

FILED

APR 27 2011

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By: _____

29435-8-III

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

KATIE WAITE,

Appellant.

DIRECT APPEAL
FROM THE SUPERIOR COURT
OF WALLA WALLA COUNTY

RESPONDENT'S BRIEF

Respectfully submitted:



by: Teresa Chen, WSBA 31762
Deputy Prosecuting Attorney

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TABLE OF CONTENTS

	Page No.
I. <u>IDENTITY OF RESPONDENT</u>	1
II. <u>RELIEF REQUESTED</u>	1
III. <u>ISSUES</u>	1
IV. <u>STATEMENT OF THE CASE</u>	1
V. <u>ARGUMENT</u>	3
A. <u>There Is Sufficient Factual Basis For The Offense Of Second Degree Robbery</u>	3
B. <u>The Sentencing Court Did Not Err In Ordering The Defendant Not To Use Alcohol</u>	6
VI. <u>CONCLUSION</u>	7

TABLE OF AUTHORITIES

State Cases

Page No.

In re Crabtree, 141 Wn.2d 577, 9 P.3d 814 (2000) 3

State v. Cronin, 142 Wn.2d 568, 14 P.3d 752 (2000) 4, 5

State v. Jones, 118 Wn. App. 199, 76 P.3d 258 (2003) 6, 7

Statutes and Rules

	Page No.
CrR 4.2	3
RCW 9.94A.703.....	6, 7
RCW 9A.08.020.....	3, 4, 5, 6
RCW 9A.56.190.....	3, 5
RCW 9A.56.210.....	3, 5

I. IDENTITY OF RESPONDENT

The State of Washington, represented by the Walla Walla County Prosecutor, is the Respondent herein.

II. RELIEF REQUESTED

Respondent asserts no error occurred in the conviction of the Appellant.

III. ISSUES

1. Is there sufficient factual basis for guilty plea to Robbery in the Second Degree?
2. Did the sentencing court err in prohibiting the defendant from consuming alcohol?

IV. STATEMENT OF THE CASE

The Defendant Katie Waite was charged by amended information with Robbery in the Second Degree, Possession of Methamphetamine, and Use of Drug Paraphernalia. CP 10-12. She pled guilty to each count. CP 13-24.

When the court asked her to describe her offenses, Ms. Waite did not describe them, but made an Alford Plea. CP 20, RP 2. In her written plea

statement, Ms. Waite indicated that the court could “review the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea.” CP 20.

The Certificate of Probable Cause states the following: Ms. Waite and her boyfriend John Owen went to a new acquaintance’s home. CP 4. Ms. Waite went to use the restroom and when she did not return, the host Bruce Williams left Mr. Owen in the living room and went to check on Ms. Waite. CP 4-5. Realizing he had left his wallet in the living room, Mr. Williams returned to the living room alone and discovered Mr. Owen holding Mr. William’s wallet. CP 5. Mr. Williams tried to retrieve his wallet, but Mr. Owen actively prevented this. CP 5. Ms. Waite returned to the room and “distracted” Mr. Williams by threatening to accuse him of sexual offenses. CP 5. While she distracted Mr. Williams in this way, Mr. Owen grabbed Mr. William’s laptop and then brandished a knife, threatening Mr. Williams. CP 5. Ms. Waite and Mr. Owen then ran from the home with the laptop and escaped in a purple Chrysler. CP 4-5. Police stopped the vehicle with the two occupants and found the laptop inside under a seat. CP 5. Police also discovered methamphetamine, syringes, a spoon, cotton balls, baggies, and wipes in a bag containing Ms. Waite’s ID and a letter addressed to her. CP 5-6. The arresting officer’s preliminary statement states the same

thing. CP 1-3.

Ms. Waite was sentenced to 300 days and 12 months community custody. CP 31. Among the conditions of Ms. Waite's sentence is a prohibition against her use, possession, or sale of "any unlawful controlled substances or alcohol." CP 34.

V. ARGUMENT

A. THERE IS SUFFICIENT FACTUAL BASIS FOR THE OFFENSE OF SECOND DEGREE ROBBERY.

The Defendant challenges the sufficiency of the factual basis for her plea to Robbery in the Second Degree.

Before a trial court may accept a guilty plea, it must first determine that there is a factual basis for the plea. CrR 4.2(d); *In re Crabtree*, 141 Wn.2d 577, 585, 9 P.3d 814 (2000).

A person is guilty of robbery in the second degree if he or she takes personal property from another in the victim's presence and against the victim's will by the use or threatened use of immediate force, violence, or fear of injury to person or property. RCW 9A.56.190, RCW 9A.56.210. One is legally accountable for the acts of an accomplice. RCW 9A.08.020(2)(c). A person has accomplice liability when he or she solicits, commands, encourages, or requests the crime or when he or she aids or agrees to aid in

the planning or commission of the crime. RCW 9A.08.020(3).

The police reports establish that Ms. Waite both aided and encouraged the crime in numerous ways. She distracted the victim first by having him escort her to the restroom and away from the living room where her accomplice began taking the victim's property. Then, when Mr. Williams confronted Mr. Owen and attempted to recover his property, Ms. Waite distracted the victim a second time, this time by making outrageous and unsubstantiated threats. In so doing, she encouraged Mr. Owen to maintain control over the stolen property. While Mr. Williams was distracted, Mr. Owen took Mr. Williams' laptop. Finally, with Mr. Owen threatening Mr. Williams with a knife, Ms. Waite escaped together with her accomplice and the stolen property in a common vehicle.

The Defendant complains that her accomplice liability is not explicit in the plea. Appellant's Opening Brief at 7 (noting that Waite was not charged with complicity, did not specifically plead guilty to complicity, and that the court made no specific finding of complicity). However, the Defendant acknowledges that accomplice liability does not need to be charged in the information. Appellant's Opening Brief at 9, *citing State v. Cronin*, 142 Wn.2d 568, 579-80, 14 P.3d 752 (2000) and *State v. Davenport*, 100 Wn.2d 757, 764-65, 65 P.2d 1213 (1984). This is because complicity is

not an element of the crime. RCW 9A.56.190, RCW 9A.56.210. It is a type of liability. RCW 9A.08.020.

The Defendant argues that “accomplice liability is an essential element that must be proven where necessary for conviction.” Appellant’s Opening Brief at 8, n.2, citing *State v. Cronin*, 142 Wn.2d 568, 579-80, 14 P.3d 752 (2000). This is an inaccurate reading of *Cronin*. That case discusses what *knowledge* an accomplice must have. In a gang confrontation, the court discussed whether each gang member must know he was facilitating “any crime” versus a specific crime. The case holds that an accomplice must have knowledge of the *specific* crime committed.

In this case, Ms. Waite was present while her accomplice robbed and threatened the victim. Entering the room mid-robbery, she actively assisted while Mr. Owen maintained control over Mr. Williams’ wallet and took control over the laptop. As she assisted, Ms. Waite was aware of the specific property taken and that it was taken by force and without lawful right. The facts here satisfy *Cronin*.

Because there is no requirement that accomplice liability be charged in the information, it is incorrect to state that the Defendant “was charged and convicted as a principal.” Appellant’s Opening Brief at 7. Ms. Waite was charged and convicted of robbery. She is liable whether she committed the

acts herself or merely aided and abetted the acts. RCW 9A.08.020(3).

Based on the police reports admitted in the plea, there is sufficient factual basis for Ms. Waite's conviction of Robbery in the Second Degree.

B. THE SENTENCING COURT DID NOT ERR IN ORDERING THE DEFENDANT NOT TO USE, POSSESS, OR SELL ALCOHOL.

The Defendant challenges the sentencing prohibition against alcohol, arguing that it is not crime-related.¹

Under RCW 9.94A.703(3)(c) and (f), the court may order an offender to participate in crime-related treatment or counseling and to comply with any crime-related prohibition. However, under a separate provision, RCW 9.94A.703(3)(e), the legislature has given the court the authority to order *any* offender, just by dint of her being under community custody, to refrain from consuming alcohol. There is no requirement that this condition be "crime-related."

In *State v. Jones*, 118 Wn. App. 199, 76 P.3d 258 (2003), the defendant Jones pled guilty to burglary and other crimes, admitting that he was bipolar and using methamphetamine at the time of his offenses. *State v.*

¹ The heading in the Appellant's Brief referencing a prohibition against internet use and an order of restitution do not appear to be related to the instant case.

Jones, 118 Wn. App. at 202. There was no evidence that alcohol contributed to the crime. *Id.* The court of appeals held that a trial court “had authority to order Jones not to consume alcohol, despite the lack of evidence that alcohol had contributed to his offenses.” *State v. Jones*, 118 Wn. App. at 207. This is because the statute expressly permits it. RCW 9.94A.703(3)(e) (“As part of any term of community custody, the court may order an offender to refrain from consuming alcohol”).

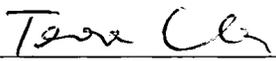
Under the statute and under the case, a sentencing court has the authority to prohibit anyone convicted of a felony (and requiring community custody) to abstain from alcohol. The sentencing court did not err in ordering the Defendant not to consume alcohol.

VI. CONCLUSION

Based upon the forgoing, the State respectfully requests this Court affirm the Appellant’s conviction.

DATED: April 25, 2011.

Respectfully submitted:



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