

**ARKANSAS COURT OF APPEALS**DIVISION II  
No. CA10-1248

T.D.

APPELLANT

Opinion Delivered February 15, 2012

APPEAL FROM THE FAULKNER  
COUNTY CIRCUIT COURT  
[NO. JV-2010-365]

V.

HONORABLE RHONDA K. WOOD,  
JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

**JOHN MAUZY PITTMAN, Judge**

Appellant, a minor, was adjudicated delinquent based on a finding that he committed misdemeanor theft of property; consequently, he was fined and placed on probation. The sole argument on appeal is that the evidence was insufficient to support a finding that appellant was an accomplice to misdemeanor theft of property. We affirm.

Arkansas Code Annotated section 5-2-403(a) (Repl. 2006) provides that a person is an accomplice of another person in the commission of an offense if, with the purpose of promoting or facilitating the commission of an offense, the person (1) solicits, advises, encourages, or coerces the other person to commit the offense; (2) aids, agrees to aid, or attempts to aid the other person in planning or committing the offense; or (3) having a legal duty to prevent the commission of the offense, fails to make a proper effort to prevent the commission of the offense. In reviewing the sufficiency of the evidence in a delinquency case, we apply the same standard of review as in criminal cases; that is, we consider only the proof

that tends to support the finding of guilt, and we view the evidence in the light most favorable to the State. *C. H. v. State*, 51 Ark. App. 153, 912 S.W.2d 942 (1995). We will affirm if the trial court's finding is supported by substantial evidence, which is evidence that is of sufficient force and character to compel a conclusion one way or the other without resorting to speculation or conjecture. *Id.*

Here, there was evidence that a cell phone was stolen from a backpack while the owner was playing for the visiting team during a middle-school basketball game. The backpack was in an unsecured athletic locker room at Bob Courtway Middle School in Conway, Arkansas. The next day, the school principal reviewed the surveillance video from the day before that showed the door to the athletic locker room. Appellant and another young man entered the doorway, stood there for a few moments, and then entered the locker room. They left the locker room a short time thereafter and walked toward the camera. Appellant and the other young man were summoned to the principal's office. The other young man admitted having the cell phone, which he surrendered to the principal. He did not implicate appellant. At the hearing, the assistant principal of the school testified that the locker room was off-limits to students during the game and that there were other restrooms available for student use. The trial court found that appellant had a legal duty to prevent or report the theft and, also, that he assisted in the commission of the offense.<sup>1</sup>

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<sup>1</sup>Appellant does not seek retrial or otherwise argue that he was prejudiced by any error of the trial judge concerning his "legal duty to prevent" or report the commission of the offense or conduct as referenced in subsections (a)(3); consequently, we do not address that issue but consider only whether there is substantial evidence to support the finding that appellant assisted in the theft.

There was no evidence that appellant took the cell phone. Nevertheless, when two people assist one another in the commission of a crime, each is an accomplice and criminally liable for the conduct of both; one cannot disclaim accomplice liability simply because he did not personally take part in every act that made up the crime as a whole. *Henson v. State*, 94 Ark. App. 163, 227 S.W.3d 450 (2006). Mere presence at the scene of a crime is not enough to make a person an accomplice. See *Perry v. State*, 277 Ark. 357, 642 S.W.2d 865 (1982); *Roleson v. State*, 277 Ark. 148, 640 S.W.2d 113 (1982). Except in extraordinary cases, even presence at the scene of the crime combined with actual knowledge that a crime is being committed is insufficient to make a person an accomplice in the absence of any purpose to further the accomplishment of the offense. See *Cate v. State*, 270 Ark. 972, 606 S.W.2d 764 (1980). Relevant factors in determining the connection of an accomplice to a crime are the presence of the accused in the proximity of a crime, the opportunity to commit the crime, and an association with a person involved in a manner suggestive of joint participation. *Clark v. State*, 358 Ark. 469, 192 S.W.3d 248 (2004).

Here, appellant and the thief stood outside the off-limits locker room together, looked down the hall, went into the locker room together, looked out of and reentered the locker room more than once, and then left the locker room together. We think that this evidence establishes that appellant was in proximity to the crime in association with the person who admitted having the stolen cell phone. Furthermore, we think that appellant's action in looking down the hall before the pair entered the locker room is suggestive of joint participation in making sure no one was about to enter the locker room before they went in.

On this record, we hold that there was substantial evidence that appellant aided his companion in committing the theft.

Affirmed.

GLADWIN and MARTIN, JJ., agree.