STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 6, 2012
v	No. 301797 Genesee Circuit Court
CLEVELAND STINNETT III, Defendant-Appellant.	LC No. 10-027111-FC

Before: WILDER, P.J., and GLEICHER and BOONSTRA, JJ.

PER CURIAM.

Defendant was convicted by a jury of assault with intent to commit murder, MCL 750.83, assault with intent to do great bodily harm less than murder, MCL 750.84, two counts of armed robbery, MCL 750.529, and possession of a firearm during the commission of a felony, MCL 750.227b. He was resentenced as a habitual offender, second offense, MCL 769.10, to concurrent prison terms of 468 months to 60 years for the assault with intent to commit murder conviction, 10 to 15 years for the assault with intent to do great bodily harm conviction, and 30 to 60 years for each robbery conviction, to be served consecutive to a two-year term of imprisonment for the felony-firearm conviction. He appeals as of right. We affirm defendant's convictions and sentences but vacate the portion of the judgment of sentence ordering him to pay court costs of $500.

Defendant's convictions arise from his participation in the January 26, 2010, armed robberies and assaults of Christopher Renfro and Thomas Tate outside a Flint market. The prosecutor's theory was that defendant aided and abetted his friends, codefendants Robert Rohl, Anthony Hoffman, and Daniel Hopkins, who were also charged in the matter. Of the four individuals, only defendant did not have a gun. The four waited outside a market for Renfro, whom they knew was a drug dealer, to exit. When Renfo emerged, the four codefendants approached. Tate, who was waiting in his truck for Renfro, exited and tried to intervene on Renfro's behalf. Hoffman and Hopkins turned their attention to Tate and ordered Tate back into his vehicle, directed him to empty his pockets, and shot him when he failed to comply. Hoffman stole Tate's keys, and the men fled the scene together. Meanwhile, defendant and Rohl were attempting to rob Renfro. Defendant actively tried to keep Renfro from leaving the area and ordered Renfro to "run his pockets." Although nothing was taken from Renfro, Rohl shot Renfro in the abdomen and the leg. Pursuant to plea agreements, Hoffman and Hopkins testified for the prosecution. The defense theory at trial was that defendant was merely present, had no

knowledge of an intended robbery, cautioned Rohl against shooting Renfro, and was unaware of Tate's presence.

I. SUFFICIENCY OF THE EVIDENCE – THE ASSAULT CONVICTIONS

Defendant first argues that there was insufficient evidence to support his convictions for assault with intent to do great bodily harm less than murder against Renfro and assault with intent to commit murder against Tate. We disagree.

When ascertaining whether sufficient evidence was presented at trial to support a conviction, we must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Circumstantial evidence and reasonable inferences arising from the evidence can constitute satisfactory proof of the elements of the crime. *People v Truong (After Remand)*, 218 Mich App 325, 337; 553 NW2d 692 (1996). "[A] reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

"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 (1997). To sustain a conviction for assault with intent to commit 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." *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997); see also MCL 750.83.

At trial, the prosecutor advanced the theory that defendant was guilty of both assaults as an aider or abettor. A person who aids or abets the commission of a crime may be convicted and punished as if he directly committed the offense. MCL 767.39. "To support a finding 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 [either] intended the commission of the crime or had knowledge that the principal intended its commission at the time he gave aid and encouragement." *People v Izarraras-Placante*, 246 Mich App 490, 496-497; 633 NW2d 18 (2001) (citation omitted). Further, an aider or abettor is liable for all "crimes that are the natural and probable consequences of the offense he intends to aid or abet." *People v Robinson*, 475 Mich 1, 15; 715 NW2d 44 (2006). "Aiding and abetting" describes all forms of assistance rendered to the perpetrator of a crime and comprehends all words or deeds that might support, encourage, or incite the commission of a crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999); *People v Rockwell*, 188 Mich App 405, 411-412; 470 NW2d 673 (1991). "The quantum of aid or advice is immaterial as long as it had the effect of inducing the crime." *People v Lawton*, 196 Mich App 341, 352; 492 NW2d 810 (1992).

A. THE ASSAULT AGAINST CHRISTOPHER RENFRO

First, there is no dispute that that codefendant Rohl attempted to rob Renfro while using a handgun.

Second, there was sufficient evidence that defendant assisted Rohl in the armed robbery attempt. The evidence established that defendant (1) agreed with his three armed codefendants to rob Renfro, (2) encouraged the group by urging, "Let's do it," (3) laid in wait with his three armed codefendants for Renfro to exit the store, (4) worked in cooperation with his codefendants in blocking Renfro from leaving the area, (5) "mess[ed] with [Renfro]" after Rohl, with his gun drawn, walked closer to Renfro, (6) attempted to make contact with Renfro by swinging at him during the altercation, (7) stood "[l]ess than arm's reach" from Rohl as Rohl shot at Renfro's feet to prevent him from leaving, (8) directed Renfro to "Run his pockets," and (9) joined Rohl in chasing Renfro as he attempted to escape across the street. A jury could have reasonably concluded from the above that defendant's actions aided Rohl in assaulting Renfro.

Third, the evidence was sufficient to show that defendant knew and intended for the defendants to commit an armed robbery against Renfro. The evidence established that all four of the defendants waited and openly discussed robbing Renfro with defendant stating, "Let's do this," before they confronted him. Thus, there was ample evidence that defendant intended to participate in the armed robbery.

Further, because defendant knew that firearms would be used in some manner in carrying out the robbery, the eventual assault with intent to do great bodily harm on Renfro was a natural and probable consequence of the commission of the originally intended robbery offense. Accordingly, the evidence was sufficient to support defendant's conviction of assault with intent to do great bodily harm less than murder under an aiding and abetting theory. See *Robinson*, 475 Mich at 15.

B. THE ASSAULT OF THOMAS TATE

The evidence was sufficient to show that codefendants Hopkins and Hoffman committed an assault with the intent to commit murder by shooting Tate with handguns in the legs and torso, resulting in life-threatening injuries that would have been fatal without surgical intervention.

Defendant argues that because he was unaware of Tate's presence, he therefore could not have assisted, encouraged, intended, or had knowledge of any crimes against Tate. Contrary to what defendant argues, under the circumstances, it is not relevant that he did not know Tate or did not know that Tate might become a victim of the defendants' intended armed robbery. Rather, the law is clear that under the "natural and probable consequences" theory, an aider and abettor is criminally responsible for any offense that is fairly within the common enterprise such that one might anticipate its commission should the opportunity arise. *Id.* Here, the evidence established that defendant knowingly participated in an armed robbery attempt outside a store (an area open to the public) with three of the participants carrying firearms. Viewing these facts in a light most favorable to the prosecution, we conclude that an assault with intent to commit murder against someone attempting to intervene on behalf of Renfro was a natural and probable

consequence of the commission of the intended offense. Therefore, the evidence was sufficient to support defendant's conviction of assault with intent to commit murder under an aiding and abetting theory.

II. SUFFICIENCY OF THE EVIDENCE – THE ARMED ROBBERY CONVICTIONS

Defendant next argues that there was insufficient evidence to support his convictions for armed robbery against both Renfro and Tate. Again, we disagree.

A. THE ARMED ROBBERY OF CHRISTOPHER RENFRO

Although defendant argues that the armed robbery conviction involving Renfro cannot stand because there was no completed larceny, our Supreme Court has recently confirmed that the crime of armed robbery encompasses attempts to commit a larceny and that no completed larceny is required. *People v Williams*, 491 Mich 164, 172; 814 NW2d 270 (2012). We are bound to follow decisions of our Supreme Court. *People v Hall*, 249 Mich App 262, 270; 643 NW2d 253 (2002). Consequently, we reject defendant's first argument.

B. THE ARMED ROBBERY OF THOMAS TATE

Defendant again argues that, like his assault with intent to commit murder conviction, there is insufficient evidence to sustain his armed robbery conviction of Tate because there is no evidence that he knew Tate existed, so he could not have assisted in or intended the armed robbery of Tate. As discussed previously, under the alternative "natural and probable consequences" theory, an aider and abettor may be held liable for crimes that are fairly within the common enterprise. *Robinson*, 475 Mich at 15. Here, as previously discussed, a rational trier of fact could reasonably conclude that the common purpose or enterprise was to steal from Renfro, specifically his drugs and money. As it was a natural and probable consequence that the defendants would assault anyone trying to intervene on Renfro's behalf, it was also a natural and probable consequence that they would rob from that person as well. This latter point is especially true considering that the intervening person, Tate, was an associate of Renfro, and the defendants were initially seeking Renfro's drugs and money. Therefore, the evidence was sufficient to support defendant's conviction of armed robbery under an aiding and abetting theory.

III. THE SCORING OF OFFENSE VARIABLES 4 AND 5

Defendant also argues that he is entitled to resentencing because the trial court erroneously scored offense variables 4 and 5 of the sentencing guidelines. We disagree. Defendant did not preserve his challenges to the scoring of OV 4 and OV 5 by objecting to the scoring of those variables at sentencing. MCL 769.34(10). We review unpreserved challenges to the scoring of offense variables for plain error affecting substantial rights. *People v Kimble*, 470 Mich 305, 312; 684 NW2d 669 (2004); *People v Odom*, 276 Mich App 407, 411; 740 NW2d 557 (2007).

Ten points may be scored for OV 4 where "[s]erious psychological injury requiring professional treatment occurred to a victim." MCL 777.34(1)(a). "[T]he victim's expression of fearfulness is enough to satisfy the statute." *People v Davenport (After Remand)*, 286 Mich App

191, 200; 779 NW2d 257 (2009); see also *People v Apgar*, 264 Mich App 321, 329; 690 NW2d 312 (2004). In this case, both victims were confronted, assaulted, robbed, and shot as a result of the actions of defendant and his codefendants. Rohl and defendant blocked Renfro from leaving the area, backed him up while Rohl shot at his feet to keep him from escaping, and chased him across the street, ultimately shooting him twice. Renfro testified that he fell to his knees, "felt a warmness in [his] backbone," and "didn't know exactly how long [he] had, [or] if [he] was gonna die." Tate testified that he was "pistol-whipped" in the face and, after being shot multiple times in the thigh, "thought that [he] was paralyzed." This evidence adequately supports the trial court's score 10-point score for OV 4.

Fifteen points may be scored for OV 5 where "[s]erious psychological injury requiring professional treatment occurred to a victim's family." MCL 777.35(1)(a). No evidence showed that any member of the either victim's family had sought professional psychological treatment in connection with the incident. According to a victim impact statement prepared for sentencing, however, Tate's grandparents, who raised Tate, indicated that they have endured mental anguish as a result of their grandchild being shot three times, and they are now more cautious in their daily lives as a result of this incident. Because there is evidence that supports the trial court's 15-point score for OV 5, there was no plain error. See *People v Endres*, 269 Mich App 414, 417; 711 NW2d 398 (2006).

Moreover, any error in scoring either of the two variables is harmless. If OV 4 and OV 5 are scored at zero points, defendant's total OV score decreases from 140 to 115 points. This scoring adjustment does not affect defendant's placement at OV Level VI (100+ points), and thus does not alter the guidelines range. MCL 777.62. Because the alleged scoring errors do not affect the appropriate guidelines range, defendant is not entitled to resentencing. MCL 769.34(10); *People v Francisco*, 474 Mich 82, 89 n 8; 711 NW2d 44 (2006).

IV. COURT COSTS

Lastly, defendant argues that the trial court improperly ordered him to pay $500 in court costs after the sentencing proceedings had concluded and he had begun serving his sentence. Plaintiff concedes error on this point, and we agree.

The trial court did not impose any court costs at sentencing. Defendant correctly notes that when a trial proceeding has concluded and a defendant has begun serving his sentence, a court may not sua sponte change the sentence imposed. See, e.g., *People v Dotson*, 417 Mich 940; 331 NW2d 477 (1983). Unlike state minimum costs, MCL 769.1j(a) and MCL 769.1k(1)(a), and payment into the crime victim rights fund, MCL 780.905(1)(a), the $500 in court costs are not statutorily mandated, but discretionary. See MCL 769.1k(1)(b). Because the court costs are not statutorily mandated and the trial court did not assess any costs at sentencing, but rather added the discretionary costs only after sentencing defendant, we vacate the portion of the judgment of sentence imposing a $500 fee for court costs.

Affirmed in part and vacated in part in accordance with this opinion.

/s/ Kurtis T. Wilder
/s/ Elizabeth L. Gleicher
/s/ Mark T. Boonstra