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

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| STATE OF WASHINGTON,<br><br>Respondent,<br><br>v.<br><br>SAMUEL EUGENE FERGUSON III and<br><br>Defendant,<br><br>ALBERT JAMAAL YOUNGBLOOD,<br><br>Appellant. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | NO. 66637-1-I<br><br>DIVISION ONE<br><br><br><br><br><br>UNPUBLISHED OPINION<br><br>FILED: May 31, 2011 |

Lau, J. — A jury convicted Albert Youngblood of first degree robbery and eluding a pursuing police vehicle but failed to agree on two counts of first degree kidnapping. The State refiled the first degree kidnapping charges, and a jury convicted him on both counts. Youngblood appeals, arguing: (1) insufficient evidence to support the kidnapping convictions, (2) improper jury discharge procedures violate double jeopardy, (3) no objection to evidence of fear constitutes ineffective assistance of counsel, and

(4) insufficient evidence to support his eluding conviction. Because sufficient evidence supports his convictions, the court properly discharged the jury, and defense counsel's

conduct was neither deficient or prejudicial. We affirm Youngblood's convictions.

FACTS[1]

On May 27, 2008, the State jointly charged Albert Youngblood, Samuel Ferguson, and John Fitzpatrick with one count of first degree robbery, two counts of first degree kidnapping, and one count of attempting to elude a pursuing police vehicle.[2] The State also charged them with committing each offense while armed with a semiautomatic pistol under RCW 9.94A.602 and RCW 9.94A.533(3). Youngblood's, Ferguson's, and Fitzpatrick's cases were joined for trial.

Trial began on February 9, 2009, and closing remarks occurred on February 18. On the afternoon of February 20, 2009, the jury sent the court a question—"If we are unable to come to an agreement on a portion of the charges, while agreeing on other portions, what do we do?" After conferring with the parties, the court answered the question—"You will be brought back into the courtroom for further instructions. In the meantime, continue to deliberate while the parties are notified." When the jury returned to the courtroom, the following colloquy occurred:

> THE COURT: . . . .
> We're at a very serious stage of the proceedings as you can well imagine. And in response to your question, I have an additional instruction to give your question and ask you. And it's going to be directed to the attention of the foreperson and you're only supposed to answer pursuant to the question I ask and it's going to be a yes or no answer; okay?
> Now I'll read the entirety to you. I've called you back into the courtroom to find out whether you have a reasonable probability of reaching a verdict.

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[1] The State accepted Youngblood's recitation of the facts.

[2] The robbery victim was Regina Bridges, while the two kidnapping counts named two separate victims: Roberta Damewood (count 2) and Javier Rivera (count 3).

> First, a word of caution. Because you are in the process of deliberating, it is essential that you give no indication about how the deliberations are going. You must not make any remark in that courtroom that may adversely affect the rights of either party or may in any way disclose your opinion of this case or the opinions of members of the jury.
>
> I'm going to ask your presiding juror if there's a reasonable probability of the jury reaching a verdict within a reasonable time. The presiding juror must restrict her answer to yes or no when I ask this question and must not say anything else.
>
> Okay. So the question is: "Is there a reasonable probability of the jury reaching their verdict within a reasonable time, as to all the counts, as regarding all the Defendants?"
>
> JURY FOREPERSON: No.
>
> THE COURT: Okay. And is there a reasonable probability of the jury reaching a verdict within a reasonable time as to any of the counts?
>
> JURY FOREPERSON: Yes

8 Report of Proceedings (RP) (Feb. 20, 2009) at 1128-29. The court sent the jury back into the jury room to complete the verdict forms on the counts it had agreed on and then called them out again.

> THE COURT: Okay, you may be seated. The jurors are all present. And again I ask the foreperson do you have—reached a verdict on some counts?
>
> JURY FOREPERSON: We have.
>
> THE COURT: And have you signed those verdict forms related to those counts you have agreed upon?
>
> JURY FOREPERSON: Yes.
>
> THE COURT: And you have not been able to reach an agreement on the remaining counts?
>
> JURY FOREPERSON: Correct.
>
> THE COURT: Okay. If you will hand the verdict forms to the bailiff.

8 RP (Feb. 20, 2009) at 1130-31

The court accepted the jury's guilty verdicts on the first degree robbery and attempting to elude a police vehicle counts.[3] The court then excused the jury, saying,

[3] The court had previously dismissed the firearm enhancement regarding the charge of attempting to elude a police vehicle at the conclusion of the State's case in chief.

"Okay. With that I do want to thank sincerely the dedication and the work done by the jurors in reaching this determination. I respect that. You are now discharged." 8 RP (Feb. 20, 2009) at 1134. The verdict forms for the kidnapping counts were left blank.

The State refiled the kidnapping charges against Youngblood and Ferguson,[4] and a second trial was held in May 2009. On May 22, 2009, a jury convicted Youngblood of two counts of first degree kidnapping and found he was armed with a firearm when he committed them.

At the first trial, witnesses testified to the following facts: Two men wearing hats with eyeholes cut in them entered a Shari's Restaurant in Vancouver, Washington at about 5 am on May 21, 2008. The men directed two restaurant employees, Javier Rivera and Roberta Damewood, to move from the kitchen area to another part of the restaurant where the mops were kept and for them to lie on the floor. Damewood testified that she did not see a gun. After five to ten minutes, when it was quiet, Damewood was able to call 911 on her cell phone. Rivera also testified that he did not see a gun.

One of the men told Shari's employee Regina Bridges to open the cash register till. She stated that he was wearing a "hoody" over a grayish stocking cap with eyeholes cut in it and that he pointed a handgun at her. She testified that she saw another man wearing a hoody and a cap pulled over his face with eyeholes in it and

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[4] Fitzpatrick entered an Alford plea to the kidnapping charges. State v. Fitzpatrick, noted at 159 Wn. App. 1022, 2011 WL 198702. State v. Alford, 25 Wn. App. 661, 611 P.2d 1268 (1980).

that he was standing behind Rivera holding a gun. After Bridges opened the till, the man took money from it, put it in his pocket, and both men left. Bridges stated that the man who had her open the till was wearing white, cotton knit, gardening gloves with blue piping. Jason Godsil and his wife walked into the restaurant as the two men ran out the door. Godsil had seen a black Lincoln town car idling in the parking lot by the door as he entered the restaurant. Bridges called 911 to report the robbery.

While traveling southbound on Interstate 205 at 4:58 am, Neil Martin of the Vancouver Police Department saw a black Lincoln town car going northbound on the interstate. Deputy Thomas Yoder and several other police units followed the car. After Deputy Yoder activated his overhead lights, the town car exited the freeway and went into a shopping plaza parking lot and turned around. Detective Thomas Mitchum was standing with his gun drawn in the area between the parking lot and the roadway and was able to see the driver, whom he identified as Ferguson. The car did not stop but went around the police car, which Det. Mitchum described as being parked in a semiroadblock. After the car left the parking lot, Deputy Yoder saw an object tossed from the car that was later identified as a gun wrapped inside a gray hat with eyeholes cut in it.

The car then reentered the freeway heading northbound and increased its speed to 100 or 110 mph with several units following it. The car eventually hit a spike strip deployed by officers, exited the highway, and several of its tires degraded and broke up. The car went through three red lights, hit a traffic median, and came to a stop. Deputy Yoder saw three males get out of the car and run down the street. Fitzpatrick was taken into custody by Deputy Jeremy

Koch, who stated that Fitzpatrick was breathing hard. Youngblood was arrested by Officer Tim Deisher and was found with a black hat with eyeholes cut in it and money in his pocket. Police found a roll of coins under him after he was arrested. Youngblood was determined to be a possible contributor of DNA (deoxyribonucleic acid) found on the black hat. Police found Ferguson behind a couch on the porch of a house. Inside the town car, police found a pair of white gloves with blue piping and a roll of pennies.

At the second trial, witness testimony was materially the same as the first trial with one notable exception—Rivera testified that one of the perpetrators had a gun with him. When defense counsel asked Rivera about his prior inconsistent testimony, Rivera conceded that he was untruthful during the first trial because he "was afraid"

> [b]ecause you don't know if the person who you're testifying against has family members, have friends that can come after you and hurt you or hurt your family. I go to work at night and my children go to school by themselves. On a time they stay home at--alone for a short period of time. And I do have to go to work to support them.

9 RP (May 19, 2009) at 1247, 1256. He acknowledged that no one had threatened him or family members since he testified at the first trial.

## ANALYSIS

### Sufficiency of the Evidence—Merger

Youngblood first argues that "the first degree kidnapping counts were incidental to the robbery and no separate conviction may be imposed and enforced." Appellant's Br. at 17. He therefore maintains that because the kidnappings were done solely to facilitate the robbery and were not independent crimes, insufficient evidence exists to sustain the kidnapping convictions.

Youngblood relies on State v.

Korum, 120 Wn. App. 686, 86 P.3d 166 (2004). There, the State charged the defendant with several kidnapping charges stemming from a conspiracy to rob drug dealers in a series of home invasions. Korum, 120 Wn. App. at 689. The perpetrators restrained the victims with duct tape while searching the homes and stealing drugs, money, and other valuables. Korum, 120 Wn. App. at 690-92. The court determined that this restraint of the victims did not constitute separate kidnappings. "[W]e hold as a matter of law that the kidnappings here were incidental to the robberies . . . ." Korum, 120 Wn. App. at 707 (footnote omitted).

But in State v. Louis, 155 Wn.2d 563, 571, 120 P.3d 936 (2005), the court held that first degree kidnapping, even when incidental to a first degree robbery, does not merge with a robbery conviction. In Louis, while robbing a jewelry store, the defendant bound the two owners' hands and feet, covered their eyes and mouths with duct tape, and forced them into a bathroom. The jury convicted him of one count of first degree kidnapping and one count of first degree robbery for each victim.

On appeal, Louis argued that his convictions for kidnapping and robbery merged because the kidnappings were simultaneous and incidental to the robbery. The court determined the crimes do not merge because proof of one is not necessary to prove the other. It reasoned that proof of kidnapping is not necessary to prove first degree robbery, and proof of first degree kidnapping requires only the intent to commit robbery, not the completion of robbery. Louis, 155 Wn.2d at 571. Because Louis controls, Youngblood's convictions for first degree kidnapping and first degree robbery do not merge.[5]

Mistrial

Youngblood next contends that his robbery conviction violates his constitutional right not to be twice put in jeopardy for the same offense. The State counters that the court properly discharged the jury based on deadlock and there is therefore no double jeopardy violation. "The double jeopardy clause of the Fifth Amendment protects the criminal defendant from repeated prosecutions for the same offense." State v. Juarez, 115 Wn. App. 881, 886, 64 P.3d 83 (2003). It also protects the right of the defendant to be tried by the jury he selected. State v. Jones, 97 Wn.2d 159, 162, 641 P.2d 708 (1982) (citing *Arizona v. Washington, 434 U.S. 497, 503 n.11, 98 S. Ct. 824, 54 L. Ed. 2d 717 (1978)).

When a trial court grants a mistrial without the defendant's consent and after jeopardy has attached, retrial is barred by double jeopardy principles unless the mistrial was justified by manifest necessity. Juarez, 115 Wn. App. at 889. Manifest necessity exists when "'extraordinary and striking'" circumstances clearly indicate that substantial justice cannot be obtained without discontinuing the trial. Juarez, 115 Wn. App. at 889 (quoting State v. Jones, 97 Wn.2d 159, 163, 641 P.2d 708 (1982)).

When a jury acknowledges, through its presiding juror and on its own accord, that it is deadlocked, there is a factual basis sufficient to constitute the "extraordinary and striking" circumstance necessary to justify discharge. Jones, 97 Wn.2d at 164. Other factors a trial court should consider include the length of deliberations in light of

[5] Furthermore, the victims of the kidnappings in this case were different from the victim of the robbery. Under similar facts, the court rejected this same argument in State v. Vladovic, 99 Wn.2d 413, 424, 662 P.2d 853 (1983). We likewise reject it here.

the length of trial and the volume and complexity of the evidence. State v. Kirk, 64 Wn. App. 788, 793, 828 P.2d 1128. We accord great deference to a trial court's decision to discharge a jury due to deadlock. See Jones, 97 Wn.2d at 163.

Here, the jury sent a question to the court during its deliberation indicating it was unable to reach a verdict on some of the charges: "If we are unable to come to an agreement on a portion of the charges, while agreeing on other portions, what do we do?" The court summoned the jury and the parties into the court room and asked the presiding juror whether "there [was] reasonable probability of the jury reaching their verdict within a reasonable time, as to all the counts, as regarding all the Defendants?" 8 RP (Feb. 20, 2009) at 1129. The presiding juror replied, "No." 8 RP (Feb. 20, 2009) at 1129. These facts establish extraordinary and striking circumstances sufficient for the court to exercise its discretion to discharge the jury. See Jones, 97 Wn.2d at 164.

Nevertheless, Youngblood argues that the discharge was improper because the court failed to (1) poll the jurors individually to determine if they agreed with the presiding juror's claim of jury deadlock, (2) "weigh[] the minimal 'relevant considerations' prior to discharging the jury,"[6] (3) make discharge findings, (4) formally declare a mistrial on the record, and (5) obtain his consent to discharge the jury. Youngblood's arguments are not persuasive in light of the deference accorded to the trial court.

Division Two of this court held that "the court has the discretion to rely on the

[6] Appellant's Br. at 22. Relevant considerations include the length of the trial and deliberations, along with the complexity of the issues and evidence.

representations of the foreman . . . ." State v. Dykstra, 33 Wn. App. 648, 652, 656 P.2d 1137 (1983). That is precisely what the trial court did here. Before polling the presiding juror, the court cautioned the jury in accordance with WPIC 4.70[7] not to make any remark that may adversely affect the parties. It then instructed the presiding juror to answer "yes" or "no" to its specific and limited questions. The court asked the presiding juror whether there was a reasonable probability that the jury could reach a decision on the kidnapping counts within a reasonable time. The presiding juror answered, "No." The court also asked the parties whether they wanted "any further [jury] polling." In response, the State and Ferguson's counsel declined. Youngblood's counsel did not respond to this question. Under these circumstances, the court properly exercised its discretion to rely on the presiding juror's statement in determining to discharge the jury. See Dykstra, 33 Wn. App. at 652.

Contrary to Youngblood's assertion, the court is not obligated to consider on the record the length of deliberations, length of trial, and complexity of the issues in rendering its decision to declare a mistrial when a jury is deadlocked.[8] Instead, "[i]n exercising that discretion, the judge should consider the length of time the jury had been deliberating in light of the length of the trial and the volume and complexity of the evidence." Jones, 97 Wn.2d at 164 (emphasis added) (citing State v. Boogaard, 90

[7] The WPIC committee "Notes for use" to WPIC 4.70, probability of verdict, suggests the use of this instruction "when the jury is brought back into the courtroom during deliberations either because the jury has indicated that it may be deadlocked or the judge is contemplating the possible discharge of the jury as a deadlocked jury."

[8] Youngblood cites to no case authority suggesting these considerations are mandatory rather than discretionary.

Wn.2d 733, 739, 585 P.2d 789 (1978)). And we concluded, "There are no particular procedures that the court must follow in determining the probability of the jury reaching an agreement." State v. Barnes, 85 Wn. App. 638, 657, 932 P.2d 669 (1997) (emphasis added).

Here, the jury announced of its own accord that it was deadlocked. After the court summoned the jury and all parties into the courtroom, the presiding juror confirmed that the jury could not reach a verdict on the kidnapping charges. The court acted well within its discretion when it relied on the presiding juror's representation that the jury was truly deadlocked. In exercising this considerable discretion, it was not required to conduct a more detailed inquiry on the record. See Barnes, 85 Wn. App. at 657.

While it is true the court never expressly declared a mistrial or made oral findings before discharging the jury, "the trial court was not required to expressly find 'manifest necessity,' it is clear that the record must adequately disclose some basis upon which the court determines that the jury necessarily must be discharged." State ex rel. Charles v. Bellingham Mun. Court, 26 Wn. App. 144, 149, 612 P.2d 427 (1980). But as discussed above, the presiding juror's responses to the court's WPIC 4.70 inquiry provide a sufficient basis on which to discharge the jury. Following discharge, the court also filed its written findings in a "Memorandum of Disposition" that "[d]efendant convicted of Rob[bery] 1 and attempt to elude. Jury hung on kidnap charges. Defendant to be held without bail." Youngblood and his counsel signed the disposition order without objection.

We turn to Youngblood's next

contention that "neither [he] nor his attorney gave consent for discharge of the first jury in this case." Appellant's Br. at 22. CrR 6.10, discharge of jury, provides, "The jury may be discharged by the court on consent of both parties or when it appears that there is no reasonable probability of their reaching agreement." (Emphasis added.) Under this rule, Youngblood's consent to discharge is not required because the presiding juror answered, "No" when the court asked her if there was a reasonable probability of the jury reaching an agreement within a reasonable time. And as discussed above, this is a reasonable basis on which to discharge the jury.

Ineffective Assistance of Counsel

Youngblood next argues that his trial counsel was ineffective because "Mr. Youngblood's attorney failed to object when Mr. Rivera testified at the second trial that he was afraid for the safety of his family." Appellant's Br. at 23-24. He claims this evidence prejudiced him because it allowed the jury to speculate that he or a family member "created fear in Mr. Rivera." Appellant's Br. at 28. The State counters that defense counsel first introduced this allegedly prejudicial testimony and that there were tactical reasons for so doing.

To establish ineffective assistance of counsel, Youngblood must show both deficient performance and resulting prejudice. *Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). Counsel's performance is deficient if it falls below an objective standard of reasonableness based on a consideration of all the circumstances. State v. Stenson, 132 Wn.2d 668, 705-06, 940 P.2d 1239 (1997). There is a strong presumption of effective representation. State v. McFarland, 127 Wn.2d 322, 334-35, 899 P.2d 1251

(1995). Matters that go to trial strategy or tactics do not show deficient performance, and Youngblood bears the burden of establishing there were no legitimate strategic or tactical reasons behind his attorney's choices. State v. Rainey, 107 Wn. App. 129, 135-36, 28 P.3d 10 (2001). Where a decision not to object to proffered evidence constitutes "a valid tactical decision, [it] cannot provide the basis for an ineffective assistance claim." State v. Alvarado, 89 Wn. App. 543, 553, 949 P.2d 831 (1998). To prove prejudice, Youngblood must show that but for counsel's deficient performance, there is a reasonable probability the outcome of the proceedings would have been different. McFarland, 127 Wn.2d at 335.

Youngblood contends his trial counsel was ineffective for failing to object to the witness's testimony about fear elicited on the State's redirect examination.

> [THE STATE]: Why were you afraid, Javier?
> [Rivera]: Because in my country, if you come to a court like this one, like what I'm doing right now, you risk a lot.
> [THE STATE]: What do you mean, Javier?
> [RIVERA]: Because you don't know if the person you're testifying against you --
> [Feguson's Counsel]: Objection.
> [Rivera]: -- they --
> [Feguson's Counsel]: Foundation. Personal knowledge. What's he testifying from, what somebody told him?
> [THE STATE]: Asking him why he --
> THE COURT: Why he.
> [THE STATE]: -- feels fearful.
> THE COURT: Overrule the objection.
> [THE STATE]: Thank you.
> [THE COURT]: Go ahead.
> [Rivera]: Because you don't know if the person who you're testifying against has family members, have friends that can come after you and hurt you or hurt your family. I go to work at night and my children go to school by themselves. One time they stay home at--alone for a short period of time. And I do have to go to work to support them.

9 RP (May 19, 2009) at 1255-56.

Although Youngblood's counsel never objected to this evidence, codefendant Ferguson's counsel did object. But the trial court overruled the objection and allowed the witness to explain the basis of his fear. "Where a claim of ineffective assistance of counsel rests on trial counsel's failure to object, a defendant must show that an objection would likely have been sustained." State v. Fortun-Cebada, 158 Wn. App. 158, 172, 241 P.3d 800 (2010). And Youngblood did not assign error to the court's evidence ruling. Here, even if defense counsel had timely objected, Youngblood fails to show the court would have sustained the objection.[9]

Sufficiency of the Evidence—Attempting to Elude

Youngblood next argues that insufficient evidence supports his conviction for attempting to elude a police officer based on accomplice liability. The State responds, "The defense took no exceptions to the proposed [jury] instructions," on accomplice liability and any error was invited and "not . . . properly preserved for purposes of appeal." Resp't's Br. at 21.

"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). A reviewing court interprets all reasonable inferences from the evidence in favor of the State. State

[9] Our review of the record shows Rivera's fear was highly relevant to explain why his testimony changed about seeing a gun between the first and second trial. And defense counsel used the evidence to undermine the witness's credibility.

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).

To prove attempting to elude a pursing police vehicle, the State must prove that the defendant was the "driver of a motor vehicle who willfully fail[ed] or refuse[d] to immediately bring his . . . vehicle to a stop and who [drove] his . . . vehicle in a reckless manner while attempting to elude a pursuing police vehicle, after being given a visual or audible signal to bring the vehicle to a stop . . . ." RCW 46.61.024(1). "Attempt to elude," as used in RCW 46.61.024, is given its ordinary meaning of "try" to elude and is unrelated to criminal attempt; thus, there is no requirement that the State prove intent to elude. State v. Gallegos, 73 Wn. App. 644, 650, 871 P.2d 621 (1994).

Under RCW 9A.08.020(3)(i)-(ii), an accomplice is one who, "[w]ith knowledge that it will promote or facilitate the commission of the crime . . . encourages . . . or aids" another person in committing a crime. In other words, an accomplice associates himself with the venture and takes some action to help make it successful. In re Welfare of Wilson, 91 Wn.2d 487, 491, 588 P.2d 1161 (1979). In particular, 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. Trout, 125 Wn. App. 403, 410, 105 P.3d 69 (2005). Where criminal liability is predicated on accomplice liability, the State must prove only that the accomplice had general knowledge of his coparticipant's substantive crime, not that the accomplice had specific knowledge of the elements of the coparticipant's crime. State v. Rice,

102 Wn.2d 120, 125, 683 P.2d 199 (1984).

But mere presence of the defendant, without aiding the principal, despite knowledge of the ongoing criminal activity, is not sufficient to establish accomplice liability. State v. Parker, 60 Wn. App. 719, 724-25, 806 P.2d 1241 (1991). 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." State v. Castro, 32 Wn. App. 559, 564, 648 P.2d 485 (1982)); see also State v. Rotunno, 95 Wn.2d 931, 933, 631 P.2d 951 (1981); Wilson, 91 Wn.2d at 491.

Here, Youngblood asserts that the evidence is insufficient to show that he acted to solicit, command, encourage, or request that the driver (Ferguson) keep going and not stop for the pursuing police. Viewed in the light most favorable to the State, the evidence supports a reasonable inference that Youngblood had knowledge of and aided in the planning of the robbery, the getaway, and the consequent attempt to elude police.

Witnesses testified that two males robbed Shari's Restaurant. Youngblood was arrested with wadded up dollar bills and rolls of coins in his pockets. Youngblood clearly knew that the idling black town car, driven by Ferguson, was waiting outside to flee after the robbery. After he pocketed the money, he and Fitzpatrick ran out of the restaurant and got into the town car, which Ferguson drove out of the Shari's parking lot toward the freeway.

Once on the freeway, police signaled the town car to stop, but it exited the freeway. One of the three men in the

town car threw a handgun and a cap with cut-out eyeholes from the town car driver's side window. Then the town car evaded a police blockade, returned to the freeway without ever stopping, and drove erratically at speeds up to 110 mph, still failing to stop after a spike strip punctured all of its tires. When the town car finally became stuck on a median, Fitzpatrick, Youngblood, and Ferguson ran on foot from the car and from the police.

Both Youngblood's actions in the restaurant and Ferguson's actions in driving the getaway town car were actions that in concert helped the robbery "succeed." State v. Alford, 25 Wn. App. 661, 666, 611 P.2d 1268 (1980). Youngblood and Ferguson were engaged together, not only in the ongoing robbery, but also in attempting to avoid detection and capture following the robbery. They worked in concert with a "community of unlawful purpose" from the time of the robbery through their joint attempt to elude police. See contra Castro, 32 Wn. App. at 564 (no "community of unlawful purpose," no evidence of shared criminal intent of principal, and no accomplice culpability of witness who slept during murder and refused to share proceeds of robbery).

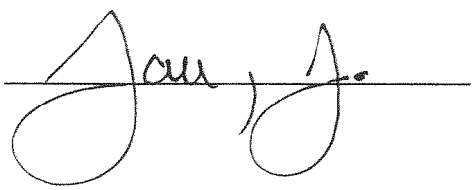
In addition, evidence of flight is admissible as tending to show guilt. State v. Bruton, 66 Wn.2d 111, 112, 401 P.2d 340 (1965). But the evidence must be sufficient to create a reasonable and substantive inference that the defendant's departure from the scene was an instinctive or impulsive reaction to a consciousness of guilt or that the flight was a deliberate effort to evade arrest and prosecution. Bruton, 66 Wn.2d at 112-18. Here, Youngblood not only fled from the robbery but also fled from the town car after it stopped. His continuing flight showed his complicity in both the robbery and the getaway, which involved attempting to

elude the police. A "rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Hagler, 74 Wn. App. at 234-35.

Statement of Additional Grounds (SAG)

Youngblood raises a number of additional arguments in his SAG. He argues that his counsel was ineffective "in failing to request a jury instruction for the lesser-included offense of unlawful imprisonment." SAG at 10 (capitalization omitted). But Youngblood fails to articulate any argument for how this allegedly deficient performance prejudiced him. He has thus failed to establish "a reasonable probability that, except for counsel's unprofessional errors, the result of the proceeding would have been different." McFarland, 127 Wn.2d at 335. Relying on State v. Recuenco, 163 Wn.2d 428, 437, 180 P.3d 1276 (2008), Youngblood also argues that there was insufficient evidence to support his firearm enhancement because there was no evidence that the gun was operable. But Division Two of this court specifically rejected this argument because the portion of Recuenco on which Youngblood relies "was not part of Recuenco's holding and is nonbinding dicta." State v. Raleigh, 157 Wn. App. 728, 735, 238 P.3d 1211 (2010). Youngblood's remaining arguments are either duplicative of his appellate brief, not supported by the record, without merit, or were not raised at trial.

We affirm Youngblood's judgment and sentence.



WE CONCUR:

Schindler, J.

Cox, J.