# STATE OF MICHIGAN

# COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BOBBY SNEAD,

Defendant-Appellant.

UNPUBLISHED
December 18, 1998

No. 199478
Recorder's Court
LC No. 96-001023

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHAWN D. LAZAR,

Defendant-Appellant.

No. 201264
Recorder's Court
LC No. 96-001512

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GEREMIAH STILL,

Defendant-Appellant.

No. 201279
Recorder's Court
LC No. 96-001023

Before: McDonald, P.J., and Jansen and Talbot, JJ.

PER CURIAM.

Following a joint bench trial, defendants Bobby Snead, Shawn Lazar, and Geremiah Still were each convicted of two counts of armed robbery, MCL 750.529; MSA 28.797, and one count of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), and defendants Snead and Still were each convicted of two counts of first-degree criminal sexual conduct (CSC), MCL 750.520b; MSA 28.788(2). All three defendants were sentenced to fifteen to thirty years each for the armed robbery convictions, and defendants Snead and Still received similar fifteen- to thirty-year sentences for the first-degree CSC convictions, all sentences to run concurrently, but consecutive to a two-year term imposed on each defendant for the felony-firearm conviction. All three defendants appeal as of right. Their appeals have been consolidated for this Court's consideration. We affirm.

This case arises from the robbery and assault of the two victims who were invited into a house under the guise that a party was occurring inside. After defendant Snead enticed the victims into the house, several men, including defendants, brandished guns and robbed the victims. Additionally, one of the victims was sexually assaulted by an unknown assailant.

Defendants Snead and Still both contend that the evidence was insufficient evidence to support their first-degree CSC convictions under an aiding and abetting theory. Additionally, defendant Lazar contends that the evidence was insufficient to convict him of armed robbery and felony-firearm. We disagree.

Although defendants Snead and Still did not personally commit the charged sexual assault, they could be convicted and punished as if they directly committed the offense if they aided and abetted the person who did so. MCL 767.39; MSA 28.979; *People v Turner*, 213 Mich App 558, 568; 540 NW2d 728 (1995). "Aiding and abetting" refers to all forms of assistance rendered to the perpetrator of a crime and comprehends all words or deeds which might support, encourage, or incite the commission of a crime. *People v Rockwell*, 188 Mich App 405, 411-412; 470 NW2d 673 (1991). However, mere presence, even with knowledge that an offense is about to be committed, is not enough to make one an aider or abettor. *Id*. at 412. To be convicted, the defendant must either possess the required intent or participate while knowing that the principal possessed the required intent. *Id*. An aider and abettor's state of mind may be inferred from all of the facts and circumstances. *Turner*, *supra* at 568. Factors which may be considered include 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. *Id*. at 569. The amount of advice, aid, or encouragement is not material if it had the effect of inducing the commission of the crime. *People v Cortez*, 131 Mich App 316, 333; 346 NW2d 540 (1984), remanded on other grounds 423 Mich 855 (1985).

Contrary to what defendants Snead and Still argue, the evidence established more than mere presence. The testimony indicated that Snead was the person who initially induced the two victims into the house. Once inside, both Snead and Still brandished guns and robbed the victims. Moreover, there was evidence that Snead gave orders to tie the victims up, and that Still "maced" the victims and also threatened to kill the victim who was sexually assaulted. Viewed in a light most favorable to the prosecution, the evidence was sufficient to enable a rational trier of fact to conclude beyond a

reasonable doubt that defendants Snead and Still aided and abetted in the commission of the sexual assault. *People v Jaffray*, 445 Mich 287, 296; 519 NW2d 108 (1994).

We also conclude that sufficient evidence was presented to identify defendant Lazar as a participant in the armed robbery of the victims. Although the perpetrators wore masks, the masks only partially covered their faces. There was testimony that the room where the incident took place was well lit, and one of the victims positively identified Lazar as one of the perpetrators. In addition, Lazar's car was observed outside the home where the offense took place. This evidence, viewed most favorably to the prosecution, was sufficient to identify Lazar as a participant in the robbery. Although Lazar claims that the victim's testimony "defies credibility," the credibility of the witnesses was a matter for the trial court, as the trier of fact, to resolve and this Court will not resolve it anew. *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988).

Next, defendant Snead argues that he was deprived of a fair trial when evidence was introduced indicating that he was on capias status for failing to show up for another criminal trial. However, any error in the introduction of this evidence was harmless. *People v Lee*, 212 Mich App 228, 244; 537 NW2d 233 (1995). This was a bench trial and a judge, unlike a jury, possesses an understanding of the law that allows the judge to ignore such errors and to decide a case based solely on evidence properly admitted at trial. *People v Jones*, 168 Mich App 191, 194; 423 NW2d 614 (1988); see also *People v Butler*, 193 Mich App 63, 66; 483 NW2d 430 (1992). Here, the trial court stated that it would not allow the evidence to affect how it judged the case. Accordingly, we also reject defendant's claim that the trial court erred in failing to disqualify itself, particularly where defendant did not raise the issue of disqualification at trial. *Evans & Luptak v Obolensky*, 194 Mich App 708, 715; 487 NW2d 521 (1992).

Next, defendant Lazar raises several issues involving sentencing, none of which have merit. The record does not support defendant Lazar's claim that the trial court improperly assumed he was guilty of criminal sexual conduct, *People v Zuccarini*, 172 Mich App 11, 17; 431 NW2d 446 (1988), nor do the trial court's comments indicate that his sentences were influenced by improper considerations. Moreover, defendant Lazar's challenge to the scoring of the guidelines does not state a cognizable claim for relief. *People v Mitchell*, 454 Mich 145, 176-177; 560 NW2d 600 (1997).

Finally, limiting our review to the record, defendant Still has not established any basis for relief due to ineffective assistance of counsel, particularly because defendant Still has not established any prejudice as a result of counsel's actions. *Id.* at 163-166; *People v Pickens*, 446 Mich 298, 314; 521 NW2d 797 (1994); *People v Barclay*, 208 Mich App 670, 672; 528 NW2d 842 (1995).

Affirmed.

/s/ Gary R. McDonald
/s/ Kathleen Jansen
/s/ Michael J. Talbot