

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EMILIO ALVARADO MENDEZ, JR.,

Defendant-Appellant.

UNPUBLISHED

June 3, 1997

No. 191747

Calhoun Circuit Court

LC No. 94-3343 FH

Before: Saad, P.J., and Hood and McDonald, JJ.

MEMORANDUM.

Defendant was convicted by a jury of larceny from the person. At trial, his counsel objected to a jury instruction that permitted the jury to find defendant guilty either as a principal or as an aider and abettor. Defendant contended at trial and persists here in asserting that the sole evidence of theft was the victim's testimony that it was defendant, not defendant's companion, who stole a dime in the course of a confrontation initiated and orchestrated by defendant and his companion.

Although the victim was positive in his testimony, the jury was not required to accept the victim's testimony in its entirety, but could accept all or any portion of that testimony. *People v Jackson*, 390 Mich 621, 625 n 2; 212 NW2d 918 (1973). The jury could rationally have concluded that, under the circumstances, in which after the victim indicated he had no money the two assailants attacked him, the victim was confused and that, although he accurately testified that a dime was stolen from his person, he may have been inaccurate in believing it was defendant rather than defendant's confederate who performed this larcenous act. Since, however, defendant was clearly acting in concert with his companion, an aiding and abetting theory was amply supported by the evidence, and the trial court therefore did not err in instructing the jury on this alternate theory. *People v Jones*, 73 Mich App 107; 251 NW2d 264 (1976).

Affirmed.

/s/ Henry William Saad

/s/ Harold Hood

/s/ Gary R. McDonald

