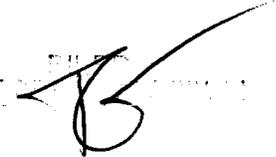


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 COURT OF APPEALS OF THE STATE OF WASHINGTON  
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NO. 64573-1-1

COURT OF APPEALS OF THE STATE OF WASHINGTON  
 DIVISION I

STATE OF WASHINGTON,  
 Respondent,  
 v.  
 ANTAURUS WILSON,  
 Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY  
 THE HONORABLE MICHAEL HEAVEY

**BRIEF OF RESPONDENT**

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**A. ISSUES PRESENTED**

1. Viewing the evidence in the light most favorable to the State, is testimony from a witness who confronted the defendant as he helped load a car with items stolen from the victim's house, admitted to loading the items in the get-away vehicle and then drove the car away from the scene when confronted by the witness and had some of the victim's property in his pocket when he was arrested, sufficient to support Wilson's residential burglary conviction under a theory of accomplice liability?

2. Was the State's use of the accomplice liability instruction permissible when the instruction accurately stated the law, permitted each side to argue its theory of the case and was not misleading?

**B. STATEMENT OF THE CASE**

**1. PROCEDURAL FACTS**

The State charged Appellant Antaurus Wilson, and his co-defendants Dominique Henry and Jessica Stanifer, with Residential Burglary. CP 1. After a jury trial, the jury found Wilson guilty as charged and sentenced him to 14 months in Department of Corrections custody. CP 34.

## 2. SUBSTANTIVE FACTS

In the early morning hours of September 27, 2008, Wilson and his co-defendants were seen removing a television, laptop computers and other items from the residence of Mr. Nathan Madins by witness and neighbor Mr. Lloyd Bondy in Maple Valley, Washington. 10/26/09 RP 50-51<sup>1</sup>. Wilson and his friend Dominique Henry, had driven with Ms. Jennifer Stanifer to the victim's address at approximately 1:00 a.m. in the morning. 10/26/09 RP 9, 50. Mr. Bondy called 911 when he noticed the individuals loading objects into the car. 10/21/09 RP 27. The objects that were loaded turned out to be a 46-inch flat-screen television that was later recovered from Mr. Wilson's car. 10/21/09 RP 97-99. Mr. Bondy had a short discussion with Mr. Wilson as they waited for police to arrive. *Id.* at 41. Mr. Bondy attempted to block Mr. Wilson and the co-defendants' escape with his own car and again directed his wife to call 911. *Id.* at 36-37. However, Mr. Wilson was able to drive past Mr. Bondy's blockade by driving

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<sup>1</sup> The verbatim report of proceedings consists of nine volumes of transcripts from October 8, 2009, through December 17, 2009. The proceedings will be referred to herein as follows: "10/08/09 RP \_\_\_." References to the file will be referred to as "CP \_\_\_."

down a one-way road and through a park to get away from the scene. 10/26/09 RP 50-51.

Upon arrival of Maple Valley Police, the officers interviewed Mr. Bondy while other officers searched for Mr. Wilson and the co-defendants. 10/26/09 RP 27.

Later, while driving around the neighborhood with the Maple Valley Officers, Mr. Bondy helped identify a nearby house with the garage door and laundry doors ajar. 10/21/09 RP 49. The officers woke up the victim Nathan Madins, telling him that his home had been burglarized while he was sleeping. 10/21/09 RP 97-99. Police then brought the two neighbors to a nearby roadside location where they had stopped Wilson's car and conducted a show-up identification. 10/21/09 RP 50, 101-03. Mr. Madins identified his property while Mr. Bondy identified Mr. Wilson as the driver whose car he had blocked and who he had spoken to earlier. *Id.* Search incident to arrest revealed that Mr. Wilson was carrying the victim's watch and cellular phone. 10/26/09 RP 51.

Later it was determined that five fingerprints lifted off the stolen television matched Mr. Wilson's. 10/26/09 RP 51.

Following a jury trial before the Honorable Michael Heavey, Mr. Wilson was convicted of residential burglary. CP 34. He timely appeals. CP 60-70.

**C. ARGUMENT**

**1. THERE WAS SUFFICIENT EVIDENCE IN THE RECORD TO SUPPORT WILSON'S BURGLARY CONVICTION.**

Wilson argues that there is insufficient evidence in the record to sustain his residential burglary conviction because the State did not prove beyond a reasonable doubt that he acted as an accomplice. According to Wilson, the State specifically failed to show that he intended to enter the Madins' home or that he knowingly aided in the commission of the burglary. Wilson's argument fails on both counts. Because there is substantial evidence in the record that establishes that Wilson intended to burglarize Mr. Madins' home, assisted the co-defendants by helping to load the television in Wilson's vehicle, escaped the scene after being confronted by Mr. Bondy, and possessed some of the stolen items in his pocket at the time of his arrest, Wilson's argument fails on all counts.

a. Standard Of Review.

A person is guilty of residential burglary if s/he enters and remains unlawfully in the dwelling of another with the intent to commit a crime against a person or property therein. RCW 9A.52.025. A person may be found guilty of a crime as either a principal or accomplice. To be held criminally liable as an accomplice, a person, with knowledge that it will promote or facilitate the commission of the crime, must (1) solicit, command, encourage or request that another commit a crime, or (2) aid or agree to aid such person in planning or committing a crime. RCW 9A.08.020(3)(a). Mere presence at the scene of a crime, or knowledge that a crime is being committed, is insufficient alone to prove accomplice liability. See e.g., *In re Welfare of Wilson*, 91 Wn.2d 487, 491, 588 P.2d 1161 (1979). Rather, the State must prove that the person present at the scene of an ongoing crime was “ready to assist” or participated in the undertaking in some way. *Id.* (quoting *State v. Aiken*, 72 Wn.2d 306, 349, 434 P.2d 10 (1967)).

At trial, 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. Furthermore, 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.

b. Substantial Evidence In The Record Supports Wilson’s Residential Burglary Conviction.

In the instant case, Wilson admitted to assisting his friends, in moving some objects from Mr. Madins’ house that night, Mr. Wilson’s fingerprints were found on one of those items – the television set belonging to Mr. Madins, and he was the get-away driver, Wilson still maintains that he cannot be found guilty as an accomplice because “there was no physical evidence to support the

conclusion that Mr. Wilson had entered into the Madins' home." App. Br. at 9. Wilson's argument misses the mark by narrowly construing the type of behavior that constitutes accomplice liability and overlooks the required standard of review.

Washington law has long recognized that a person may be criminally liable as an accomplice by participating in the crime or by being "ready to assist" at the scene of the crime. *E.g., Wilson*, 91 Wn.2d at 491. Here, Mr. Bondy's testimony establishes that Wilson was more than "ready to assist" his accomplices in stealing from Mr. Madins. Indeed, Wilson *assisted* his co-defendants by actively helping to move Mr. Madins' television into Mr. Wilson's car and drive away from the scene through a park and down a one-way street before being apprehended. 10/26/09 RP 50-51. Wilson himself admitted to helping move the TV and his fingerprints were found in at least five different places on the television. *Id.* The fact that Wilson disagrees about his role as an accomplice to the residential burglary does not change the standard of review requiring this Court to view the evidence in the light most favorable to the State and defer to the trier of fact on issues of conflicting testimony, witness credibility and persuasiveness of the evidence. *Fiser*, 99 Wn. App. at 719.

Wilson attempts to discount the weight of the physical evidence of the crime when he: helped move a TV from the victim's house into his own car; was the get-away driver; and, there was property from the victim found on his person, fail for obvious reasons. This Court should defer to the jury's finding on the persuasiveness of the evidence and affirm Wilson's conviction based on the substantial evidence in the record that Wilson readily assisted the co-defendants in burglarizing Madins' residence. *Fiser*, 99 Wn. App. at 719.

**2. THE ACCOMPLICE LIABILITY INSTRUCTION WAS NOT ERRONEOUS AND DID NOT DEPRIVE WILSON OF A FAIR TRIAL.**

Wilson argues that in order to prove that he was an accomplice to a residential burglary, the State had to show he possessed knowledge he was aiding in the commission of this particular crime. App. Br. at 13. This lacks merit because Wilson's argument has previously been rejected by this Court.

The trial court accurately instructed the jury on the essential requirements of accomplice liability. The State is required to prove to a jury every essential element of a crime charged beyond a reasonable doubt. *State v. Cronin*, 142 Wn.2d 568, 580, 14 P.3d

752 (2000) (citing inter alia *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068 (1970)). This derives from the guarantees of due process of law contained in article 1, section 3 and 22 of the Washington Constitution and the 14<sup>th</sup> Amendment of the federal constitution. *Sandstrom v. Montana*, 442 U.S. 510, 520, 99 S. Ct. 2450 (1979); *State v. Acosta*, 101 Wn.2d 612, 615, 683 P.2d 1069 (1984).

Criminal jury instructions are adequate if they accurately state the law, permit each side to argue its theory of the case, and are not misleading. *State v. Clark*, 143 Wn.2d 731, 24 P.3d 1006, cert. denied, 534 U.S. 1000, 122 S. Ct. 475, 151 L. Ed. 2d 389 (2001). Washington's accomplice liability statute permits the jury to convict a defendant as an accomplice to the principal crime only when the defendant knew that he or she was promoting or facilitating "the crime." RCW 9A.08.020; *State v. Cronin*, 142 Wn.2d 568, 579, 14 P.3d 752 (2000); *State v. Roberts*, 142 Wn.2d 471, 510, 14 P.3d 713 (2000). *Cronin* and *Roberts* held that it is error to instruct the jury that it can convict a defendant as an accomplice if the defendant knew his actions would promote or facilitate the commission of "a crime," because such an instruction could lead the jury to believe that it could convict a defendant who

unknowingly facilitated the crime charged as long as the defendant knew some crime was going to occur. But in reaching this decision, the Supreme Court reaffirmed its holding in *State v. Davis*, 101 Wn.2d 654, 656, 682 P.2d 883 (1984), which approved of an instruction that mirrored the language of the accomplice liability statute. *Roberts*, 142 Wn.2d at 512, 14 P.3d 713.

A trial court need not reference the charged crime in an accomplice liability instruction; *it is sufficient to instruct the jury with language from the accomplice liability statute.* *State v. Mullin-Coston*, 115 Wn. App. 679, 691-92, 64 P.3d 40 (2003), *aff'd on other grounds*, 152 Wn.2d 107, 95 P.3d 321 (2004). (Emphasis added.)

Wilson argues that the lack of additional information regarding the exact crime charged in his accomplice liability instruction is error. Wilson's argument is identical to the one rejected in *State v. Mullin-Coston*, 115 Wn. App. 679, 64 P.3d, 40 (2003).

*Mullin-Coston* is controlling and eviscerates Wilson's argument that the accomplice liability instruction in Jury Instruction 13 was deficient. CP 82 (Jury Instruction 13); *Mullin-Coston*, 115 Wn. App., 679, 64 P.3d 40 (2003). This Court

in *Mullin-Coston* held that the accomplice liability instruction was legally accurate and not misleading. *Id.* The court stated the additional language requested by defense to be added to the accomplice liability instruction related to the exact crime charged was “neither necessary nor preferable to an instruction that mirrors the statute.” *Id.* at 692. The *Mullin-Coston* court disagrees. In fact, the *Mullin-Coston* court specifically stated that the additional language is *neither necessary nor preferable* and as such, Wilson’s argument lacks merit. *Mullin-Coston*, at 692; App. Br. at 14. (Emphasis added.)

Thus, Wilson’s argument that “the jury instruction here failed to inform the jury that accomplice liability required knowingly aiding in a residential burglary,” fails because the court has already rejected this argument in the *Mullin-Coston* decision. *Id.* Here, the trial court gave an accomplice liability instruction identical to the one cited with approval in *Mullin-Coston*. Therefore, Wilson’s argument should be rejected because the jury was properly instructed as to accomplice liability. Wilson’s conviction should be affirmed.

**D. CONCLUSION**

For the foregoing reasons, the State requests that Wilson's residential burglary conviction be affirmed. The jury properly found Wilson guilty of residential burglary. Viewing the evidence in the light most favorable to the State, the Court should affirm Wilson's conviction based on the substantial evidence in the record that Wilson acted as an accomplice to the residential burglary by helping steal the television, acting as get-away driver and having the victim's property on him when he was arrested. Additionally, the trial court properly instructed the jury on accomplice liability and thus, Wilson's conviction should be affirmed.

DATED this 13 day of October, 2010.

Respectfully submitted,

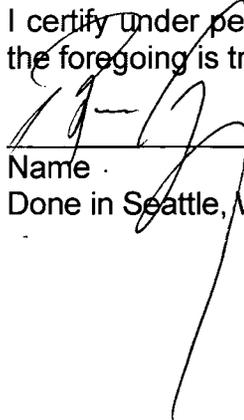
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Jan Trasen, 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. ANTAURUS WILSON, Cause No. 64573-1-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 .

Done in Seattle, Washington

10-13-10  
Date