STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED January 12, 2010
v MICHAEL ANTONIO DAVIS, Defendant-Appellant.	No. 285473 Wayne Circuit Court LC No. 07-014628-FC
PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	
v MAURICE CLIMMIE JACKSON, Defendant-Appellant.	No. 286964 Wayne Circuit Court LC No. 07-012175-FC

Before: Wilder, P.J., and O'Connell and Talbot, JJ.

PER CURIAM.

In Docket No. 285473, defendant, Michael Antonio Davis ("defendant Davis"), appeals as of right his jury trial convictions for first-degree murder, MCL 750.316(1)(a), mutilation of a dead body, MCL 750.160, possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b, and felon in possession of a firearm, MCL 750.224f. Defendant was sentenced as a fourth habitual offender, MCL 769.12, to life in prison without parole for the first-degree murder conviction, five to ten years in prison for the mutilation of a dead body conviction, two years in prison for the felony-firearm conviction, and two to five years in prison for the felon in possession of a firearm conviction. We affirm.

In Docket No. 286964, defendant, Maurice Climmie Jackson ("defendant Jackson"), appeals as of right his jury trial convictions for second-degree murder, MCL 750.317, felon in possession of a firearm, MCL 750.224f, and felony-firearm, MCL 750.227b. Defendant Jackson was sentenced as a second habitual offender, MCL 769.10, to 40 to 80 years in prison for the second-degree murder conviction, two to five years in prison for the felon in possession of a firearm conviction, and two years in prison for the felony-firearm conviction. We affirm.

In Docket No. 285473, defendant Davis first argues that several instances of prosecutorial misconduct denied him a fair trial. We disagree. This Court reviews unpreserved claims of prosecutorial misconduct for "plain error affecting the defendant's substantial rights." *People v McLaughlin,* 258 Mich App 635, 645; 672 NW2d 860 (2003). In accordance with the plain error rule, a defendant must show "prejudice, meaning that the error must have affected the outcome of the lower court proceedings." *Id.* In addition, we consider issues of prosecutorial misconduct "on a case-by-case basis by examining the record and evaluating the remarks in context, and in light of defendant's arguments," *People v Thomas*, 260 Mich App 450, 454; 678 NW2d 631 (2004), and examine the relationship between the remarks and the evidence admitted at trial. *People v Brown*, 279 Mich App 116, 135; 755 NW2d 664 (2008). "An otherwise improper remark may not rise to an error requiring reversal when the prosecutor is responding to defense counsel's argument." *People v Kennebrew*, 220 Mich App 601, 608; 560 NW2d 354 (1996). Curative instructions "are sufficient to cure the prejudicial effect of most inappropriate prosecutorial statements." *People v Unger*, 278 Mich App 210, 235; 749 NW2d 272 (2008).

Defendant Davis first contends that the prosecutor argued facts that were not in evidence when, during her rebuttal argument, she stated, referring to Walter Simpson, the eyewitness:

> But for him the police would not have known that there was a body[1] in the basement. They would not have known that this homicide happened. They would have no clue that these defendant[s], at the time that the police came on to the scene, were probably out looking for accelerants or out looking for a better cutting saw.

Defendant Davis contends that the only mention of burning down the house came from Simpson; no other evidence or testimony supported that statement. Thus, he concludes that this statement constitutes misconduct by the prosecutor and it denied him a fair trial. We disagree.

As discussed by this Court in *People v Dobek*, 274 Mich App 58, 66; 732 NW2d 546 (2007) (citation omitted):

> A prosecutor may not make a factual statement to the jury that is not supported by the evidence, but he or she is free to argue the evidence and all reasonable inferences arising from it as they relate to his or her theory of the case. The prosecution has wide latitude in arguing the facts and reasonable inferences, and need not confine argument to the blandest possible terms.

The testimony regarding defendants' plans to burn down the house was elicited during the questioning of Herbert Witherspoon, Jr., Simpson's pastor. On cross-examination, Witherspoon stated that defendants "were going to burn down the house. [Simpson] thought they were going to burn down the house or cut up the body. That was the statement he made to me." Hence, the prosecutor's statement that defendants were taking action to bring this plan to fruition could reasonably be inferred from this evidence. Therefore, defendant has failed to show error.

---

[1] The body of victim John B. Anderson was found on June 27, 2007, in the basement of 6082 Barrett in Detroit, Michigan.

Defendant Davis next contends that the prosecutor argued additional facts not in evidence and also improperly appealed to the jury to sympathize with Simpson, whom the prosecutor described as a victim. We disagree.

The testimony elicited showed that, previously, defendant Davis had twice shot Simpson. After Anderson was shot, defendant Davis not only prevented Simpson from leaving, but also ordered Simpson at gunpoint to drag Anderson's body to the basement and dismember it with a circular saw. As such, the prosecutor's characterization of Simpson as a victim stemmed from the facts in evidence. While it is true that "[a]ppeals to the jury to sympathize with the victim constitute improper argument," *People v Watson*, 245 Mich App 572, 591; 629 NW2d 411 (2001), even if the prosecutor's statement were error, the trial court instructed the jury that it "must not let sympathy or prejudice influence [its] decision." Curative instructions "are sufficient to cure the prejudicial effect of most inappropriate prosecutorial statements." *Unger*, *supra* at 235.

Defendant Davis next cites several rather lengthy statements to show that the prosecutor improperly vouched for Simpson's credibility. While it is true that "[a] prosecutor may not vouch for the credibility of a witness by implying that the prosecution has some special knowledge that the witness is testifying truthfully," *People v Rodriguez*, 251 Mich App 10, 31; 650 NW2d 96 (2002), the cited comments did nothing of the sort. Rather, the prosecutor admitted that Simpson took part in cutting up Anderson's body and made several inconsistent statements. Further, far from telling the jury what to think, the prosecutor invited the jury members to reach their own conclusions. Similarly, there is no evidence of improper bolstering of credibility on the part of the prosecutor in the portion of her closing remarks cited by defendant Davis. Again, far from vouching for his credibility, in this statement, the prosecutor is admitting to the jury that Simpson is not an ideal witness.

Defendant Davis also references another section of the prosecutor's argument, which he contends demonstrates that the prosecutor improperly bolstered Simpson's testimony by referencing Witherspoon. Defendant Davis also references this statement in the prosecutor's rebuttal argument to suggest improper bolstering: "What the important thing is that [Simpson] came [to the investigative subpoena], that he took the oath to tell the truth. That he testified. And what did he say at the investigative subpoena, under oath, under the penalty of perjury, that these two defendants were involved in that homicide."

Defendant Davis' argument that these statements constitute improper vouching is without merit. A prosecutor may argue from the facts and testimony that a witness is "credible or worthy of belief" and such an argument does not imply that the prosecutor "had some special knowledge" that the witness was testifying truthfully. *Dobek, supra* at 66. As conceded on appeal, the prosecutor did err when she stated that Witherspoon was a person to whom Simpson told the truth because Witherspoon had testified that, on occasion, Simpson was less than truthful with him. However, the prosecutor's point in that statement, as well as her theory of the case, was that Simpson told the truth in this instance, and she argued that the physical evidence and his statements, however inconsistent, supported this conclusion. Even if this statement constituted error, the trial court instructed the jury on more than one occasion that the attorneys' statements were not evidence. Again, curative instructions "are sufficient to cure the prejudicial effect of most inappropriate prosecutorial statements." *Unger*, *supra* at 235. Therefore, the prosecutor did not commit misconduct and defendant Davis received a fair trial.

Defendant Davis next argues that there was insufficient evidence to sustain his convictions for first-degree murder and mutilation of a body. We disagree. A challenge to the sufficiency of the evidence is reviewed de novo. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). This Court reviews "the evidence in a light most favorable to the prosecution and determine[s] whether any rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt." *People v Passage*, 277 Mich App 175, 177; 743 NW2d 746 (2007). Nevertheless, "[t]his court will not interfere with the trier of fact's role of determining the weight of the evidence or the credibility of witnesses. Circumstantial evidence and reasonable inferences that arise from such evidence can constitute satisfactory proof of the elements of the crime." *Id.*

Defendant Davis was convicted of first-degree murder, which is murder that "is perpetrated by means of poison, lying in wait, or other wilful, deliberate, and premeditated killing, or which is committed in the perpetration, or attempt to perpetrate" an enumerated felony. *People v Garcia (After Remand),* 203 Mich App 420, 424; 513 NW2d 425 (1994), quoting MCL 750.316. The prosecution must prove "that the defendant intentionally killed the victim and that the act of killing was premeditated and deliberate. Premeditation and deliberation require sufficient time to allow the defendant to take a second look." *People v Abraham,* 234 Mich App 640, 656; 599 NW2d 736 (1999) (citation omitted). Premeditation and deliberation:

> may be established by evidence of (1) the prior relationship of the parties; (2) the defendant's actions before the killing; (3) the circumstances of the killing itself; and (4) the defendant's conduct after the homicide. Circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to prove the elements of a crime. Proof of motive is not essential. [*Id.* at 656-657 (internal citations omitted).]

Defendant Davis argues that the prosecution presented no direct evidence that he killed the victim, let alone evidence that showed planning and premeditation and proof of guilt beyond a reasonable doubt. We disagree.

Regarding the prior relationship between the parties, Simpson testified that defendant Davis and Anderson had a disagreement pertaining to a truck that defendant Davis purchased from Anderson. This testimony provides evidence of a motive, which, while not necessary to prove first-degree murder, is evidence from which a jury could infer, premeditation. In addition, an overview of defendant Davis' actions before the killing demonstrates that he first pointed a gun at Anderson, who fled from the house. Defendant Davis instructed Simpson to retrieve Anderson. Simpson testified that Anderson was down on his knees, asking what he had done wrong, and essentially pleading for his life. This testimony shows that defendant Davis had ample time to reflect on what he was doing before he discharged the weapon.

In determining premeditation, the trier of fact may also consider "the type of weapon used and the location of the wounds inflicted." *People v Berry (On Remand),* 198 Mich App 123, 128; 497 NW2d 202 (1993). Simpson testified that defendant Davis fired a .45-caliber pistol at Anderson and the police uncovered both live rounds and .45-caliber casings in the lower flat where defendant Davis lived. The medical examiner confirmed that the resulting wounds were to Anderson's torso and shoulder. The high caliber of the weapon and lethal location of the

wounds support a finding of premeditation. Finally, defendant Davis' actions after the shooting imply that he planned to dispose of the body by ordering Simpson to drag the body into the basement and dismember it with a circular saw, and then, by possibly burning down the house. This is additional evidence from which the jury could infer premeditation.

Although there were several inconsistencies in Simpson's statements, and he admitted to smoking crack on the day of the shooting, Simpson recounted a similar version of events to Witherspoon the morning after the shooting, and to police later that same day. Moreover, the physical evidence corroborates Simpson's story. In addition to the bullet casings, police found blood in the upper flat's bathroom and a trail of blood from the upper level to the basement where they found Anderson's body. Ultimately, it was the province of the jury to determine whether Simpson's testimony was credible, even without corroboration. *Passage*, *supra* at 177. Simpson's testimony was sufficient to prove beyond a reasonable doubt that defendant Davis was guilty of first-degree premeditated murder.

Defendant Davis was also convicted of mutilation of a human body under an aiding and abetting theory. Defendant Davis argues that the prosecution failed to provide any evidence, beyond Simpson's testimony that defendant Davis was even present at the time of the murder, and furthermore, Simpson admitted to cutting up the body. Defendant Davis concludes that it is not possible for a reasonable jury to find him guilty beyond a reasonable doubt of mutilating the body. We disagree.

MCL 750.160 provides:

> A person, not being lawfully authorized so to do, . . . who shall mutilate, deface, remove, or carry away a portion of the dead body of a person, whether in his charge for burial or otherwise, whenever the mutilation, defacement, removal, or carrying away is not necessary in any proper operation in embalming the body or for the purpose of a postmortem examination, and every person accessory thereto, either before or after the fact, shall be guilty of a felony . . . .

With respect to aiding and abetting, MCL 767.39 provides: "Every person concerned in the commission of an offense, whether he directly commits the act constituting the offense or procures, counsels, aids, or abets in its commission may hereafter be prosecuted, indicted, tried and on conviction shall be punished as if he had directly committed such offense." Although, "[m]ere presence, even with knowledge that an offense is about to be committed, is not enough to make one an aider or abettor," *People v Rockwell*, 188 Mich App 405, 412; 470 NW2d 673 (1991), "'[a]iding 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) (citation omitted).

The three elements necessary for a conviction under an aiding and abetting theory are "(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, 5-6; 715 NW2d 44 (2006), quoting *People v Moore*, 470 Mich 56, 67-68; 679

NW2d 41 (2004). Regarding intent, referred to in the third element, "[a]n aider and abettor's state of mind may be inferred from all the facts and circumstances. Factors that may be considered include a close association between the defendant and the principal, the defendant's participation in planning or executing the crime, and evidence of flight after the crime." *Carines*, *supra* at 758.

Simpson testified that after Anderson was dead, defendant Davis told Simpson he could not leave and instructed him to drag the body to the basement. Simpson complied, but defendant Davis told him that he still could not leave because "we need you." Simpson sat on defendant Davis' couch while both defendants talked on their cell phones. When they had finished their conversations, defendant Davis, while still holding his .45-caliber weapon, handed Simpson a circular saw and told him to cut up the body. According to Simpson, who had been shot twice before by defendant Davis, "I didn't want to do it. I never cut nobody in my life, you know. I was made to do it." Further, as the result of being shot, Simpson had a pin in his leg and was unable to run. While Simpson was cutting up the body, defendant Davis remained at the top of the basement stairs. Simpson maintained that if he had not done what defendant Davis told him to do, he believed that defendant Davis would have killed him.

Testimony from responding police officers and the medical examiner confirmed that Anderson's body sustained several cuts to the side of his head, abdomen, right shoulder, both arms, both legs, and the right palm. Thus, it is clear that that Anderson's body was mutilated as prohibited by MCL 750.160. A rational jury could find beyond a reasonable doubt that defendant Davis intended for Simpson cut up the body and aided and abetted in the mutilation by telling Simpson that he could not leave, handing him a circular saw, and providing him with instructions.

In Docket No. 286964, defendant Jackson contends on appeal that, as a result of discovery violations resulting in the nondisclosure of evidence, several of his constitutional rights were violated. Defendant Jackson further asserts that prejudice is normally presumed from such errors, even if inadvertent, and the trial court's refusal to grant a meaningful remedy deprived him of his right to a fair trial. We disagree.

On the first day of trial, defendant Jackson's counsel asked that the case be dismissed because (1) she did not get the statement Simpson made to homicide investigators dated June 29, 2007, until January 23, 2008, (2) on the Thursday before trial (which started on a Tuesday), she was provided "hours and hours" of tape recordings of defendant Jackson's phone calls in jail, and (3) on that same day, she received homicide unit notes indicating that there had been an investigative subpoena on June 27, 2007, of which she was previously unaware. In response, the court ordered that (1) the tape recorded jail conversations could not be admitted, (2) the transcript of the investigative subpoena had to be provided by lunchtime that day, (3) the prosecution could not call Simpson as a witness for two days, and (4) defense counsel would have an opportunity to interview Simpson before he testified.

"A trial court's decision regarding discovery is reviewed for abuse of discretion." *People v Phillips*, 468 Mich 583, 587; 663 NW2d 463 (2003). "The exercise of that discretion involves a balancing of the interests of the courts, the public, and the parties. It requires inquiry into all the relevant circumstances, including the causes and bona fides of tardy, or total, noncompliance, and a showing by the objecting party of actual prejudice." *People v Davie*, 225 Mich App 592,

598; 571 NW2d 229 (1997) (citation omitted). "An abuse of discretion occurs . . . when the trial court chooses an outcome falling outside th[e] principled range of outcomes." *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

MCR 6.201 controls discovery in a criminal case. *Phillips, supra* at 587-588. Pursuant to MCR 6.201(A):

> a party upon request must provide all other parties: (1) the names and addresses of all lay and expert witnesses whom the party may call at trial; . . . [and] (2) any written or recorded statement pertaining to the case by a lay witness whom the party may call at trial, except that a defendant is not obliged to provide the defendant's own statement . . . .

Further, upon request, a prosecutor must provide a defendant with:

> (1) any exculpatory information or evidence known to the prosecuting attorney, (2) any police report and interrogation records concerning the case, except so much of a report as concerns a continuing investigation, and (3) any written or recorded statements by a defendant, codefendant, or accomplice pertaining to the case, even if that person is not a prospective witness at trial. [MCR 6.201(B)(1)-(3).]

Regarding timing of discovery, "[u]nless otherwise ordered by the court, the prosecuting attorney must comply with the requirements of this rule within 21 days of a request . . . ." MCR 6.201(F).

At the outset, we note that, although defendant claims that the alleged discovery violations amount to constitutional wrongs, "there is no general constitutional right to discovery in a criminal case." *People v Elston*, 462 Mich 751, 765; 614 NW2d 595 (2000). Rather, "discovery in criminal cases is constrained by the limitations expressly set forth in the . . . criminal discovery rule . . . , MCR 6.201." *People v Greenfield (On Reconsideration)*, 271 Mich App 442, 447; 722 NW2d 254 (2006). Further, "due process requires only that the prosecution provide a defendant with material, exculpatory evidence in its possession." *Id*. at 447 n 4. The evidence at issue was not exculpatory and, although untimely, it was ultimately provided to defendant. Therefore, defendant's constitutional rights were not violated.

Within 21 days of defendant Jackson's discovery request, the prosecution was required to provide to defense counsel: (1) Simpson's June 29, 2007, statement to homicide investigators, pursuant to MCR 6.201(A)(2), and, (2) the tape recordings of defendant Jackson's jail telephone calls, pursuant to MCR 6.201(B)(3). The prosecution failed on both counts. If a party is in violation of this rule, "the court, in its discretion, may order the party to provide the discovery or permit the inspection of materials not previously disclosed, grant a continuance, prohibit the party from introducing in evidence the material not disclosed, or enter such other order as it deems just under the circumstances." MCR 6.201(J).

Addressing Simpson's June 29, 2007 statement, the court noted that defense counsel had seen it the day of trial. Defendant Jackson acknowledges that he received the statement on January 23, 2008, although he argues that he was prejudiced because he did not have it before his preliminary examination. Because defense counsel was able to thoroughly cross-examine

Simpson, defendant's counsel cannot show prejudice. With respect to the tape-recorded telephone calls, the trial court recognized the difficulty defense counsel would face trying to review hours of tape, and ordered that the prosecutor could not introduce them at trial. This remedy was favorable to defendant Jackson. As such, defendant cannot demonstrate prejudice.

Regarding the transcript of the investigative subpoena we note that, "[n]onexculpatory statements made by . . . persons who are *not* 'defendant[s], codefendant[s], or accomplice[s],' are not subject to mandatory discovery under MCR 6.201, but are subject to discovery under MCL 767A.5(6)." *People v Pruitt*, 229 Mich App 82, 89; 580 NW2d 462 (1998) (emphasis in original). MCL 767A.5 provides, in relevant part:

> (6) If a criminal charge is filed by the prosecuting attorney based upon information obtained pursuant to this chapter, *upon the defendant's motion made not later than 21 days after the defendant is arraigned on the charge*, *the trial judge* shall direct the prosecuting attorney to furnish to the defendant the testimony the defendant gave regarding the crime with which he or she is charged and *may direct the prosecuting attorney to furnish to the defendant the testimony any witness who will testify at the trial gave the prosecuting attorney pursuant to this chapter regarding that crime* except those portions that are irrelevant or immaterial, or that are excluded for other good cause shown. If the defendant requests the testimony of a witness pursuant to this section and the trial judge directs the prosecuting attorney to furnish to the defendant a copy of that witness's testimony, the prosecuting attorney shall furnish a copy of the testimony not later than 14 days before trial. *If the prosecuting attorney fails or refuses to furnish a copy of the testimony to the defendant pursuant to this subsection, the prosecuting attorney may be barred from calling that witness to testify* at the defendant's trial.
>
> (7) If the trial judge has not directed the prosecuting attorney to furnish a copy of a witness's testimony to the defendant before trial, the prosecuting attorney shall, upon the defendant's request, furnish a copy of that testimony to the defendant after direct examination of that witness at trial has been completed. [Emphasis added.]

At trial, defense counsel admitted that she did not specifically request the transcript of the investigative subpoena, and as a result, the trial court had not ordered the prosecutor to produce it. Thus, the prosecutor had not violated the statute and was not obligated to turn over the transcript until after Simpson's direct examination. Nevertheless, the court ordered the transcript turned over by lunch time on the first day of trial, instructed the prosecutor to wait two days before calling Simpson as a witness, and granted defense counsel the opportunity to interview Simpson before cross-examination. As a result of having all of Simpson's statements and being given time to prepare, defendant Jackson's counsel thoroughly cross-examined Simpson. She confronted him with several instances were his trial testimony differed from his statements to the police, his investigative subpoena testimony, and his testimony at the two preliminary examinations. Therefore, defendant Jackson cannot show prejudice and the trial court's discovery remedies do not fall outside the principled range of outcomes.

Defendant Jackson next argues that the prosecution presented insufficient evidence to sustain his conviction of second-degree murder because the prosecutor's evidence proved only that he was present when defendant Davis shot Anderson and there was no evidence of malice. We disagree. A challenge to the sufficiency of the evidence is reviewed de novo. *Hawkins*, *supra* at 457. This Court reviews the evidence in a light most favorable to the prosecution and determines whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *Passage*, *supra* at 177.

First-degree premeditated murder requires proof that a defendant intentionally killed the victim and that the act of killing was premeditated and deliberate. *Abraham, supra* at 656. All other murders constitute second-degree murder, which is defined as comprised of the following elements: "(1) a death, (2) the death was caused by an act of the defendant, (3) the defendant acted with malice, and (4) the defendant did not have lawful justification or excuse for causing the death." *People v Smith*, 478 Mich 64, 70; 731 NW2d 411 (2007), citing *People v Goecke*, 457 Mich 442, 464; 579 NW2d 868 (1998). Malice is "the intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and wilful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm." *Goecke, supra* at 464, citing *People v Aaron*, 409 Mich 672, 728; 299 NW2d 304 (1980).

As discussed *supra*, "'[a]iding 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." *Carines*, *supra* at 757 (citation omitted). The three elements necessary for a conviction under an aiding and abetting theory are:

> (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. [*Robinson*, *supra* at 5-6.]

Finally, "an aider and abettor can be convicted of an offense lower in degree than the offense of which the principal is convicted." *People v Buck*, 197 Mich App 404, 421; 496 NW2d 321 (1992) (citation omitted), rev'd in part on other grds sub nom *People v Holcomb*, 444 Mich 853 (1993).

Simpson testified that defendant Davis was armed with a .45-caliber pistol while defendant Jackson carried a .38-caliber revolver. Defendants stood on either side of Anderson, pointing their weapons at him as he was on his knees pleading for his life. Simpson heard two shots and saw both defendants shoot. One casing from a .45-caliber automatic was recovered near the scene of the shooting. Because a revolver does not produce casings, the jury could have concluded that defendant Jackson fired one of the shots, which struck Anderson's torso and shoulder. This is evidence that defendant Jackson, at the very least, acted with wanton and wilful disregard of the likelihood that the natural tendency of this action would cause death or great bodily harm. *Goecke, supra* at 464.

Even if the jury believed that both shots were from defendant Davis' gun, there was sufficient evidence to conclude that defendant Jackson assisted defendant Davis. Defendant Jackson pointed his gun at Anderson, who was begging for his life, while defendant Davis

discharged his weapon at Anderson's torso. Regarding the necessary intent, "[a]n aider and abettor's state of mind may be inferred from all the facts and circumstances. Factors that may be considered include a close association between the defendant and the principal, the defendant's participation in planning or executing the crime, and evidence of flight after the crime." *Carines*, *supra* at 758. Simpson testified that the defendants had a close relationship; indeed, he saw them together nearly every day. Shortly before the shooting, defendants pointed their guns at Anderson, causing him to run out of the house, only to be brought back inside by Simpson at defendant Davis' direction. After the shooting, defendant Jackson, while still armed, remained at the top of the house stairs while defendant Davis ordered Simpson to cut up the body. From these facts, the jury could infer that defendant Jackson knew of defendant Davis' plan to shoot defendant and assisted him in the act. Consequently, sufficient evidence existed to permit a rational jury to find defendant Jackson guilty beyond a reasonable doubt of second-degree murder, as either a principal or an aider and abettor.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Peter D. O'Connell
/s/ Michael J. Talbot