

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID LAMONT ANDERSON,

Defendant-Appellant.

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UNPUBLISHED

April 26, 2007

No. 263129

Macomb Circuit Court

LC No. 04-002055-FH

Before: Whitbeck, C.J., and Murphy and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction for unarmed robbery, MCL 750.530. The trial court sentenced defendant to 3 to 15 years in prison. We affirm.

This matter essentially involves a purse snatching, wherein one unarmed man ripped a purse off the shoulder of the victim, then left the scene in car driven by another man. Defendant, David Lamont Anderson, and his brother, codefendant, Delwood Anderson, were charged with unarmed robbery, MCL 750.530, and conspiracy to commit unarmed robbery, MCL 750.157a and MCL 750.530. Following a joint jury trial, defendant David Anderson was convicted of unarmed robbery and acquitted. Codefendant Delwood Anderson was also acquitted of the conspiracy charge, and a mistrial was granted as to codefendant Delwood Anderson due to a jury deadlock with respect to the unarmed robbery charge.

Defendant argues that there was insufficient evidence to sustain his unarmed robbery conviction. We disagree. When the sufficiency of the evidence is challenged, we review the evidence in a light most favorable to the prosecutor to determine whether any trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Robinson*, 475 Mich 1, 5; 715 NW2d 44 (2006).

“The elements of unarmed robbery are (1) a felonious taking of property from another, (2) by force, violence, assault, or putting in fear, and (3) being unarmed.” *People v Randolph*, 242 Mich App 417, 419; 619 NW2d 168 (2000), rev’d in part on other grounds 466 Mich 532 (2000); see also MCL 750.530. The evidence showed that an unarmed man tugged and yanked on Karen Harrington’s purse, took it from her, and rode away in a vehicle driven by another man. Defendant and codefendant, Delwood Anderson, were pursued after the incident and immediately arrested. Regardless of whether the jury convicted defendant as a principal or under an aiding and abetting theory, there was sufficient evidence to sustain his conviction.

Defendant's clothing matched Harrington's description of the clothing worn by the man who stole her purse, and a video recording of the arrest showed that codefendant was the driver of the vehicle, which supports the conclusion that defendant was the one who stole Harrington's purse. Further, defendant admitted to Officer Rushton that he was the one who had taken Harrington's purse. Viewing the evidence in a light most favorable to the prosecutor, any trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. See *Robinson, supra* at 5.

There is no distinction between a principal and an aider and abettor; therefore, anyone who intentionally assists another in committing a crime is as guilty as a person who directly commits the crime and can be convicted of those crimes as an aider and abettor. MCL 767.39; *People v Mass*, 464 Mich 615, 627; 628 NW2d 540 (2001). To prove aiding and abetting of a crime, a prosecutor must show: (1) that the crime charged was committed by defendant or some other person; (2) that defendant performed acts or gave encouragement that assisted in the commission of the crime; and (3) that defendant intended the commission of the crime *or* had knowledge of the other's intent at the time he gave the aid or encouragement. *People v Moore*, 470 Mich 56, 67-68; 679 NW2d 41 (2004) (emphasis added).

Defendant correctly notes that mere presence, even with the knowledge that an offense is about to be committed or is in the process of being committed, is not sufficient to establish that a defendant aided or assisted in the commission of the crime. *People v Norris*, 236 Mich App 411, 419-420; 600 NW2d 658 (1999). Dennis Maljak, Sr., was in the parking lot when the purse was stolen. He noticed a car "cutting across the lanes" of the parking lot, then saw the passenger get out and walk toward one store, while the driver continued "creeping forward." He then saw the man who had exited the car struggle with a woman outside the store, and saw "him grabbing onto something and the lady letting go of something." The man then got back in the car, which was roughly ten to twelve feet away from the point of the struggle, and the car exited the parking lot. Maljak called 911 and followed the car, giving direction as to its location until the police arrived, approximately two and a half miles away from the parking lot. Maljak identified codefendant as the one who took Harrington's purse and got into the passenger side of the vehicle, which implies that defendant was the driver. "The quantum of aid or advice is immaterial as long as it had the effect of inducing the crime." *People v Lawton*, 196 Mich App 341, 352; 492 NW2d 810 (1992). Circumstantial evidence and reasonable inferences arising from the evidence may constitute satisfactory proof of the elements of the crime. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993); *People v Warren*, 200 Mich App 586, 588; 504 NW2d 907 (1993). Therefore, this evidence supports a conclusion that codefendant stole Harrington's purse and defendant assisted codefendant by driving him near Harrington, waiting, and driving away. Viewing the evidence in a light most favorable to the prosecutor, any trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt under an aiding and abetting theory. See *Robinson, supra* at 5.

Although defendant is correct that the evidence conflicts about who stole Harrington's purse, who drove the car, and who was wearing the olive green jacket and khaki baseball cap, absent exceptional circumstances, issues of witness credibility are for the jury. *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998). This Court will not interfere with the role of the trier of fact of determining the weight of the evidence or witness credibility. *People v Hill*, 257 Mich App 126, 141; 667 NW2d 78 (2003).

Defendant contends that the trial court abused its discretion in denying his motion for a separate trial and/or jury. We disagree. We review a trial court's decision to sever or join defendants for trial for an abuse of discretion. *People v Hana*, 447 Mich 325, 346; 524 NW2d 682 (1994); see also MCL 768.5. While the use of separate juries would certainly have been a reasonable choice, we also find that the use of a single jury for both defendants was within the range of principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

The use of separate juries is a partial form of severance to be evaluated under the standard that applies to motions for separate trials. *Hana, supra* at 351. MCR 6.121(C) provides, "On a defendant's motion, the court must sever the trial of defendants on related offenses on a showing that severance is necessary to avoid prejudice to substantial rights of the defendant." Severance pursuant to MCR 6.121(C) is mandated "only when a defendant provides the court with a supporting affidavit, or makes an offer of proof, that clearly, affirmatively, and fully demonstrates that his substantial rights will be prejudiced and that severance is the necessary means of rectifying the potential prejudice." *Hana, supra* at 346. A defendant's failure to make this showing in the trial court precludes reversal unless there is a significant indication that the requisite prejudice occurred at trial. *Id.* at 346-347.

As the trial court noted in denying defendant's motion for a separate trial and/or separate juries, defendant failed to submit the required affidavit or offer of proof to the trial court with his motion. Severance under MCR 6.121(C) is required when the codefendants' defenses are "mutually exclusive" or "irreconcilable." *Hana, supra* at 349. "Incidental spillover prejudice, which is almost inevitable in a multi-defendant trial, does not suffice." *Id.* Rather, the tension between the defenses must be so great as to require the jury to believe one defendant at the other's expense. *Id.*

Without actually pointing a finger at the other, defendant and codefendant each argued that he was not the one who took Harrington's purse. While these defenses may have created some incidental spillover prejudice, one may not overlook the fact that both defendant and codefendant were tried for unarmed robbery under an aiding and abetting theory or as a principal. Although they incidentally implicated one another as the one who stole Harrington's purse, their defenses were not mutually exclusive or irreconcilable, and there is no distinction between a principal and an aider and abettor for purposes of criminal liability. MCL 767.39; *Mass, supra* at 627. Further, neither defendant nor codefendant testified about the other's involvement or accused one another in their interactions with the police. See *Hana, supra* at 355. The trial court also provided the jury instruction on multiple defendants, CJI2d 2.19. See *id.* Therefore, defendant has failed to show a significant indication that the requisite prejudice occurred at trial and reversal is not warranted. *Id.* at 346-347.

Affirmed.

/s/ William C. Whitbeck  
/s/ William B. Murphy  
/s/ Jessica R. Cooper