IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**No. 28164-7-III**
	)	
Respondent,	)	
	)	
v.	)	**Division Three**
	)	
RUSBEL SAENZ, JR.,	)	
	)	
Appellant.	)	**UNPUBLISHED OPINION**

Korsmo, J. — Rusbel Saenz challenges his conviction for possession of cocaine, arguing that the police lacked authority to seize him. We disagree and affirm the conviction.

FACTS

Mr. Charlie Cave called Pasco police to report that he heard glass breaking at a nearby house and saw two strangers in the neighborhood. The men fled, but the officers were able to apprehend them. Mr. Cave recognized the two men, whom police later identified as Rusbel and Nicholas Saenz, as the ones he had seen near his neighbor's

house. Officers also determined that six window panes had been damaged. Rusbel Saenz was arrested for malicious mischief.

Cocaine was discovered in Mr. Saenz's wallet at the jail. Prosecutors charged him with one count of possession of a controlled substance. He moved to suppress, arguing that the officers lacked probable cause to arrest him as an accomplice to Nicholas Saenz.

An officer testified at the suppression hearing about the information he had received from Mr. Cave. Mr. Cave had seen two males on the north side of his neighbor's house; they were urinating into some bushes. They then walked to another house. One man was wearing a white sweatshirt, while the other wore a black sweatshirt. Cave heard glass breaking and ran outside his house. The man wearing a white sweatshirt was holding a crowbar. The man in the black sweatshirt stood nearby. The two men fled upon seeing Cave.

Mr. Cave identified the two men apprehended by the police as the two men he had seen. Nicholas Saenz was wearing a white sweatshirt, while Rusbel Saenz was wearing the black sweatshirt. Both men denied involvement in the incident; neither had a crowbar.

The trial court denied the motion to suppress, reasoning that probable cause existed to believe the two men were working together. Mr. Saenz later was convicted of

cocaine possession at a trial on stipulated facts. He was sentenced to 30 days in jail. The original judgment and sentence, entered June 9, 2009, contained two typed charges: count I, first degree malicious mischief, and count II, possession of cocaine. The court struck through the malicious mischief language and relabeled the cocaine charge as count I.

Two weeks later a "first amended judgment and sentence" was entered. It contained the same two typed counts as the original judgment form, but without the handwritten interlineations. It also included a sentence of "30 days/months" on "count I." There is no sentence for any other count.

Mr. Saenz timely appealed to this court.

ANALYSIS

This appeal challenges the suppression ruling and the amended judgment form. We will address the challenges in order.

Suppression Ruling. Appellant argues that while there was probable cause to arrest Nicholas Saenz for malicious mischief, there was no evidence that Rusbel Saenz did anything to contribute to the offense. His mere presence at the scene was insufficient to justify his arrest.

A trial court is required to enter findings of fact and conclusions of law after it conducts a suppression hearing. CrR 3.6(b). We review the factual findings for

"substantial evidence." *State v. Hill*, 123 Wn.2d 641, 647, 870 P.2d 313 (1994). "Substantial evidence" is evidence sufficient to convince a fair-minded person of the truth of the finding. *Id.* at 644. The trial court's legal conclusions are reviewed *de novo. State v. Acrey,* 148 Wn.2d 738, 745, 64 P.3d 594 (2003).

The trial court's factual findings are not challenged in this appeal. Mr. Saenz does challenge the trial court's legal conclusion that probable cause existed to arrest him. Thus, we review his argument *de novo.*

Probable cause to arrest exists when an officer is aware of circumstances that would lead a reasonably cautious person to believe that the suspect has committed a crime. *State v. Terrovona*, 105 Wn.2d 632, 643, 716 P.2d 295 (1986). "Probable cause is not a technical inquiry. In any given case it is a set of factual circumstances and practical considerations governing the actions of reasonable and prudent people in their normal, everyday affairs." *State v. Dorsey*, 40 Wn. App. 459, 468-469, 698 P.2d 1109, *review denied,* 104 Wn.2d 1010 (1985).

Mr. Saenz argues that merely being present at a crime scene does not constitute a crime nor provide a basis for finding accomplice liability. *State v. J-R Distribs., Inc.*, 82 Wn.2d 584, 593, 512 P.2d 1049 (1973), *cert. denied*, 418 U.S. 949 (1974). Similarly, the presence of an individual at a location where a premises search warrant is being served

does not provide probable cause to search that individual. *State v. Broadnax*, 98 Wn.2d 289, 295, 654 P.2d 96 (1982).

However, probable cause to arrest does exist where there is some additional evidence linking an individual to a crime such as association with a criminal actor. *Dorsey*, 40 Wn. App. at 466-468. Associating with a person at the time he commits a criminal act does permit an inference that the associate was assisting in the offense. *Id.* (driving others to banks where thefts were committed sufficient to permit inference that the driver was assisting them in the crimes).

There is sufficient joint action to make this case similar to *Dorsey*. Here, Nicholas and Rusbel Saenz[1] were walking together in a neighborhood where they were strangers. They stopped to urinate together on one property and then moved on to another house where one of them apparently used a crowbar to break six window panes. Nicholas was seen possessing the crowbar, which is an unusual item to take for a walk. Upon discovery by Mr. Cave, both men fled together and were apprehended together. Both denied involvement in the incident even though they had been observed at the scene. Under these circumstances, it was reasonable for the police to believe the two men were acting in concert. Regardless of whether or not this evidence would have been sufficient

[1] The exact nature of the two men's relationship is unclear. They are alternatively described as brothers in a brief and cousins in the police report filed with the motion to suppress.

to convict Rusbel Saenz of malicious mischief, the evidence did rise to the level of probable cause. There was reason to believe both men were acting together.

The trial court did not err in concluding that probable cause existed to arrest Mr. Rusbel Saenz. The motion to suppress was correctly denied.

Amended Judgment and Sentence Form. Mr. Saenz also argues that because the amended judgment form lists malicious mischief instead of cocaine possession as the crime of conviction, the conviction should be overturned for insufficient evidence of that offense. Under these facts, it is clear that a mere scrivener's error has occurred.

When a scrivener's error mars a judgment, the remedy is to remand to the trial court for correction of the error. *State v. Cross*, 156 Wn. App. 568, 589 n.13, 234 P.3d 288 (2010) (various errors in criminal history list); *State v. Moten*, 95 Wn. App. 927, 929, 976 P.2d 1286 (1999) (wrong offense listed for crime of conviction).

The error here is a scrivener's error. The only charge filed against Rusbel Saenz was the drug possession count. He moved to suppress the evidence relating to that charge. He entered into an agreement for a stipulated trial on a charge of cocaine possession, and the trial court found him guilty of that offense. The original judgment and sentence form was interlineated to confirm that sentence was imposed on only one count, a charge of cocaine possession. While Rusbel Saenz was arrested for malicious

mischief, he never was charged with that offense.

The amended judgment[2] form simply repeated the mistake of the first judgment form—listing two offenses instead of one—without including the trial court's original corrections. This is simply a scrivener's error that will need to be corrected. *Moten.*

The conviction for possession of cocaine is affirmed and the matter is remanded for the trial court to correct the amended judgment and sentence.

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

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Korsmo, J.

WE CONCUR:

_____
Kulik, C.J.

_____
Brown, J.

[2] The record does not explain why the amended judgment was entered.