

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RODERICK LEE WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

May 5, 1998

No. 195949

Recorder's Court

LC No. 95-006736 01

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

VENUS D. BERRIEN,

Defendant-Appellant.

No. 195950

Recorder's Court

LC No. 95-006736 02

Before: Doctoroff, P.J., and Reilly and G.S. Allen, Jr.*, JJ.

PER CURIAM.

Following a joint trial before a single jury, defendants Roderick Lee Williams and Venus Berrien were each convicted of unarmed robbery, MCL 750.530; MSA 28.798. The trial court sentenced defendant Williams to two to fifteen years' imprisonment and sentenced defendant Berrien to one year of probation. Defendants appealed as of right and this Court consolidated their appeals. We now affirm.

This case arises from an incident which occurred while both defendants, complainant, and a fourth person, Erin, were driving to a store, ostensibly to get some change so complainant could lend some money to defendant Berrien. Before reaching the store, Berrien stopped the car, Williams beat

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

complainant, and Erin took complainant's wallet. Berrien, Williams, and Erin then got back into the car and drove away, leaving complainant behind on the sidewalk.

Docket No. 195949

On appeal, defendant Williams argues he is entitled to a new trial because it was alleged that one of the jurors in the case failed to reveal her acquaintance with complainant. We disagree. Defendant Williams filed his appellate brief with this Court on November 15, 1996. Subsequently, on February 14, 1997, and February 21, 1997, the trial court conducted an evidentiary hearing on motions for new trial made by defendants Williams and Berrien, who argued that they were entitled to a new trial based on the juror's acquaintance with complainant and or her boyfriend. After hearing testimony from the juror and both defendants, the trial court issued an opinion and order denying both defendants' motions for new trial. The trial court's ruling was based on its finding that the juror did not know any of the parties involved in the trial. Because defendant Williams has failed to address the trial court's ruling on his post-trial motion, he has waived the issue for appellate review. See *People v Kean*, 204 Mich App 533, 536; 516 NW2d 128 (1994). In any event, even if the issue had been properly presented, we would decline to upset the trial court's factual finding. See *People v Daoust*, ___ Mich App ___, ___ NW2d ___ (Docket No. 188192; issued 2/10/98) slip op p 7 "questions of the credibility of witnesses are to be resolved by the trier of fact."

Docket No. 195950

Defendant Berrien first argues that the evidence was not sufficient to support her conviction of unarmed robbery on an aiding and abetting theory. We disagree. When reviewing the sufficiency of the evidence in a criminal case, this Court must view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v Reeves*, 222 Mich App 32, 34; 564 NW2d 476 (1997).

The elements of unarmed robbery are: (1) a felonious taking of property from another, (2) by force or violence or assault or putting in fear, and (3) being unarmed. *People v Johnson*, 206 Mich App 122, 125-126; 520 NW2d 672 (1994). To support a finding that a defendant aided and abetted a crime, a prosecutor must show that: (1) the crime charged was committed, (2) the defendant performed acts or gave encouragement that assisted in the commission of the crime, and (3) the defendant either intended the commission of the crime or had knowledge the principal intended its commission when defendant gave aid and encouragement. *People v Turner*, 213 Mich App 558, 568; 540 NW2d 728 (1995). The jury in this case was instructed on an aiding and abetting theory.

At trial, complainant testified that she handed her wallet up to Williams, who was sitting in the front passenger seat of the car, to allow Berrien to see some pictures. Complainant further testified that, when Williams had her wallet, Berrien looked in the rearview mirror and told complainant, "You don't have anything coming." Berrien then turned the car onto a side street and parked. After parking, Berrien said, "bitch get out," opened the car door, and "smacked" complainant. When complainant grabbed her wallet away from Williams and attempted to get away, Williams threw her down onto the

sidewalk. As Williams beat complainant, Berrien admonished him to “get her, get her, get her.” Eventually, Williams was able to subdue complainant, at which time Erin took complainant’s wallet (which contained nine hundred dollars) and Berrien, Williams, and Erin drove away. From this evidence, a rational trier of fact could have found (1) that complainant was the victim of an unarmed robbery, (2) that Berrien encouraged and assisted in the commission of the crime, and (3) that Berrien intended the commission of the crime. Accordingly, we hold that evidence was sufficient to support Berrien’s conviction of unarmed robbery on a theory of aiding and abetting.

Next, defendant Berrien argues that the trial court erred in denying her post-trial motion for a new trial based on her allegation that she was denied her right to an impartial jury when one of the juror’s failed to reveal a prior relationship with complainant and complainant’s boyfriend. We disagree. We review a trial court’s decision on a motion for new trial for an abuse of discretion. *People v Torres (On Remand)*, 222 Mich App 411, 415; 564 NW2d 149 (1997). In deciding a motion for new trial, the trial court may evaluate the credibility of a witness. *People v Mechura*, 205 Mich App 481, 484; 517 NW2d 797 (1994).

At the post-trial evidentiary hearing, defendants testified that they knew a person named Roy as complainant’s boyfriend and that, after the trial, they saw Roy ask a juror if she knew where complainant was. Defendant Berrien testified that the juror told her she knew Roy from when they were younger and went to church together. The juror testified that she (1) did not know complainant, (2) did not recall anyone asking her about complainant’s whereabouts, and (3) did not remember speaking to a person named Roy in the hallway after the trial. As noted, *supra*, after hearing the conflicting testimony of the witnesses, the trial court determined that the juror in question did not know complainant or her boyfriend. Questions of the credibility of witnesses are to be resolved by the trier of fact rather than the appellate court, which lacks the benefit of being present in the courtroom to observe the testimony of witnesses. See *Daoust, supra* at slip op p 7. Because the juror’s testimony, if true, would support the trial court’s denial of Berrien’s post-trial motion for a new trial, we hold that the trial court did not abuse its discretion in denying the motion.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Maureen Pulte Reilly
/s/ Glen S. Allen, Jr.