

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JWON MAXWELL MCCOY,

Defendant-Appellant.

UNPUBLISHED

January 17, 2013

No. 306882

Wayne Circuit Court

LC No. 10-009972-FC

Before: DONOFRIO, P.J., and FORT HOOD and SERVITTO, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of armed robbery, MCL 750.529. Because the evidence was sufficient to support defendant's conviction, the prosecutor did not commit misconduct, and defendant was not denied the effective assistance of counsel, we affirm.

Defendant's conviction arises out of the armed robbery of a Pet Supplies Plus store in Redford Township. Defendant first argues that the prosecution failed to present sufficient evidence to support his conviction. We review de novo a challenge to the sufficiency of the evidence. *People v Ericksen*, 288 Mich App 192, 195; 793 NW2d 120 (2010). In reviewing such a challenge and in reviewing the trial court's denial of a motion for a directed verdict of acquittal, we must review 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 offense were proven beyond a reasonable doubt. *People v Riley (After Remand)*, 468 Mich 135, 139-140; 659 NW2d 611 (2003); *People v Harverson*, 291 Mich App 171, 175; 804 NW2d 757 (2010). "Circumstantial evidence and reasonable inferences arising therefrom may constitute proof of the elements of the crime." *People v Bennett*, 290 Mich App 465, 472; 802 NW2d 627 (2010). The weight of evidence, the credibility of witnesses, and the inferences to be drawn from the evidence are matters for the jury to determine. *People v Eisen*, 296 Mich App 326, 331; 820 NW2d 229 (2012); *People v Kissner*, 292 Mich App 526, 534; 808 NW2d 522 (2011).

Defendant contends that the prosecution failed to present evidence that he aided and abetted Jarred Smith in committing the armed robbery. In order to prove armed robbery, the prosecution must establish: "(1) an assault and (2) a felonious taking of property from the victim's presence or person (3) while the defendant is armed with a weapon." *People v Smith*, 478 Mich 292, 319; 733 NW2d 351 (2007). "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 Bulls*, 262 Mich App 618, 625; 687 NW2d 159 (2004) (quotation marks and citations omitted). In order to convict a defendant on an aiding and abetting theory, the prosecution must establish 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 Robinson*, 475 Mich 1, 6; 715 NW2d 44 (2006) (quotation marks, citations, and brackets omitted).

The evidence was sufficient to show, beyond a reasonable doubt, that defendant aided and abetted Smith in committing the armed robbery. Defendant and Smith arrived together both times that they entered the store, they left together before they returned to commit the armed robbery, and they were together at all times while inside the store. Surveillance camera footage from both the Pet Supplies Plus store and another store in the same strip mall confirm that defendant and Smith appeared to have been in each other’s company. James Brown, the owner of the store, testified that defendant and Smith appeared to be “casing” the store because defendant looked over his shoulder to determine the location of the employees, and, although defendant asked questions about some of the products, the two men did not seem like they were interested in purchasing anything. After defendant brought a bag of dog food to the cash register, defendant and Smith argued over who was going to pay for the dog food before Smith pointed a gun at Ashley Hampton, the cashier, and demanded that she hand over the money in the cash register. Hampton testified that while Smith was pointing the gun at her, defendant told her to hand over the money. Further, defendant initially lied to the police and denied that he had been inside the store. Accordingly, the evidence was sufficient for a rational trier of fact to reject defendant’s argument that he was a mere uninvolved bystander and conclude that he aided and abetted Smith in the plan to rob the store.

Defendant next argues that the prosecutor committed misconduct by asking him to comment on the credibility of prosecution witnesses. Because defendant did not object to the alleged misconduct during trial, our review of this issue is limited to plain error affecting his substantial rights. *People v Brown*, 294 Mich App 377, 382; 811 NW2d 531 (2011). “Reversal is warranted only when plain error resulted in the conviction of an actually innocent defendant or seriously affected the fairness, integrity, or public reputation of judicial proceedings.” *People v Callon*, 256 Mich App 312, 329; 662 NW2d 501 (2003).

Defendant contends that the prosecutor committed misconduct by asking him whether Hampton and Brown were lying after defendant gave conflicting testimony. It is improper for a prosecutor to ask a defendant to comment on the credibility of prosecution witnesses because his opinion regarding their credibility is not probative of the matter. *People v Buckey*, 424 Mich 1, 17; 378 NW2d 432 (1985). Defendant challenges the following questioning:

Q. Once you made it to the Pet Supply [sic] Plus when you went inside the store, you said you asked about vet shots?

A. Yes.

Q. You didn’t ask about dog food?

A. No.

Q. You never talked to Ms. Hampton?

A. No.

Q. So, Ms. Hampton is lying?

A. About me—

Q. She's lying about the fact that she says you asked her about dog food?

A. Yes.

Q. Okay. And she's lying when she says that you talked to her, had a conversation with her the first time you came in the store?

A. Yes.

Q. And Mr. Brown is lying, too?

A. About?

Q. Mr. Brown is lying when he says that you asked about dog food and that he was showing you dog food?

A. Yes.

When read in context, the record shows that the prosecutor was not asking defendant to comment on Hampton and Brown's credibility, but rather, she was attempting to determine which facts were in dispute. "It is not improper for the prosecutor to attempt to ascertain which facts are in dispute." *People v Ackerman*, 257 Mich App 434, 449; 669 NW2d 818 (2003). The challenged questioning occurred at the very beginning of the prosecutor's cross-examination and after both Hampton and Brown testified that defendant had asked them about dog food before the armed robbery. Moreover, defendant testified on direct examination that he did not ask Brown about anything other than "vet shots" and employment. Thus, the prosecutor's questions were an attempt to ascertain the factual issues that were in dispute. As such, the questions were proper. *Id.* Further, because the prosecutor did not commit misconduct, defense counsel did not render ineffective assistance of counsel by failing to object to the challenged questions. "[C]ounsel does not render ineffective assistance by failing to raise futile objections." *Id.* at 455.

Affirmed.

/s/ Pat M. Donofrio
/s/ Karen M. Fort Hood
/s/ Deborah A. Servitto