IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	NO. 66021-7-I
	)	
Respondent,	)	DIVISION ONE
	)	
v.	)	
	)	
K.K.,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	FILED: June 20, 2011
	)	

Lau, J. — KK appeals his adjudication of guilt for second degree robbery and his manifest injustice disposition. He argues that insufficient evidence supports his conviction and that the disposition is improper because the court wrongly failed to find certain mitigating factors. Additionally, he argues that the disposition is not clearly and convincingly supported by the record or valid aggravating factors. Finding no error, we affirm.

FACTS

On January 22, 2010, Shabazz Sallier went to the Garfield Teen Life Center (Center) in Seattle to have his picture taken for an identification card. After he entered

the Teen Life Center, KK approached Sallier and asked him for $5. When Sallier told KK that he did not have $5, KK "grabbed the exterior of [Sallier]'s pocket." Sallier initially thought KK was joking. Video from the Center shows KK talking to a second unidentified man (Individual 2). After speaking with Individual 2, KK again tried to grab Sallier's pocket. Sallier tried to move away, but KK "who was face to face with [Sallier] followed [Sallier] around the lobby of the Teen Life Center . . . ." Finding of Fact (FF) 4. A third male, B.J.C. then entered the Center and approached KK and Sallier. B.J.C. and Individual 2 both grabbed at Sallier's pocket. B.J.C. "stated something to the effect of 'it looks like he has an iPod in his pocket.'" FF 7. KK again grabbed at Sallier's pocket, and he then realized that KK was not joking.

Center employee Buck Buchanan then told Sallier that the camera was not working and he could not have his picture taken. Buchanan told KK and the other males to leave the Center and Sallier to stay for a few minutes "because they were 'messing' with [Sallier]." FF 8.

After leaving the community center, KK "approached [Sallier] again and demanded $5.00." "Concurrently, a group of 8-1O males circled [Sallier] and surrounded him, all of them standing within two feet of [Sallier]. [KK] was standing closer than the rest, he was one foot away from [Sallier]." FF 10. One of the males grabbed Sallier's pants and took his wallet. As Sallier turned to see who had taken his wallet, another male punched him in the face and a third male reached into his jacket and took his MP3 player (audio file format). KK did not hit Sallier or take his wallet or

MP3 player. Sallier went back into the Center and eventually called the police.

The juvenile court found KK guilty of second degree robbery based on an accomplice liability theory. KK had one prior conviction for first degree manslaughter based on an incident when he and a group of youths attacked a man by kicking and punching him. The victim eventually died of his injuries. KK admitted to punching the victim and pleaded guilty. At the disposition hearing, the Juvenile Probation Counselor (JPC), Gabrielle Pagano, recommended a manifest injustice disposition of 27 to 36 weeks' confinement and 12 months' probation. The State recommended a manifest injustice disposition upwards of 52 to 65 weeks' confinement, while the Defense argued for a downward disposition of 15 to 19 weeks' confinement and 12 months' community supervision. The court imposed a manifest injustice disposition of 27 to 36 weeks' confinement and 12 months' community supervision.

ANALYSIS

Sufficiency of the Evidence

KK first argues that insufficient evidence exists to support his conviction for second degree robbery. "In reviewing the sufficiency of the evidence in a criminal case, the question is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." State v. Hagler, 74 Wn. App. 232, 234-35, 872 P.2d 85 (1994). We interpret all reasonable inferences from the evidence in favor of the State. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). "A claim of insufficiency

admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." Salinas, 119 Wn.2d at 201. And circumstantial evidence is as probative as direct evidence. State v. Moles, 130 Wn. App. 461, 465, 123 P.3d 132 (2005). "This court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence." State v. Fiser, 99 Wn. App. 714, 719, 995 P.2d 107 (2000). Given the fact finder's opportunity to assess witness demeanor and credibility, we will not disturb those findings. See State v. Pierce, 134 Wn. App. 763, 774, 142 P.3d 610 (2006).

A person commits the crime of robbery

> when he unlawfully takes personal property from the person of another or in his presence against his will by the use or threatened use of immediate force, violence, or fear of injury to that person or his property or the person or property of anyone. Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking; in either of which cases the degree of force is immaterial.

RCW 9A.56.190.

"Any force or threat, even slight, is sufficient to sustain a robbery conviction." State v. O'Connell, 137 Wn. App. 81, 95, 152 P.3d 349 (2007). The intent to commit theft of property is a nonstatutory element of robbery. State v. Kjorsvik, 117 Wn.2d 93, 98, 812 P.2d 86 (1991). "An unequivocal demand for money, unsupported by any pretext of lawful entitlement, constitutes an implicit threat of force." 13B Seth A. Fine et al., Washington Practice: Criminal Law § 2304, at 5 (1998) (citing State v. Collinsworth, 90 Wn. App. 546, 553, 966 P.2d 905 (1997)).

A person is guilty of a crime as an accomplice if, "[w]ith 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." RCW 9A.08.020(3)(a).

Here, KK challenges the sufficiency of the evidence only as to whether he had knowledge that "that someone was going to use force to take [Sallier]'s property." Appellant's Br. at 13. KK maintains that because he did not know that one of the males would use force, specifically by punching Sallier, to take his property, there was insufficient evidence to convict him as an accomplice. But an accomplice need not have knowledge of the particular method of effectuating a crime or of every element rather "[g]eneral knowledge of 'the crime' is sufficient." State v. Roberts, 142 Wn.2d 471, 513, 14 P.3d 713 (2000); See also In re Pers. Restraint of Sarausad, 109 Wn. App. 824, 836, 39 P.3d 308 (2001) ("An accused who is charged with first degree assault or second-degree assault, as an accomplice must have known generally that he was facilitating an assault, even if only a simple, misdemeanor-level assault, but need not have known that the principal was going to use deadly force or that the principal was armed."); but cf. State v. Grendahl, 110 Wn. App. 905, 911, 43 P.3d 76 (2002) (person who knowingly aids in theft cannot be convicted of robbery when principal later uses force). Thus, KK need only have known that force would be used in taking Sallier's property, not that the force would be a punch.

Viewed in the light most favorable to the State, there was sufficient evidence to show that KK knew force would be used to take Sallier's property. KK approached

Sallier and asked for $5. "Seconds after requesting the money, [KK] grabbed the exterior of [Sallier]'s pocket." FF 2. While Sallier initially believed that KK was joking, the encounter did not end there. KK again grabbed at Sallier's pocket and, when Sallier attempted to move away, KK "who was face to face with [Sallier] followed [Sallier] around the lobby of the Teen Life Center . . . ." FF 4. B.J.C. and Individual 2 both grabbed at Sallier's pocket. B.J.C. "stated something to the effect of 'it looks like he has an iPod in his pocket.'" FF 7. KK again grabbed at Sallier's pocket and he then realized that KK was not joking. After leaving the community center, KK "approached [Sallier] again and demanded $5.00." "Concurrently, [a] group of 8-1O males circled [Sallier] and surrounded him, all of them standing within two feet of [Sallier]. [KK] was standing closer than the rest, he was one foot away from [Sallier]." FF 10. One of the males grabbed Sallier's pants and took his wallet. As Sallier turned to see who had taken his wallet, another male punched him in the face and a third male reached into his jacket and took his MP3 player.

This evidence was sufficient to support the conviction for robbery even absent KK's knowledge that one of the males would punch Sallier. The threatened use of force to obtain property is sufficient to convict for robbery. RCW 9A.56.190. And "[a]n unequivocal demand for money, unsupported by any pretext of lawful entitlement, constitutes an implicit threat of force." 13B Fine et al., supra, at 5. Thus, when KK "approached [Sallier] again [outside the community center] and demanded $5.00" without lawful purpose he exhibited knowledge of sufficient force for the robbery. FF

10. Moreover, KK repeatedly grabbed at Sallier's pockets as did B.J.C., Individual 2, and other males in the group. Thus, by his actions and direct observation, KK was well aware that someone would use force to take Sallier's property. And while the court did specifically reference the punch as a specific example of the use of force, it stated that the robbery was proved beyond a reasonable doubt without reference to the punch. The State did not need to show that KK had knowledge that the robbery would be accomplished by punching Sallier. There is sufficient evidence to support the conclusion that KK knew that one of the males would take Sallier's property through the use of force—either by grabbing it out of his pocket or by the implicit threat of force of demanding the money.

Manifest Injustice Disposition

KK next argues that the trial court erred in imposing the manifest injustice disposition by "wrongly fail[ing] to find mitigating factors" and because "the court's reasons do not clearly and convincingly support the conclusion that a manifest injustice disposition was needed." Appellant's Br. at 19. The juvenile court may impose a disposition outside the standard range only when it determines that a standard range would effectuate a manifest injustice. State v. Jacobsen, 95 Wn. App. 967, 977-78, 977 P.2d 1250 (1999). A "[m]anifest injustice results if the standard range 'would impose a serious, and clear danger to society in light of the purposes' " of the Juvenile Justice Act. Jacobsen, 95 Wn. App. at 978 (quoting RCW 13.40.020(17)). These purposes include protecting the citizenry and providing necessary treatment, supervision, or

custody for the juvenile. State v. K.E., 97 Wn. App. 273, 279, 982 P.2d 1212 (1999). While RCW 13.40.150 provides a list of statutory aggravating factors, "[t]he court is not limited to the express statutory factors." State v. Radcliff, 58 Wn. App. 717, 721, 794 P.2d 869 (1990). "Because the JJA's policy of responding to the needs of offenders is the 'critical distinction' between the adult and juvenile systems, the juvenile court must focus on the offender's circumstances and must consider numerous factors that may not be relevant to adult sentencing." State v. Meade, 129 Wn. App. 918, 922, 120 P.3d 975 (2005). Thus, the need for treatment or rehabilitation, the need to protect society from dangerous offenders, and the previous failure of noncustodial treatment or supervision are valid reasons that support a sentence outside the standard range. State v. Tauala, 54 Wn. App. 81, 86, 771 P.2d 1188 (1989).

The Juvenile Justice Act sets forth the standard of review on appeal:

> To uphold a disposition outside the standard range, the court of appeals must find (a) that the reasons supplied by the disposition judge are supported by the record which was before the judge and that those reasons clearly and convincingly support the conclusion that a disposition within the range would constitute a manifest injustice, and (b) that the sentence imposed was neither clearly excessive nor clearly too lenient.

RCW 13.40.230(2). In reviewing a manifest injustice determination, we engage in a three-part test: (1) Are the reasons given by the trial court supported by substantial evidence; (2) do those reasons support the determination of a manifest injustice disposition beyond a reasonable doubt; and (3) is the disposition either clearly too excessive or too lenient?" State v. Duncan, 90 Wn. App. 808, 812, 960 P.2d 941

(1998); RCW 13.40.230(2). We review the entire record on appeal, including the oral opinion of the disposition judge, and written findings are not required. State v. E.J.H., 65 Wn. App. 771, 775, 830 P.2d 375 (1992). Here, the court's written findings and conclusions expressly incorporated the oral findings. We conclude that the reasons supplied by the juvenile court for the disposition are supported by the record and those reasons clearly and convincingly support the conclusion that a disposition within the standard range would constitute a manifest injustice. RCW 13.40.230.

The trial court's ruling was based on the need for effective treatment and rehabilitation for KK. The court concluded, "A detention above the standard range is necessary to . . . adequately serve the goal of rehabilitating the respondent and to include a period of supervised probation." Conclusion of Law (CL) 1. The court further concluded, "The term of this manifest injustice disposition is not clearly excessive because of the treatment, rehabilitation, supervision and protection of the public needed in this case." CL 2. The court emphasized these treatment and rehabilitation goals in its oral ruling:

> I really believe that you are capable of being rehabilitated then I believe the recommendations that have been offered by the JPC offer you the best opportunity to realize the dreams that you have articulated in that letter. It gives you the best opportunity to work with probation and to work with others in terms of achieving some goals and actually addressing the issues that are driving you into this behavior that we all find unacceptable.

Report of Proceedings (RP) (Aug. 27, 2010) at 61. The JPC's report stated that she believed KK's rapid recidivism was due in part to the fact that he did not receive any postrelease treatment after his prior offense.

> I believe that had [KK] received parole [after his previous adjudication of guilt], he would have had the monitoring and services in place so that he would not have been charged with a new offense. My recommendation would give [KK] time at JRA to again receive services and drug/alcohol treatment. He would then be monitored by the Probation Department and court for a year after release. That way he will receive follow up services and monitoring this time following his release from JRA.

Report at 12. Thus, the court expressly based its findings and disposition on valid nonstatutory treatment and rehabilitation factors; those findings were supported by the record. The juvenile court properly considered the need for treatment in imposing the manifest injustice disposition. See Meade, 129 Wn. App. at 923 ("[A] juvenile's need for treatment may justify imposing a manifest injustice disposition.").

The court also based the disposition on the need to protect the public, stating, "A detention above the standard range is necessary to protect the public . . ." CL 1. The need to protect the public and the resulting need for an extended period of structured care is a valid consideration. See Tauala, 54 Wn. App. at 86; State v. S.H., 75 Wn. App. 1, 11, 877 P.2d 205 (1994); State v. S.S., 67 Wn. App. 800, 816-17, 840 P.2d 891 (1992). The court's conclusion is amply supported by the record, particularly the JPC report. That report noted that in KK's previous offense for manslaughter, he "hit the alleged victim in the chin area with his fist." Report at 9. The report also detailed that KK had a detention program adjustment "for assaulting another youth" and a second adjustment "because he was one of three youth[s] who jumped another youth." Report at 4-5. The court also highlighted, "The respondent committed this crime six months after release from his prior conviction." FF 7. The report stated, "[M]y recommendation

is the most appropriate and responsible recommendation before the court for rehabilitation for [KK] and protection of the community . . . ." Report at 12. KK's previous assaultive behavior, including the program modifications and his rapid reoffense upon release, are relevant and proper considerations related to public protection and likelihood to reoffend. See State v. J.N., 64 Wn. App. 112, 114, 823 P.2d 1128 (1992) (high risk to reoffend without an extended period of structured care supports manifest injustice); Tauala, 54 Wn. App. at 86.

KK argues that the court improperly considered the uncharged "assaults" in making this determination. But the record indicates that it considered those events as part of its conclusion that KK's actions evidenced his extensive treatment needs as well as the imperative to protect the public and prevent recidivism. Those are proper grounds to consider KK's assaultive conduct. Furthermore, the juvenile court is statutorily required to "[c]onsider any predisposition reports" and information about the uncharged assaults was contained in the JPC's report. RCW 13.40.150(3)(c).

The court also found the fact that "respondent has drug an[d] alcohol issues as outlined in JPC Pagano's report" supported the disposition. FF 9. That finding is supported by substantial evidence in the JPC's report. According to the report "[KK] reported that he did start smoking marijuana at 14 years old . . .[s]ince his release . . . [KK] told me that he has been smoking marijuana on a daily basis." Report at 9. Drug and alcohol use is relevant to the nonstatutory aggravators of need for treatment, likelihood to reoffend, and protection of the public. See State v. N.E., 70 Wn. App.

606-07, 854 P.2d 672 (1993) (untreated long-term alcohol and drug abuse, as well as lack of parental control, high risk to reoffend, failure to comply with recent dispositional orders, and running away from community-based treatment support manifest injustice disposition).

KK maintains that because he had not yet completed a full drug and alcohol evaluation and his need for treatment was thus not definitively established, his substance abuse was not a proper aggravating factor. But the record supports the court's conclusion that treatment was necessary. The JPC stated, "I believe that [KK] should participate in drug and alcohol treatment." Report at 9. And while KK had not undergone a full drug and alcohol evaluation, he did complete a "substance abuse screen . . . and scored a total of 19 points which placed him in the 'HIGH' category." According to JPC Paggano, "This indicates that [KK] needs to be recommended for further [drug and alcohol] evaluations/treatment at this time." Report at 9 (emphasis added). And drug and alcohol abuse is relevant not only to treatment, but to valid nonstatutory aggravating factors of likelihood to reoffend and public protection. The court properly considered KK's drug and alcohol use.

KK next argues that the trial court erred in not finding the mitigating factor that "The respondent's conduct neither caused nor threatened serious bodily injury or the respondent did not contemplate that his or her conduct would cause or threaten serious bodily injury." RCW 13.40.150(3)(h)(i). KK argues that the "[m]inor bruising and bleeding [suffered by Sallier] does not qualify as 'serious bodily injury.'" Br. of

Appellant at 27. But here, the juvenile court properly found the mitigator did not apply, not based on the lack of bodily injury, but because KK "contemplate[d] that his . . . conduct would cause or threaten serious bodily injury." RCW 13.40.150(3)(h)(i). The State conceded below that "there were no serious injuries in this case" but argued,

> The other issue with the fact that he did not contemplate that his actions would result in any injury to anyone is belied by, again, his prior conviction for similar activities, group assault on a vulnerable individual that did, in fact, despite the fact that may have only played part of the role in the assault on Mr. McMichael, it did result in his death. So of all people, the respondent should know that actions such as this can and do lead to serious injuries.

RP (Aug. 27, 2010) at 29-30. The trial court did not err in declining to find the RCW 13.40.150(3)(h)(i) mitigator.

Finally, KK correctly argues that the trial court erred by not finding that "[t]here has been at least one year between the respondent's current offense and any prior criminal offense" under RCW 13.40.150(3)(h)(v). KK committed the current robbery offense on January 22, 2010, almost 15 months after his last offense of first degree manslaughter, which occurred on October 25, 2008. The juvenile court found, "There were no mitigating circumstances." FF 6. That finding was error.

But KK cites to no controlling authority establishing that failure to find a mitigating factor is reversible error. He argues instead, "Reversal is required here because aggravating factors relied on by the court are improper for the reasons set forth above" and that "[e]ven where the appellate court concludes remaining factors demonstrate beyond a reasonable doubt that a manifest injustice disposition is warranted, reversal is still appropriate when there is a possibility the lower court would

grant a different disposition." Appellant's Br. at 34. But we conclude the juvenile court relied on proper aggravating factors. And while it is true that where a reviewing court invalidates an aggravating factor and cannot tell if the juvenile court would have imposed the same sentence absent that factor, reversal is required, KK has provided no authority that the same principle applies where the court improperly found no mitigating factors. See State v. Bourgeois, 72 Wn. App. 650, 664, 866 P.2d 43 (1994). We may assume that where counsel has cited no authority, he has found none. State v. Young, 89 Wn.2d 613, 625, 574 P.2d 1171 (1978).

We affirm.

Cox, J.

WE CONCUR:

Schindler, J.

Cox, J.