

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MACK R. RODRIGUEZ,

Defendant-Appellant.

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UNPUBLISHED

December 13, 1996

No. 181860

LC No. 93-066005-FH

Before: Young, P.J., and Markey and D.A. Teeple,\* JJ.

PER CURIAM.

Defendant was convicted by jury for larceny over \$100, MCL 750.356; MSA 28.588. He was sentenced to three months' incarceration and eighteen months' probation. Defendant appeals as of right. We affirm.

Defendant's conviction arose from his participation in the larceny of recording equipment from the Lansing Community College (LCC) audio center. Defendant drove his codefendants to the laboratory, opened the lab for them, and transported them and the stolen equipment from LCC.

Defendant's first issue is whether the trial court committed error requiring reversal when it gave only part of the admitted accomplice instructions, CJI2d 5.6, i.e., the court omitted two paragraphs contained in CJI2d 5.6(3)(c) and (d).<sup>1</sup> We believe that the omitted sections of the instructions did not apply because the record failed to disclose that either of the accomplice witnesses had a criminal record. Moreover, one of the accomplices specifically stated that the prosecution did not offer him any deal and that the judge independently sentenced him to probation. Both accomplices who testified at trial had been sentenced prior to defendant's trial, so there was no indication that either would be subject to adverse action for failing to cooperate regarding defendant's trial. Further, the trial court admonished the jury to closely scrutinize the accomplices' testimony before basing defendant's conviction upon it. Because jury instructions are to be read as a whole rather than extracted piecemeal

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\* Circuit judge, sitting on the Court of Appeals by assignment.

to establish error, *People v Bell*, 209 Mich App 273, 276; 530 NW2d 167 (1995), this Court concludes that there was no error because the jury instructions, as read, fairly presented the issues to be tried and adequately protected defendant's rights.

The second issue before this Court is whether the trial court erred in its jury instructions for the charge of larceny in a building. Because defendant failed to cite supporting authority for his arguments on appeal, defendant has abandoned this issue on appeal. *People v Hoffman*, 205 Mich App 1, 17; 518 NW2d 817 (1994).

The third issue on appeal is whether the jury verdict of guilty of larceny in a building was based upon insufficient evidence. Defendant did not move for a directed verdict, but this Court may nevertheless review the issue. *People v Patterson*, 428 Mich 502, 514; 410 NW2d 733 (1987). Viewing the evidence in a light most favorable to the prosecutor, this Court believes that 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).

Defendant argues that his involvement in the crime was limited to holding the door open and driving the thieves away from the scene, and that this conduct did not constitute larceny over \$100. MCL 767.39; MSA 28.979 clearly states, however, that an accessory who aids or abets a crime may be "prosecuted, indicted, tried and on conviction shall be punished as if he had directly committed such offense." It has been long recognized that an aider and abettor is treated as a principal and may be charged as a principal under the statute governing the underlying crime. *People v Dockery*, 20 Mich App 201, 207; 173 NW2d 726 (1969). Defendant performed acts that aided and assisted in the commission of the crime of larceny, and defendant had knowledge that the principals intended the commission at the time of giving aid to them. Therefore, the evidence was sufficient to support the conviction for the crime of larceny. *People v Partridge*, 211 Mich App 239, 240; 535 NW2d 251 (1995).

Finally, defendant asserts that the prosecutor impermissibly used an accomplice's testimony of guilt as substantive proof of defendant's guilt. Defendant did not object to the allegedly improper remarks or questioning; thus, appellate review is precluded under these circumstances unless an objection could not have cured the error or a failure to review would result in a miscarriage of justice. *People v Stanaway*, 446 Mich 643, 687-688; 521 NW2d 557 (1994). We find no miscarriage of justice. The prosecutor questioned witness Alvarez about his guilty plea to the larceny at issue and the successful completion of his probation. Defendant maintains that this was improper impeachment but relies on an outdated version of MRE 617. Under the current rule, "[t]he credibility of a witness may be attacked by any party, including the party calling the witness." MRE 607. Moreover, the prosecution never argued in closing that the accomplice's guilt in any way established defendant's guilt. Apparently, this testimony was admitted to establish that the accomplice was not required to testify against defendant as part of a plea bargain, not to establish that the accomplice was guilty. The trial court has discretion to determine "when the fact and terms of an accomplice's plea agreement may be

admitted.” *People*

*v Manning*, 434 Mich 1, 18; 450 NW2d 534 (1990). Accordingly, we find no miscarriage of justice.

Affirmed.

/s/ Robert P. Young, Jr.

/s/ Jane E. Markey

/s/ Donald A. Teeple

<sup>1</sup> Subsections c and d of the accomplice witness instruction, CJI2d 5.6(3) read as follows:

(3) When you decide whether you believe an accomplice, consider the following:

\* \* \*

(c) Has the accomplice been promised that [he/she] will not be prosecuted, or promised a lighter sentence or allowed to plead guilty to a less serious charge? If so, could this have influenced [his/her] testimony?

(d) Does the accomplice have a criminal record?