

NO. 40703-5-II

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**COURT OF APPEALS, DIVISION II  
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

MATTHEW R. WHITE, APPELLANT

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Appeal from the Superior Court of Pierce County  
The Honorable Stephanie A. Arend

No. 09-1-03375-9

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**Respondent's Brief**

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Was sufficient evidence adduced at trial to support the jury's guilty verdict for unlawful imprisonment where witnesses testified that defendant was present while the assault and imprisonment of the victim were planned, and provided the clothesline used to tie the victim?

B. STATEMENT OF THE CASE.

1. Procedure

On July 17, 2009, the State charged defendant, Matthew White, with robbery in the first degree with a deadly weapon enhancement. CP 1-

2. The State amended the charges on September 17, 2009, to include additional counts of assault in the first degree with deadly weapon and gang enhancements, unlawful imprisonment, and taking a motor vehicle without permission in the second degree. CP 4-6. An enhancement for gang activity was also added to the robbery charge. CP 4-6.

Jury trial began before the Honorable Judge Stephanie Arend on March 3, 2010. RP 1.<sup>1</sup> On March 11, 2010, the jury found defendant guilty of robbery in the first degree, the lesser included offense of assault

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<sup>1</sup> For clarity, the State will refer to the transcript for March 2, 2010 as RP(03/02/2010), the consecutively numbered volumes for March 3, 2010 through March 11, 2010 as RP, and for the sentencing proceedings on March 26, 2010 as RP(3/26/2010), and the sentencing proceedings on April 23, 2010 as RP(4/23/2010) because the volumes are not consecutively numbered.

in the second degree, unlawful imprisonment, and taking a motor vehicle without permission. CP 113, 116-17, 120-21, RP 760-62. The jury also found that the crimes of assault in the second degree and robbery in the first degree were committed while the defendant or an accomplice was armed with a deadly weapon. CP 114, 118, RP 760-62. The jury left the both special verdict forms for the gang enhancements blank. CP 115, 119, RP 760-62.

On April 23, 2010, the court sentenced defendant to 63 months for robbery in the first degree. CP 130-43, RP(04/23/2010) 6. The sentence was within the standard range for defendant's offender score of 5. CP 128-29, RP(04/23/2010) 6. The judge added an additional 24 months to the sentence robbery sentence, to be served consecutively, for the deadly weapon enhancement. CP 144-53, RP(04/23/2010) 6. The judge also sentenced defendant to 19.5 months for unlawful imprisonment, and 38 months for taking a motor vehicle without permission. Both sentences are consistent with the standard range, and concurrent to the sentence for robbery. CP 130-43, RP(04/23/2010) 7.

Defendant timely appealed on May 12, 2010. CP 144-53.

## 2. Facts

On July 15, 2009, thirteen-year-old S.R.<sup>2</sup> had been living for a few months with the victim, her grandmother Linda Bergstrom, in Tacoma,

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<sup>2</sup> Because they are minors, the State will refer to the co-conspirators by their initials.

Washington. RP 51. In June of the same year, S.R. met seventeen-year-old P.D. after running away from her grandmother's house. RP 244-45. Without her grandmother's permission, S.R. allowed P.D. to live in a shed on Ms. Bergstrom's property on July 4, 2009. RP 52, 243, 246, 465. Shortly after P.D. moved into the shed, he invited defendant to live there as well. RP 242-43, 469. At no time did anyone have Ms. Bergstrom's permission to live in the shed on her property. RP 52. P.D. and defendant lived in the shed for about a week, and would come into the Ms. Bergstrom's house while she was away with S.R. RP 261. On the night of July 14, 2009, fifteen-year-old J.D. also stayed in the shed on Ms. Bergstrom's property. RP 371.

On July 15, 2009, S.R. and her friend, fourteen-year-old C.W., met with P.D., J.D. and defendant. RP 267-68, 314, 377. The group planned to steal Ms. Bergstrom's purse and car and then leave the state. RP 377. P.D., J.D., S.R. and defendant agreed that they would have to physically subdue Ms. Bergstrom in order to carry out their plan. RP 377-78. The group discussed physically restraining Ms. Bergstrom, deciding to tie her up with cords or anything they could find. RP 314, 377. Defendant and the rest of the group "agreed that if it came to it, that [they] would hack [the victim] and then tie her up, and just take the stuff then." RP 544.

At around 6:30 on July 15, 2009, Ms. Bergstrom, S.R.'s mother, and S.R. went to Wal-Mart. RP 55. They brought along C.W. as well. RP 55, 246. S.R. told Ms. Bergstrom that C.W. had to be home by 8:00, so they returned to the house around 7:30 pm. RP 56-7. Once home, S.R. signaled the rest of co-conspirators while they were hiding in the shed. RP 285. P.D. and J.D. snuck into the house, while defendant walked through the back yard. RP 57, 221, 287. Ms. Bergstrom saw defendant, and asked him who he was and why he was in her back yard. RP 62-63, 221. While talking to defendant, Ms. Bergstrom "saw a shadow of somebody moving in [her] other hallway." RP 63. She called out, "who else is in my house." RP 64. J.D. and P.D. both struck Ms. Bergstrom over the head and shoulders with kitchen pans. RP 67, 69, 222, 289, 385.

Once the victim had noticed J.D. and P.D., the two, each now armed with a pan, struck her over the head. RP 67. The two also struck the victim on the shoulders. RP 69. The victim tried to move away from the attackers, but they followed her down the hallway and into her bedroom. RP 69. Once the victim fell down from the beating, J.D. "started tying her up," using tape. RP 493, 506. Meanwhile, defendant "[ran] toward Ms. Bergstrom's room," and tossed J.D. a white cord which he had taken from the garage. RP 500-02.

While J.D. and P.D. beat her grandmother, S.R. and C.W. stayed in S.R.'s room. RP 292. After the Ms. Bergstrom was subdued, J.D. came to get S.R. and C.W. and all five co-conspirators, then loaded bags of stolen

property into Ms. Bergstrom's car. RP 292, 294. Once the car was loaded, they all got into the car, and defendant drove away. RP 294, 510. Ms. Bergstrom was able to free herself and go to a neighbor for help. RP 83-84. All five co-conspirators were arrested in Forks, Washington around 2:30 am the following day. RP 183, 337, 514.

C. ARGUMENT.

1. AMPLE EVIDENCE WAS ADDUCED AT TRIAL TO SUPPORT THE JURY'S GUILTY VERDICT FOR UNLAWFUL IMPRISONMENT.

In determining whether the evidence presented at trial was sufficient to support a guilty verdict, the question is whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt after viewing the evidence in the light most favorable to the State. *State v. Rangel-Reyes*, 119 Wn. App. 494, 499, 81 P.3d 157 (2003); *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). Any reasonable inferences from the evidence must be interpreted most strongly against defendant in favor of the State. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Challenging a verdict based on insufficiency of the evidence admits all evidence presented by the State and any reasonable inferences as true. *State v. Theroff*, 25 Wn. App. 590, 593, 608 P.2d 1254 (1980). Circumstantial evidence is no less reliable than direct evidence. *State v. Lubers*, 81 Wn. App 614, 619, 915 P.2d 1157 (1996). When there is a conflict in the evidence or testimony, it is in the

hands of the jury to determine which is credible. *Id.* (See also *State v. Young*, Wn.2d 613, 618, 574 P.2d 1171 (1978); *State v. Reynolds*, 51 Wn.2d 830, 833, 322 P.2d 356 (1958)). Determinations of credibility are not reviewable on appeal. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

The jury was instructed that to find defendant guilty of unlawful imprisonment they must find:

- (1) That on or about the 15<sup>th</sup> of July, 2009, the defendant or an accomplice restrained the movements of Linda Bergstrom in a manner that substantially interfered with her liberty;
- (2) That such restraint was accomplished by physical force;
- (3) That such restraint was without legal authority; and
- (4) That, with regard to (1),(2), and (3), the defendant or an accomplice acted knowingly; and
- (5) That these acts occurred in the State of Washington.

CP 75-112 (Jury Instruction 26).

A person acts with knowledge with respect to a fact, circumstance or result when he or she is aware of that fact, circumstance or result... If a person has information that would lead a reasonable person in the same situation to believe that a fact exists, the jury is permitted but not required to find that he or she acted with knowledge or that fact.

CP 75-112 (Jury Instruction no. 25).

Here, defendant acknowledges that Ms. Bergstrom was unlawfully imprisoned. Defendant's brief at 11. He challenges only the sufficiency of the evidence to prove that he was either a principal or an accomplice to the unlawful imprisonment. *Id.*

- a. Sufficient evidence was adduced at trial to support a finding that defendant acted as the principal.

The State presented sufficient evidence to prove defendant's guilt as a principal actor beyond a reasonable doubt. Taken in the light most favorable to the State, there was ample evidence adduced at trial that defendant not only planned the crimes with his co-conspirators, but also implemented the plan. Defendant was instrumental in the planning of the assault against the victim. RP 220, 268, 270, 280, 377, 392, 544. The defendant and his four co-conspirators planned to beat the victim, tie her up, rob her and then leave in her car. RP 220, 314, 377, 544. Defendant and P.D. "wanted to tie [the victim] up with cords, anything they could find." RP 314.

Defendant was present in the living room while the victim was being tied up in her bedroom. RP 292, 500-02. He ripped the phone cord out of the wall in an effort to prevent Ms. Bergstrom from calling for help. RP 293, 295. Further, defendant provided the clothes line, stolen from Ms. Bergstrom's garage, that J.D. used to tie Ms. Bergstrom. RP 500-502. In doing so, defendant provided the implement used to restrain the victim. By planning the crime, preventing the victim from calling for help, and providing the instrument used to tie the victim up, defendant was acting to unlawfully restrain the victim.

A reasonable person would know that providing the cord used to tie a person up would be acting to physically restrain that person. A reasonable person would also know that the victim's liberty would be further impeded by removing her ability to call for help.

Taken in the light most favorable to the State, the evidence is sufficient to support the jury's finding that defendant was guilty of unlawful imprisonment.

- b. Sufficient evidence was adduced at trial for the jury to find defendant guilty as an accomplice.

Even if this Court finds that there was insufficient evidence to support a jury's finding that defendant intended to restrain Ms. Bergstrom, the evidence was sufficient to support the jury's finding of guilt under the theory of accomplice liability. "A person is guilty of a crime if it is committed by the conduct of another person for which he or she is an accomplice of such other person in the commission of the crime." CP 75-112 (Jury Instruction 7).

A person is an accomplice in the commission of a crime if, with knowledge that it will promote or facilitate the commission of the crime, he, or she either:

- (1) Solicits, commands, encourages, or requests another person to commit the crime; or
- (2) Aids or agrees to aid such other person in planning or committing the crime.

CP 75-112 (Jury Instruction 7); *see also* RCW 9A.08.020(3). More than physical presence and knowledge of the criminal activity of another must be shown to establish a person is an accomplice. *In re Wilson*, 91 Wn.2d 487, 491, 588 P.2d 1161 (1979). Aid is defined as any assistance given by words, acts, encouragement, support or presence. *State v. Galista*, 63 Wn. App. 833, 839, 822 P.2d 303 (1992). “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.” *Id.*

An accomplice does not need to have the same state of mind as a principal nor have specific knowledge of every element of the crime. *State v. Larue*, 74 Wn. App. 757, 762, 875 P.2d 701 (1994); *State v. Berube*, 150 Wn.2d 498, 511, 79 P.3d 1144 (2003), *see also State v. Roberts*, 142 Wn.2d 471, 511, 14 P.3d 717 (2000). The accomplice need only know that his actions will encourage or promote the principal’s commission of the particular crime. *State v. Whitaker*, 133 Wn. App. 199, 230, 135 P.3d 923 (2006), *Berube*, 150 Wn.2d at 511.

Through his presence and participation in deciding with his co-conspirators that beating and tying up the victim was the manner in which they would steal her car and money, defendant knowingly aided in the planning of the crime. A reasonable person would know that helping to plan a crime would facilitate the commission of that crime.

Knowing that the plan was to “hack [the victim] and then tie her up,” defendant distracted the victim by approaching the back door and speaking with the victim while his co-conspirators snuck into the house. RP 61-63, 221, 382, 544. By distracting the victim, defendant was working to further the plot to restrain the victim.

These actions, in addition to those described in the section above, not only encouraged J.D. to continue with the crime, but also aided her in its commission by providing the tool used to commit it. The jury had ample evidence from which to find that defendant aided in the commission of the crime of unlawful imprisonment.

While defendant cites conflicting testimony in his brief, credibility determinations are left to the jury. *Lubers*, 81 Wn. App. at 619. The jury’s determination of credibility is not reviewable on appeal. *Camarillo*, 115 Wn.2d at 71. “It [is] the sole province of the jury to believe or disbelieve this testimony, and to draw its conclusions therefrom.” *Reynolds*, 51 Wn.2d at 834. There was sufficient evidence presented at trial from which the jury could find defendant guilty of aiding in the unlawful imprisonment of Ms. Bergstrom upon finding it credible.

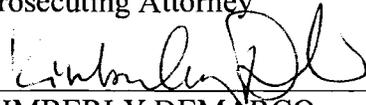
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D. CONCLUSION.

For the aforementioned reasons, the State respectfully requests that the defendant's convictions be affirmed.

DATED: May 16, 2011.

MARK LINDQUIST  
Pierce County  
Prosecuting Attorney

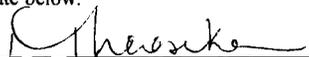
  
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Margo Martin  
Legal Intern

Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

5.16.11   
Date Signature