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Division I
State of Washington

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WASHINGTON STATE
SUPREME COURT

Supreme Court No.: 93703-0
Court of Appeals No.: 71416-3-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

CLAYTON GERLACH,

Petitioner.

PETITION FOR REVIEW

KATHLEEN A. SHEA
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WASHINGTON APPELLATE PROJECT
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A. IDENTITY OF PETITIONER AND THE DECISION BELOW

Mr. Gerlach requests this Court grant review pursuant to RAP 13.4(b) of the decision of the Court of Appeals, Division One, in State v. Clayton Gerlach, No. 71416-3-I, filed May 4, 2015. A copy of the opinion is attached as Appendix A. Mr. Gerlach's motion for reconsideration was denied May 27, 2015. A copy of this order is attached as Appendix B.

B. ISSUES PRESENTED FOR REVIEW

1. When a defendant can demonstrate a strong indication that belated findings of fact have been tailored, a defendant is prejudiced and reversal is required. Where the trial court entered no findings when determining Mr. Gerlach's guilt after a bench trial, but later adopted two sets of findings specifically addressing the issue raised by Mr. Gerlach on appeal, should this Court grant review in the substantial public interest? RAP 13.4(b)(4).

2. No reasonable factfinder could determine, beyond a reasonable doubt, that Clayton Gerlach committed residential burglary acting as either a principal or an accomplice given the lack of evidence presented at trial. When a criminal defendant is convicted upon insufficient evidence, his fundamental right to due process is violated.

Should this Court grant review in the substantial public interest because the evidence at trial fails to support the conviction entered against Mr. Gerlach? RAP 13.4(b)(4).

C. STATEMENT OF THE CASE

Clayton Gerlach waived his right to a jury and proceeded to a bench trial on the charge of residential burglary. CP 25-27. Mark Conner testified that upon returning to his residence, he observed a white sport utility vehicle (SUV) in his driveway. 11/18/13 RP 17. As Mr. Conner approached the vehicle, the driver honked the horn. 11/18/13 RP 27. Mr. Conner asked if he could help the driver, who indicated that he was having engine troubles. 11/18/13 RP 21. Mr. Conner told the driver that he was going to call 911. 11/18/13 RP 22. At trial, Mr. Conner identified the driver of that vehicle as Mr. Gerlach. 11/18/13 RP 30-31.

Mr. Conner then went into his house, which he noticed was not in the same condition as he had left it earlier that morning. 11/18/13 RP 23-24. He saw that property had been moved around, but nothing had been taken. 11/18/13 RP 31-32. When he went back outside, the SUV pulled quickly from his driveway. 11/18/13 RP 26. Mr. Conner

testified that he saw an unknown person run through some bushes and get into the SUV. 11/18/13 RP 27.

Law enforcement later detained Mr. Gerlach while he was walking down a street not far from Mr. Conner's residence. 11/18/13 RP 91. The SUV was left on the side of the road about 200 yards away from where Mr. Gerlach was seized. 11/18/13 RP 64. Despite using a K-9 track, no other suspect was located by law enforcement. 11/18/13 RP 107.

At trial, Mr. Gerlach admitted to being the driver of the SUV. 11/18/13 RP 117. He drove down Mr. Conner's driveway because he was having engine problems. *Id.* Mr. Gerlach explained that he is deaf and could not recall whether he honked the horn when approached by Mr. Conner. 11/18/13 118. Mr. Gerlach perceived that Mr. Conner was unhappy with his presence in the driveway, so he pulled out as Mr. Conner entered his residence. *Id.* Mr. Gerlach said that no one else entered his vehicle. *Id.* He testified that he had to start walking a short time later when his engine died. 11/18/13 RP 118-19. Mr. Gerlach denied any involvement in a burglary. 11/18/13 RP 121.

After listening to testimony and receiving evidence, the trial court scheduled a subsequent hearing to issue its decision. 11/18/13 RP

137. At that hearing, the trial judge stated:

I have had a chance to review my notes as well as all the exhibits that were admitted in this case, and I am ready to make my decision. So, in this matter I find Mr. Gerlach guilty of the charge. I've already found him guilty of the bail jumping charge, but I find him guilty of the charge of residential burglary. What is the plan for sentencing?

11/26/13 RP 2. The trial court neither stated the elements on the record nor engaged in any further analysis regarding the facts relied upon to find each element of the crime. *See* 11/26/13 RP 2-3. It did not enter any written findings of fact or conclusions of law to support the guilty finding.

After Mr. Gerlach raised the lack of findings as an error on appeal, the State made efforts to secure the entry of written findings and conclusions. *See* CP 95-98. First, the trial court entered "Bench Trial Findings" on September 3, 2014, more than nine months after the court's oral ruling. CP 97-98. Included in these findings was the assertion that "the defendant acted as an accomplice by assisting and aiding another party in the commission of this crime." CP 98 (Finding

of Fact 4). This factual finding was never articulated during the court's oral ruling the previous year. *See* 11/26/13 RP 2.

The State later submitted "Supplemental Findings." CP 95-96. Over trial counsel's objection, the court adopted the Supplemental Findings on October 7, 2014. CP 95-96. Mr. Gerlach's trial counsel file a written objection opposing the entry of these findings and attached a copy of Mr. Gerlach's opening brief on appeal. CP 102. The attorney representing the State on appeal, as opposed to the trial prosecutor, filed a response to Mr. Gerlach's arguments against entering these findings.

Over Mr. Gerlach's objection, the trial court adopted the Supplemental Findings. CP 95-96. None of these findings were pronounced during the trial court's oral ruling the previous year. *See* 11/26/13 RP 2. The findings included that "[t]he defendant intended to aid and facilitate the unknown person's commission of the crime of residential burglary." CP 96 (Finding of Fact g). The Court of Appeals affirmed Mr. Gerlach's conviction. Slip Op. at 10.

D. ARGUMENT IN FAVOR OF GRANTING REVIEW

- 1. The Court should grant review in the substantial public interest because there is sufficient evidence that findings have been tailored when they are created several months after the court's oral ruling and precisely address the issue raised on appeal.**

The practice of submitting late findings and conclusions is disfavored and may be entered while an appeal is pending only if the defendant is not prejudiced by their belated entry. *State v. Cannon*, 130 Wn.2d 313, 329, 922 P.2d 1293 (1996) (citing *State v. McGary*, 37 Wn. App. 856, 861, 683 P.2d 1125 (1984)). Where a defendant is able to show “there is a strong indication that findings ultimately entered have been ‘tailored’ to meet issues raised on appeal,” a defendant is prejudiced and reversal is required. *State v. Head*, 136 Wn.2d 619, 624-5, 964 P.2d 1187 (1998).

This Court of Appeals found the record revealed “no strong indication that the findings were tailored to the issue raised by Gerlach on appeal.” Slip Op. at 10. In reaching this conclusion, the court assigned no significance to the fact the State made more than one attempt to secure the entry of written findings and conclusions. Slip Op. at 8. The State’s submission of more detailed supplemental findings, and the appellate prosecutor’s involvement in advocating for

the trial court's adoption of these findings, suggest the findings were indeed designed to defeat Mr. Gerlach's argument on appeal. *See* CP 95-99.

In addition, the findings precisely address the sufficiency challenge Mr. Gerlach raised in his opening brief. On appeal, Mr. Gerlach explained that his mere presence was insufficient to establish accomplice liability and the State failed to prove he had knowledge his actions would promote or facilitate any crime. Op. Br. at 10-11. The supplemental finding proposed by the State asserted, for the first time, that "[t]he defendant knew that the unknown person had entered the residence without permission to steal property inside the residence." CP 96 (Finding of Fact f).

A trial court's delayed findings must track its original oral decision. *Cannon*, 130 Wn.2d at 329-30; *State v. Ritter*, 149 Wn. App. 105, 109, 201 P.3d 1086 (2009); *State v. Portomene*, 79 Wn. App. 863, 865, 905 P.2d 1234 (1995). The Court of Appeals found, essentially, that because the trial court's decision was "incomplete," the delayed

findings did not result in prejudice because the findings comported with the court's oral determination of guilt. Slip Op. at 10.

A determination that the findings tracked those the trial court would have been *expected* to make in order to support its decision is not the same as determining that the findings actually track the court's oral decision. Where the court initially made no specific findings at all, belated written findings that precisely address Mr. Gerlach's argument on appeal reveal a strong indication that the written findings were tailored to meet the issues raised in his appeal. A holding to the contrary allows a trial court to make no findings when determining the guilt of the defendant and then later adopt whatever findings are needed to defeat the defendant's arguments on appeal later. This issue is one of substantial public interest and this Court should accept review.

2. This Court should grant review because the trial court's finding that honking a horn can establish accomplice liability raises an issue of substantial public interest.

In the belated Bench Trial Findings and Supplemental Findings, the trial court found Mr. Gerlach guilty of residential burglary because of his actions as an accomplice. CP 96 (Finding of Fact g); CP 98 (Finding of Fact 4). To be an accomplice, a person must have knowledge that he or she was promoting or facilitating the crime

charged. *State v. Cronin*, 142 Wn.2d 568, 579, 14 P.3d 752 (2000).

The evidence must show that the accomplice aided in the planning or commission of the crime and that he had knowledge of the crime. *State v. Truong*, 168 Wn. App. 529, 539-40, 277 P.3d 74 (2012) (citing *State v. Trout*, 125 Wn. App. 403, 410, 105 P.3d 63 (2005)). Although a fact finder may infer knowledge from circumstantial evidence, it must still find subjective knowledge. *State v. Shipp*, 93 Wn.2d 510, 516-17, 610 P.2d 1322 (1980).

Physical presence and assent, without more, are insufficient to establish accomplice liability. *State v. Roberts*, 80 Wn. App. 342, 355, 908 P.2d 892 (1996). “One does not aid and abet unless, in some way, he associated himself with the undertaking, participates in it as something he desires to bring about, and seeks by his action to make it succeed.” *In re Welfare of Wilson*, 91 Wn.2d 487, 491, 588 P.2d 1161 (1979) (quoting *State v. J-R Distribs., Inc.*, 82 Wn.2d 584, 593, 512 P.2d 1049 (1973)). “The State must prove that the defendant was ready to assist the principal in the crime and that he shared in the criminal intent of the principal, thus ‘demonstrating a community of unlawful purpose at the time the act was committed.’” *Truong*, 168 Wn. App. at

540 (quoting *State v. Castro*, 32 Wn. App. 559, 564, 648 P.2d 485 (1982)).

The Court of Appeals affirmed the trial court's findings because there was evidence that Mr. Gerlach had honked the horn of his vehicle twice and the other suspect was later seen entering Mr. Gerlach's vehicle. Slip Op. at 7. Without evidence of Mr. Gerlach's subjective knowledge, no rational tier of fact could determine that he committed the crime of residential burglary as an accomplice. This Court should accept review in the substantial public interest and reverse.

E. CONCLUSION

On each of these bases, the Court should grant review of the Court of Appeals opinion affirming Mr. Gerlach's conviction for residential burglary.

DATED this 26th day of June, 2015.

Respectfully submitted,



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Washington Appellate Project
Attorney for Petitioner

APPENDIX A

COURT OF APPEALS, DIVISION I OPINION

May 4, 2015

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON)
)
 Respondent,)
)
 v.)
)
 CLAYTON DANIEL GERLACH,)
)
 Appellant.)

No. 71416-3-I
DIVISION ONE
UNPUBLISHED OPINION
FILED: May 4, 2015

FILED
COURT OF APPEALS DIVISION ONE
STATE OF WASHINGTON
2015 MAY -4 AM 11:04

TRICKEY, J. — Clayton Gerlach appeals from the judgment and sentence following a bench trial. He argues that the evidence was insufficient to sustain his conviction of residential burglary and that he was prejudiced by the trial court's entry of delayed findings of fact and conclusions of law. We disagree and affirm the conviction.

FACTS

On October 27, 2011, Mark Conner was returning to his residence in Arlington, Washington at approximately 10 a.m. after stopping at a nearby restaurant. As he was approaching his house, he noticed a white sports utility vehicle (SUV) pull into his driveway. The SUV was parked on Conner's property about halfway between the house and the entrance to the driveway. Conner parked his vehicle in the driveway and approached the driver sitting inside the white SUV. Conner noticed that the driver had short black hair and was wearing a black leather coat over a white T-shirt. Conner asked the driver if he needed help. The driver told Conner that he was having engine problems, after which he honked the horn to his vehicle. At that point, Conner became suspicious and said he was going to call 911.

When Conner left his house that morning, he had turned the lights off, locked the front door and the screen door. But when he entered the house to call 911, he observed that a light was on inside, the screen door was open, and the front door was unlocked. Conner also discovered that many items had been displaced and the house was in disarray. Conner had not given permission to anyone to enter his home.

Conner ran outside. He planned to obstruct the SUV in the driveway, but the SUV swiftly pulled out of the driveway once he emerged outside. Conner noticed a pink trailer hitch attached to the vehicle.

The driver of the SUV honked the horn once again. As Conner was calling 911, he saw a man scurry across his front yard and into some bushes. The man entered the SUV, which immediately sped off down the street.

Conner provided descriptions of the vehicle and the driver to the police. Shortly thereafter, Snohomish County Police Officer Thomas Morris observed Clayton Gerlach walking on the side of a road located between one and two miles from Conner's house. According to Officer Morris, it was dangerous to walk on that road, and was very unusual to see pedestrians there. Officer Morris observed that Gerlach's face was red, as if he had been exerting himself. Nevertheless, Officer Morris did not stop Gerlach but continued to search for the vehicle Conner had described—a white SUV with a pink trailer hitch. He soon found the vehicle parked approximately 200 yards from where he had seen Gerlach walking. The SUV was parked at an angle and there were skid marks on the grass, as if the vehicle had skidded to a stop. The SUV was still warm, indicating that the vehicle

had been recently driven. Based on these observations, it appeared to Officer Morris that the vehicle had been abruptly stopped or "ditched" by the driver who wanted to flee the vehicle.¹ As soon as he saw the vehicle, Officer Morris alerted other responding officers of the vehicle and the suspect and requested that they stop and detain Gerlach.

Officer Kenneth Thomas stopped Gerlach on the side of the road. Officer Thomas noticed Gerlach was walking at a heightened pace and was not wearing a jacket despite the cold weather. Gerlach was perspiring and breathing heavily. When Officer Thomas asked Gerlach where he was coming from, Gerlach was unable to answer. Gerlach said he was from Everett, but could not explain why he was in the area that day.

Conner subsequently identified the SUV by its color and style, from an item hanging from the rearview mirror, and from the distinctive pink trailer hitch on the rear of the vehicle. Conner then identified Gerlach as the man he encountered in the driveway.

A K-9 officer arrived to the scene. The dog followed a scent trail from Gerlach's vehicle to the location where Gerlach was detained, about one half mile from the SUV. However, the K-9 officer was unable to locate the second suspect.

The State charged Gerlach with one count of residential burglary and one count of bail jumping. Gerlach stipulated to a bench trial on agreed documentary evidence on the bail jumping charge. He waived his right to a jury trial on the residential burglary charge.

¹ Report of Proceedings (RP) (11/18/2013) at 70.

A bench trial took place in November 2013. The State called Conner as a witness, along with several of the investigating officers. Gerlach testified that he was in Arlington on the day in question to apply for a job. He said that he ended up in Conner's neighborhood because he once had friends who lived in that neighborhood. He testified that he took a wrong turn in that neighborhood. According to Gerlach, he was experiencing car trouble that day so he pulled into Conner's driveway. He left when Conner began appearing suspicious of him. Afterwards, Gerlach testified that he got lost and pulled over on the road because the engine failed.

At the conclusion of the trial, the trial court found Gerlach guilty on both charges. The trial court entered findings of fact and conclusions of law as to the residential burglary conviction on September 3, 2014, and supplemental findings on October 7, 2014.²

Gerlach appeals.

ANALYSIS

Sufficiency of the Evidence

Gerlach contends that insufficient evidence supported the trial court's guilty verdict. This is so, he asserts, because the State did not establish that he was the principal or accomplice in the crime. We disagree.

The due process clauses of the federal and state constitutions require that the State prove every element of a crime beyond a reasonable doubt. Appendi v. New Jersey, 530 U.S. 466, 476-77, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000);

² The trial court entered separate findings of fact and conclusions of law with regard to the bail jumping charge.

U.S. CONST. amend. XIV; WASH. CONST. art. I, § 3. “[T]he critical inquiry on review of the sufficiency of the evidence to support a criminal conviction must be . . . to determine whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt.” Jackson v. Virginia, 443 U.S. 307, 318, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979). “[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” Jackson, 443 U.S. at 319.

By challenging the sufficiency of the State’s evidence, Gerlach admits the truth of the State’s evidence and all reasonable inferences from that evidence. State v. Kintz, 169 Wn.2d 537, 551, 238 P.3d 470 (2010). Circumstantial evidence and direct evidence can be equally reliable. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). We defer to the fact finder on questions of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. State v. Killingsworth, 166 Wn. App. 283, 287, 269 P.3d 1064 (2012).

The State charged Gerlach with residential burglary in violation of RCW 9A.52.025. To find Gerlach guilty of residential burglary, the State was required to prove that, “with intent to commit a crime against a person or property therein, [Gerlach or an accomplice] enter[ed] or remain[ed] unlawfully in a dwelling other than a vehicle.” RCW 9A.52.025.

Under Washington’s complicity statute, an individual is guilty of a crime committed by another if he or she “is an accomplice of such other person in the commission of the crime.” RCW 9A.08.020(2)(c). A person is an accomplice if,

with knowledge that it will promote or facilitate the commission of the crime, he encourages or aids another in committing it. RCW 9A.08.020(3)(a)(i) and (ii). "The word 'aid' means all assistance whether given by words, acts, encouragement, support, or presence." 11 WASHINGTON PRACTICE: WASHINGTON PATTERN JURY INSTRUCTIONS: CRIMINAL 10.51, at 217 (3d ed. 2008). Intent may be inferred where the circumstances indicate such intent as a matter of logical probability. State v. Johnson, 159 Wn. App. 766, 774, 247 P.3d 11 (2011). Specific knowledge of each element of the principal's crime need not be proved to convict a person as an accomplice. State v. Roberts, 142 Wn.2d 471, 513, 14 P.3d 713 (2000); State v. Rice, 102 Wn.2d 120, 125, 683 P.2d 199 (1984). General knowledge of the crime is sufficient to support a finding of accomplice liability. Roberts, 142 Wn.2d at 513.

Gerlach contends that insufficient evidence supported that he was an accomplice in the burglary because, he asserts, there was no evidence that he had the intent to commit the crime or that he had knowledge that his actions would aid the commission of the crime. He maintains that the only evidence implicating him was his presence at the scene of the crime. In support of this contention, Gerlach cites to State v. Truong, where we noted:

Mere presence of the defendant without aiding the principal—despite knowledge of the ongoing criminal activity—is not sufficient to establish accomplice liability. Rather, the State must prove that the defendant was ready to assist the principal in the crime and that he shared in the criminal intent of the principal, thus "demonstrating a community of unlawful purpose at the time the act was committed."

168 Wn. App. 529, 540, 277 P.3d 74 (2012) (internal citations omitted).

The State proved that Gerlach had the intent to commit the burglary and was ready to aid. Gerlach was not "merely present" at the scene of the crime.

The evidence shows that Gerlach honked the horn once Conner confronted him on his driveway. Gerlach honked the horn a second time when Conner returned outside after discovering his residence had been burglarized. From these facts, one could reasonably infer that Gerlach was attempting to alert the suspect of Conner's presence. Furthermore, Conner testified that the other suspect entered Gerlach's vehicle and the two men immediately fled the scene.

A rational trier of fact could find beyond a reasonable doubt that Gerlach committed the crime of residential burglary as an accomplice.

Belated Findings and Conclusions

Gerlach next contends that he was prejudiced by the trial court's belated entry of findings of facts and conclusions of law. We disagree.

Gerlach filed his opening brief on July 7, 2014, challenging the sufficiency of the evidence and asserting that the trial court failed to enter findings of facts and conclusions of law. On September 3, 2014, the trial court entered findings of fact and conclusions of law. The trial court found Gerlach guilty of residential burglary and entered the following facts:

1. That on or about the 27th day of October 2011;
2. The Defendant, Clayton Gerlach;
3. Did enter or remain unlawfully in a dwelling with the intent to commit a crime of theft;
4. That the defendant acted as an accomplice by assisting and aiding another party in the commission of this crime; and
5. That the acts occurred in Snohomish County Washington.^[3]

The trial court entered supplemental findings of fact and conclusions of law on October 7, 2014. In the trial court's supplemental findings, the court found that

³ Clerk's Papers (CP) at 98.

Gerlach "knew that the unknown person had entered the residence without permission to steal property inside the residence," and that Gerlach "intended to aid and facilitate the unknown person's commission of the crime of residential burglary."⁴ The trial court also found not credible Gerlach's "explanation for his behavior, including his reason for being in the area and horn honking."⁵ The trial court concluded that Gerlach was guilty beyond a reasonable doubt as an accomplice of the crime.

On October 16, 2014, the State asked this court to grant permission pursuant to RAP 7.2(e) for the trial court to formally enter its findings of fact and conclusions of law and supplemental findings. On October 31, 2014, we granted this request. Gerlach filed his appellant's reply brief and supplemental assignment of error on December 5, 2014.

CrR 6.1(d) requires the trial court to enter written findings of fact and conclusions of law at the conclusion of a bench trial. State v. Head, 136 Wn.2d 619, 621-22, 964 P.2d 1187 (1998). This enables an appellate court to review the questions raised on appeal. Head, 136 Wn.2d at 622. The proper remedy for failure to comply with CrR 6.1(d) is remand for entry of written findings of fact and conclusions of law. Head, 136 Wn.2d at 624. Reversal is only appropriate where the defendant has established actual prejudice. Head, 136 Wn.2d at 624. Although the practice of submitting late findings of fact and conclusions of law is disfavored, findings and conclusions may be submitted and entered even while an

⁴ CP at 96.

⁵ CP at 96.

appeal is pending if the defendant is not prejudiced by the belated entry of findings.

State v. McGary, 37 Wn. App. 856, 861, 683 P.2d 1125 (1984).

"We will not infer prejudice . . . from delay in entry of written findings of fact and conclusions of law." Head, 136 Wn.2d at 625. Rather, "a defendant might be able to show prejudice resulting from the lack of written findings and conclusions where there is strong indication that findings ultimately entered have been 'tailored' to meet issues raised on appeal." Head, 136 Wn.2d at 624-25.

Gerlach argues that he was prejudiced by the belated findings because the findings were tailored to his argument on appeal. He points to the trial court's oral ruling in which the court did not recite any facts to support its conclusion that he was guilty of residential burglary:

I have had a chance to review my notes as well as all the exhibits that were admitted in this case, and I am ready to make my decision.

So, in this matter I find Mr. Gerlach guilty of the charge. I've already found him guilty of the bail jumping charge, but I find him guilty of the charge of residential burglary.^{6]}

Gerlach relies on the well settled principle in Washington that a defendant is not prejudiced by a trial court's delayed findings if the findings track its oral decision. State v. Cannon, 130 Wn.2d 313, 329-30, 922 P.2d 1293 (1996); State v. Ritter, 149 Wn. App. 105, 108-9, 201 P.3d 1086 (2009); State v. Portomene, 79 Wn. App. 863, 905 P.2d 1234 (1995)). However, Gerlach has failed to identify any legal authority establishing that belated written findings following a trial court's incomplete oral decision results in prejudice.

⁶ Report of Proceedings (11/26/2013) at 2.

Indeed, the trial court's decision did not change when it entered the findings of fact and conclusions of law. At trial, the State's theory of the case was that Gerlach was an accomplice to the burglary by acting as a lookout and the get-away driver. Defense counsel argued that Gerlach was encountering car trouble and therefore was merely present as an innocent bystander to the crime.⁷ Based on these opposing theories, the trial court was required to make a credibility determination. Its oral ruling finding Gerlach guilty demonstrates that the trial court did not believe Gerlach's testimony that he was innocently present in the neighborhood; otherwise, the trial court would have acquitted Gerlach. In the trial court's supplemental findings, it determined that "[t]he defendant's explanation for his behavior, including his reason for being in the area and the horn honking was not credible."⁸ The findings did not deviate from the court's original oral decision. A comparison of the trial court's findings of fact and Gerlach's briefing on appeal reveals no strong indication that the findings were tailored to the issue raised by Gerlach on appeal.

Affirmed.

Trickey J

WE CONCUR:

Jay A

Becker J.

⁷ RP (11/18/2013) at 127.

⁸ CP at 96.

APPENDIX B

ORDER DENYING MOTION FOR RECONSIDERATION

May 27, 2015

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON)	
)	No. 71416-3-1
Respondent,)	
)	ORDER DENYING MOTION
v.)	FOR RECONSIDERATION
)	
CLAYTON DANIEL GERLACH,)	
)	
Appellant.)	

The appellant, Clayton Daniel Gerlach, has filed a motion for reconsideration herein. The court has taken the matter under consideration and has determined that the motion should be denied.

Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

Done this 27th day of May, 2015.

FOR THE COURT:

Trichey, J

2015 MAY 27 PM 2:41
COURT OF APPEALS
STATE OF WASHINGTON

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 71416-3-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

- respondent Mary Kathleen Webber, DPA
[kwebber@co.snohomish.wa.us]
Snohomish County Prosecutor's Office
- petitioner
- Attorney for other party



MARIA ANA ARRANZA RILEY, Legal Assistant
Washington Appellate Project

Date: June 26, 2015

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