

COURT OF APPEALS  
DIVISION TWO  
OF THE STATE OF WASHINGTON

FILED  
COURT OF APPEALS  
DIVISION II

2014 OCT 16 PM 2:00

STATE OF WASHINGTON )  
)  
Respondent, )  
)  
v. )  
)  
MAHDI ELIJAH SHARRIEFF )  
(your name) )  
)  
Appellant. )

STATE OF WASHINGTON

BY: Cm  
DEPUTY  
No. 45876-4-II

STATEMENT OF ADDITIONAL  
GROUNDS FOR REVIEW

I, MAHDI ELIJAH SHARRIEFF, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

INSUFFICIENT EVIDENCE TO CONVICT AS ACCOMPLICE.

Additional Ground 2

THE COURT ERRONEOUSLY USED POINT IN OFFENDER SCORE FROM OFFENSE THAT ENCOMPASSES SAME CRIMINAL CONDUCT AS ANOTHER OFFENSE.

If there are additional grounds, a brief summary is attached to this statement.

Date: SEPTEMBER 30 2014

Signature: [Handwritten Signature]

Form 23

**CERTIFICATE OF SERVICE**  
I certify that I mailed  
1 copies of SAG  
to Pres office  
& App-Counsel  
10/21/14  
Date Signed [Signature]

Additional Grounds: INSUFFICIENT EVIDENCE TO CONVICT AS ACCOMPLICE.

The state argued during trial that the defendant was an accomplice to Mr Warren in both charges with no evidence to support this. The state argued that defendant was an accomplice based on his presence and since the defendant was friends with Mr Warren along with him being present he had knowledge of the offenses. The defendant left store before theft no evidence was given that the defendant became aware of what Mr Warren did. No evidence was present to establish that the defendant, solicits, commands, encourages, or aids or agrees to aid another person in planning or committing the crime, RCW 9A.08.020. The defendant's clothes did not match described by suspect but Mr Warren's did. The defendant never contacted officers. The cameras were found on Mr Warren. There is no evidence linking the defendant to the offenses. It can be inferred from jury questions during deliberation that the jury rendered guilty verdicts based on the prosecution's theory of the defendant being present and possibly having knowledge of the offenses, which is insufficient based on the following.

A defendant's mere presence at the scene cannot serve as the basis for accomplice liability. State v. Knight (2013) 2013 WC 5406441.

Additional Grounds: Mere presence with knowledge of the criminal activity does not support a finding of accomplice liability but aid can be accomplished by being present and ready to assist. State v. Truong (2012) 1168 Wash. App. 529, 277 P.3d 74, review denied 175 Wash. 2d 1020, 290 P.3d 994

An accomplice associates himself with the venture and takes some action to help make it successful. State v. Truong (2012) 1168 Wash. App. 529, 277 P.3d 74, review denied 175 Wash. 2d 1020, 290 P.3d 994

Defendant is not guilty as accomplice unless he has associated with and participated in venture as something he wished to happen and which he sought by his acts to make succeed. State v. Luna (1993) 71 Wash. App. 155, 862 P.2d 620

An "accomplice must associate himself with the venture and participate in it as something he wishes to bring about and by action to make it succeed. State v. Castro (1982) 32 Wash. App. 559, 648 P.2d 465, review denied.

Additional Grounds: More than mere presence and knowledge of criminal activity of another must be shown to establish that person present is a "accomplice"; accomplice liability is predicated on aid to another in the commission of a crime and is, in essence, liability for that crime. State v. Alsop (1994) 75 Wash App. 128, 876 P.2d 935.

To support conviction of a defendant as an accomplice there must be evidence that he was ready to assist or intended to encourage the conduct of his coparticipant and mere presence at scene is insufficient. State v. Lozler (1982) 32 Wash App. 376, 647 P.2d 535.

There was no evidence indicating that defendant, who drove vehicle containing one of his co-defendants to park early in the morning where shooting took place, was aware of any plan by his co-defendants to assault or shoot the victim, as required in order to establish that such defendant was an accomplice to murder and convict him of second degree felony murder based on the assault or attempted assault of the victim. though there was evidence that defendant had conversations with his co-defendants prior to the shooting, there was no evidence that any of the conversations related in any way to a plan to shoot or assault the victim, and mere presence at the scene of the crime with knowledge that others were looking for the victim was insufficient to establish

Additional Grounds: Such defendant's Complicity in the Victim's Murder State V. Asaeli (2009) 150 Wash. App. 543, 208 P.3d 1130, review denied 167 Wash. 2d 1001, 220 P.3d 207.

To establish accomplice liability the state must demonstrate more than physical presence at the scene and assent to the crime committed. State V. Amezola, 49 Wash. App. 78, 89, 741 P.2d 1024 (1987)

One's presence at Commission of crime, even coupled with knowledge that one's presence would aid in Commission of crime, will not subject accused to accomplice liability; to prove that one present is aider, it must be established that one is "ready to assist" in Commission of the crime. State V. Rotunno (1981) 95 Wash. 2d 931, 631 P.2d 951

Mere presence at scene of a crime is not enough to find that a defendant was an accomplice; there must be evidence that defendant participated in the undertaking and sought by his action, to make it succeed. State V. Alford (1980) 25 Wash. App. 661, 611 P.2d 1268, review granted, affirmed 95 Wash. 2d 629, 628 P.2d 467

There was a "reasonable likelihood" that jury misapplied jury instruction with respect to accomplice liability under Washington law, there by unconstitutionally relieving the State of its burden of proof of an element of the crimes with which defendant was charged, and warranting habeas relief; there was no

Additional Grounds: ~~direct evidence that defendant knew that the principle intended to commit murder, the prosecutor argued clearly and forcefully for the "in a dime, in for a dollar" theory of accomplice liability, and, in its notes sent to the judge during deliberations, the jury demonstrated substantial confusion about what the state was required to prove with respect to accomplice liability.~~  
~~Saravsaad v. Porter, C.A. 9 (Wash.) 2007, 479 F.3d 671, vacated in part on denial of rehearing en banc 503 F.3d 822, certiorari granted 128 S.Ct. 1650, 552 U.S. 1256, 170 L.Ed. 2d 352, certiorari denied 128 S.Ct. 1669, 552 U.S. 1266 170 L.Ed. 2d 370, reversed and remanded 129 S.Ct. 823, 555 U.S. 179, 172 L.Ed. 2d 532, on remand 2010 WL 771366, Habeas Corpus 498~~

All evidence clearly indicates that Mr. Warren committed both offenses, but no evidence is present to prove defendant was an accomplice to Mr. Warren. State argues the defendant's knowledge was proven when he stated that "you don't have me on video stealing any cameras" this does not prove knowledge for it can be inferred from testimony that officers were discuss still images of surveillance video a couple of feet away from defendant. Comment was made from conversation between officers. The defendant's presence and possible knowledge is insufficient to sustain conviction.

Additional Grounds: THE COURT ERRONEOUSLY INCLUDED A POINT IN DEFENDER SCORE FROM DEFENSE WHICH ENCOMPASSES THE SAME CRIMINAL CONDUCT TO ANOTHER DEFENSE.

In 2002 the defendant was charged with one count of robbery in the first and one count of unlawful possession of a firearm. The defendant would later plea to amended information to one count of unlawful possession of a firearm, one count of theft, and one account of assault in the second. The defendants theft charge, and assault charge should be calculated as one offense since ~~it~~ they arose from one single incident which is the original charge of robbery in the first.

RCW 9A.400 (1)(a) Two or more offenses meet the "Same Criminal Conduct" test if the crimes

(1) Require the same criminal intent

"Intent, in this context, is not the particular mens rea element of the particular crime, but rather is the offender's objective criminal purpose in committing the crime." State v. Adame, 516 Wash. App. 803, 811, 735 P.2d 1144 (1990).

(2) Are committed at the same time and place

Additional Grounds: (3) And involves the same victim.  
State V. Garza-Villarreal, 123 Wash. 2d 42, 46,  
864 P.2d 1378 (1993).  
State V. Lewis, 115 Wash. 2d 294, 302, 797  
P.2d 1141 (1990)

Court's determination of same criminal conduct will not be disturbed unless the sentencing court abuses its discretion or misapplies the law. Eg., State V. Elliott, 114 Wash. 2d 6, 17, 785 P.2d 440 (1990)

An appellate court will reverse a sentencing court's decision only if it finds a clear abuse of discretion or misapplication of the law.  
State V. Williams, 135 Wash. 2d 365, 367, 957 P.2d 216 (1998)

The abuse of discretion and misapplication of law occurred when the sentencing court only applied "same criminal conduct" test to the defendant's juvenile possession of firearm convictions, stating they shall be treated as one offense because they are the same charges, but did not apply "same criminal conduct" test for theft in the first and assault in the second, stating that because these two different charges instead of establishing the nature of offenses this is not harmless and is clear abuse of



Additional Grounds: discretion and misapplication of the law.

State V. Tornngren, 147 Wash. App. 556, 563, 196 P.3d 742 (2008)

"A sentencing court must apply the same criminal conduct test to multiple prior convictions that a court has not already concluded amount to the same criminal conduct. The court has no discretion on this". (citation omitted)

Court failed to conduct same criminal conduct analysis as required by RCW 9A.4A.525 (5)(a)(i) and 589 (i)(a), reversed and remanded for trial court to perform that analysis, State V. Williams, 307 P.3d 819, 176 Wn. App. 138, Wash. App. Div. 3 2013

In determining whether multiple crimes constitute the same criminal conduct, courts consider "How intimately related the crimes are", "Whether, between the crimes charged, there was any substantial change in the nature of the criminal objective", and "Whether one crime furthered the other". State V. Burns, 114 Wash. 2d 314, 318, 788 P.2d 531 (1990)

# ADDITIONAL GROUNDS

## ONE

INSUFFICIENT EVIDENCE TO CONVICT THE DEFENDANT AS ACCOMPLICE.

### PRINCIPLE OF ACCOMPLICE:

The State charged the defendant as to being an accomplice to both offenses stated herein. All evidence and testimony clearly indicate that Mr. Warren is the principal to both of these offenses. As depicted on the surveillance video of the individual taking the pictures, also Mr. Warren is the individual the description of the 2007 Ford Focus is a half of to which he admitted to own in 2007 and would be driving. Mr. Warren was also found with the cameras on his person. The State further sustains this by putting the following into "The State's Saying Warren Committed These Crimes and that Mr. Shinnick is liable as an accomplice, that is the whole premise of the State's Case". Page 642 Line 1 of verbatim proceedings. With this in mind the State would have to prove beyond a reasonable doubt that the defendant acted as an accomplice under KCU 9A.08.020 and the jury would be instructed under WJEC 10.51 Accomplice Liability. The State's case was insufficient in proving that the defendant acted as an accomplice as defined under KCU 9A.08.020 and WJEC 10.51 Accomplice Liability based on the following.

## THEFT

The state argues that the defendant was the leader and the McWarren was the follower, and together they were acting in concert. The state argues that the defendant is an accomplice to the theft due to the fact that the defendant engaged into a conversation with store clerk Rodger C. Young. Rodger C. Young clearly states that the defendant asked some questions about the cameras, he also indicates that the defendant grabs his phone from which he receives a text or call and at that point and time states that he was going to his car. Rodger C. Young was unsure of the exact intent of the defendant, but it was ultimately concluded that the defendant was leaving. McWarren stays in the store and continues to talk with Rodger C. Young, then eventually grabs the cameras from the counter and then runs out of the store. All evidence makes it clear that the defendant was never seen after leaving.

## ARGUMENT

In order to sustain an conviction based on the accomplice liability theory the state must prove that the defendant, (knowingly solicits, commands, encourages, or request another person to commit the crime (or) aids or agrees to aid another person in planning or committing the crime).  
RCW 9A.04.030; WPI 13.51 Accomplice Liability.

It's clear that State's Case Pertaining to the theft is only based on the fact that the defendant was priorly present in the store and during his prior presence he had a conversation about the cameras, this information is insufficient basis for the follow. There is no information, testimony, or evidence to prove that the defendant knew that Mr. Warren was going to steal anything nor is there anything to suggest that the defendant became aware after the fact. The knowledge prong of accomplice liability statute has not been met. RCW 9A.08.020, WPIIC 10.51 Accomplice liability. No testimony or evidence proved or can prove that the defendant (knowingly, solicits, commands, encourages, or request Mr. Warren to commit the crime (or aid's or agrees to aid Mr. Warren in planning or committing the crime, The word "aid" means all assistance whether giving by words acts encouragement support, or presence. A person who is present at the scene and ready to assist by his or her presence is aiding in the commission of the crime. However more than mere presence and knowledge of the criminal activity of another must be shown to establish that a person present is an accomplice. RCW 9A.08.020, WPIIC 10.51 Accomplice liability. The States argument

That the defendant aided by asking Rodger C. Young about the first camera is insupportable based on the fact that Rodger C. Young never testified that the defendant asked for him to pull the camera out he only testifies that defendant only asked about the camera. In order to sustain the accomplice statute the state would have to prove that he aid to the charged crime here in, the offense of theft includes the following (That on or about the 6th day of June 2013, Mr. Warren wrongfully obtained or exerted unauthorized control over property of another, that the property exceeded \$5,000 in value, that Mr. Warren intended to deprive the other person of the property and that this act occurred in the state of Washington).

There is no facts of evidence that the defendant aided Mr. Warren in the theft, his conversation with Rodger C. Young in no way can establish that it was aid by the defendant because it was not linked to the taking of the cameras. All arguments of the defendant aiding in the

It's clear that State's Case Pertaining to the theft is only based on the fact that the defendant was priorly present in the store and during his prior presence he had a conversation about the cameras, this information is insufficient based on the follow. There is no information, testimony, or evidence to prove that the defendant knew that Mr. Warren was going to steal anything nor is there anything to suggest that the defendant became aware after the fact. The knowledge prong of accomplice liability statute has not been met. RCW 9A.08.020, WPIIC 10.51 Accomplice liability. No testimony or evidence proved or can prove that the defendant (knowingly solicits, commands, encourages, or request Mr. Warren to commit the crime (or aid's or agrees to aid Mr. Warren in planning or committing the crime, The word "aid" means all assistance whether giving by words acts encouragement support or presence. A person who is present at the scene and ready to assist by his or her presence is aiding in the commission of the crime. However more than mere presence and knowledge of the criminal activity of another must be shown to establish that a person present is an accomplice. RCW 9A.08.020, WPIIC 10.51 Accomplice liability. The States argument

The State was and is unable to prove that the defendant's prior presence was him being ready to assist. There is no evidence to support the State's argument of the defendant being an accomplice to Mr. Warren the State conveys with the following

"Mr. Sharnoff left, we don't know anything more of it. We don't have any idea that he had any knowledge of what was going on, not at all."  
Page 659 Line 18 Verbatim Report.

"We don't know where he was, we don't know what he did". Page 631 Line 7 Verbatim Report

These are clear indications that the State did not have any facts of evidence to support its theory that the defendant was an accomplice to Mr. Warren.