STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 27, 2007
v DANNY LEVELL BLOUNT, Defendant-Appellant.	No. 270875 Wayne Circuit Court LC No. 06-000514-01

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	
v TYRONE LAVELL HUDSON, Defendant-Appellant.	No. 271062 Wayne Circuit Court LC No. 06-000514-03

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	
v CRYSTAL LYNN VIVODA, Defendant-Appellant.	No. 271292 Wayne Circuit Court LC No. 06-000514-02

Before: Saad, P.J., and Owens and Kelly, JJ.

PER CURIAM.

Defendants Danny Blount, Tyrone Hudson, and Crystal Vivoda were tried jointly before a single jury. All three defendants were convicted of armed robbery of Ronald Fields, MCL 750.529, and assault with intent to rob while armed against Robin Gallagher, MCL 750.89.

In addition, Blount and Hudson were each convicted of unarmed robbery of Brian Curry, MCL 750.530, assault and battery of Kathryn Sawinski, MCL 750.81, and larceny in a building, MCL 750.360. Blount was also convicted of unlawful use of a motor vehicle, MCL 750.414, and Hudson and Vivoda were convicted of felonious assault of Fields, MCL 750.82.

Blount was sentenced as a fourth habitual offender, MCL 769.12, to concurrent prison terms of 10 to 25 years for the armed robbery and assault with intent to rob convictions, 3 to 15 years for the unarmed robbery conviction, 1-1/2 to 4 years for the larceny conviction, one to two years for the unlawful use of a motor vehicle conviction, and 90 days (suspended) for the assault and battery conviction. Hudson was sentenced to concurrent prison terms of 10 to 20 years for the armed robbery and assault with intent to rob convictions, 4 to 15 years for the unarmed robbery conviction, one to four years for the larceny conviction, 1-1/2 to 4 years for the felonious assault conviction, and 90 days (suspended) for the assault and battery conviction. Vivoda was sentenced to concurrent prison terms of 81 months to 15 years for the armed robbery and assault with intent to rob convictions and one to four years for the felonious assault conviction. All three defendants appeal as of right. We affirm.

I. Factual Background

On the evening of December 9, 2005, Ronald Fields, Robin Gallagher, Brian Curry, and Kathryn Sawinski gathered at a house in Hamtramck where Fields and Gallagher each rented rooms. They stayed up all night playing cards and using drugs. At about noon on December 10, 2005, Fields and Gallagher left the house to buy crack cocaine and some convenience items. Gallagher testified that they purchased $30 worth of crack cocaine. Curry and Sawinski stayed at the house. When Fields and Gallagher were gone, defendants Blount and Hudson arrived at the house. They entered without permission and began searching the bedrooms. When Sawinski confronted Hudson, he yelled at her and ordered her into Fields' room. Hudson then entered the room, hit Sawinski in the face, and took $21 from Curry's pockets. Blount and Hudson told Sawinski and Curry that Gallagher owed them money. They threatened to harm Curry and Sawinski if Gallagher did not have the money when she returned.

When Fields and Gallagher returned, Blount and Hudson demanded money. Apparently, Gallagher entered Fields' bedroom, followed by both Blount and Hudson. Fields stood near the doorway between his bedroom and the kitchen. Hudson and Gallagher began arguing and Hudson hit Gallagher in the face. Hudson also grabbed Fields by the throat and punched him in the face. Blount and Hudson went through Fields's pockets looking for money and Blount took the crack cocaine that Fields had just purchased. At this time, Hudson and Blount had a steel pipe, which they apparently passed back and forth to brandish.

Vivoda arrived at the house at some point after Blount and Hudson arrived. When Vivoda arrived, she also threatened a "blood bath" if someone did not come up with the money that Gallagher allegedly owed Blount.[1] Blount wanted Gallagher to call her payee and get the

[1] A payee had been appointed to handle Gallagher's financial affairs after she began receiving SSI benefits because her drug use affected her ability to pay her bills. Gallagher testified that she had planned to rent a place from Blount, but changed her mind and instructed her payee not to
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money. Because there was no telephone in the house, Blount took Fields's truck keys and drove Gallagher to a pay telephone.

At the pay telephone, Gallagher stopped a police car and told the officers about the assault. When Blount and Gallagher were gone, Vivoda and Hudson continued to threaten the remaining victims and to beat Fields with the pipe. When Vivoda noticed the police car arrive, she and Hudson left the house. Blount had walked back to the house after the police stopped him. The other victims confirmed Gallagher's story, and the police stopped and arrested all three defendants soon thereafter.

II. Docket No. 270875 (Defendant Blount)

A. Missing Witness

Brian Curry was an endorsed witness on the prosecution's witness list, but could not be located for trial. On appeal, Blount argues that the prosecutor failed to exercise due diligence in attempting to secure Curry's presence at trial. An endorsed witness may be deleted from a party's witness list at any time by leave of the trial court and for good cause shown or by stipulation of the parties. MCL 767.40a(4); *People v Perez*, 469 Mich 415, 420; 670 NW2d 655 (2003). However, the prosecution is obligated to exercise due diligence to produce endorsed witnesses for trial. *People v Eccles*, 260 Mich App 379, 388; 677 NW2d 76 (2004). The test for due diligence "is one of reasonableness and depends on the facts and circumstances of each case, i.e., whether diligent good-faith efforts were made to procure the testimony, not whether more stringent efforts would have produced it." *People v Bean*, 457 Mich 677, 684; 580 NW2d 390 (1998).

The prosecutor presented testimony at trial regarding the efforts made to secure Curry's presence. Because neither Blount nor the other defendants requested Curry's production or challenged his absence, the trial court was not asked to rule on the issue of due diligence, and the issue is unpreserved. We review unpreserved issues for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763-764, 774; 597 NW2d 130 (1999). The record establishes that diligent efforts were made to secure Curry's presence at trial and, accordingly, we find no plain error arising from Curry's absence at trial.

Derek Suwalkowski, a detective with the Hamtramck Police Department, attempted to serve Curry with a subpoena at his home. Because Curry was not at home when Suwalkowski went to the house, he left the subpoena with Curry's wife, along with instructions to call. Suwalkowski repeatedly tried to contact Curry by telephone during the week of trial. The night before Curry was scheduled to testify, Suwalkowski again visited his home, where Curry's wife informed him that Curry no longer lived there and that she did not know where he was living. Under the circumstances, diligent good-faith efforts were made to secure Curry's presence. This was not a situation in which the witness's whereabouts were originally unknown. The prosecutor had spoken with Curry by telephone and informed Curry of the date he was to testify. The prosecutor also had an address at which personal service of a subpoena was attempted.

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give Blount the $300 in rent money.

Detective Suwalkowski repeatedly tried to contact Curry at his only known address and telephone number, but Curry's wife did not inform him until the night before Curry was scheduled to testify that he was no longer living in the marital home and that she did not know where he was. By this time, it was too late to secure Curry's presence through other means. Under the circumstances, we find no plain error.

Blount also asserts that his counsel was ineffective for failing to request either a due diligence hearing or that Curry's preliminary examination testimony be read into the record at trial. We disagree. Because Blount did not raise an ineffective assistance of counsel claim in a motion for a new trial or request a *Ginther*[2] hearing, our review of this issue is limited to mistakes apparent on the record. *People v Rodriguez*, 251 Mich App 10, 38; 650 NW2d 96 (2002). "Effective assistance of counsel is presumed, and the defendant bears a heavy burden of proving otherwise." *People v Solmonson*, 261 Mich App 657, 663; 683 NW2d 761 (2004). To establish ineffective assistance of counsel, "the defendant has the burden to show both that counsel's performance fell below objective standards of reasonableness, and that it is reasonably probable that the results of the proceeding would have been different had it not been for counsel's error." *People v Frazier*, 478 Mich 231, 243; 733 NW2d 713 (2007).

Decisions regarding what witness testimony to present are matters of trial strategy. *People v Dixon*, 263 Mich App 393, 398; 688 NW2d 308 (2004). Although Blount contends that Curry's preliminary examination testimony would have contradicted portions of Gallagher's, Sawinski's, and Fields's testimony, Curry's preliminary examination testimony also was potentially damaging because Curry stated that Hudson had slapped Sawinski so hard that "he almost knocked her jaw out" and that he was scared when Hudson robbed him. The prosecutor's theory at trial was that Blount and Hudson were acting together, and Blount was convicted of unarmed robbery with respect to Curry under an aiding and abetting theory. Blount has not overcome the presumption that his counsel's decision not to seek admission of Curry's preliminary examination testimony was a matter of sound trial strategy, and we will neither substitute our judgment for that of counsel regarding matters of trial strategy, nor make an assessment of counsel's competence with the benefit of hindsight. *People v Matuszak*, 263 Mich App 42, 58; 687 NW2d 342 (2004).

Counsel's decision not to request a due diligence hearing with respect to the efforts to produce Curry for trial was also a matter of trial strategy. Blount argues that if the trial court had found that the prosecutor did not exercise due diligence in attempting to produce Curry for trial, he would have been entitled to a missing witness instruction, which would have allowed the jury to infer that Curry's testimony would have been unfavorable to the prosecution. See *Perez*, *supra* at 420. Conversely, however, Curry's preliminary examination testimony was also available and, if the trial court had found that Curry could not be produced despite the exercise of due diligence, the prosecutor could have requested the introduction of his preliminary examination testimony at trial. MRE 804(a)(5), (b)(1). As discussed earlier, Blount's counsel had legitimate reasons to prevent the introduction of Curry's preliminary examination testimony. Accordingly, Blount has not overcome the presumption that his counsel reasonably decided not

[2] *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

to risk the introduction of Curry's preliminary examination testimony by insisting on a due diligence hearing.

B. Claim-of-Right Defense

Next, Blount argues that the trial court erred when it failed to instruct the jury on a claim-of-right defense. Because Blount did not request such an instruction and expressed satisfaction with the instructions as given, any error was waived. *People v Carter*, 462 Mich 206, 215-216; 612 NW2d 144 (2000). Blount also argues that his counsel was ineffective for failing to request a claim-of-right instruction. We disagree.

A claim-of-right defense arises when a dispute exists regarding a defendant's felonious intent at the time of the taking. *People v Cain*, 238 Mich App 95, 118-119; 605 NW2d 28 (1999). "[I]f a defendant had a good-faith belief that the defendant had a legal right to take the property at issue, then the defendant cannot be convicted because the defendant did not intend to deprive another person of property." *Id.* at 119. A claim-of-right defense applies even if the defendant's belief is mistaken or unreasonable. *Id*. "It is necessary, however, in all cases that the claim of right be a bona fide one and not a mere cover for a felonious taking. The taker's claim of right must be something more than a vague impression, it must amount to an honest conviction." *People v Karasek*, 63 Mich App 706, 713; 234 NW2d 761 (1975), quoting 52A CJS, Larceny, § 26, pp 449-450.

Although some victims testified that Blount demanded money that Gallagher allegedly owed him, the parties presented no additional evidence establishing that Blount had a good-faith belief that he was legally entitled to the requested money. A claim-of-right defense must be supported by more than vague impressions. *Karasek*, *supra* at 713. Furthermore, the evidence showed that, rather than requesting money solely from Gallagher, the only person who allegedly owed Blount money, Blount and Hudson demanded money from each victim and threatened to harm the victims if someone did not give them money. Before Gallagher and Fields returned from the store, Blount and Hudson searched other bedrooms in the house, Hudson robbed Curry, and Blount threatened to "f--k up" Curry and Sawinski. When Gallagher returned without any money, Blount asked Fields if he had any money and then went through his pockets, taking his cocaine. Blount also armed himself with a pipe and again threatened to "f--k up" each victim if "someone" did not come up with the money. Because the evidence presented at trial showed that Blount did not direct his threats and efforts to recover money solely at Gallagher, but threatened each victim and stole money and property from the other victims, and because Blount did not present evidence indicating that he had a bona fide good-faith belief that he was legally entitled to the money requested, we conclude that the evidence did not support a claim-of-right instruction. Because an attorney is not required to make futile requests, defense counsel was not ineffective for failing to request a claim-of-right instruction. "Counsel is not ineffective for failing 'to advocate a meritless position.'" *People v Mack*, 265 Mich App 122, 130; 695 NW2d 342 (2005), quoting *People v Snider*, 239 Mich App 393, 425; 608 NW2d 502 (2000).

C. Joint Trial

"There is a strong policy favoring joint trials in the interest of justice, judicial economy, and administration, and a defendant does not have an absolute right to a separate trial." *People v Etheridge*, 196 Mich App 43, 52; 492 NW2d 490 (1992). Blount's counsel did not move the trial

court for severance. In the absence of such a request, the trial court's failure to sever Blount's trial was not plain error. MCR 6.121(B)-(D).

Blount also argues that his counsel was ineffective for not moving for a separate trial or, alternatively, for a separate jury. We disagree. In order to establish that his counsel's failure to request a separate trial or separate jury to constituted ineffective assistance of counsel, Blount must show that he was entitled to a separate trial.[3] See *People v Daniel*, 207 Mich App 47, 59; 523 NW2d 830 (1994). "[S]everance should be granted 'only if there is a serious risk that a joint trial would compromise a specific trial right . . . or prevent the jury from making a reliable judgment about guilt or innocence.'" *People v Hana*, 447 Mich 325, 346; 524 NW2d 682 (1994), amended 447 Mich 1203 (1994), quoting *Zafiro v United States*, 506 US 534; 113 S Ct 933; 122 L Ed 2d 317, 325 (1993) (ellipses in original). In this case, Blount has not demonstrated that a separate trial was necessary to protect his rights.

We disagree with Blount's argument that a separate trial would have prevented the jury from exposure to testimony regarding Hudson's allegedly more culpable and violent conduct. The prosecutor argued that Blount was guilty of the various offenses as either a principal or an aider and abettor. Simply because Hudson committed an offense while Blount was not in the house does not mean that Blount's jury would not be entitled to hear that evidence if he had been tried separately. Because an aider and abettor can also be held liable as a principal, both defendants can be convicted "without any prejudice or inconsistency." *Hana, supra* at 361. Any risk of prejudice from a joint trial was further allayed by the trial court's cautionary instruction, whereby the jury was instructed to determine guilt or innocence on an individual basis and was cautioned that each case must be considered and decided separately on the evidence as it applied to each defendant. *Id.* at 356. "It is well established that jurors are presumed to follow their instructions." *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998). Because Blount failed to show that he was entitled to severance, we conclude that his counsel was not ineffective for failing to make such a motion. *Mack, supra* at 130.

D. Sufficiency of the Evidence

Blount argues that the prosecution presented insufficient evidence to support his convictions of unarmed robbery, armed robbery,[4] and assault with intent to rob while armed. 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 the essential elements of the crime were proven beyond a reasonable doubt." *People v Robinson*, 475 Mich 1, 5; 715 NW2d 44 (2006). "[A]ll conflicts in the evidence must be resolved in favor of the prosecution." *People v Fletcher*, 260 Mich App 531, 562; 679 NW2d 127 (2004).

[3] The use of separate juries is evaluated under same standard as a request for separate trials. *People v Hana*, 447 Mich 325, 351; 524 NW2d 682 (1994), amended 447 Mich 1203 (1994).

[4] Blount failed to raise the argument that the prosecution presented insufficient evidence to support his armed robbery conviction in his statement of the questions presented. Therefore, the issue is not properly raised for our review. MCR 7.212(C)(5). Regardless, we choose to briefly address defendant's argument on its merits.

1. Unarmed Robbery

MCL 750.530(1) states, "A person who, in the course of committing a larceny of any money or other property that may be the subject of larceny, uses force or violence against any person who is present, or who assaults or puts the person in fear, is guilty of a felony . . . ." 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).

The evidence presented at trial indicated that Hudson took money from Curry's pockets. Blount was convicted of the unarmed robbery of Curry under an aiding and abetting theory.

> The general rule is that, to convict a defendant of aiding and abetting a crime, a prosecutor must establish that "(1) the crime charged was committed by the defendant or some other person; (2) the defendant performed acts or gave encouragement that assisted the commission of the crime; and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time that [the defendant] gave aid and encouragement." [*People v Moore*, 470 Mich 56, 67-68; 679 NW2d 41 (2004), quoting *Carines*, *supra* at 768.]

A person aids or abets in the commission of a crime if that person "is present at the crime scene and by word or deed gives active encouragement to the perpetrator of the crime, or by his conduct makes clear that he is ready to assist the perpetrator if such assistance is needed." *Moore*, *supra* at 63, quoting Am Jur 2d, Criminal Law, § 206, p 273. To establish the intent necessary to support a conviction based on an aiding and abetting theory,

> the prosecutor must prove beyond a reasonable doubt that the defendant aided or abetted the commission of an offense and that the defendant intended to aid the charged offense, knew the principal intended to commit the charged offense, or, alternatively, that the charged offense was a natural and probable consequence of the commission of the intended offense. [*Robinson*, *supra* at 15.]

We disagree with Blount's argument that because Curry did not testify, the jury had no basis on which to conclude that he was in fear when Hudson took his money. The evidence presented at trial indicated that Blount and Hudson entered the house together and searched the bedrooms without consent. Curry was seated near Sawinski in Fields' room when Hudson punched her in the face, and immediately thereafter, Hudson went through Curry's pockets and took his money. The jury could reasonably infer that Hudson's action toward Sawinski placed Curry in reasonable fear of an immediate battery if he resisted. "Circumstantial evidence and reasonable inferences drawn from it may be sufficient to establish the elements of a crime." *People v Fennell*, 260 Mich App 261, 270; 677 NW2d 66 (2004).

Blount also argues that the prosecution failed to present evidence that he aided or abetted Hudson in the robbery of Curry. The evidence that Blount and Hudson were acting together (they both searched the bedrooms, demanded money, and threatened a "blood bath" if the money was not produced), and their statements clarifying that it did not matter who produced the money, viewed in a light most favorable to the prosecution, was sufficient to enable the jury to

reasonably infer that Blount should have reasonably expected that the robbery of Curry was a natural and probable consequence of their intended procurement of money through the use of threats of violence. Accordingly, the prosecution presented sufficient evidence to support Blount's unarmed robbery conviction under an aiding and abetting theory.[5]

2. Armed Robbery

Next, Blount argues that the prosecution presented insufficient evidence to support his conviction for armed robbery, MCL 750.529.[6] To establish armed robbery, the prosecution must prove the following:

> (1) the defendant, in the course of committing a larceny of any money or other property that may be the subject of a larceny, used force or violence against any person who was present or assaulted or put the person in fear, and (2) the defendant, in the course of committing the larceny, either possessed a dangerous weapon, possessed an article used or fashioned in a manner to lead any person present to reasonably believe that the article was a dangerous weapon, or represented orally or otherwise that he or she was in possession of a dangerous weapon. [*People v Chambers*, 277 Mich App 1, ___; ___ NW2d ___ (2007).]

The phrase "in the course of committing a larceny" is statutorily defined as including "acts that occur in an attempt to commit the larceny, or during commission of the larceny, or in flight or attempted flight after the commission of the larceny, or in an attempt to retain possession of the property." MCL 750.530(2).

The prosecution presented sufficient evidence to establish that Blount committed armed robbery of Fields' prescription forms. When Blount was arrested, officers found Fields' prescription forms on him. Fields claimed that the forms had been in his bedroom before the crimes in question occurred. According to the testimony presented at trial, Blount only entered Fields' room once when he was at the rooming house, and a reasonable juror could conclude that Blount found and took Fields' prescription forms at this time. Further, when Blount was in Fields' room, Hudson and Vivoda were also present, and Fields was standing in the doorway

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[5] Blount also asserts that because Curry did not testify and could not be cross-examined, his right of confrontation was violated. However, the Confrontation Clause was not implicated because no statements by Curry were admitted at trial. See *People v Shepherd*, 472 Mich 343, 347; 697 NW2d 144 (2005).

[6] The Legislature amended MCL 750.529 in 2004. 2004 PA 128. The statute now reads in pertinent part:

> A person who engages in conduct proscribed under [MCL 750.530] and who in the course of engaging in that conduct, possesses a dangerous weapon or an article used or fashioned in a manner to lead any person present to reasonably believe the article is a dangerous weapon, or who represents orally or otherwise that he or she is in possession of a dangerous weapon, is guilty of a felony . . . .

between his room and the kitchen. When the defendants entered Fields' room, they repeatedly demanded money and threatened to hurt the victims if they did not receive it. The defendants brandished a steel pipe in Fields' presence (apparently handing it to each other), while threatening the victims and later hitting Fields with the pipe. Accordingly, at the only point when Blount was in Fields' room and, therefore, had access to Fields' prescription forms, Fields was also either inside or in proximity to the room, and Blount both used and assisted the other defendants in using a steel pipe to threaten and force Fields to comply with their demands. Although Fields was not aware at the time that Blount had apparently taken his prescription forms, a victim's knowledge of the specific items taken is not an element of armed robbery. Accordingly, the prosecution presented sufficient evidence to support Blount's conviction for armed robbery.

3. Assault with Intent to Rob While Armed

Finally, Blount argues that the prosecution presented insufficient evidence to support his conviction of assault with intent to rob while armed, MCL 750.89. "'The elements of assault with intent to rob while armed are: (1) an assault with force and violence; (2) an intent to rob or steal; and (3) the defendant's being armed. Because this is a specific-intent crime, there must be evidence that the defendant intended to rob or steal.'" *People v Akins*, 259 Mich App 545, 554; 675 NW2d 863 (2003), quoting *People v Cotton*, 191 Mich App 377, 391; 478 NW2d 681 (1991).

Blount argues that because he believed that the money Gallagher owed him was rightfully his, he had no intent to permanently deprive her of her property. However, Blount did not assert a claim-of-right defense and the court did not instruct the jury on such a defense. Further, as previously discussed, this defense was not viable in this case.

Blount also asserts that the prosecution failed to present evidence that he was armed or intended to rob Gallagher and, therefore, the prosecution failed to establish these elements of the offense. Either attempting to commit a battery or committing an unlawful act that places another in reasonable apprehension of receiving an imminent battery constitutes a simple criminal assault. *People v Reeves*, 458 Mich 236, 240; 580 NW2d 433 (1998). To commit an assault, a defendant must have had the present ability to fulfill the threat through sufficient proximity to the target, but "actual ability to inflict the threatened harm is largely irrelevant and unnecessary, as long as the victim reasonably apprehends an *imminent* battery." *Id*. at 243-244, quoting 2 LaFave & Scott, Substantive Criminal Law, § 7.16(b), p 315 (emphasis in original). "Therefore, the assault element is satisfied where the circumstances indicate that an assailant, by overt conduct, causes the victim to reasonably believe that he will do what is threatened." *Reeves*, *supra* at 244.

In this case, Gallagher testified that Blount was armed with a steel pipe when he ordered her to go to a pay telephone with him to call her payee to get the money he demanded. Gallagher also testified that Blount threatened that there would be a "blood bath" if she did not come up with the money. This evidence supports a finding of an armed assault with intent to rob. Thus, there was sufficient evidence to support Blount's conviction for assault with intent to rob while armed.

III. Docket No. 271062 (Defendant Hudson)

Hudson raises three claims of instructional error. First, he argues that the trial court erred when it refused to give a modified version of CJI2d 5.7, which is the cautionary instruction concerning testimony of addict-informers.[7] We review for an abuse of discretion the trial court's determination that a jury instruction is applicable to the facts of the case. *People v Dobek*, 274 Mich App 58, 82; 732 NW2d 546 (2007). An abuse of discretion occurs when the trial court's decision falls outside the range of principled outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

The addict-informer instruction cautions a jury to closely scrutinize the testimony of a drug-addicted informer. CJI2d 5.7. The requested modified version would have instructed the jury to closely scrutinize the testimony of the victims because they were admitted drug addicts.

"[A]n instruction concerning special scrutiny of the testimony of addict-informants should be given upon request, where the testimony of the informant is the only evidence linking the defendant to the offense." *People v Griffin*, 235 Mich App 27, 40; 597 NW2d 176 (1999), overruled on other grounds by *People v Thompson*, 477 Mich 146; 730 NW2d 708 (2007), quoting *People v Smith*, 82 Mich App 132, 133-134; 266 NW2d 476 (1978). The reason for the instruction is that addict-informers are often given special consideration for their testimony because they are informers, and thus may have a particular motive for testifying.[8] *People v Atkins*, 397 Mich 163, 169-170; 243 NW2d 292 (1976).

In this case, although there was evidence that the victims were drug users, there was no evidence suggesting that they were informers or that they had any ulterior motives for testifying apart from their status as witnesses and crime victims. Also, although the only testimony connecting defendants to the offenses was the testimony of the victims, who were admitted drug addicts, each victim's testimony was corroborated by the testimony of the other victims. Under the circumstances, we conclude that the instruction was not applicable, and the trial court did not err by failing to give it.

Hudson also argues that the trial court erred when it failed to instruct the jury that an aider and abettor must have the same specific intent as the principal, and by failing to give a missing witness instruction with respect to Curry. Hudson not only failed to request these instructions at trial, but his defense attorney expressed satisfaction with the court's instructions as given. Therefore, these two claims are waived.[9] *Carter*, *supra* at 215-216.

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[7] Although Vivoda requested the instruction, her request was sufficient to preserve the issue for Hudson. See *People v Griffin*, 235 Mich App 27, 41 n 4; 597 NW2d 176 (1999), overruled on other grounds by *People v Thompson*, 477 Mich 146; 730 NW2d 708 (2007).

[8] Our Supreme Court noted that addict-informer testimony might be compromised because addict-informers have a motive to testify in a particular way out of fear "of being jailed or deprived of access to drugs, and also the fear of retaliation from others in the drug trade." *People v Atkins*, 397 Mich 163, 169 n 4; 243 NW2d 292 (1976).

[9] Although Hudson also faults his defense counsel for not requesting the jury instructions, he (continued…)

IV. Docket No. 271292 (Defendant Vivoda)

Vivoda argues that the prosecution presented insufficient evidence to support her armed robbery and felonious assault convictions. She asserts that, at most, the evidence merely showed that she was present during these offenses. We disagree.

A. Armed Robbery

First, Vivoda challenges her armed robbery conviction. She argues that the evidence presented at trial indicated that she was not inside the house when Blount stole the crack cocaine from Fields and, therefore, she should not have been convicted of armed robbery on the basis of that taking. We disagree.

As discussed earlier, the prosecution presented sufficient evidence to establish that Blount committed armed robbery of Fields, and defendants do not challenge Hudson's armed robbery conviction. Vivoda, who was Blount's girlfriend, arrived at the house shortly after Blount and Hudson. Gallagher stated that when Vivoda entered the house, she said that they "were screaming too loud" and that she could hear them "all the way down the street." Further, when Vivoda arrived, she joined Hudson and Blount in threatening the victims and demanding money.

In light of the evidence that Vivoda was close enough to hear what was happening inside the house, expressed her concern that Blount and Hudson were too loud when she entered, and joined the other defendants in making threats and demanding money immediately after her arrival, the jury could reasonably infer that she was involved in this wrongful conduct from the beginning. Specifically, the jury could infer that Vivoda acted as a lookout when Blount and Hudson initially entered the house and entered the house to warn Blount and Hudson that they were too loud and the commotion might attract unwanted attention. Her actions demonstrated that she had prior knowledge of Blount's and Hudson's felonious intent and shared that intent. Thus, viewed in a light most favorable to the prosecution, the evidence was sufficient to enable the jury to find that Vivoda aided and assisted Blount and Hudson when Fields was robbed, and that the robbery of Fields was a natural and probable consequence of defendants' intended procurement of money through the use of threats of violence. *Robinson*, *supra* at 15. Accordingly, the prosecution presented sufficient evidence to support Vivoda's armed robbery conviction.

B. Felonious Assault

Vivoda also challenges her conviction for felonious assault of Fields, MCL 750.82, claiming that she did not threaten Fields, give Hudson the pipe, or assist in beating Fields. We disagree. "The elements of felonious assault are (1) an assault, (2) with a dangerous weapon,

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concedes in his brief on appeal that his counsel's conduct does not rise to the level of ineffective assistance under applicable federal and state case law, and does not otherwise argue an ineffective assistance of counsel claim. Thus, we deem any claim in this regard abandoned. *People v Bobby Martin*, 271 Mich App 280, 315; 721 NW2d 815 (2006).

and (3) with the intent to injure or place the victim in reasonable apprehension of an immediate battery." *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). The prosecution presented sufficient evidence to support her felonious assault conviction under an aiding and abetting theory.

Sawinski testified that Hudson said he was going to "f--k up" Fields and do the same to Gallagher when she returned to the rooming house. Fields testified that Hudson repeatedly threatened him and poked him with the pipe. Vivoda was in the room at the time. Also, testimony showed that Vivoda actively participated in threatening the victims with violence if they did not produce the money; in particular, she threatened Fields, Curry, and Sawinski just before Fields was assaulted. She also assaulted Gallagher on separate occasions with a pipe and a crutch before Gallagher left with Blount. Based on this evidence, the jury could reasonably infer that Vivoda's statements and actions indicated her support for Fields's assault and her willingness to assist in the violence if necessary. Vivoda argues that because Hudson beat Fields only after he "mouthed off," Hudson's assault was an independent act. However, the evidence indicates that Vivoda was aware of Hudson's intent to assault Fields and aided and abetted him in the commission of that offense. Accordingly, Vivoda's felonious assault conviction is supported by sufficient evidence.

Affirmed.

/s/ Henry William Saad
/s/ Donald S. Owens
/s/ Kirsten Frank Kelley