

No. 44347-3-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

ANGELA LEIGH BOHRER,

Appellant.

On Appeal from the Pierce County Superior Court
Cause No. 12-1-01071-6
The Honorable Rosanne Buckner, Judge

OPENING BRIEF OF APPELLANT

STEPHANIE C. CUNNINGHAM
Attorney for Appellant
WSBA No. 26436

4616 25th Avenue NE, No. 552
Seattle, Washington 98105
Phone (206) 526-5001

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I. ASSIGNMENTS OF ERROR

1. The State failed to present sufficient evidence to prove beyond a reasonable doubt that Angela Bohrer committed burglary.
2. The State failed to present sufficient evidence to prove beyond a reasonable doubt that Angela Bohrer acted as an accomplice to the commission of a burglary.
3. The trial court erred when it denied Angela Bohrer's motion to dismiss the unlawful possession of a stolen vehicle charge, because the State failed to present sufficient evidence to establish the elements of the crime.
4. The State failed to present sufficient evidence to prove beyond a reasonable doubt that Angela Bohrer unlawfully possessed a stolen vehicle.
5. The State failed to present sufficient evidence to prove beyond a reasonable doubt that Angela Bohrer acted as an accomplice to the unlawful possession of a stolen vehicle.

II. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR

1. Did the State present sufficient evidence to prove beyond a reasonable doubt that Angela Bohrer personally entered or remained unlawfully in the storage unit, or that she acted as

an accomplice to a person who entered or remained unlawfully in the storage unit, where the evidence at most established that Angela Bohrer was at the self-storage facility when the victims' storage unit was burglarized, and that she later possessed some of the items taken from that storage unit? (Assignments of Error 1 & 2)

2. Did the State present sufficient evidence to prove beyond a reasonable doubt that Angela Bohrer personally possessed the stolen motorized dirt bike, or that she acted as an accomplice to the person who unlawfully possessed the stolen motorized dirt bike, where the evidence at most established that Angela Bohrer was at the self-storage facility when the victims' storage unit was burglarized and that she later possessed some of the items taken from that storage unit, but where the motorized dirt bike was found in her boyfriend's storage unit? (Assignments of Error 3, 4 & 5)

III. STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

The State charged Angela Leigh Bohrer by Information with one count of second degree burglary (RCW 9A.52.030) and one count of unlawful possession of a stolen vehicle (RCW 9A.56.068,

.140). (CP 1-2) The trial court denied Bohrer's pretrial CrR 3.6 motion to suppress. (07/10/12 RP 68-73; CP 44-49)¹ Following two CrR 3.5 hearings, the trial court admitted some of Bohrer's custodial statements and suppressed others. (10/16/12 RP 80; RP4, 12; CP 149-51, 152-56)

At the close of the State's case, Bohrer moved to dismiss the possession of a stolen vehicle charge for lack of sufficient proof, but the trial court denied the motion. (RP7 428-33) The jury convicted Bohrer as charged. (RP8 497-98) The trial court imposed a sentence at the low end of Bohrer's standard range. (12/21/12 RP 27-28; CP 168, 171) This appeal timely follows. (CP 178)

B. SUBSTANTIVE FACTS

Brandi Ulrey owns a self-storage facility in Parkland, Washington, called A Storage Center. (RP5 221; RP6 278) The facility is secured by perimeter fencing and a locked gate. (RP5 222-23) Each tenant is given an individual pin code, which must be entered into a key pad in order to unlock the gate for entry and exit during regular business hours, 7:00AM to 8:00PM. (RP5 224) After hours access is allowed only with permission of the resident

¹ The consecutively numbered trial transcripts will be referred to by volume number. The remaining transcripts will be referred to by the date of the proceeding contained therein.

facility manager. (RP5 226; RP6 284-85) Each individual storage unit is secured with a tenant-supplied padlock. (RP5 226)

Angela Bohrer rented a storage unit on February 1, 2012. (RP 235) Bohrer's boyfriend, Daniel Ripley rented a nearby storage unit on the ground floor of the facility on March 1, 2012. (RP5 230, 234) Angela Bohrer was given permission by Ripley to access his unit. (RP5 234) But in mid-March, Bohrer asked to move to a unit farther away from Ripley, and asked that he not be given access to her unit. (RP6 287-88) On March 16th, Bohrer began moving her belongings to unit 358, on the second floor. (RP5 235; RP6 288)

In March of 2012, Latisha and Ivan Ahquin rented storage unit number 357, located upstairs. (RP4 123-24, 168, 169; RP5 227, 230) On March 12th, they moved most of their family's personal belongings into the unit, including a motorized dirt bike, an ATV recreational vehicle, tools, sports equipment, luggage, furniture, and other sports equipment and household items. (RP4 125-26, 169)

About a week later, they returned to the storage unit and discovered that their key did not fit the lock on the unit door. (RP4 127, 169-70) Upon closer inspection, they realized the lock on the

door was not the one they had originally used to secure the door. (RP4 127, 128, 170) They peered through a small hole in the door, and immediately saw that the ATV, which had been placed right in front of the door, was no longer in the unit. (RP4 128)

The Ahquins notified the manager, who used a grinder to cut off the lock and open their unit. (RP4 128-29, 171; RP6 280, 282) The Ahquins' unit appeared to have been ransacked, and many of their belongings were missing, including the motorized dirt bike and its accessories, and the ATV. (RP4 129, 130, 133-34, 171; RP5 272; RP6 282) The Ahquins called the police to report the break-in. (RP4 172; RP5 270-71) After the police left, the Ahquins, with help from Ulrey and the facility manager, reviewed surveillance video tape and gate pin codes from the prior week to see if they could identify any suspects. (RP4 135, 173; RP5 238-39; RP6 283)

They first noticed that Bohrer's pin number was used to enter and exit the facility on the same day the Ahquins moved into their unit. (RP 240-41) Bohrer's and Ripley's pin numbers were also used to enter and exit the storage facility several times on March 15th and 16th. (RP5 250-55) Bohrer's storage unit is also located next to the Ahquins' unit. (RP5 247)

On the surveillance video, a red Ford Explorer, towing a

trailer carrying the Ahquins' ATV, can be seen leaving the facility. (RP4 136, 173; RP6 285) The facility manager had in the past seen Bohrer and Ripley driving this car. (RP6 285) On another video, the Ahquins saw several of their personal belongings on a cart being pushed by Bohrer. (RP4 139, 174-75)

Ulrey escorted the Ahquins to Bohrer's and Ripley's units, and at each unit she allowed the Ahquins to climb a ladder to look over the wall and into the units. (RP4 139-41, 194-95; RP5 244, 246, 247) The Ahquins identified several of their personal belongings inside each of the units. (RP4 139-41, 194-95; RP5 244) They also noticed tire marks on the wall leading from the Ahquins' unit directly to Ripley's unit. (RP4 194; RP5 244-45)

Ulrey cut the locks on Bohrer's and Ripley's units so that the Ahquins could have a better look. (RP5 247) Among other things, the Ahquins were able to identify a motorized dirt bike, their sports equipment, tool box, athletic equipment, television, recently purchased school supplies, suitcase, fog machine, DVD player, and DVDs. (RP4 139-41, 145, 146, 148-49; 195) They called the police again and reported their discoveries, and the police obtained and executed a search warrant for the two storage units. (RP7 351, 357-61, 388-89) Police also obtained a search warrant for the

red Ford Explorer. (RP7 351, 362) The Ahquins identified many of their personal items in the Explorer. (RP7 362-63, 367-68, 373) Inside the Explorer, police also found a wallet containing Bohrer's identification card, and paperwork listing both Bohrer's and Ripley's names and a shared address. (RP7 365-66, 372) The Explorer is also registered to both Bohrer and Ripley. (RP7 372)

Pierce County Sheriff's Deputy Seth Huber contacted Bohrer and Ripley at the storage facility on March 24th. (RP6 325-26) The red Ford Explorer was parked nearby. (RP6 327) According to Deputy Huber, Bohrer was upset and crying, and denied any involvement. (RP6 336-37) She told the Deputy that she was there moving items out of her unit. (RP6 330-31) When asked if she knew about Ripley's possible involvement, she told the Deputy, "whatever Daniel does on his own is up to him." (RP6 330)

IV. ARGUMENT & AUTHORITIES

The State charged Bohrer with burglary and unlawful possession of a stolen vehicle, and the trial court instructed the jury that it could convict Bohrer as either the principal or as an accomplice. (CP 1-2, 83, 84, 89, 90, 97)

"Due process requires that the State provide sufficient evidence to prove each element of its criminal case beyond a

reasonable doubt.” City of Tacoma v. Luvene, 118 Wn.2d 826, 849, 827 P.2d 1374 (1992) (citing In re Winship, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970)). Evidence is sufficient to support a conviction only if, viewed in the light most favorable to the prosecution, 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 inferences that reasonably can be drawn therefrom.” Salinas, 119 Wn.2d at 201.

The reviewing court should reverse a conviction and dismiss the prosecution for insufficient evidence where no rational trier of fact could find that all elements of the crime were proven beyond a reasonable doubt. State v. Hickman, 135 Wn.2d 97, 103, 954 P.2d 900 (1988); State v. Hardesty, 129 Wn.2d 303, 309, 915 P.2d 1080 (1996).

To convict a defendant as an accomplice, the State must prove that the defendant, “with knowledge that it will promote or facilitate the commission of the crime,” solicited, commanded, encouraged, or requested another person to commit the crime, or aided or agreed to aid another person in planning or committing the

crime. RCW 9A.08.020(3)(a). Physical presence and awareness of the criminal activity alone are insufficient to establish accomplice liability. In re Wilson, 91 Wn.2d 487, 491, 588 P.2d 1161 (1979); State v. Rotunno, 95 Wn.2d 931, 933, 631 P.2d 951 (1981). Rather, to aid in the commission of the crime the defendant must, in some way, associate herself with the undertaking, participate in it as something she desires to bring about, and seek by her action to make it succeed. State v. J-R Distributions, 82 Wn.2d 584, 593, 512 P.2d 1049 (1973).

In this case, the State failed to present sufficient evidence to prove that Bohrer committed burglary and possession of a stolen vehicle, either as a principal or an accomplice.

A. BURGLARY

“A person is guilty of burglary in the second degree if, with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a building other than a vehicle or a dwelling.” RCW 9A.52.030(1). In this case, the State had no proof that Bohrer personally entered the Ahquins’ storage unit. There is no surveillance video showing anyone entering the storage unit, and no fingerprints were located in the unit that would have placed Bohrer inside the unit at any time.

Instead, Bohrer was seen on the surveillance video in possession of items the Ahquins claimed belonged to them, and some of the Ahquins' property was later found in Bohrer's storage unit. (RP4 140-41, 174-75; RP7 392-99) But, this evidence does not establish that Bohrer herself entered or remained unlawfully. And proof that a defendant possesses recently stolen property is insufficient, without corroborating evidence, to support a burglary conviction. State v. Mace, 97 Wn.2d 840, 843, 650 P.2d 217 (1982).

The evidence also does not establish that Bohrer acted as an accomplice to Ripley's entry into the Ahquins' storage unit. The evidence showed that Bohrer's pin number was used to enter the storage facility in the days after the Ahquins' moved their belongings into their unit, and that Ripley's pin number was also used during the same time period. (RP5 240-41, 250-55) While this evidence indicates that Bohrer could have been present at the facility when the Ahquins' unit was burglarized, it does not support the conclusion that Bohrer aided or agreed to aid in the burglary. This is because mere presence at the commission of a crime does not make a bystander an accomplice; presence without intent to encourage or assist in the crime does not make a person an

accomplice. See Wilson, 91 Wn.2d at 492; Rotunno, 95 Wn.2d at 933 (an individual's presence at the scene of a crime, even coupled with knowledge that one's presence would aid in the commission of the crime, will not subject an accused to accomplice liability unless it is established that one is "ready to assist" in the commission of the crime").

The State's evidence showed that the red Ford Explorer, which Bohrer and Ripley shared, towed the Ahquins' ATV out of the storage facility. (RP4 136, 173; RP7 372) But there is no evidence that Bohrer helped load the ATV onto the trailer, or that she was in the Explorer when it left the facility. And Ripley's pin number was used when the Explorer exited the facility with the ATV. (07/10/12 21-22; RP5 250-51; RP8 446-47)

The State also established that Bohrer had some of the Ahquins' possessions in her storage unit. (RP4 174-75; RP7 392-99) But once again, these facts do not prove that Bohrer personally assisted, aided, agreed to aid, or encouraged the taking of property from inside the Ahquins' storage unit. It simply shows that, at most, Bohrer was an accomplice to the continued possession of some of the stolen property.

The fact that Bohrer is seen on one of the surveillance

videos pushing a cart carrying some of the Ahquins' belongings also does not prove that Bohrer was involved with the actual burglary. The video shows Bohrer possessing some of the Ahquins' property after the burglary was completed, and after the items had already been taken downstairs to Ripley's storage unit, because Bohrer is seen taking the cart *upstairs* to her unit, not *downstairs* from the Ahquins' unit. (RP5 268)

The State's evidence amounts to nothing more than presence at the facility and after-the-fact possession. But it is well established that these facts alone cannot support a conviction as a principal or an accomplice to the crime of burglary. There is no evidence to establish that Bohrer entered the Ahquins' unit or was present when the unit was unlawfully entered. And there is insufficient evidence to prove that Bohrer encouraged, aided or agreed to aid in the burglary of the Ahquins' unit. Bohrer's burglary conviction should be dismissed.

B. UNLAWFUL POSSESSION OF A STOLEN VEHICLE

The State alleged that Bohrer possessed, or was an accomplice to the possession of the stolen motorized dirt bike found in Ripley's storage unit. (RP7 359, 423-24) A person is guilty of possessing a stolen vehicle if they knowingly "receive,

retain, possess, conceal, or dispose of stolen property knowing that it has been stolen and . . . withhold or appropriate the same to the use of any person other than the true owner or person entitled thereto.” RCW 9A.56.140(1); RCW 9A.56.068(1).

The motorbike was found in the unit rented by Ripley. (RP7 357) Although Bohrer had initially been given permission to access the unit, it was rented in Ripley’s name. (RP5 234) Bohrer also had her own storage unit located near Ripley’s, but on March 16th she revoked his permission to access her unit, and moved into a new upstairs unit by herself. (RP5 235; RP6 287-88) Accordingly, the State’s evidence does not establish that Bohrer had equal access to Ripley’s unit, or that she equally possessed the items in that unit.

Furthermore, just as with the burglary charge, the State presented no evidence that Bohrer aided or assisted in the removal of the motorized dirt bike from the Ahquins’ storage unit or its eventual placement in Ripley’s storage unit. The State also presented no evidence that Bohrer *knew* that specific item had been removed from the Ahquins’ storage unit and placed into Ripley’s storage unit.

The State failed to present sufficient facts to prove that

Bohrer, either personally or as an accomplice, retained, possessed, or concealed the motorized dirt bike. Bohrer's unlawful possession of a stolen vehicle conviction must also be reversed.

V. CONCLUSION

The State's evidence amounts to, at most, proof of Bohrer's presence at the facility and after-the-fact possession of stolen property. While these facts may be sufficient to prove that Bohrer committed some sort of criminal offense, it is not sufficient to prove that she committed burglary and possession of a stolen vehicle, the specific crimes charged in this case. There is simply no evidence from which a rational trier of fact could have found, beyond a reasonable doubt, that Bohrer committed the crimes of burglary and possession of a stolen vehicle. Bohrer's convictions must therefore be reversed.

DATED: June 21, 2013



STEPHANIE C. CUNNINGHAM

WSB #26436

Attorney for Angela Leigh Bohrer

CERTIFICATE OF MAILING

I certify that on 06/21/2013, I caused to be placed in the mails of the United States, first class postage pre-paid, a copy of this document addressed to Angela L. Bohrer, DOC# 765869, Mission Creek Corrections Center for Women, 3420 NE Sand Hill Road, Belfair, WA 98528.

Stephanie Cunningham

STEPHANIE C. CUNNINGHAM, WSBA #26436

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