

66326-7

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ORIGINAL

NO. 66326-7-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

CRAIG COLEMAN,

Appellant.

APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR KING COUNTY

BRIEF OF RESPONDENT

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*filed
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A. ISSUES PRESENTED

1. 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. To deliver cocaine, a defendant must deliver to another a substance that he knows to be cocaine. To convict as an accomplice to delivery of a controlled substance, a defendant must have solicited another person or aided another person in delivering a controlled substance with knowledge that the substance delivered was a controlled substance. Here, Coleman asked an officer if he was "looking" and told the officer he knew somebody who had "40," referring to forty dollars of crack cocaine. Coleman led the officer to Shaniqua Bolds, who received money from the officer and delivered cocaine to Coleman, to hand to the officer. Is there substantial evidence in the record to support Coleman's conviction?

B. STATEMENT OF FACTS

1. PROCEDURAL FACTS

Craig Coleman was charged with one count of Violation of the Uniform Controlled Substances Act: Delivery of Cocaine. CP 1-5. After the initial trial resulted in a hung jury, a mistrial was

declared and a new trial was later commenced. CP 30; 3 RP 7.

At the conclusion of the second trial, Coleman was found guilty as charged. CP 64. The court sentenced Coleman to the Drug Offender Sentencing Alternative, with a sentence of 45 months in prison and 45 months community custody. CP 68; 4 RP 24-25.

2. SUBSTANTIVE FACTS

On March 31, 2010, Seattle Police Officer Andrew West was working undercover in downtown Seattle as part of a buy bust operation to purchase street level narcotics. 3 RP 35-43, 71.¹ Officer West has been trained in narcotics identification and has participated in numerous narcotics enforcement operations. 3 RP 36-37. West was given pre-recorded buy money and a photocopy of the buy money was made prior to West going undercover. 3 RP 43-44.

During the operation, Officer West came across Coleman and made eye contact with the Defendant. 3 RP 44-45. Officer West asked Coleman, "what's up," to which Coleman replied, "you lookin?" Id. Both Officer West and Coleman continued the

¹ Respondent is using the same number system as found in Appellant's brief. 1 RP refers to the verbatim report of proceedings for August 10-12, 2010. 2 RP August 13, 2010. 3 RP for October 4, 6, 7, 8, 2010. 4 RP for November 5, 2010.

discussion, with Officer West asking Coleman "You got 40?" and Coleman responding that he did not, but that he knew somebody who did, and indicated that Officer West should follow him. Id.

Coleman and Officer West began walking northbound until they reached the northeast corner of Two Avenue and Battery, where they were met by Shaniqua Bolds. 3 RP 46. Officer West observed that Coleman and Bolds appeared to know each other, and observed them having a conversation. Id. Officer West then spoke up and said he was looking for \$40 of crack cocaine. Id. Bolds told Officer West and Coleman to wait and she would go and get the drugs. Id.

Officer West and Coleman continued walking together. Id. Eventually, Officer West asked where Bolds was, and Coleman pointed to a silver F150 vehicle and said she was there. 3 RP 47. Coleman then said "come on, we got to go down to First Avenue" and Coleman and Officer West continued walking. Id. At One and Wall they were met by the silver F150, with Bolds in the passenger seat of the vehicle. Id. Bolds pointed to the southwest corner of One and Wall, and Coleman and Officer West walked over to that corner. Id. Once there, Bolds stepped out of the vehicle and asked for the money. 3 RP 47-48. Officer West asked to see the drugs.

3 RP 48. Bolds showed Officer West the crack cocaine, and then handed the narcotics to Coleman. Id. Officer West gave \$40 in pre-recorded buy money to Bolds, and proceeded to attempt to grab the narcotics from Coleman. Id. Coleman kept half of one of the stones and said "You need to hook me up." Id.

Officer West gave a "good buy" signal, indicating to nearby officers that a buy had been made and arrest teams should move in to arrest the involved individuals. 3 RP 48-49. Coleman was arrested and a crack pipe was found in his possession. 3 RP 91.

C. ARGUMENT

1. THERE IS SUBSTANTIAL EVIDENCE IN THE RECORD TO SUPPORT DEFENDANT'S CONVICTION FOR DELIVERY OF COCAINE UNDER ACCOMPLICE LIABILITY.

Defendant asserts that the State did not prove that he delivered cocaine under accomplice liability. This argument should be rejected because there was sufficient evidence from which a rational jury could find that Defendant did deliver the cocaine under accomplice liability when he directly engaged in a conversation about selling drugs with an undercover police officer, led the officer to the dealer, followed the officer around until the deal was

finalized, was the one to receive the drugs from the dealer, and tried to keep some of the cocaine for himself.

The State must prove each element of the charged crime beyond a reasonable doubt. State v. Alvarez, 128 Wn.2d 1, 13, 904 P.2d 754 (1995). 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. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

"A claim of insufficiency admits the truth of the State's evidence and all reasonable inferences that reasonably can be drawn therefrom." Id. at 201. Circumstantial and direct evidence are equally reliable. State v. Fiser, 99 Wn. App. 714, 718, 995 P.2d 107 (2000). A reviewing court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. Id. at 719. 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.

A person is guilty of delivery of a controlled substance if he delivers a controlled substance and knows that the delivered

substance is controlled. RCW 69.50.401. Cocaine is a controlled substance. RCW 69.50.206(4). Delivery means the actual or constructive transfer of a controlled substance from one person to another. RCW 69.50.101(f).

A person is an accomplice of another person in the commission of a crime if: (a) With knowledge that it will promote or facilitate the commission of the crime, he (i) solicits, commands, encourages, or requests such other person to commit it; or (ii) aids or agrees to aid such other person in planning or committing it.

RCW 9A.08.020. Physical presence and awareness of a transaction, on their own, are insufficient to establish accomplice liability. In re Wilson, 91 Wn.2d 487, 491, 588 P.2d 1161 (1979). However, a defendant does not need to have participated in each element of the crime, nor does he have to have shared the same mental state that would be required of the principal, to be found guilty under accomplice liability. See 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, *review denied*, 102 Wn.2d 1002 (1984). "Rather, it is the intent to facilitate another in the commission of a crime by providing assistance through his presence or his act that

makes the accomplice criminally liable." State v. Galisia, 63 Wn. App. 833, 822 P.2d 303 (1992).

In Galisia, the defendant assisted a buyer in locating a seller, was present at the location where cocaine was produced and offered for sale, and had an interest in ensuring that the transaction occur so that he could receive money and cocaine. State v. Galisia, 63 Wn. App. 833. This combination of facts was deemed sufficient evidence to support defendant's conviction for aiding and abetting the possession of cocaine with the intent to deliver. Id.

Galisia, and the conduct of Coleman in this case, stand in contrast to the defendant in Gladstone, whose sole involvement was drawing a map that directed an informant to a house where he could purchase marijuana. State v. Gladstone, 78 Wn.2d 306, 474 P.2d 274, 42 A.L.R.3d 1061 (1970).

Defendant's conduct in this case therefore clearly amounts to more than the minor involvement in Gladstone and resembles the conduct in Galisia. Defendant engaged in a conversation with Officer West wherein he indicated that he knew someone who had drugs and directed Officer West to follow him. 3 RP 44-45. Coleman led Officer West to Shaniqua Bolds, who agreed to deliver cocaine. 3 RP 46. When Officer West lost sight of Bolds, Coleman

pointed to a silver F150 vehicle and said she was there. 3 RP 47. Coleman then said "come on, we got to go down to First Avenue" and Coleman and Officer West continued walking together. Id.

Once they met up with Bolds, Officer West asked to see the drugs. 3 RP 48. Bolds showed Officer West the crack cocaine, and then handed the narcotics to Coleman. Id. Officer West gave \$40 in pre-recorded buy money to Bolds, and proceeded to attempt to grab the narcotics from Coleman. Id. Coleman kept half of one of the stones and said "You need to hook me up." Id.

These facts clearly establish that Bolds delivered cocaine, and that Coleman was a willing accomplice. Like in Galisia, Coleman took active steps to arrange for the transaction to happen, inquiring if Officer West was looking for drugs, directing Officer West to Bolds, accompanying Officer West to meet Bolds, pointing out where Bolds had gone to, conversing with Bolds, receiving the drugs from Bolds, and displaying an interest in finalizing the transaction when he attempted to keep a piece of cocaine for himself. These facts leave no question that there was substantial evidence in the record to allow a rational trier of fact to find that Defendant was an accomplice to delivery of cocaine.

2. A CORRECT AMENDED VERSION OF THE JUDGMENT AND SENTENCE WAS FILED.

Defendant asserts that the Judgment and Sentence erroneously listed an offender score of 10. The oral ruling of the court at sentencing, and the sentence given, were based on a calculated score of 6. 4 RP 23. An amended Judgment and Sentence with the correct score was filed on August 2, 2011, rendering this issue moot.

D. CONCLUSION

For the above reasons, the State respectfully requests that this court affirm Defendant's VUCSA conviction.

DATED this 3 day of August, 2011.

Respectfully submitted,

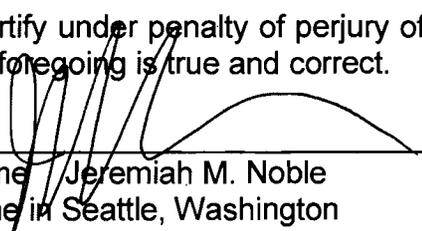
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Lila Silverstein, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Brief of REspondent, in STATE V. CRAIG COLEMAN, Cause No. 66326-7-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.


Name Jeremiah M. Noble
Done in Seattle, Washington

8.3.11
Date August 3rd, 2011

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