IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. ANTAURUS ANTWON WILSON, Appellant, DOMINIQUE LEFLEET HENRY, and JESSICA MAE STANIFER, and each of them, Defendants.	)	No. 64573-1-I DIVISION ONE UNPUBLISHED OPINION FILED: May 9, 2011

Grosse, J. — An accomplice liability instruction need not reference the specific crime charged where the instruction uses the same language contained in the accomplice liability statute. Accordingly, we affirm.

FACTS

In the early morning hours of September 27, 2008, Lloyd Bondy observed a strange car parked in front of his house. Bondy called 911 and asked the police to check the vehicle out. Bondy watched the car relocate to a place across from his neighbor, Nathan Madins. Bondy saw two people loading items into the car. Bondy then used his wife's car to block the vehicle from leaving while his wife called 911 again. The driver of the vehicle, Antaurus Wilson, asked Bondy to move. When Bondy informed Wilson that the police were coming, Wilson returned to his car and drove the wrong way down a one-way street.

The police discovered Madins' garage door open and the laundry room door ajar. The police contacted Madins informing him of a possible burglary. The police

stopped Wilson's car nearby and conducted a show-up identification. Madins identified the items in the car as belonging to him, and Bondy identified Wilson as the car's driver whom he had spoken to earlier. A search incident to arrest uncovered Madins' watch and cellular phone in Wilson's pocket.

Wilson testified that he thought he and his brother, Dominique Henry, were picking up items that Jessica Stanifer had left at her ex-boyfriend's house. He testified that neither he nor Henry ever entered the home. When asked whether he knew if the items were stolen, he responded "kind of, in a way, and I kind of didn't, because I trusted her." Wilson testified that the stuff was at a corner by an electrical box. He denied telling Bondy that the reason he was there was so that he could find a place to "get busy with [his] girl." Wilson drove through a park and down a one-way street attempting to get out of the neighborhood.

Wilson, Henry, and Stanifer were all charged with residential burglary. A jury found Wilson guilty of burglary and he was sentenced to 14 months. Wilson appeals.

ANALYSIS

Wilson argues that there was insufficient evidence to convict him of burglary because the State did not present direct evidence proving that he had been inside the burglarized residence. Evidence is sufficient to support a conviction if, viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt.[1] "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom."[2] Circumstantial evidence and direct evidence are equally reliable.[3]

[1] State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

Credibility determinations are for the trier of fact and are not subject to review.[4]

A person is guilty of residential burglary if he enters and remains unlawfully in the dwelling of another with the intent to commit a crime against a person or property therein.[5] Washington's accomplice liability statute holds a defendant liable for a crime committed by another person if he aids that person in committing the crime with knowledge that his actions will promote or facilitate the commission of the crime.[6] Although mere physical presence at a crime scene is insufficient to convict someone as an accomplice,[7] here, Wilson was more than merely physically present: he aided by helping load the vehicle with the stolen merchandise; he drove away after the neighbor had blocked the car's exit, and the police recovered stolen items from his pants pocket.

Wilson contends that jury instruction 13 misstated the law on accomplice liability, thereby relieving the State of its burden to prove all the essential elements of the charged offense. Jury instruction 13 provides in pertinent part:

> A person is an accomplice in the commission of a crime if, with knowledge that it will promote or facilitate the commission of the crime, he or she either:
>
> (1) solicits, commands, encourages, or requests another person to commit the crime; or
>
> (2) aids or agrees to aid another person in planning or committing the crime.

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[2] Salinas, 119 Wn.2d at 201.
[3] State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).
[4] State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).
[5] RCW 9A.52.025.
[6] RCW 9A.08.020(3) provides:

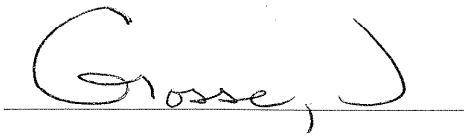
> A person is an accomplice of another person in the commission of a crime if:
>
> (a) With knowledge that it will promote or facilitate the commission of the crime, he
>
> (i) solicits, commands, encourages, or requests such other person to commit it; or
>
> (ii) aids or agrees to aid such other person in planning or committing it.

[7] State v. Roberts, 142 Wn.2d 471, 511-12, 14 P.3d 713 (2000).

> The word "aid" means all assistance whether given by words, acts, encouragement, support, or presence. A person who is present at the scene and ready to assist by his or her presence is aiding in the commission of the crime. However, more than mere presence and knowledge of the criminal activity of another must be shown to establish that a person present is an accomplice.

Wilson argues that not specifying the burglary as "the" crime, permitted the jury to put whatever crime it thought might have been committed, e.g., trespass. Wilson contends the instruction here is analogous to a deficient instruction given in State v. Brown,[8] even though it is more specific than the one given there. An accomplice liability jury instruction is deficient if it refers to the defendant's knowledge of "a crime," rather than "the crime."[9] Wilson's argument was rejected by this court in State v. Mullin-Coston,[10] which held that the charged crime need not be referenced in the liability instruction; it was sufficient to instruct the jury, as here, with the language from the accomplice liability statute.[11] The challenged instruction is materially indistinguishable from instructions previously upheld by Washington courts.[12]

Accordingly, we affirm.



WE CONCUR:

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[8] 147 Wn.2d 330, 58 P.3d 889 (2002).
[9] State v. Carter, 154 Wn.2d 71, 76, 109 P.3d 823 (2005) (internal quotation marks omitted) (citing State v. Cronin, 142 Wn.2d 568, 578-80, 14 P.3d 752 (2000); State v. Roberts, 142 Wn.2d 471, 510-13, 14 P.3d 713 (2000)).
[10] 115 Wn. App. 679, 64 P.3d 40 (2003), aff'd on other grounds, 152 Wn.2d 107, 905 P.3d 321 (2004).
[11] Mullin-Coston, 115 Wn. App. at 690-91.
[12] State v. Davis, 101 Wn.2d 654, 656-57, 682 P.2d 883 (1984) (upholding instruction identical to the instruction given in this case); Roberts, 142 Wn.2d at 511-12 (expressly approving of Davis instruction).

Ellington, J. Becker, J.