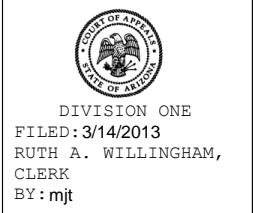


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



STATE OF ARIZONA,) 1 CA-CR 12-0048
)
 Appellee,) DEPARTMENT E
)
 v.) MEMORANDUM DECISION
) (Not for Publication -
 DONELL LEE JONES, JR.,) Rule 111, Rules of the
) Arizona Supreme Court)
 Appellant.)
)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2011-111925-001

The Honorable William L. Brotherton, Jr., Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General Phoenix
by Kent E. Cattani, Chief Counsel,
Criminal Appeals/Capital Litigation Division
and Robert A. Walsh, Assistant Attorney General
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix
By Margaret M. Green, Deputy Public Defender
Attorneys for Appellant

P O R T L E Y, Judge

¶1 Donell Lee Jones appeals his conviction and sentence
for aggravated robbery. For the reasons that follow, we affirm.

FACTS¹ AND PROCEDURAL BACKGROUND

¶2 Jones, and a man known as Menace, confronted the seventeen-year-old victim. Jones threatened to kill the victim unless the victim gave him \$600 in four days time. And, Menace wrapped one arm around the victim's neck, took his MP3 player, and said, "We'll take this, too." Although Menace threatened to fight the victim, Jones vetoed the threat and told Menace that the MP3 player "would do" until the victim came up with the \$600.

¶3 The victim did not resist the robbery out of fear. After the confrontation, he ran to his nearby group home and told the manager. The manager called the police and Jones was subsequently arrested and indicted for aggravated robbery while aided by an accomplice in violation of Arizona Revised Statutes ("A.R.S.") section 13-1903 (West 2013) and related statutes. Jones went to trial, and was convicted by a jury as charged. He was subsequently sentenced to 6.5 years in prison.

DISCUSSION

¶4 Aggravated robbery, as charged here, requires proof that the defendant, aided by an accomplice who is present, used threats or force with the intent to coerce surrender or prevent

¹ We view the facts "in the light most favorable to sustaining the verdict, and resolve all reasonable inferences against the defendant." *State v. Rienhardt*, 190 Ariz. 579, 588-89, 951 P.2d 454, 463-64 (1997).

resistance in the course of taking property from another's person or immediate presence. A.R.S. §§ 13-1903, -1902 (West 2013). Jones argues that the crime "requires two people: 1) the taker, and 2) the accomplice." He argues that because the indictment charged him as the "taker," and the evidence demonstrated that he was the "accomplice," and not the "taker," the court erred in denying his motion for judgment of acquittal.² We review de novo the denial of a motion for judgment of acquittal and the sufficiency of the evidence to support a conviction. *State v. West*, 226 Ariz. 559, 562, ¶ 15, 250 P.3d 1188, 1191 (2011). Evidence is sufficient if "reasonable persons could accept [it] sufficient to support a guilty verdict beyond a reasonable doubt." *State v. Stroud*, 209 Ariz. 410, 411-12, ¶ 6, 103 P.3d 912, 913-14 (2005).

¶15 Although the indictment referred to Jones as a principal, it also cited to the statutes governing accomplice liability, and the court instructed the jury on accomplice liability. Arizona law defines an accomplice as one "who with

² The indictment alleged that: "Donell Lee Jones, on or about the 1st day of March, 2011, in the course of taking property of another from Richard C[]'s person or immediate presence and against his will, used threats or force against Richard C[], with intent to coerce surrender of the property or to prevent resistance to Donell Lee Jones' taking or retaining the property, while Donell Lee Jones was aided by one or more accomplices actually present in violation of A.R.S. §§ 13-1903, 13-1901, 13-1902, 13-301, 13-302, 13-303, 13-304, 13-701, 13-702, and 13-801."

the intent to promote or facilitate the commission of an offense . . . [a]ids, counsels, agrees to aid or attempts to aid another person in planning or committing an offense." A.R.S. § 13-301(2) (West 2013). A person is criminally liable for the conduct of another if "[t]he person is an accomplice of such other person in the commission of an offense including any offense that is a natural and probable or reasonably foreseeable consequence of the offense for which the person was an accomplice." A.R.S. § 13-303(A)(3) (West 2013).

¶6 It is well established that there is no distinction between a principal and an accomplice: "An accomplice may be either the principal or an accessory to the crime." *State v. McNair*, 141 Ariz. 475, 480, 687 P.2d 1230, 1235 (1984) (reasoning that each of the codefendants could be considered an accomplice of the other for purposes of the armed robbery statute). In fact, we have stated that "[u]nder Arizona law, an accused is a principal regardless of whether he directly commits the illegal act or aids or abets in its commission." *State v. McInelly*, 146 Ariz. 161, 162-63, 704 P.2d 291, 292-93 (App. 1985). As a result, it is "not necessary to set out in the information the facts showing whether the defendant was an accessory before the fact or a principal in the crime charged, since under our statutes all persons, whether they directly commit the act constituting the offense or aid and abet in the

commission, are principals." *Browning v. State*, 53 Ariz. 174, 178, 87 P.2d 112, 114 (1939), superseded by statute, as recognized in *State v. Lewis*, 107 Ariz. 163, 164, 483 P.2d 1402, 1403 (1971). Similarly, it is a "nearly universal rule . . . that one who is indicted as a principal may be found guilty on evidence that he or she aided and abetted the commission of the crime." *State v. Burney*, 82 P.3d 164, 168-69 (Or. Ct. App. 2003) (summarizing cases); see *McInelly*, 146 Ariz. at 162-63, 704 P.2d at 292-93 (rejecting defendant's argument that jury could not be allowed to convict him as an accomplice when he had been charged as a principal).

¶7 Jones cites no authority for his argument that his conviction cannot stand on an accomplice theory of liability notwithstanding Arizona law. The plain language of the aggravated robbery statute simply requires the presence of two people, each aiding the other in the robbery. See A.R.S. § 13-1903; *State v. Herrera*, 176 Ariz. 21, 27-29, 859 P.2d 131, 137-39 (1993) (affirming aggravated robbery conviction of defendant who restrained victim while his accomplice took property); *State v. Schurz*, 176 Ariz. 46, 52, 859 P.2d 156, 162 (1993) ("If an accomplice is present, the robbery is aggravated robbery."). It is immaterial whether Jones was the "taker" or the "accomplice" because, in either case, he would be considered a "principal"

under Arizona law. See *McInelly*, 146 Ariz. at 162-63, 704 P.2d at 292-93; *Herrera*, 176 Ariz. at 27-29, 859 P.2d at 137-39.

¶8 Moreover, there was substantial evidence to support the conviction. The jury heard that Jones threatened the victim and the fact that the MP3 player "would do" until the victim delivered \$600 in four days. The jury was free to infer that Jones intended that Menace rob the victim, and that Jones's threats coupled with his presence assisted Menace in committing the robbery by preventing any resistance from the victim. A.R.S. §§ 13-301(2), -303(A)(3). Because the evidence was sufficient to prove that Jones committed the aggravated robbery, the court did not err by denying Jones's motion for judgment of acquittal.

CONCLUSION

¶9 For the foregoing reasons, we affirm Jones's conviction and sentence.

/s/

MAURICE PORTLEY, Judge

CONCURRING:

/s/

MARGARET H. DOWNIE, Presiding Judge

/s/

PHILIP HALL, Judge

