IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. T.F., Appellant.	No. 41755-3-II UNPUBLISHED OPINION

Quinn-Brintnall, J. — T.F.[1] appeals his adjudication of third degree theft, arguing that the State failed to present sufficient evidence that he knew an act of shoplifting would occur when he handed an item in a store to a female companion. We affirm.[2]

FACTS

On May 27, 2010, Emily Cable was working at Swain's Outdoor in Port Townsend. She saw T.F. hand a black leather belt to a female companion, R.M. R.M. then put the belt up her shirt and she and T.F. began to walk toward the store's exit. Cable stopped her and asked for the

[1] Under RAP 3.4, this court changes the title of the case to the juvenile's initials. The opinion uses initials for the juvenile and his family to protect the juvenile's rights to confidentiality.

[2] A commissioner of this court initially considered T.F.'s appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

belt; R.M. complied. When Cable saw the belt, she recognized it as an item sold in the store. The store's security tags were still on it. Cable then escorted T.F. and R.M. to the back of the store. As the three walked to the back of the store, Cable noticed T.F. putting on his old belt. T.F. kept repeating that he was not shoplifting. Cable noted that T.F. had an offensive demeanor.[3] The store manager decided that R.M. should be detained, but let T.F. leave. T.F. remained outside the store. City of Port Townsend Police Officer John Bick arrived at the store and spoke to T.F., who said that he did not take the belt, nor did he tell R.M. to take it. T.F. admitted handing the belt to her, but said that he did not know she would take it.

The State charged T.F. with third degree theft. RCW 9A.56.050(1). After a bench trial before a court commissioner, T.F. was found guilty as charged. T.F. moved for revision, but other than striking one finding of fact as unsupported by the evidence and irrelevant, the reviewing judge denied T.F.'s motion. T.F. appeals.

ANALYSIS

T.F. argues that the State failed to present sufficient evidence to prove (1) that a theft occurred and (2) that he was liable as an accomplice. The State has presented sufficient evidence when, 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. Green*, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980). "[W]hen the sufficiency of the evidence is challenged in a criminal case, all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant." *State v. Partin*, 88 Wn.2d 899, 906-07, 567 P.2d 1136 (1977). In performing this review and drawing inferences, we consider

[3] Cable's further testimony that T.F. was "trying to get himself out of it" was improper opinion testimony but was not objected to at trial. Report of Proceedings at 13.

circumstantial evidence as reliable as direct evidence. *State v. Thomas*, 150 Wn.2d 821, 874, 83 P.3d 970 (2004). And as an appellate court, we "must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence." *Thomas*, 150 Wn.2d at 874-75.

T.F. first argues that because the belt never left the store, a theft was not completed. Theft, defined in part, is "[t]o wrongfully obtain or exert unauthorized control over the property . . . of another . . . with intent to deprive him or her of such property." RCW 9A.56.020(1)(a). Third degree theft is defined as theft of property or services that does not exceed $750 in value. RCW 9A.56.050(1). One "'wrongfully obtain[s] or exert[s] unauthorized control'" over an item when he or she "'*assume[s] ownership*'" of an item. *State v. Britten*, 46 Wn. App. 571, 573-74, 731 P.2d 508 (1986) (alterations in original) (quoting RCW 9A.56.020(1)(a); Black's Law Dictionary 1303 (5th ed. 1979)).

Viewing the evidence in the light most favorable to the State, a rational trier of fact could have found that the elements of third degree theft were proved beyond a reasonable doubt. Cable testified that the belt belonged to the store. After T.F. handed the belt to R.M., rather than carrying it in the open, she exerted unauthorized control over the belt by placing the belt under her shirt and starting toward the store's exit. Concealing the belt in this way was an act inconsistent with the store's ownership of the item and was an act consistent with assuming ownership of it. On these facts, the trial court could have found that a third degree theft had been committed.

T.F. next argues that the evidence was insufficient to prove that he was an accomplice to third degree theft. Under RCW 9A.08.020(3)(a), a person is legally accountable as an accomplice

for the substantive crimes of another if "[w]ith knowledge that it will promote or facilitate the commission of the crime, he . . . (ii) [a]ids or agrees to aid such other person in planning or committing it." The State must prove that the accomplice acted with knowledge that his or her actions promoted or facilitated the commission of the crime. *State v. Cronin*, 142 Wn.2d 568, 579, 14 P.3d 752 (2000). Although conspiracy requires a prior agreement, accomplice liability does not. *State v. Markham*, 40 Wn. App. 75, 88, 697 P.2d 263, *review denied*, 104 Wn.2d 1003 (1985). But mere presence and assent are insufficient to establish accomplice liability. *State v. Everybodytalksabout*, 145 Wn.2d 456, 481, 39 P.3d 294 (2002). Although the accomplice need not have specific knowledge of every element of the crime the principal committed, so long as he or she has general knowledge of that specific substantive crime and promotes or facilitates its commission, he is liable as an accomplice. *State v. Roberts*, 142 Wn.2d 471, 512, 14 P.3d 713 (2000); *State v. Sweet*, 138 Wn.2d 466, 479, 980 P.2d 1223 (1999).

The State presented evidence that when T.F. handed the belt to R.M., she immediately concealed it. With the belt concealed under R.M.'s shirt, T.F. and R.M. walked toward the store's exit. After Cable stopped the pair, T.F. started putting his own belt back on. A rational trier of fact could have found that, with knowledge that it would promote or facilitate theft of the belt, T.F. handed it to R.M. for concealment under her shirt. Therefore, the State presented sufficient evidence to support the trial court's finding that T.F. committed third degree theft of the belt when he handed it to R.M. for concealment under her shirt and then he started to walk out of the store with her. The court's rejection of T.F.'s denials that he was shoplifting or that he knew R.M. would conceal the belt are credibility determinations which we defer to the trial court.

The State presented sufficient evidence to support T.F.'s conviction. 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.

QUINN-BRINTNALL, J.

We concur:

VAN DEREN, J.

PENOYAR, C.J.