IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. TAMALA AVEALALO, Appellant.	No. 39710-2-II UNPUBLISHED OPINION

Armstrong, J. — A jury found Tamala Avealalo guilty of second degree robbery, a lesser included offense in violation of RCW 9A.56.210. The trial court imposed a standard range sentence of 4.5 months' confinement followed by 12 months' community custody. Avealalo appeals; he argues that insufficient evidence supports his conviction. We disagree and affirm.

FACTS

At approximately 1:55 am on October 4, 2008, Avealalo and Mark Alapati entered a 7-Eleven store located at 137th Street and Pacific Avenue in Tacoma. The men walked to the coolers and Alapati picked up two cases of beer. The men then walked to the counter and asked the clerk, Ravinder Sekhon, for food. Sekhon suggested he would like to process the beer purchase first because he could not make an alcohol sale after 2:00 am. Alapati and Avealalo searched their pockets and stated they had no money.

Sekhon then reached for the beer and told Alapati and Avealalo they could come back to purchase the beer. The two men told Sekhon they would place the beer back into the cooler.

Sekhon responded, "That's my work and I can do it." Report of Proceedings (RP) at 57. Alapati retorted, "Hey, you don't listen. We're saying we will put it back." RP at 57. Alapati, accompanied by Avealalo, then walked towards the door with the beer. The men exited the store and entered a black vehicle. As they exited Sekhon heard one of the men say to the other, "Don't stop." RP at 65.

Another employee, Ashish Khadka, was outside when Alapati and Avealalo exited the store. Sekhon called to Khadka, "Hey, will you please stop them." RP at 61. Khadka saw something on the right side of Avealalo's body as Avealalo entered the passenger seat of the vehicle, which Khadka believed to be a firearm. Khadka "fear[ed] for his life" and "was afraid that [Avealalo] might do something to [him]," and did not pursue the men. RP at 309.

Sekhon called the police and gave the dispatcher a description of the vehicle and the license plate number. Several minutes later, Lakewood police officers stopped the vehicle described by Sekhon. Police searched the vehicle and found two cases of beer but did not find a firearm. Avealalo was charged with first degree robbery, and a jury convicted him of the lesser included offense of second degree robbery. Avealalo appeals.

ANALYSIS

Avealalo challenges the sufficiency of the evidence, arguing that his mere presence at the scene of the robbery and Khadka's belief that he was armed was insufficient to establish an indirect threat of force, and there was insufficient evidence to convict him as an accomplice. Evidence is sufficient to support a conviction if, viewed in the light most favorable to the State, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). An insufficiency claim

admits the truth of the State's evidence and requires that we draw all reasonable inferences in favor of the State and against the defendant. *Salinas*, 119 Wn.2d at 201.

I. Use or Threatened Use of Force

To establish robbery, the State had to prove that Avealalo took property by force or violence.[1] RCW 9A.56.190; *State v. Shcherenkov*, 146 Wn. App. 619, 624, 191 P.3d 99 (2008), *review denied*, 165 Wn.2d 1037 (2009). The threat may be a direct or indirect communication of the intent to use immediate force, violence, or cause injury. RCW 9A.04.110(27); *Shcherenkov*, 146 Wn. App. at 624-25. Threatened use of force may be slight, as long as it induces the property owner to part with it. *See State v. Handburgh*, 119 Wn.2d 284, 293, 830 P.2d 641 (1992).

A threat of force exists where the threatened person reasonably interprets the language or actions of another to be threatening. *See Shcherenkov*, 146 Wn. App. at 628-29. Taking by intimidation is also sufficient to establish a threat of force. *See State v. Collinsworth*, 90 Wn. App. 546, 552, 966 P.2d 905 (1997). Taking by "'intimidation'" is "'the willful taking in such a way as would place an ordinary person in fear of bodily harm.'" *Collinsworth*, 90 Wn. App. at 552 (quoting *United States v. Bingham*, 628 F.2d 548, 548 (9th Cir. 1980)). The State need not

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[1] A person commits 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. A person is guilty of robbery in the first degree if, in the commission of a robbery or immediate flight therefrom, he or she: (a) is armed with a deadly weapon; (b) displays what appears to be a firearm or other deadly weapon; or (c) inflicts bodily injury. RCW 9A.56.200. All robberies not constituting first degree robbery are second degree robbery. RCW 9A.56.210.

prove Avealalo used force in acquiring the property to prove robbery. *Handburgh*, 119 Wn.2d at 293. Rather it need only prove that Avealalo used the threat of force to retain possession of property that Alapati may have initially taken peaceably. *Handburgh*, 119 Wn.2d at 293.

Here, the State proved that Avealalo was present in the store when Alapati stole the property, creating a more intimidating force than if Alapati had been alone. The State also proved that Avealalo appeared to be carrying a concealed weapon in his waistband, causing Khadka to fear for his safety and abandon any attempt to stop Avealalo. Viewed in the light most favorable to the State, the jury's conclusion that Avealalo threatened the use of immediate force was supported by sufficient evidence.

II. Evidence of Accomplice Liability

Avealalo is guilty of a crime committed by Alapati if Avealalo served as an accomplice to Alapati in the commission of the crime. RCW 9A.08.020. A person is an accomplice if: "[w]ith knowledge that it will promote or facilitate the commission of the crime, he . . . solicits, commands, encourages, or requests [another] person to commit it; or . . . aids or agrees to aid [another] person in planning or committing it." RCW 9A.08.020(3)(a).

Avealalo aided Alapati by (1) standing by ready to help, (2) acting as an intimidating figure to stop Sekhon from pursuing the pair outside the store, and (3) carrying what appeared to be a firearm that discouraged Khadka from stopping the pair. Moreover, Sekhon heard either Avealalo or Alapati say to the other as they exited the store, "Don't stop," suggesting that the two were cooperating in their attempt to exit the store with the stolen goods. RP at 65. Viewing this evidence in the light most favorable to the State, as we must, we find that a rational trier of fact could find Avealalo acted as an accomplice under RCW 9A.08.020.

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Armstrong, P.J.

We concur:

Quinn-Brintnall, J.

Van Deren, J.