IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,	No. 41210-1-II
v.	
MYRON ALEX LOZIER,	UNPUBLISHED OPINION
Appellant.	

Hunt, J.—Myron Alex Lozier appeals his jury conviction for conspiracy to commit third degree theft. He argues that the State failed to present sufficient evidence of a conspiracy. We affirm.

FACTS

On March 14, 2010, Myron Lozier drove his sister, Sadie Moses, and his friend, Bradley Courville, to the South Hill Mall Macy's store in Puyallup. Lozier said that Moses told him she was "going to get an outfit" and would be just "a little bit." Report of Proceedings (RP) at 267. Lozier parked in the row closest to the store's entrance, from which he could see into the store.

Macy's loss prevention officers Nicholas Gregory and Matthew Newberry saw Moses and Courville place different sizes of men's shirts into a Foot Locker bag that Moses was carrying. Moses and Courville walked past the registers and toward the store's entrance. When Lozier saw Moses and Courville approach the entrance, he pulled his car out of his parking spot, drove

toward the entrance and saw that Moses was carrying a Foot Locker bag of what he assumed were shoplifted items and that she and Courville were being followed by security guards.

When Gregory identified himself as a loss prevention officer, first Courville and then Moses attacked him. Courville and Moses ran toward Lozier's car, which by then was "creeping along" in front of the Macy's entrance. RP at 275. Moses changed direction and ran toward the J.C. Penney store, with Gregory in pursuit. Courville opened the right rear passenger door of Lozier's car and made several unsuccessful attempts to climb in, but was prevented by Newberry and a J.C. Penney employee. Lozier pulled his car into a nearby parking spot, where, according to Lozier, the police arrested him after a loss prevention officer told them that Lozier "was driving." RP at 287.

The State charged Lozier with first degree robbery and conspiracy to commit first degree robbery. The jury found him guilty of first degree robbery, not guilty of conspiracy to commit first degree robbery, and guilty of the lesser-included offense of conspiracy to commit third degree theft. He appeals only the conspiracy to commit theft conviction.[1]

ANALYSIS

Lozier argues that the State presented insufficient evidence of an agreement among him, Moses, and Courville for them to commit theft at Macy's. *See* Br. of Appellant at 13-15 (citing *State v. Johnson*, 124 Wn.2d 57, 72, 873 P.2d 514 (1994)). He contends that the only agreement the State proved was that he agreed to drive Moses and Courville to Macy's, which agreement is insufficient to support the conspiracy conviction. We disagree.

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

Evidence of a crime is sufficient when, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992) (citing *State v. Green*, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980)). We draw all reasonable inferences from the evidence in favor of the State and interpret it most strongly against the defendant. *Salinas*, 119 Wn.2d at 201 (citing *State v. Partin*, 88 Wn.2d 899, 906-07, 567 P.2d 1136 (1977)). When determining the sufficiency of the evidence, appellate courts do not consider circumstantial evidence to be any less reliable than direct evidence; and appellate courts may infer the specific criminal intent of the accused from his conduct where intent is "plainly indicated as a matter of logical probability." *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

In order to convict Lozier of conspiracy to commit third degree theft, the State had to prove beyond a reasonable doubt that

> with intent that conduct constituting a crime be performed, he . . . agrees with one or more persons to engage in or cause the performance of such conduct, and any one of them takes a substantial step in pursuance of such agreement.

RCW 9A.28.040. Proof of this crime, thus, required the State to prove the formation of an agreement among the conspirators. *See State v. Pacheco*, 125 Wn.2d 150, 154-55, 882 P.2d 183 (1994). The State may prove the existence of such agreement by (1) a "concert of action, all the parties working together understandingly, with a single design for the accomplishment of a common purpose"; or (2) by overt acts alone. *State v. Casarez-Gastelum*, 48 Wn. App. 112, 116, 738 P.2d 303 (1987) (quoting *Marino v. United States*, 91 F.2d 691, 694 (9th Cir. 1937)). But it is not sufficient to prove simply that multiple people were involved in committing a crime. *See State v. Halley*, 77 Wn. App. 149, 153, 890 P.2d 511 (1995).

Again viewing the evidence in the light most favorable to the State, a rational trier of fact could find beyond a reasonable doubt that Lozier's, Moses' and Courville's actions demonstrated their pre-existing agreement that Moses and Courville would shoplift merchandise from Macy's, after which Lozier would pick them up in his car and drive them and the stolen merchandise away. After dropping Moses and Courville off at Macy's, Lozier parked so he could see into the store's entrance. When he saw them leaving the store, he pulled his car out of its parking spot and started "creeping forward" in front of the Macy's entrance.[2] When he saw Moses carrying the full Foot Locker bag, Lozier assumed she had shoplifted the items in the bag. Even though they were dressed in plain clothes, Lozier also assumed that the men following Moses and Courville out of the store were security officers, who wanted Moses and Courville to return to the store with the stolen merchandise. After Moses and Courville attacked loss prevention officer Gregory, they ran toward Lozier's approaching car, which Courville tried to enter. From these actions, a rational trier of fact could reasonably infer that Lozier had an agreement with Moses and Courville to drive them to Macy's to shoplift and to assist their getaway afterwards.[3]

---

[2] RP at 209.

[3] Lozier attempts to contrast his case with *State v. Smith* by contending that the evidence was not sufficient to prove he agreed to assist in the theft because, unlike in *Smith*, (1) the evidence shows only that he drove Courville and Moses to Macy's during business hours, and (2) he did not encourage the theft. *See* Appellant's Brief at 14-15 (citing *State v. Smith*, 65 Wn. App. 468, 828 P.2d 654, *review denied*, 119 Wn.2d 1019 (1992)). Lozier's reliance on *Smith* is misplaced because the facts are distinguishable.

First, the time of day or night, during business hours or not, when Smith drove his coconspirator was not a factor in Division One's holding that the trial court had sufficient evidence to find that Smith had agreed to transport the coconspirator, Erickson, with the common purpose of delivering LSD. *See Smith*, 65 Wn. App. at 473. Division One relied on two overt acts to determine that such an agreement existed: (1) "that Smith drove Erickson to Snohomish knowing, according to Corporal Cook, Erickson's purpose for the trip"; and (2) "that Smith provided encouragement for the sale by assuring the officer of the potency of the drug." *Smith*,

We hold, therefore, that the State presented sufficient evidence of an agreement among Lozier, Moses, and Courville to commit theft at Macy's to support the jury's verdict that Lozier engaged in a conspiracy to commit third degree theft. 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 in accordance with RCW 2.06.040, it is so ordered.

Hunt, J.

We concur:

Worswick, ACJ.

Johanson, J.

65 Wn. App. at 473. Second, Smith encouraged the sale of LSD by vouching for its potency to the undercover officer purchasing the drugs, which vouching was a factor in proving an agreement among Smith, the driver, and his coconspirator, the seller. *Smith*, 65 Wn. App. at 473.

In contrast with *Smith*, as we explain in the text above, a rational trier of fact could have inferred from Lozier's suspicious driving patterns outside the store after dropping off Moses and Courville that he was participating and encouraging their theft from Macy's, especially under the applicable standard of review, which requires us to view the evidence in the light most favorable to the State and to draw all reasonable inferences in the State's favor.