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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
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NO. 36661-4-II

COURT OF APPEALS, DIVISION II

STATE OF WASHINGTON,

Respondent

vs.

ARIEL LYNN STARR,

Appellant

APPEAL FROM THE SUPERIOR COURT
FOR THURSTON COUNTY

The Honorable Indu Thomas, Court Commissioner
Cause No. 07-8-00388-5

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

01. In finding Starr guilty of theft in the second degree, count I, the trial court erred in entering findings of fact 4, 5, 6, 7, 8, 12 and 14 as fully set forth herein at pages 2-3.
02. In finding Starr guilty of obstructing a law enforcement officer, the trial court erred in entering findings of fact 4, 5, 6, 7, 8, 12 and 14 as fully set forth herein at pages 2-3.
03. In finding Starr guilty of theft in the second degree, count I, the trial court erred in entering Conclusions of Law 1 and 2 as fully set forth herein at page 4.
04. In finding Starr guilty of obstructing a law enforcement officer, the trial court erred in entering Conclusions of Law 1 and 2 as fully set forth herein a page 4 and in orally concluding that Starr was guilty of the offense.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

01. Whether there was sufficient evidence to uphold 's Starr's conviction for theft in the second degree? [Assignments of Error Nos. 1 and 3].
02. Whether there was sufficient evidence to uphold 's Starr's conviction for obstructing a law enforcement officer? [Assignments of Error Nos. 2 and 4].

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C. STATEMENT OF THE CASE

01. Procedural Facts

Ariel Lynn Starr (Starr) was charged by first amended information filed in Thurston County Superior Court (Juvenile Court) on June 27, 2007, with theft in the second degree, count I, and obstructing a law enforcement officer, count II, contrary to RCWs 9A.56.020(1)(a), 9A.56.040(1)(a) and 9A.76.020. [CP 3].

No pre-trial motions were filed nor heard regarding either a CrR 3.5 or CrR 3.6 hearing. An adjudicatory hearing was held on July 19, the Honorable Court Commissioner Indu Thomas presiding. The court found Starr guilty as charged and entered the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. On or about April 29, 2007, Ms. Starr and her mother, Skye Sticklin, were observed in the Fred Meyer store in Lacey, Washington, a city in Thurston County.
2. Marcus Lewis, a Fred Meyer loss prevention officer was asked to observe the pair.
3. Mr. Lewis placed the pair under surveillance while they shopped both together and separately. When they separated he maintained contact with the merchandise which was in the cart of Ms. Sticklin.
4. Ms. Starr was present when her mother paid

for some of the merchandise that was contained in the shopping cart.

5. Mr. Lewis observed the pair rearranging items in the cart so as to hide some of the items.
6. Ms. Starr participated in the selection and secreting of some of the items in the shopping cart and was with her mother for 40-60 minutes inside the store.
7. The two then proceeded to leave the store making no effort to pay for the concealed merchandise while passing all points of pay within the store.
8. 32 items with a total value in excess of \$250 were taken from the Lacey Fred Meyer store by Ms. Starr and Ms. Sticklin.
9. Once outside the store, Mr. Lewis confronted Ms. Sticklin about the stolen merchandise and a physical altercation ensued.
10. During the altercation, Ms. Starr, at the direction of her mother, grabbed her mother's purse and shoes.
11. Ms. Starr then proceeded to her car, opened the trunk, placed the items inside and closed the trunk.
12. Ms. Sticklin stopped struggling with Mr. Lewis when Ms. Starr secured her purse. Ms. Starr returned to the vicinity of Mr. Lewis and her mother.
14. (sic) Ms. Starr provided misinformation to law enforcement investigating the incident, in that she indicated that she was not involved with the shoplifting, that she had not taken any items from

her mother during the altercation with Mr. Lewis, and that she had not placed anything into the trunk of the car.

15. A citizen eye witness, Rick Conley, provided information to the police that he had observed Ms. Starr take items from the altercation and place them into the trunk of a car.
16. The officer, having gained permission from Ms. Starr to search her trunk, located Ms. Sticklins' (sic) purse which contained both unpaid merchandise and illegal drugs.

CONCLUSIONS OF LAW

1. The State proved beyond a reasonable doubt that on April 29, 2007, the Respondent with the assistance of her mother stole 32 items with a total value in excess of \$250.
2. The Respondent is guilty of the offense of Theft in the Second Degree as stated in the findings.¹

[CP 13-15].

Starr was sentenced within her standard range and timely notice of this appeal followed. [CP 5-11].

02. Substantive Facts

On April 29, 2007, Marcus Lewis, a Fred Meyer loss prevention specialist, observed Sky Sticklin (Sticklin) and her daughter, Ariel Starr (Starr), in the store for about 40 minutes placing merchandise

¹ The written Conclusions of Law inadvertently fail to indicate the Respondent also guilty of the offense of obstructing a law enforcement officer, which was clearly the conclusion of the trial court. [RP 104].

from various departments into a shopping cart before walking out the door together without paying for some of the items. [RP 11-21, 41]. When Lewis stopped Sticklin and identified himself, a struggle ensued between the two, and Starr started

yelling get off my mom, get off my mom, she didn't do anything. Then the daughter started to reach for the purse. That's my purse, that's my purse. Or pocket book, I'm sorry. I get pocket book and purse mixed up. The pocket book is a whole entire bag itself. That's mine, that's mine. And I said no she walked out of the store with it, it's going with her. Back up before you go to jail to (sic). Back up.

[RP 22-23].

Starr eventually "snatched the purse" from under Lewis and Sticklin and took it to her car and placed it in the trunk. [RP 24,43, 47, 51]. Sticklin initially denied knowing Starr. [RP 24-26]. The recovered unpaid merchandise totaled \$459.61. [RP 28].

Starr at first denied both being with Sticklin and placing anything in the trunk of her car [RP 58-60, 66], but later gave the police permission to go into the trunk, where the purse was retrieved containing merchandise from Fred Meyers "that still had some store tags on them." [RP 61].

There was also "identifying information" in the purse relating to Sticklin and some suspected marijuana. [RP 69-70].

Sticklin testified she didn't remember the last time she had seen Starr before the incident, that they both just happened to be at the store at

the same time, that they had driven there separately, that they did not leave the store together, that when she walked outside the store Starr “was all the way down by her car,” that Starr had nothing to do with the shoplifting and had no knowledge of the contents of Sticklin’s purse that she, Starr, had placed in the trunk of her car. [RP 75-87]. In addition, Sticklin testified that when she first struggled with Lewis, she did not know he was with loss prevention and that her screaming was what she felt raised Starr’s attention to the incident. “Right, because I got knocked to the ground. I screamed.” [RP 88]. “I asked (Starr to grab my purse).” [RP 89]. Sticklin knew she had stolen items from Fred Myers in her purse, though Starr did not. [RP 90]. “I know she didn’t see me do anything. I made sure of it.” [RP 92].

D. ARGUMENT

THERE WAS INSUFFICIENT EVIDENCE
THAT STARR COMMITTED THE
OFFENSES OF THEFT IN THE SECOND
DEGREE, COUNT I, AND OBSTRUCTING
A LAW ENFORCEMENT OFFICER, COUNT II.

The test for determining the sufficiency of the evidence is whether, after viewing the evidence in light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). All reasonable inferences from the evidence must be drawn in

favor of the State and interpreted most strongly against the defendant. Salinas, at 201; State v. Craven, 67 Wn. App. 921, 928, 841 P.2d 774 (1992). Circumstantial evidence is no less reliable than direct evidence, and criminal intent may be inferred from conduct where “plainly indicated as a matter of logical probability.” State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). A claim of insufficiency admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom. Salinas, at 201; Craven, at 928.

01. Count I: Theft in the Second Degree

It has long been the law that mere presence at the scene of a crime does not constitute the requisite evidence for a finding of guilt. See State v. Luna, 71 Wn. App. 755, 759, 862 P.2d 620 (1993) (“A defendant is not guilty as an accomplice unless he has associated with and participated in the venture as something he wished to happen and which he sought by his acts to succeed.” (Citations omitted); see also State v. Robinson, 73 Wn. App. 851, 897 P.2d 43 (1994). The evidence must demonstrate more than that the accused was present and knew what was going to happen. In order to convict under an accomplice liability theory, the State must demonstrate some nexus between the party committing the act and the party deemed the accomplice. State v. Wilson, 95 Wn.2d 828, 631 P.2d 362 (1981). A defendant’s presence at the scene of criminal

activity combined with knowledge of the criminal activity, does not establish accomplice liability. In re Wilson, 91 Wn.2d 487, 492, 588 P.2d 1161 (1979); State v. Amezola, 49 Wn. App. 74, 89, 741 P.2d 1024 (1987). The State must also show that the defendant “associates himself with the undertaking, participates in it as something he desires to bring about, and seeks by his actions to make it succeed.” In re Wilson, 91 Wn.2d at 491.

The evidence presented here did not establish that Starr was guilty either as a principal or as an accomplice to theft in the second degree. Aside from her mere presence at the store, the State did not demonstrate a sufficient connection between Starr and the criminal activity at issue. There was no evidence presented that she and her mother had planned the theft or had recent contact before meeting each other in the store. To the contrary, Sticklin testified that the two had not even recently talked to each other and had driven to and arrived at the store separately.

There was no evidence that Starr was a partner in this transaction: she wasn't responsible for Sticklin's independent activity. The evidence demonstrated that the two had separated after meeting in the store, as confirmed by Lewis, and that Sticklin had fooled the store cashiers, much like she had fooled her daughter, when she exited the store without paying for the merchandise subsequently recovered. Sticklin admitted

responsibility and went so far as to brag that her daughter had not seen her take the stolen property: "I made sure of it." [RP 92]. In sum, the evidence didn't even demonstrate that Starr was both present and knew what was going to happen, neither of which or in combination would be sufficient to convict under an accomplice liability theory, given that the State must demonstrate some nexus between the party committing the act and the party deemed the accomplice. The State did not carry this burden, with the result that Starr's conviction for this offense should be reversed.

02. Count II: Obstructing

Under RCW 9A.76.020, to convict Starr of the offense of obstructing a law enforcement officer, as charged in count II, the State had to prove beyond a reasonable doubt that on the date in question Starr willfully hindered, delayed, or obstructed any law enforcement officer in the official discharge of that officer's duties.

Here, when Starr retrieved the purse from her mother, she was merely responding to her mother being attacked by an unknown assailant. Lewis admitted that Starr had screamed at him to get off her mother, that her mother hadn't done anything wrong. Given this, it cannot be asserted that by taking the purse and putting it in the trunk of her car Starr was doing anything more than protecting her mother's property from the person she perceived to be assaulting her mother, who had urgently

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CERTIFICATE

I certify that I mailed a copy of the above brief by depositing it in the United States Mail, first class postage pre-paid, to the following people at the addresses indicated:

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DATED this 13th day of May 2008.

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