IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. K.B., Appellant.	No. 40345-5-II UNPUBLISHED OPINION

Quinn-Brintnall, J. — The juvenile court found K.B., born December 1, 1994, guilty of one count of second degree burglary. He appeals, arguing that the State failed to present sufficient evidence to support four of the findings of fact. Concluding that the evidence was sufficient, we affirm.[1]

The State charged K.B. with second degree burglary of the snack bar of the Little Wheels Quarter Midget Club in Frontier Park. After trial, the juvenile court found him guilty and entered the following pertinent findings of fact:

> IV.
>
> On July 8, 2009, [K.B.] was with a group, some of whom, unlawfully and feloniously entered the snack bar. At daybreak, Gary Zackary walked through Frontier Park and saw a group of seven to nine juveniles banging on the metal service window at the front of the snack bar. Mr. Zachary shined a laser light on

[1] A commissioner of this court initially considered K.B.'s appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

the group and they ran towards him. As the group approached him, Mr. Zachary told them to "knock it off". He recognized [K.B.] as one of the juveniles who ran past him. The group, including [K.B.], returned to the snack bar where larger members continued to beat and pull at the window creating a large hole.

V.

At least one participant of the group entered and remained inside the snack bar with the intent to commit a crime against the property therein. Mr. Zachary saw at least one of the smaller juveniles climb through the large hole in the window, enter the snack bar, and hand items from inside to the juveniles outside. Mr. Zachary alerted the night guard who called police.

VI.

Pierce County deputies arrived at the scene at 0534. Deputy Swanlander went to the snack bar and observed the metal window had an 18" in diameter hole in it. He looked inside and saw several bulk boxes that were opened and missing soda, chips, and various types of candy. Meanwhile, Deputy Collins contacted [K.B.], six males, and one female within blocks of the snack bar. The group appeared nervous and three full backpacks were on the ground in front of them. The backpacks were searched and contained chips, candy, and soda of the same types missing from the snack bar. The deputies recovered over 70 packages of candy, chips, and sodas found on the juveniles at the scene. [K.B.] had three candy bars in his possession.

VII.

Someone from the group unlawfully entered the snack bar. Patricia Woods purchased the chips, soda, and candy sold there. She arrived at the scene on the morning of the incident and confirmed entry was gained through the large hole in the service window. All other entry points were locked. Ms. Woods confirmed that the items recovered from [K.B.] and other juveniles were the same type of items sold by the snack bar. Ms. Woods did not know [K.B.] or other juveniles and she said none of them [had] permission to be in the snack bar on the morning of the offense.

VIII.

[K.B.] acted as an accomplice to the unlawful entry of the snack bar. Even though his exact involvement is unknown, the court finds that [K.B.] encouraged the unlawful entry when he returned to the snack bar where other participants resumed their attempts to gain entry even after Mr. Zachary told them "to knock it off".

IX.

The court finds that [K.B.] acted as an accomplice because he aided, abetted, and participated in the theft of the snack bar when he accepted three candy bars taken from the snack bar by another participant.

X.

The court finds credible the testimony of Gary Zachary, Deputy Brian Swanlander, Deputy Jonathan Collins, and Patricia Woods.

Clerk's Papers (CP) at 10-12.

K.B. argues that the State failed to present sufficient evidence to support findings of fact IV, VII, VIII and IX. We review a claim of insufficient evidence for whether, when viewing the evidence in the light most favorable to the State, "'any rational trier of fact could have found the essential elements of the charged crime beyond a reasonable doubt.'" *State v. Yarbrough*, 151 Wn. App. 66, 96, 210 P.3d 1029 (2009) (quoting *State v. Rempel*, 114 Wn.2d 77, 82, 785 P.2d 1134 (1990)). A sufficiency challenge admits the truth of the State's evidence and all reasonable inferences therefrom. *State v. Theroff*, 25 Wn. App. 590, 593, 608 P.2d 1254, *aff'd*, 95 Wn.2d 385 (1980). "In determining the sufficiency of the evidence, circumstantial evidence is not to be considered any less reliable than direct evidence." *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). Determinations of credibility are for the trier of fact and are not subject to review. *State v. Thomas*, 150 Wn.2d 821, 874, 83 P.3d 970 (2004) (citing *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990)). We defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533, *review denied*, 119 Wn.2d 1011 (1992).

As to findings of fact IV and VIII, K.B. argues that because Zachary's testimony wavered as to what he witnessed K.B. do after Zachary admonished the group to "knock it off," the State failed to present sufficient evidence of his participation. CP at 10. On direct examination, Zachary testified that the "bigger kids" were breaking in through the window while the "younger kids" watched, and he considered K.B. to be one of the "older kids" and "taller kids." 1 Report of Proceedings (RP) at 19. He testified that he was not sure what K.B. was doing, but stated that K.B. was one of the individuals participating in breaking in through the window. On cross-

examination and recross-examination, Zachary stated he was unsure of K.B.'s actions. Zachary testified that K.B. ran past him after he shined the laser light on the building, but Zachary did not know what K.B. did at the snack bar when the group returned. And on redirect examination, Zachary testified that when he watched the group from 100 feet away, K.B. was one of the members of the group "beating on the door." 1 RP at 30.

While Zachary's testimony fluctuated as to whether he was sure he saw K.B. return to the snack bar and participate with the larger members of the group in creating a hole in the metal window of the snack bar, we defer to the trier of fact for determinations of credibility and conflicting testimony. *See Thomas*, 150 Wn.2d at 874; *see also Walton*, 64 Wn. App. at 415-16. The juvenile court found Zachary's testimony on direct and redirect examination credible and found that K.B. returned to the snack bar and was among the larger members of the group who continued to create a hole to gain entry to the snack bar. This was a reasonable inference based on Zachary's testimony. The State presented sufficient evidence to support findings of fact IV and VIII.

As to finding of fact VII, K.B. argues that the State failed to present sufficient evidence to support the finding that the three Baby Ruth candy bars, which the deputies found to be in his possession, were stocked or sold at the snack bar. When the deputies arrested the juveniles, they documented what was found on each individual by placing the items in front of the person and taking a photograph. During her testimony, Woods was shown a picture of K.B. with three Baby Ruth candy bars in front of him that had been found on his person. Woods saw the photograph and testified that the items in front of K.B. were the types of items sold at the snack shop during the month of the burglary. The State presented sufficient evidence to support the finding.

As to finding of fact IX, K.B. argues that the State failed to present sufficient evidence that he "accepted three candy bars taken from the snack bar by another participant." CP at 12. The State did not present a witness who specifically testified to witnessing K.B. accepting three candy bars. However, Zachary testified that he saw hands inside the snack shop distributing "pop and chips" through a hole in the door to those outside. 1 RP at 11. And, as discussed above, Woods identified the candy bars found on K.B.'s person as among the types sold in the snack bar. Based on this testimony, it was a reasonable inference that the Baby Ruth candy bars found on K.B. originated from the snack shop and were handed to K.B. from another member of the group. The State presented sufficient evidence to support finding of fact IX in this regard.

Finally, as to finding of fact IX, K.B. argues that the State failed to present sufficient evidence that he was an accomplice to the burglary of the snack bar. A person is an accomplice to a crime if he knowingly "solicits, commands, encourages, or requests" the commission of a crime or "aids or agrees to aid" in the planning or commission of a crime. RCW 9A.08.020(3)(a)(i), (ii). In other words, he must associate with the undertaking, participate in it as in something he desires to bring about, and seek by his action to make it succeed. *State v. Jackson*, 87 Wn. App. 801, 818, 944 P.2d 403 (1997), *aff'd*, 137 Wn.2d 712, 976 P.2d 1229 (1999). Physical presence and assent alone are insufficient to establish accomplice liability. *In re the Welfare of Wilson*, 91 Wn.2d 487, 491-92, 588 P.2d 1161 (1979) (aiding and abetting requires that one associate oneself with the undertaking, participate in it as something one desires to bring about, and seek by one's action to make it succeed). But "[p]resence at the scene of an ongoing crime may be sufficient if a person is 'ready to assist.'" *Wilson*, 91 Wn.2d at 491.

K.B. contends that, at most, he was merely present at the snack bar and argues that his

case is analogous to three cases, in which a finding of accomplice liability was reversed—*Wilson*, 91 Wn.2d at 491-92; *State v. Robinson*, 73 Wn. App. 851, 852, 872 P.2d 43 (1994); *State v. Mace*, 97 Wn.2d 840, 843, 650 P.2d 217 (1982). But each is distinguishable. In *Wilson*, the defendant was merely standing with a group at the scene of a crime. 91 Wn.2d at 490. In contrast, Zachary testified that K.B. was one of the "bigger kids" who were breaking the window open while the "younger kids" watched. 1 RP at 19. In *Robinson*, the defendant did not know of the criminal act until after it had been completed. 73 Wn. App. at 852, 857. In contrast, K.B. was with the group when individuals were beating or pulling in the window. And, unlike in *Mace*, 97 Wn.2d at 841-42, Zachary's testimony put K.B. at the scene of the crime and participating in entry of the snack bar.

K.B. also argues that there was no evidence that he was present when actual entry was gained. However, accomplice liability does not require that one participate in every element of the crime. *State v. Boast*, 87 Wn.2d 447, 455, 553 P.2d 1322 (1976); *State v. Galisia*, 63 Wn. App. 833, 840, 822 P.2d 303, *review denied*, 119 Wn.2d 1003 (1992), *abrogated by State v. Trujillo*, 75 Wn. App. 913, 883 P.2d 329 (1994). The State presented sufficient evidence that K.B. was an accomplice to the burglary of the snack bar.

In conclusion, the State presented sufficient evidence to support the juvenile court's findings of fact. We affirm K.B.'s adjudication.

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.

QUINN-BRINTNALL, J.

We concur:

WORSWICK, A.C.J.

JOHANSON, J.