

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HECTOR SANTIAGO,

Defendant-Appellant.

UNPUBLISHED
November 8, 2005

No. 245582
Oakland Circuit Court
LC No. 99-169672-FC

Before: White, P.J., and Jansen and Wilder, JJ.

WHITE, P.J., (*dissenting*).

Recognizing the heavy burden on defendant in establishing that the verdict was against the great weight of the evidence, as set forth in *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1988), I would reverse and remand for a new trial.

There is no question that Aponte and Juan Santiago committed the robbery and murder. Juan Santiago was found not guilty based on his duress defense.

While the evidence supports the conclusion that defendant dropped Aponte and Juan off near the house knowing that they intended to rob and possibly kill the victim,¹ it is also clear that he did so without any intent or desire to assist them in committing the offenses, and with a desire to separate himself from Aponte and Juan and their actions. The evidence overwhelmingly supports that defendant's purpose in going to the house was to get paid for his work, that he got paid and abandoned any intent to assist in the robbery, that he did not want to participate in the robbery or possible murder, that he dropped Aponte and Juan off where they requested with knowledge of their plans, but without any desire to assist them, and that he then drove home and gave his sister the keys to his car. The uncontradicted evidence clearly supports that defendant did not share Juan's and Aponte's intent, and also did not intend to aid them by dropping them off at a particular spot. Rather, defendant was trying to remove himself from the situation.

/s/ Helene N. White

¹ This is clearly the basis upon which defendant was convicted, and was also the trial court's stated reason for denying his motion for new trial.