

NO. 67151-1-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

SINDY TRUONG,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE HELEN HALPERT

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

1. A person commits robbery when she unlawfully takes personal property from another person, through the use of force, violence, or fear of injury. Such force or fear may be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking. Truong took a Zune MP3 player from Redmon-Beckstead, and then hit Redmon-Beckstead when she attempted to retrieve her property. Is this sufficient evidence to demonstrate that Truong used force to retain possession of Redmon-Beckstead's property?

2. A person is guilty as an accomplice if she knowingly aids another person in committing a crime. After assaulting Decoste, both Truong and Wea reached into his pockets. While Truong did not find anything, Wea took Decoste's cigarettes. Both Truong and Wea then hit Decoste again, preventing him from retrieving his property. Is this sufficient evidence to show that Truong aided Wea in robbing Decoste?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS.

Sixteen-year-old juvenile respondent Sindy Truong was charged by amended information with two counts of robbery in the first degree. CP 17-18. Based on an agreed motion from the State and Truong, the court waived application of exclusive adult jurisdiction and the case was remanded to the jurisdiction of King County Juvenile Court.¹ CP 10-12.

The case proceeded by way of a bench trial. The trial court found Truong guilty of first-degree robbery of Jessica Redmon-Beckstead (count I). CP 35-39. The court found Truong not guilty of first-degree robbery of Jason Decoste, but found her guilty of robbery in the second degree (count II). Id. The court imposed a standard-range sentence on count I and a sentence below the standard range on count II. CP 31-34, 40-43.

¹ When a 16 or 17-year-old juvenile is charged with robbery in the first degree, the adult criminal court has exclusive jurisdiction. RCW 13.04.030(1)(e)(v)(C). However, if both the prosecutor and the respondent agree to waive adult jurisdiction, the proceeding may be removed back to juvenile court with the court's approval. RCW 13.04.030(1)(e)(v)(E)(iii).

2. SUBSTANTIVE FACTS.

On the evening of November 19, 2010, Jessica Redmon-Beckstead and her boyfriend, Jason Decoste, were riding a bus home from Redmon-Beckstead's prenatal appointment; Redmon-Beckstead was three months pregnant. 1RP² 25-26. The couple sat in side-facing seats in the back of the bus, listening to Redmon-Beckstead's Zune MP3 player with a shared set of headphones. 1RP 27.

Shortly before 7:00 p.m., five young females boarded the bus at the Westlake station. 1RP 28. One girl, later identified as Sha'raun Hill,³ accused Decoste of stealing her phone. 1RP 34. Before Decoste could respond, Truong⁴ grabbed the Zune from his hands. 1RP 35. Although Decoste had met Hill before, Redmon-Beckstead did not know any of the girls and was confused by the encounter. 1RP 28, 68. She stood and demanded that Truong

² The verbatim report of proceedings consists of two volumes: 1RP (3/11/2011) and 2RP (3/24/11, 3/28/11, and 4/13/11).

³ In the surveillance video, Hill is wearing a yellow bag across her shoulder. 1RP 34; Ex. 3.

⁴ In the video, Truong's hair is pulled back and she is wearing a dark jacket with red and blue collars. 1RP 32-33, 35; Ex. 3.

return her Zune. 1RP 36-37. Truong refused, responding that Decoste had taken Hill's phone. Id.

Redmon-Beckstead turned to sit, but Decontee Wea⁵ had taken her seat next to Decoste and was trying to rip the headphones from his hands. 1RP 37. Redmon-Beckstead grabbed the headphones, but Wea ripped them away and threw the headphones to one of her friends.⁶ Id. Immediately after, Truong hit Redmon-Beckstead from behind. 1RP 38. When Decoste tried to intervene, both Hill and Wea joined in on the assault. Id. Truong, Hill, and Wea each hit Redmon-Beckstead and Decoste multiple times. 1RP 39, 74. Afraid of getting injured, Redmon-Beckstead stopped her attempts to retrieve her Zune and headphones. 1RP 40.

After the initial flurry of assaults, Hill moved so that she was in between Redmon-Beckstead and Decoste, and the door. 1RP 41, 74-75. Truong and the rest of her friends were on the other side of the couple. Id. As Hill continued to accuse Decoste of

⁵ In the video, Wea is wearing a black jacket, with brown fur around the hood, and her hair is in braids or cornrows. 1RP 32-22, 37; Ex. 3.

⁶ Redmon-Beckstead thought that Wea threw the headphones to Truong, but was not positive. 1RP 65-66.

taking her phone, Wea grabbed an overhead bar and kicked Decoste several times in the head. 1RP 43. Hill continued to accuse Decoste, as Truong and Wea began "pocket checking" him, or reaching in his pockets. 1RP 42, 74. Decoste tried to deflect their hands, but Wea removed a pack of cigarettes from his pocket. 1RP 76. Truong and Wea then continued to punch both victims. 1RP 47.

About two minutes after Hill first spoke to Decoste, other passengers noticed that Redmon-Beckstead was bleeding and yelled to call 911; the bus stopped. 2RP 17. Even as the couple left the bus, Truong, Wea, and their friends continued to hit them. 1RP 50. The five girls fled the area on foot. 1RP 51. Redmon-Beckstead was taken to Harborview, where she received six stitches for a cut on her eyebrow. 1RP 52. Decoste had a headache, but no serious injuries. 1RP 78. The stolen property was never recovered. 1RP 51, 82.

About 15 minutes after the robbery, King County Deputies Fowler and Drazich found Wea, Hill, and Nyajuok Reath in White Center. 1RP 12-15. Two witnesses identified all three girls as participants in the robbery. 1RP 12-13; 2RP 19. Truong was not found that night, but her school identification card was found on

Reath. 1RP 13. The robbery was also captured on surveillance video. Ex. 3.

C. ARGUMENT

1. **THERE IS SUFFICIENT EVIDENCE TO SUPPORT TRUONG'S CONVICTIONS.**

Truong claims that there is insufficient evidence to support her convictions for first-degree robbery of Jessica Redmon-Beckstead and second-degree robbery of Jason Decoste. Because there is sufficient evidence to sustain each charge, Truong's convictions should be affirmed.

a. **Sufficient Evidence Supports Truong's Conviction Of Robbery In The First Degree.**

Truong challenges her conviction on count I, arguing that there is insufficient evidence to show that she robbed Redmon-Beckstead of either her Zune or her headphones. Truong's argument fails because sufficient evidence supports the trial court's conclusion that she robbed Redmon-Beckstead of personal

property and that Redmon-Beckstead was injured during the robbery.⁷

Evidence is sufficient to support a conviction if, viewed in the 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. 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 appellate 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 robbery when she unlawfully takes personal property from the person of another, or in her presence, against her will by the use, or threatened use, of force. RCW

⁷ Truong does not argue that the State lacked sufficient evidence of injury to elevate the robbery to first degree.

9A.56.190. Any force or threat, no matter how slight, that induces an owner to part with her property, is sufficient to sustain a robbery conviction. State v. Handburgh, 119 Wn.2d 284, 293, 830 P.2d 641 (1992). If the person inflicts bodily injury in the commission of the crime, she is guilty of robbery in the first degree. RCW 9A.56.200(1)(a)(iii).

Truong argues that because she had passed the Zune to one of her accomplices, she did not use force to retain the property. Truong's argument fails because the evidence clearly shows that she used force to prevent Redmon-Beckstead from retrieving her property from Truong's accomplice.

Under Washington's robbery statute, the force need not be contemporaneous with the taking; it may also be used to retain property that was peacefully taken. Handburgh, 119 Wn.2d at 293. In Handburgh, the defendant took a girl's unattended bicycle. Id. at 285. When the girl demanded her bike back, Handburgh threatened her, and subsequently threw rocks at her. Id. at 286. The Supreme Court rejected Handburgh's argument that he could not be found guilty of robbery when he did not use force to obtain the unattended bicycle, holding that force used to retain property is robbery. Id. at 293.

When Truong took the Zune out of Decoste's hands, she certainly used a level of force or intimidation not seen in Handburgh. See State v. Collinsworth, 90 Wn. App. 546, 553, 966 P.2d 905 (1997), review denied, 135 Wn.2d 1002 (1998) (unequivocal demand for money constitutes an implicit threat of force). However, even if Truong did not use force to obtain the Zune, just as in Handburgh, once Redmon-Beckstead tried to retrieve her property, Truong assaulted her. In fact, Redmon-Beckstead testified that she did not persist in retrieving her Zune because she was afraid of further assault. 1RP 40-41, 48.

Relying on State v. Johnson, 155 Wn.2d 609, 121 P.3d 91 (2005), Truong argues that because she "gave up possession of the Zune" prior to hitting Redmon-Beckstead, she "could not have used force to retain possession of the property." App. Br. at 14. Truong's reliance on Johnson is misplaced. In Johnson, the defendant stole a television from Wal-Mart. Id. at 610. Two security guards confronted Johnson in the parking lot and he abandoned the television and fled. Id. When one of the guards grabbed his arm, Johnson punched him. Id. The trial court found Johnson guilty of robbery in the first degree, despite its finding that Johnson did not use force to obtain or retain the property. Id. The

Supreme Court reversed, holding that robbery requires force used to obtain or retain property and that Johnson simply used force to escape after abandoning the television in Wal-Mart's parking lot. Id. at 611.⁸

Truong's case is distinguishable. Although she no longer held the Zune, she certainly had not abandoned it.⁹ Instead, she had passed it to one of her accomplices. Whereas the Wal-Mart security officers could have retrieved the television without risking any assault, Redmon-Beckstead could not similarly retrieve her Zune. Unlike the trial court in Johnson, the trial court here specifically found that the force was used immediately after Redmon-Beckstead tried to retrieve her property. 2RP 134. The trial court also concluded that Truong used force or fear to retain possession of the property. CP 37. The evidence supports these findings.

⁸ Contrary to Truong's contention, Johnson does not hold that a defendant must have actual or constructive possession of the property at the time that force was used.

⁹ Truong claims that she did not have actual or constructive possession of the Zune. Unlike the drug and firearm-possession cases cited by Truong, possession is not an element of robbery. RCW 9A.56.190. Consequently, Truong's discussion of actual and constructive possession is irrelevant to the question of whether sufficient evidence supports her conviction for robbery.

In addition to the Zune, count I also alleged that Truong, together with others, robbed Redmon-Beckstead of her headphones.¹⁰ There is sufficient evidence that Truong was an accomplice to the taking of the headphones.

A person is an accomplice of another person in the commission of a crime if, with knowledge that it will promote or facilitate the commission of the crime, she aids another in committing it. RCW 9A.08.020. The trial court found that both Redmon-Beckstead and Decoste struggled with Wea over the headphones and that Wea pulled the headphones away from them. CP 36. The trial court also found that after Redmon-Beckstead tried to retrieve her Zune and her headphones, Truong and Wea assaulted her. 2RP 134. Even if Truong never touched the headphones, she clearly acted as Wea's accomplice when she hit Redmon-Beckstead in order to prevent her from retrieving the headphones.

¹⁰ Truong claims that there was "no allegation or charge of accomplice liability" on count I. App. Br. at 8. Truong's claim is contradicted by the information, which clearly includes the language "together with others." CP 17. However, even without that language, accomplice liability need not be charged in the information. State v. McDonald, 138 Wn.2d 680, 688, 981 P.2d 443 (1999).

There is sufficient evidence to show that Truong robbed Redmon-Beckstead. Therefore, her conviction on count I should be affirmed.

b. Sufficient Evidence Supports Truong's Conviction Of Robbery In The Second Degree.

Truong also argues that there is insufficient evidence to support her conviction for second-degree robbery of Jason Decoste. Truong's claim fails, as the evidence shows that she aided in the robbery by assaulting Decoste before and after Wea took his cigarettes.

Mere presence is not sufficient to support a conviction under accomplice liability. State v. Roberts, 80 Wn. App. 342, 355-56, 908 P.2d 892 (1996). Instead, "aiding" in a crime includes "all assistance whether given by words, acts, encouragement, support, or presence. A person who is present at the scene and ready to assist by his ... presence is aiding in the commission of the crime." State v. Dove, 52 Wn. App. 81, 87, 757 P.2d 990 (1988).

Truong was not merely present while Wea robbed Decoste; rather, she actively assisted Wea in the robbery. Shortly after Truong and Wea robbed Redmon-Beckstead, Hill maneuvered

herself so that she was between Decoste and the door. Meanwhile, Truong and Wea positioned themselves behind him. By this point, both Decoste and Redmon-Beckstead had been assaulted multiple times and the situation was tense and intimidating. As Hill distracted the couple, both Truong and Wea reached into Decoste's pockets. Truong did not find anything in his jacket pocket, but Wea took Decoste's cigarettes from his pants pocket. After Wea took the cigarettes, she and Truong hit Decoste again.

The fact that Truong did not find anything in Decoste's jacket pocket does not mean that she was any less of a participant in the robbery. Truong's use of force prior to reaching in Decoste's pocket created an atmosphere of intimidation where he was unlikely to resist the taking, out of fear for his own safety and the safety of his pregnant girlfriend. Likewise, Truong's use of force afterward prevented Decoste from attempting to retrieve his property. 2RP 80.

Truong claims that the evidence does not show that she knew of Wea's plans to rob Decoste. Although there is no direct evidence that Wea and Truong discussed the robbery beforehand, the circumstantial evidence indicates that Truong knowingly aided Wea. Truong and Wea had just robbed Redmon-Beckstead; it is reasonable to infer that they would move on to Decoste. In addition, by going through Decoste's pockets at nearly the same time as Wea, Truong demonstrated knowledge of Wea's intentions. Finally, the surveillance video shows that Truong was standing in a position where she could see Wea take the cigarettes. Ex. 3, Camera 4 at 18:45:57. Indeed, Truong appears to notice Wea taking the cigarettes and even applauds and laughs a few seconds later. Ex. 3, Camera 4 at 18:45:59-18:46:25.

Viewing the evidence in the light most favorable to the State, there was sufficient evidence that Truong aided Wea in robbing Decoste. See Salinas, 119 Wn.2d at 201. Truong's conviction on count II should be affirmed.

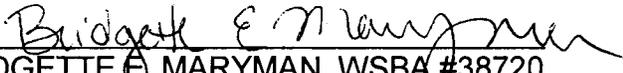
D. **CONCLUSION**

For all of the foregoing reasons, the State respectfully asks this Court to affirm Truong's convictions.

DATED this 19 day of December, 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 Nancy Collins, 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. SINDY TRUONG, Cause No. 67151-1-I, in the Court of Appeals, Division I, for the State of Washington.

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Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Lindsay Calkins, Rule 9, 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. SINDY TRUONG, Cause No. 67151-1-I, in the Court of Appeals, Division I, for the State of Washington.

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