

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,	)	No. 64579-0-I
	)	
Respondent,	)	DIVISION ONE
	)	
v.	)	
	)	
T.K. (DOB: 11-02-91),	)	UNPUBLISHED
	)	
Appellant.	)	FILED: <u>September 20, 2010</u>
	)	
	)	

Cox, J. – T.K. appeals her adjudication and disposition for third degree assault, claiming there was insufficient evidence to support her conviction. There was substantial evidence that T.K. participated as an accomplice in a group assault of K.F. and that K.F. sustained injuries to her jaw that caused pain and substantial suffering as a result of that assault. Moreover, there is no need to remand for entry of additional findings and conclusions. We affirm.

On June 14, 2009, K.F. was walking with her brother and some friends at Lake Meridian Park. A group of four girls, including M.S. and T.K., approached K.F. and an altercation ensued. M.S. punched K.F. K.F. reciprocated, and the three other girls, including T.K., joined M.S. in assaulting K.F. At the fact-finding hearing, K.F. testified that “they were kicking me, punching me. I believe one of them was holding me down because I felt someone standing on my ankle.”

Eventually one of K.F.’s friends intervened and the fight ended. The group of girls that assaulted K.F. left the park and went to a nearby bus stop.

Police arrived and detained M.S., T.K., and the two other girls at the bus stop. K.F. positively identified all four girls as having taken part in the assault at an in-field showup. T.K. testified at the hearing, denying ever hitting, kicking, or touching K.F.

K.F. sustained injuries to her jaw, hip, and knee as a result of the assault. She was unable to eat solid foods for a month due to the damage to her jaw and still suffered some pain at the time of trial.

The State charged T.K. in juvenile court with third degree assault by amended information. After a two day fact-finding hearing, the juvenile court found her guilty as charged.

T.K. appeals.

### **SUFFICIENCY OF THE EVIDENCE**

T.K. argues that the State did not present sufficient evidence to convict her of third degree assault because there was no evidence that she hit K.F. in the face or jaw, where K.F. sustained the most serious injuries. She also claims the court erred when it entered its conclusion stating that T.K. caused the requisite bodily injury for third degree assault. We disagree with both claims.

In reviewing the sufficiency of evidence, we draw all reasonable inferences from the evidence in the prosecution's favor, and interpret the evidence most strongly against the defendant.<sup>1</sup> We defer to the trier of fact to

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<sup>1</sup> State v. Joy, 121 Wn.2d 333, 339, 851 P.2d 654 (1993); State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

resolve any conflicts in testimony, to weigh the persuasiveness of evidence, and to assess the credibility of the witnesses.<sup>2</sup>

We review the juvenile court’s findings of fact for substantial evidence.<sup>3</sup> “In determining whether the requisite quantum of proof exists, the reviewing court need not be convinced of the defendant’s guilt beyond a reasonable doubt, but only that substantial evidence supports the State’s case.”<sup>4</sup>

The trial court’s findings of fact must support its conclusions of law. We review conclusions of law de novo.<sup>5</sup>

A person commits third degree assault if, with criminal negligence, the person causes bodily harm accompanied by substantial pain that extends for a period sufficient to cause considerable suffering.<sup>6</sup>

A person acts as an accomplice if, “[w]ith knowledge that it will promote or

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<sup>2</sup> State v. Boot, 89 Wn. App. 780, 791, 950 P.2d 964 (1998).

<sup>3</sup> State v. B.J.S., 140 Wn. App. 91, 97, 169 P.3d 34 (2007).

<sup>4</sup> State v. Jones, 93 Wn. App. 166, 176, 968 P.2d 888 (1998).

<sup>5</sup> B.J.S., 140 Wn. App. at 97.

<sup>6</sup> RCW 9A.36.031:

(1) A person is guilty of assault in the third degree if he or she, under circumstances not amounting to assault in the first or second degree:

.....

(f) With criminal negligence, causes bodily harm accompanied by substantial pain that extends for a period sufficient to cause considerable suffering.

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 ....”<sup>7</sup> A defendant need not participate in each element of the crime in order to be convicted as an accomplice.<sup>8</sup> Instead, an accomplice need have only general knowledge that he is encouraging or assisting in the criminal act.<sup>9</sup> A person who is an accomplice in the commission of a crime is guilty of that crime to the same extent as the principal.<sup>10</sup>

T.K. properly admits that K.F. was assaulted and suffered injuries severe enough to meet the statutory requirement for third degree assault. But she argues that there was insufficient evidence to prove that she caused those injuries. She bases this argument on the lack of evidence that she kicked K.F. anywhere near her head. In taking this position, she does not dispute there was sufficient evidence to show that M.S., one of the other assailants, hit K.F. in the jaw. Likewise, she does not dispute that she hit K.F. in the stomach. Finally, she does not dispute that the trial court asked for argument on accomplice liability at the fact-finding hearing, which both parties then addressed.

There is sufficient evidence to prove all of the elements of the crime of

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<sup>7</sup> RCW 9A.08.020(3).

<sup>8</sup> State v. Galisia, 63 Wn. App. 833, 840, 822 P.2d 303 (1992), abrogated on other grounds by State v. Trujillo, 75 Wn. App. 913, 883 P.2d 329 (1994).

<sup>9</sup> State v. Ferreira, 69 Wn. App. 465, 472, 850 P.2d 541 (1993).

<sup>10</sup> RCW 9A.08.020.

third degree assault. Taking the evidence in the light most favorable to the State, T.K. participated in an assault of K.F., during which the victim suffered the requisite severity of injury to constitute the crime. Unchallenged findings of fact 1 through 3, 6, and 8 establish these points. These are verities on appeal.<sup>11</sup>

The underlying argument is that these findings do not support conclusions of law II(a) and (b). We disagree.

It is true that neither of these challenged conclusions of law expressly state that T.K. is guilty as an accomplice. But it is also true that at the fact-finding hearing, the trial court explicitly asked both the prosecutor and defense counsel to address accomplice liability. The court then stated “I am going to find that the assault did take place, that there was a group activity that [T.K.] was in fact a part of that group, including the kicking, including the hitting, that there was substantial pain, there was bodily harm that extended for a certain period of time and that included the jaw.”<sup>12</sup>

At that same hearing, the court then entered its “Order on Fact-Finding.” The court’s handwritten findings state:

***A group assault took place, respondent was included.*** On the date alleged, the alleged victim was caused substantial pain that persisted for long enough to cause considerable suffering. ***The respondent acted intentionally in joining. (See findings filed subsequently).***<sup>[13]</sup>

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<sup>11</sup> State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994).

<sup>12</sup> Report of Proceedings (September 29, 2009) at 140.

<sup>13</sup> Clerk’s Papers at 5 (emphasis added).

The trial court's findings of fact and conclusions of law, entered more than two months after the fact finding hearing, do not explicitly state that the trial court relied on accomplice liability. But it is clear from the court's oral ruling and the express notation in the order on fact-finding that this was the case. We also note the reference in the fact-finding order that the trial court cross-referenced this determination to the later findings and conclusions entered in connection with this appeal.

We read this record to mean that the trial court expressly determined that T.K. was guilty as an accomplice to the charged crime. There is no other reasonable way to read this record. In sum, the trial court made all the necessary ultimate findings and conclusions to evidence its decision. No more is required.

This case is unlike State v. Alvarez.<sup>14</sup> There is sufficient evidence to prove the crime of third degree assault. Likewise, there are written findings, when the whole record is considered, to comply with the rules requiring entry of findings on ultimate facts. In short, the challenge to the conclusions of law of the trial court is unpersuasive and remand for entry of additional findings and conclusions is unnecessary.

We affirm the adjudication and disposition.

Cox, J.

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<sup>14</sup> 128 Wn.2d 1, 19-20, 904 P.2d 754 (1995).

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WE CONCUR:

*Schiveller, J*

*Seaman, J*