

FILED
APRIL 12, 2012
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	No. 29629-6-III
)	
Respondent,)	
)	Division Three
v.)	
)	
LUIS CISNEROS VALENCIA,)	UNPUBLISHED OPINION
)	
Appellant.)	
)	

Kulik, J. — Luis Cisneros Valencia’s nephew, Juan Garcia, helped Flora Goodale move her belongings to her new residence. Later that evening, Ms. Goodale’s neighbor saw two men trying to pry open the door to the old residence. Benton County sheriff’s deputies caught Mr. Valencia and Mr. Garcia fleeing the scene. Both men were arrested. Mr. Valencia contended that he was unaware that Mr. Garcia intended to burglarize the residence, and that he was simply driving Mr. Garcia to pick up some items that Ms. Goodale left for Mr. Garcia. A jury found Mr. Valencia guilty of attempted residential burglary. Mr. Valencia appealed. Mr. Valencia contends that the State failed to present sufficient evidence to prove that he acted as an accomplice to Mr. Garcia in burglarizing

the residence.

We conclude that ample evidence, more than sufficient, establishes Mr. Valencia's guilt. Therefore, we affirm.

FACTS

On January 13, 2010, Juan Garcia helped move some of Flora Goodale's belongings to her new home. Later that night, at about 11:00 p.m., Diana Holt, who was Ms. Goodale's neighbor and close friend, and Evan Kosterman, Ms. Holt's son, saw a vehicle pull into the driveway of Ms. Goodale's old home. The vehicle, a Jeep Grand Cherokee, had its headlights off. Ms. Holt determined that no one was supposed to be at the old house. She called 911 and reported the vehicle's information.

Mr. Kosterman went outside. By Ms. Goodale's back door, he saw a skinnier man wearing a head lamp and a chunkier man. One of the men seemed to be pushing on the door and the other had a broom stick positioned as if to hit the door off its track. Mr. Kosterman said something and the unidentified men ran toward their vehicle.

Benton County Sheriff Deputies Brian Tungesvik and Roger Trevino arrived as the Jeep spun out of the driveway with its lights off. The deputies followed the vehicle. Within a block, the Jeep hit a patch of ice and became stuck in a ditch. The driver of the Jeep, Mr. Valencia, and the passenger, Mr. Garcia, were detained.

After being read his *Miranda*¹ rights, Mr. Valencia spoke with Deputy Tungesvik. He said that Mr. Garcia asked him for a ride to pick up some items. Mr. Valencia also said that the owner gave Mr. Garcia permission to take the items.

Near the back slider door, police found a head lamp that was still illuminated and a long-handled tool that looked like a screwdriver or paint scraper. The door had markings on it as if someone attempted to pry open the door. The broom handle was lying in front of the patio door and was not in its normal place. In the Jeep, police discovered pry bars, pliers, channel locks, a second head lamp, and a pair of gloves. A blanket was lying in the back of the Jeep.

Ms. Goodale had not given any of the items remaining in the old residence to the people who helped her move.

Benton County charged Mr. Valencia with attempted residential burglary. At trial, Mr. Garcia testified that he decided to go back to Ms. Goodale's house to steal some property. Mr. Garcia did not have a license or a vehicle so he asked Mr. Valencia for a ride. Mr. Garcia testified that he did not tell Mr. Valencia of his plan to steal Ms. Goodale's property. Mr. Garcia also said that Mr. Valencia stayed in the vehicle while Mr. Garcia went to the back door and tried to remove it from its hinges. Mr. Valencia

¹ *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

left the vehicle only to see what Mr. Garcia was doing.

The jury found Mr. Valencia guilty of attempted residential burglary. He appeals, contending that the State did not present sufficient evidence to convict him of attempted residential burglary based on accomplice liability. In a statement of additional grounds, Mr. Valencia also contends that his right to be present at all stages of a trial was violated when the jury returned its verdict outside of his presence and without his waiver of appearance.

ANALYSIS

Sufficiency of the Evidence. In reviewing the sufficiency of the evidence, the standard is “whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *State v. Gentry*, 125 Wn.2d 570, 596-97, 888 P.2d 1105 (1995). “[A]ll reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant.” *Id.* at 597. Direct and circumstantial evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). Credibility issues are for the trier of fact and are not subject to review. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

The jury was instructed that in order to convict Mr. Valencia with the crime of

attempted residential burglary, each of the following elements needed to be proved beyond a reasonable doubt:

- (1) That . . . the defendant did an act that was a substantial step toward the commission of Residential Burglary; or acted as an accomplice to another who did an act that was a substantial step toward the commission of Residential Burglary;
- (2) That the act was done with the intent to commit Residential Burglary; and
- (3) That the act occurred in the State of Washington.

Clerk's Papers at 30.

A conviction for attempted residential burglary requires that the State prove that a person had taken a substantial step toward entering or remaining unlawfully in a dwelling and that the person intended to commit a crime against a person or property therein.

RCW 9A.52.025(1).

A person is an accomplice of another person in the commission of a crime if that person, with knowledge that it will promote or facilitate the commission of a crime, solicits, commands, encourages, or requests such other person to commit the crime, or that person aids or agrees to aid such other person in planning or committing the crime.

RCW 9A.08.020(3)(a).

An accomplice does not need to participate in the crime, does not need to have specific knowledge of every element of the crime, and does not need to share the same

mental state as the principal. *State v. Berube*, 150 Wn.2d 498, 511, 79 P.3d 1144 (2003).

Here, Mr. Valencia contends that the State failed to prove the element that he acted as accomplice to Mr. Garcia. Mr. Valencia maintains that the State did not present sufficient evidence to prove beyond a reasonable doubt that Mr. Valencia knew that Mr. Garcia intended to commit a crime.

At trial, Mr. Garcia admitted that he unlawfully attempted to enter the home of Ms. Goodale in order to steal her property. Mr. Garcia also testified that he did not tell Mr. Valencia that he needed a ride to Ms. Goodale's to commit burglary but, instead, told Mr. Valencia that the items were given to him by Ms. Goodale.

The State presented testimony that Mr. Valencia drove the Jeep and entered the driveway with the lights off. He attempted to enter the backdoor of the home by prying it off the hinges. When confronted, he became aggressive and sped away from the scene. He did not stop when signaled by police. Deputy Tungsвик testified that Mr. Valencia admitted that he and Mr. Garcia were going to the home to retrieve the property. Based on Mr. Valencia's actions, a reasonable juror could conclude that Mr. Valencia knew of Mr. Garcia's plan to break into Ms. Goodale's home and steal her property and, in fact, participated in the plan.

The tools found in the truck could also lead to an inference that Mr. Valencia

knew Mr. Garcia's plan was for the men to burglarize the home. The two head lamps, two pliers, and two pry tools inferred a two-person job. Moreover, the jury could infer from the types of tools and draped blanket found in the Jeep that Mr. Valencia knew that Mr. Garcia needed the tools to unlawfully enter Ms. Goodale's home and remove her property.

The State presented sufficient evidence for the jury to find that Mr. Valencia knew of Mr. Garcia's plans. The jury was entitled to weigh the evidence and credibility of the witnesses, including the testimony of Mr. Garcia. After viewing the evidence in the light most favorable to the State, the evidence was sufficient to convince a rational juror beyond a reasonable doubt that Mr. Valencia acted as an accomplice to Mr. Garcia.

Due Process Right to be Present at Verdict. In his pro se statement of additional grounds, Mr. Valencia contends his right to be present at trial was violated because he was not present at the reading of the jury's verdict. However, Mr. Valencia fails to provide any citations to the record to inform this court of the nature and occurrence of the alleged error—that he was not present during the reading of his verdict. The record does not contain a transcript of the reading of the jury verdict, which would confirm whether or not Mr. Valencia was present. No other part of the record indicates that Mr. Valencia was not present or waived his presence at the reading of the verdict. Also, Mr. Valencia

does not provide any additional evidence to show his absence, such as a statement from his trial attorney saying that he was absent from the proceeding.

“Reference to the record and citation to authorities are not necessary or required, but the appellate court will not consider a defendant/appellant’s statement of additional grounds for review if it does not inform the court of the nature and occurrence of alleged errors.” RAP 10.10(c).

There is nothing in the record to substantiate Mr. Valencia’s contention that he was not present at the reading of his verdict. Therefore, we cannot address whether Mr. Valencia’s right to be present at trial was violated or, under the totality of the circumstances, whether he voluntarily waived that right.

In addition to his right to be present, Mr. Valencia also contends that the trial court should have conducted a *Bone-Club*² analysis before closing the courtroom during the return of his verdict. *Bone-Club* pertains to a defendant’s right to a public trial. Again, there is nothing in the record to indicate that Mr. Valencia’s trial or the reading of his verdict was closed to the public. Therefore, this court is unable to address his contention.

We affirm the conviction for attempted residential burglary.

A majority of the panel has determined this opinion will not be printed in the

² *State v. Bone-Club*, 128 Wn.2d 254, 906 P.2d 325 (1995).

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Washington Appellate Reports, but it will be filed for public record pursuant to
RCW 2.06.040.

Kulik, J.

WE CONCUR:

Korsmo, C.J.

Siddoway, J.