*, 484 Mich 549, 562; ___ NW2d ___ (2009), our Supreme Court held that “the jail credit statute[, MCL 769.11b,] does not apply to a parolee who is convicted and sentenced to a new term of imprisonment for a felony committed while on parole.” It explained:

[O]nce arrested in connection with the new felony, the parolee continues to serve out any unexpired portion of his earlier sentence unless and until discharged by the Parole Board. For that reason, he remains incarcerated regardless of whether he would otherwise be eligible for bond before conviction on the new offense. He is incarcerated not “because of being denied or unable to furnish bond” for the new offense, but for an independent reason. [*Id.* at 562-563.]

Because defendant was not entitled to credit for time served, there was no error by the trial court.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Richard A. Bandstra
/s/ Deborah A. Servitto