

66121-3

66121-3

NO. 66121-3-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

---

STATE OF WASHINGTON,

Respondent,

v.

DAYLAE THOMAS,

Appellant.

---

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE MICHAEL TRICKEY

---

**BRIEF OF RESPONDENT**

---

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

TRINH TRAN NORSEN  
Deputy Prosecuting Attorney  
Attorneys for Respondent

King County Prosecuting Attorney  
Norm Maleng Regional Justice Center  
401 Fourth Avenue North  
Kent, Washington 98032-4429

FILED  
JUL 10 2018  
KING COUNTY  
COURT CLERK  
8

TABLE OF CONTENTS

	Page
A. <u>ISSUES PRESENTED</u> .....	1
B. <u>STATEMENT OF THE CASE</u> .....	2
1. PROCEDURAL FACTS .....	2
2. SUBSTANTIVE FACTS .....	2
C. <u>ARGUMENT</u> .....	8
1. STANDARD OF REVIEW .....	8
2. SUBSTANTIAL EVIDENCE IN THE RECORD SUPPORTS THOMAS' CONVICTION FOR DELIVERY OF COCAINE UNDER THE THEORY OF ACCOMPLICE LIABILITY .....	11
D. <u>CONCLUSION</u> .....	14

TABLE OF AUTHORITIES

Page

Table of Cases

Washington State:

In re Welfare of Wilson, 91 Wn.2d 487,  
588 P.2d 1161 (1979)..... 9

State v. Bockman, 37 Wn. App. 474,  
682 P.2d 925 (1984)..... 9

State v. Fisher, 99 Wn. App. 714,  
995 P.2d 107 (2000)..... 10

State v. Galisia, 63 Wn. App. 833,  
822 P.2d 303 (1992), reversed on other grounds  
75 Wn. App. 913 (1994) ..... 9

State v. Gentry, 125 Wn.2d 570,  
888 P.2d 1105 (1995)..... 10

State v. Rotunno, 95 Wn.2d 931,  
631 P.2d 951 (1981)..... 9

State v. Salinas, 119 Wn.2d 192,  
829 P.2d 1068 (1992)..... 10

Statutes

Washington State:

RCW 9A.08.020 ..... 9

**A. ISSUES PRESENTED**

Viewing the evidence in the light most favorable to the State, is testimony from several Seattle police officers that Daylae Thomas entered the Pioneer Square area with Co-Respondent Mark Skinner, stood a short distance away actively looking up and down the street while Skinner was involved in five separate hand-to-hand transactions, walked out of the area with Skinner once Skinner completed the five hand-to-hand transactions, grabbed Skinner's arm and directed Skinner to head in a different direction upon seeing an undercover officer in the area, remained standing very close to Skinner while Skinner made a hand-to-hand transaction with an un-identified individual and delivered cocaine to undercover police Officer Raul Vaca in Occidental Park, made comments such as "Hurry up" and "Leave man" during these two hand-to-hand transactions, and then left the area together with Skinner afterwards, sufficient to support Thomas' conviction for Delivery of Cocaine under a theory of accomplice liability?

**B. STATEMENT OF THE CASE**

**1. PROCEDURAL FACTS**

On March 25, 2010, the State charged Appellant Daylae Thomas with Delivery of Cocaine. CP 1<sup>1</sup>. After a bench trial, the Honorable Judge Michael Trickey found Thomas guilty as charged of the crime of Delivery of Cocaine under the theory of accomplice liability. CP 17, 40-47. Specifically, the Court found that Thomas was an accomplice to the drug deal performed between Co-Respondent Mark Skinner and Officer Raul Vaca. CP 46. Thomas' standard sentence range was 103-129 weeks at JRA; however, the Court followed defense counsel's recommendation for a Manifest Injustice down and sentenced Thomas to 26-27 weeks of confinement. CP 25-31, 48-52.

**2. SUBSTANTIVE FACTS**

On March 22, 2010, Seattle Police Officers Raul Vaca, Terry Bailey, and Matthew Pasquan were working in an undercover capacity as part of an organized buy/bust operation in the Pioneer

---

<sup>1</sup> Clerk's Papers as designated by Appellant.

Square neighborhood. 1 RP 39-40<sup>2</sup>, 114-16, 166-68. Thomas and Co-Respondent Mark Skinner were observed walking into the Pioneer Square area together. 1 RP 45-46. After walking together for a short distance, Skinner headed toward an alley way while Thomas took a position on the street corner approximately 20 to 25 feet away from Skinner. 1 RP 48-49.

Skinner took a position next to a building, and soon after, people began approaching Skinner. 1 RP 50. Skinner was observed making what appeared to be five separate hand-to-hand transactions with five separate individuals. 1 RP 50-51. On each of the five occasions, Skinner was observed reaching into his pocket, opening up his palm to the individual, the individual would then take something out of Skinner's palm, and then the individual would appear to hand something to Skinner in exchange. 1 RP 51-52.

While Skinner was involved in these five hand-to-hand transactions, Thomas stayed at the corner and was actively looking up and down the street the whole time. 1 RP 52. Officer Bailey noted that the area that Skinner was positioned at while Skinner

---

<sup>2</sup> Report of Proceedings--Adjudicatory Hearing August 30/September 2, 2010.

conducted his five separate hand-to-hand transactions was partially secluded and that Skinner would not have had a clear view up the street from where he was situated. 1 RP 53-54.

Once Skinner completed his five separate hand-to-hand transactions, Skinner and Thomas met back up at the corner and began walking away together. 1 RP 54. At one point while Skinner and Thomas were walking, Thomas made eye contact with Officer Bailey. 1 RP 55. After passing Officer Bailey, Thomas then turned around and looked back at Officer Bailey, at which time Thomas then grabbed Skinner and they turned and walked in a different direction. 1 RP 58-59. Officer Bailey then decided not to follow Skinner and Thomas further as he was concerned that Thomas and Skinner were becoming suspicious of his presence. 1 RP 61.

Thomas and Skinner walked into Occidental Park, where Officer Vaca and Officer Pasquan subsequently observed them. 1 RP 119-20, 171. When Officer Vaca entered the park, he observed Thomas standing a little more than an arm's distance away from Skinner. 1 RP 122. Officer Vaca observed that there was a group of people standing around Skinner and it appeared to him that the people were waiting to speak to Skinner. 1 RP 122-24, 126.

Officer Vaca then observed Skinner make a hand-to-hand transaction with an individual from the group. 1 RP 123-24, 126. During this transaction, Officer Vaca could see what appeared to be suspected crack cocaine in Skinner's hand. 1 RP 126. As this hand-to-hand transaction was occurring between Skinner and the unidentified individual, Officer Vaca heard Thomas say on at least one occasion, "Hurry up, man." 1 RP 127. It appeared to Officer Vaca that Thomas was addressing his comment to the person or people around Skinner. 1 RP 127.

Officer Vaca then made his way up to Skinner and told Skinner that he wanted \$60 worth of rock. 1 RP 127-28. Officer Vaca handed Skinner some money and in return, Skinner handed some crack cocaine to Officer Vaca. 1 RP 128. During this transaction, Thomas was still standing "very close" to Skinner. 1 RP 128. Once Officer Vaca received the cocaine from Skinner, Officer Vaca attempted to delay his departure by remaining there in front of Skinner. 1 RP 129. Thomas looked at Officer Vaca's hand and stated, "Leave man." 1 RP 129. Officer Vaca believed that Thomas' command was directed at him. 1 RP 129. In response to Thomas' order to leave, Officer Vaca immediately walked away. 1 RP 129.

As Officer Vaca walked away, Officer Pasquan continued to watch Skinner and Thomas. 1 RP 172. Officer Pasquan could see that Skinner and Thomas were looking in his direction and became concerned that he may have been spotted. RP 172. Skinner and Thomas then turned and began walking out of the park together. 1 RP 173. At some point, Skinner and Thomas broke into a run, but were subsequently contacted by police and arrested. 1 RP 174-75.

Officer Bailey testified that there were several roles that people commonly play in a drug deal, one being the 'lookout'. 1 RP 36. Officer Bailey explained that 'lookouts' sometimes come into the area with the dealer and that the lookout's job consists of putting themselves in a position to be able to observe a large area of the block and areas that the dealer might not be able to see, and alerting the dealer to police or suspicious people. 1 RP 37, 38. Officer Bailey testified that it is common for 'lookouts' to be "actively looking up and down the street, looking back and forth, kind of keeping their eyes on the whole area." 1 RP 38. Officer Bailey explained that 'lookouts' can sometimes stand very close to the dealer or a short distance away from the dealer at a location where

the 'lookout' is able to see things that a dealer might not be able to see. 1 RP 39.

Officer Vaca explained that 'lookouts' act as a second set of eyes for the dealer, help to make sure police are not around, help to make sure there are no suspicious people in the area that might be undercover police officers or concerned citizens, and help control the flow of customers to the dealer. 1 RP 113.

The trial Court found that Thomas had knowledge that Skinner was engaged in drug activity when Skinner was involved in the initial five hand-to-hand transactions with five separate individuals. 2 RP 53<sup>3</sup>. The Court further found that it was reasonable to infer from the evidence that as Thomas was walking away with Skinner, he observed Officer Bailey, became suspicious of Officer Bailey, and directed Skinner to head in a different direction. 2 RP 53-54. The Court found that Skinner delivered cocaine to Officer Vaca and that Officer Vaca heard Thomas make statements of, "Hurry up" and "Leave man", and that based on the totality of the evidence, Thomas was present and ready to assist. 2 RP 48, 54-55.

---

<sup>3</sup> Report of Proceedings--Adjudicatory Hearing/Disposition September 3 and 22, 2010.

**C. ARGUMENT**

Thomas argues that there is insufficient evidence to sustain his conviction for Delivery of Cocaine under a theory of accomplice liability. According to Thomas, the State failed to show that he assisted, or was ready to assist, Skinner during the drug deal or that he knew his assistance and readiness to assist would aid in the commission of the drug deal. Thomas' argument fails on both counts.

The trial Court found that Thomas had knowledge of Skinner's drug transactions, was present, and was ready to assist Skinner. There is substantial evidence in the record to support the trial Court's findings.

**1. STANDARD OF REVIEW**

The Court found in this case that on or about March 22, 2010, in King County, Washington, Mark Skinner, unlawfully and feloniously did deliver cocaine, a controlled substance and a narcotic drug, to Seattle Police Officer Raul Vaca, and did know it was a controlled substance and that appellant Daylae Thomas was an accomplice to the drug deal performed between Skinner and Officer Vaca. CP 40-47. As a result, the Court found appellant

Thomas guilty of the crime of Delivery of Cocaine under the theory of accomplice liability. CP 17, 40-47.

A person may be found guilty of a crime either as a principal or as an accomplice. To be held criminally liable as an accomplice, a person, with knowledge that it will promote or facilitate the commission of the crime, must 1) solicit, command, encourage or request that another commit a crime, or 2) aid or agree to aid such person in planning or committing the crime. RCW 9A.08.020(3)(a). The State must prove that the person present at the scene of an ongoing crime was "ready to assist" or participated in the undertaking in some way. In re Welfare of Wilson, 91 Wn.2d 487, 491, 588 P.2d 1161 (1979).

Accomplice liability in Washington is premised on the notion that a defendant need not participate in each element of the crime, nor need he share the same mental state that is required of the principal. State v. Galisia, 63 Wn. App. 833, 840, 822 P.2d 303 (1992), reversed on other grounds 75 Wn. App. 913 (1994); *citing* State v. Rotunno, 95 Wn.2d 931, 934, 631 P.2d 951 (1981); State v. Bockman, 37 Wn. App. 474, 491-92, 682 P.2d 925 (1984). Rather, it is the intent to facilitate another in the commission of the

crime by providing assistance through his presence or his act that makes the accomplice criminally liable. Id. at 840.

When sufficiency of the evidence is challenged, all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the accused. State v. Gentry, 125 Wn.2d 570, 597, 888 P.2d 1105 (1995). Further, a defendant who claims insufficiency admits the truth of the State's evidence and all inferences that can reasonably be drawn from that evidence. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

Evidence is sufficient to support a conviction if, viewed in a light most favorable to the State, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. Salinas, 119 Wn.2d at 201. A reviewing court must defer to the trier of fact on issues of the persuasiveness of the evidence. State v. Fisher, 99 Wn. App. 714, 719, 995 P.2d 107 (2000). Furthermore, the reviewing court need not be convinced of the defendant's guilt beyond a reasonable doubt, but only that there is substantial evidence in the record to support the conviction. Id. at 718. Circumstantial and direct evidence are equally reliable. Id. at 718.

**2. SUBSTANTIAL EVIDENCE IN THE RECORD SUPPORTS THOMAS' CONVICTION FOR DELIVERY OF COCAINE UNDER THE THEORY OF ACCOMPLICE LIABILITY**

Thomas points out that awareness and physical presence at the scene of the ongoing crime are not enough unless the purported accomplice stands "ready to assist" in the crime at issue, and points out that Thomas did not summon customers, handle money, handle cocaine, OR physically interact with purchasers. Thomas' argument misses the mark by narrowly construing the type of behavior that constitutes accomplice liability and overlooking the required standard of review.

Here, not only was Thomas present at the scene of the ongoing criminal activity, but he was ready to assist, and did in fact assist in the crime at issue. Officer Bailey and Officer Vaca testified regarding their experience in undercover buy/bust drug operations and to the different roles that people play, to include the role of a 'lookout'.

There was testimony in this case that Thomas walked into the area together with Skinner, stood a short distance away from Skinner while Skinner was involved in the first five hand-to-hand transactions, while actively looking up and down the street. Based

on Thomas' behavior and his close proximity to Skinner, it is reasonable to infer that Thomas had knowledge that Skinner was involved in drug transactions and had knowledge that by acting as a 'lookout', he was aiding Skinner in successfully committing that crime by being ready to warn Skinner of any potential threats.

Furthermore, it is reasonable to infer from the evidence that Thomas continued to act as a lookout for Skinner during their walk to Occidental Park and that he became suspicious of Officer Bailey upon seeing Officer Bailey, and as a result, he grabbed Skinner and the two of them turned and walked in another direction in an attempt to avoid detection.

It is also reasonable to infer from the evidence that Skinner continued to act as a 'lookout' for Skinner while the two of them were in Occidental Park, standing close to Skinner during the two hand-to-hand transactions in the park, and making statements of, "Hurry up" and "Leave man", thereby continuing to assist Skinner in successfully completing the drug transactions.

Thomas' commands of "Hurry up" and "Leave man" during these two transactions can reasonably be inferred to have been made to the un-identified individual and to Officer Vaca in an attempt to get the individual and Officer Vaca to disperse and thus

not attract any unnecessary attention to themselves by citizens or police.

Although, as Thomas points out, he did not summon potential customers, handle money, handle cocaine, or physically interact with purchases, there is sufficient evidence to show that Thomas was ready to assist, and did assist, Skinner in Skinner's drug transactions and sought by his actions to make Skinner's transactions succeed. By acting as a lookout, Thomas was prepared to alert Skinner to any suspicious people or police that might be in the area, and participated in the undertaking by ordering people who were interacting with Skinner and receiving suspected drugs from him to "Hurry up" and "Leave" so as not to attract undue attention to themselves.

Thomas was ready to assist, assisted, and sought by his actions, to make Skinner's drug deals succeed. Thomas' continued and purposeful presence, his actions and behavior, and his statements, when viewed in the totality of the evidence, constitute sufficient evidence of accomplice liability.

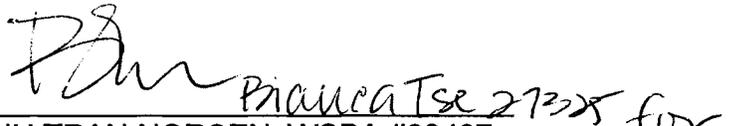
**D. CONCLUSION**

In viewing all of the evidence in the light most favorable to the State, and drawing all reasonable inferences from the evidence in favor of the State, there is substantial evidence to support Thomas' conviction as an accomplice to the charge of Delivery of Cocaine and the verdict of the court should be affirmed. As a result, the Court's Findings of Fact 28 and 29 and Conclusions of Law 1 through 3 should be affirmed.

DATED this \_\_\_\_\_ day of February, 2011.

Respectfully submitted,

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

By:  *Trinh Tran Norsen* 27328 for  
TRINH TRAN NORSEN, WSBA #29437  
Deputy Prosecuting Attorney  
Attorneys for Respondent  
Office WSBA #91002