

FILED
May 25, 2016
Court of Appeals
Division I
State of Washington

NO. 73842-9-I

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

JIMMY JAMES THOMPSON,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE HELEN L. HALPERT

BRIEF OF RESPONDENT

DANIEL T. SATTERBERG
King County Prosecuting Attorney

DANIEL J. CAREW
Deputy Prosecuting Attorney
Attorneys for Respondent

King County Prosecuting Attorney
Norm Maleng Regional Justice Center
401 Fourth Avenue North
Kent, Washington 98032-4429

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A. ISSUES PRESENTED

1. Viewing the evidence in the light most favorable to the State, was there sufficient evidence such that a rational trier of fact could have found guilt beyond a reasonable doubt?

2. Given the lack of information about future ability to pay in the record, should the Court order that no costs be awarded on appeal?

B. STATEMENT OF THE CASE

At around 5:15 a.m. on March 6, 2015, Kennan Southworth was working for Pride Electric at a job site at 4300 Roosevelt Way in Seattle. 7/21/15 RP 15. He was driving a white Ford F350 service van with a blue stripe down the side with "Pride Electric" written in large lettering. 7/21/15 RP 17. After arriving at the job site, he locked the van and walked into the work site with his keys in his pocket. 7/21/15 RP 22-23. When he returned to his van just a few minutes later, he discovered that his van was missing and immediately called 911 at 5:19 a.m. 7/21/15 RP 25-26.

Seattle Police Officers Gingrey and Hoppers were working together as a two-man unit that morning. At the time of Southworth's call, they were parked at the Hotel Deca at 4507

Brooklyn Avenue NE, less than half a mile away from the location of the theft. 7/21/15 RP 62. They were dispatched to the call at 5:21 a.m. and almost immediately located the stolen van in a private parking lot on the north side of NE 42nd Street. 7/21/15 RP 105-06. They observed two men standing next to the van, one on the driver's side and the other on the passenger side. The male on the driver's side was later identified as Jimmy Thompson. When the two males saw the police, they immediately turned and fled on foot over a short fence. Officer Hoppers exited the vehicle yelling, "Stop! Police!" but the men continued to run. 7/21/15 RP 106-08.

Officer Hoppers pursued Thompson on foot while Officer Gingrey remained in the patrol car. While chasing Thompson, Officer Hoppers watched him run and observed him jumping over numerous fences into various properties. 7/21/15 RP 112-16. After a lengthy pursuit, Officer Hoppers arrested Thompson in a parking lot at around 5:25 a.m. At the time of his arrest, Thompson appeared to be having difficulty breathing and was taken to Harborview for treatment. 7/21/15 RP 121-22.

Once Thompson was in custody, the officers went back to the location of the stolen van. 7/21/15 RP 122. Upon arriving, they saw that the van was still running even though there was no key in

the ignition. The driver's side door lock had been pried open and the ignition had been punched. The back sliding door of the van was open and equipment belonging to Pride Electric lying on the ground next to the van. 7/21/15 RP 82. While processing the scene, the officers also noted an unoccupied Honda parked next to the van that also had its engine running. When Southworth arrived, he looked inside the Honda and was able to identify property belonging to Pride Electric on the front seat. 7/21/15 RP 85-86.

C. ARGUMENT

1. SUFFICIENT EVIDENCE PROVED THAT THOMPSON WAS GUILTY OF THE THEFT OF THE VAN.

The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980). When a defendant challenges the sufficiency of the evidence underlying his conviction, he admits the truth of the State's evidence and all inferences that reasonably may be drawn from the evidence. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). A challenge to the sufficiency of the evidence must be

denied if any reasonable inference may be drawn from the State's evidence that would support a guilty verdict, even though an inference consistent with innocence may also reasonably be drawn. State v. Reyes, 104 Wn.2d 35, 700 P.2d 1155 (1985). The reviewing court considers circumstantial evidence equally reliable as direct evidence. State v. Myers, 133 Wn.2d 26, 38, 941 P.2d 1102 (1997).

A defendant can be convicted of a crime committed by another person if the defendant was an accomplice in the commission of the crime. To be an accomplice, the defendant must either (a) solicit, command, encourage, or request the other person to commit the crime or (b) aid or agree to aid the other person in planning or committing it. These acts must be done with knowledge that they will promote or facilitate the commission of the crime. RCW 9A.08.020(3)(a). Mere assent to the commission of a crime is not enough to make someone an accomplice. State v. Renneberg, 83 Wn.2d 735, 739, 522 P.2d 835 (1974). Neither is presence at the scene of a crime sufficient, even when coupled with knowledge that the presence aids in the crime's commission. State v. Rotunno, 95 Wn.2d 931, 933, 631 P.2d 951 (1981). For presence to rise to the level of complicity, the defendant must be ready to assist in the

commission of the crime. State v. Robinson, 35 Wn. App. 898, 903, 671 P.2d 256 (1983); In re Wilson, 91 Wn.2d 487, 588 P.2d 1161 (1979).

In the present case, Thompson summarily claims that there was insufficient evidence to prove that he acted as either a principal or an accomplice in the theft of Southworth's van. Under either theory of liability, his argument is basically the same: that the State did not prove anything beyond Thompson's presence at the time that Southworth's van was located. This argument fails because it does not account for the wealth of circumstantial evidence that demonstrated Thompson's guilt. This evidence includes: (1) the short time period between theft and recovery; (2) Thompson's proximity to the driver's door of the van; (3) his immediate flight upon seeing the officers; (4) the fact that there was no one else out walking around; (5) the punched door lock and ignition on the van; and (6) the stolen property recovered from the ground outside the van and from inside the Honda.

As discussed in State v. Myers, 133 Wn.2d 26, 38, 941 P.2d 1102 (1997), a reviewing court considers circumstantial evidence equally reliable as direct evidence. Here, the circumstantial evidence - and the reasonable inferences drawn from that evidence

- clearly supports a finding of guilt under either theory of liability.

Because principal and accomplice liability are not alternative means of committing a single crime, this court need only find that there is sufficient evidence in the record to support either theory and there is no requirement that a jury determine the defendant's exact role in the crime or that they unanimously agree on the theory underlying the conviction. State v. Carothers, 84 Wn.2d 256, 262-65, 525 P.2d 731 (1974).

Viewed together, the circumstantial evidence in this case provides a sufficient basis for a finding that Thompson was, at the very least, present and ready to assist in the commission of the crime. Officer Hoppers testified that the entire event, from the time Southworth called 911 to the time Thompson was arrested, lasted just 6 minutes. When he located the vehicle, Thompson was standing next to the driver's door of the van and another individual was standing on the other side of the van. No other individuals were seen in the area. Immediately upon seeing officers, both individuals turned and fled on foot. After Thompson was caught and taken into custody, Officer Gingrey returned to the van and observed that both the lock on the driver's door and the ignition had clearly been punched. The van was still running and there was no

key in the ignition. The rear passenger sliding door was open and there were various tools belonging to Pride Electric strewn on the ground. Additionally, tools belonging to Pride Electric were located inside of a Honda that was parked directly next to the driver's side of the van where Thompson was initially observed. These facts, when viewed cumulatively and in the light most favorable to the State, clearly support an inference that the defendant was not only present, but was involved, either as a principal or as an accomplice, in the theft of Southworth's van.

2. DUE TO THE LACK OF INFORMATION IN THE RECORD REGARDING FUTURE ABILITY TO PAY, THE COURT SHOULD REJECT THE REQUEST THAT APPELLATE COSTS BE DENIED.

Under RCW 10.73.160, an appellate court may require a defendant to pay appellate costs. RCW 10.73.160. In State v. Sinclair, the Court of Appeals acknowledged its discretion regarding appellate costs and ruled that it is appropriate for the Court to consider the issue of the appellate costs in a criminal case during the course of appellate review when the issue is raised in an appellant's brief. 192 Wn. App. 380, 390, 367 P.3d 612 (2016). In

that case, the court ultimately declined to order appellate costs and cited the Order of Indigency signed by the trial court. Id. at 392.

The State's concern with the procedure set forth in Sinclair is that the record will rarely contain sufficient information regarding the defendant's financial status. That information is seldom litigated because it will almost always be irrelevant to the issues on trial. Here, similar to Sinclair, the appellant relies heavily on the Order of Indigency finding that the defendant lacks sufficient funds to prosecute an appeal and authorizes a right to review at public expense. The problem with this approach is that the Order of Indigency only considers ability to pay at the time of the appeal and does not address future ability to pay or ability to pay over time. See State v. Blank, 131 Wn.2d 230, 241, 930 P.2d 1213 (1997) (indigence is a constitutional bar to the collection of monetary assessments only if the defendant is unable to pay at the time the government seeks to enforce collection of the assessments). Because the record in this case contains no evidence from which this Court could reasonably conclude that the defendant has no likely future ability to pay costs, this Court should reject the appellant's request that appellate costs be denied.

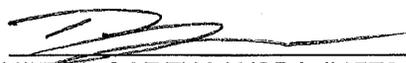
D. CONCLUSION

This Court should affirm the defendant's conviction and sentence. Further, this Court should reject the appellant's request to deny costs at this point.

DATED this 25 day of May, 2016.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 
DANIEL J. CAREW, WSBA #45726
Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to Thomas Kummerow, the attorney for the appellant, at Tom@washapp.org, containing a copy of the Brief of Respondent, in State v. Jimmy James Thompson, Cause No. 73842-9, 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.

Dated this 25th day of May, 2016.

Name:
Done in Kent, Washington