IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. D.W.W., Appellant.	No. 39563-1-II UNPUBLISHED OPINION

Bridgewater, P.J. — D.W.W.[1] appeals his adjudication for second degree assault, arguing that the State failed to present sufficient evidence of (1) accomplice liability and (2) substantial bodily harm. We affirm.[2]

The following facts are taken in the light most favorable to the State. Around 10:00 or 11:00 p.m. on February 14, 2009, A.M. and L.H. went to an outdoor party, attended by about 75 other people. While standing next to a truck waiting for a friend to arrive, A.M. saw D.W.W. and his brother, Daniel, approaching. A.M. had never seen either of the men before, and he did not know that Daniel was L.H.'s ex-boyfriend. Daniel appeared angry, "turning red, like he was getting ready to hit or something." RP (June 30, 2009) at 71. Daniel said to A.M., "'Hey

[1] Under RAP 3.4, this court changes the title of the case to the juvenile's initials. We use initials to protect the juvenile's rights to confidentiality.

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

ni[**]er, you know [L.H.]?'" RP (June 30, 2009) at 75. When A.M. did not respond, Daniel went on, "'Didn't you hear me talking to you, bitch?'" RP (June 30, 2009) at 75.

As Daniel confronted A.M., D.W.W. moved around the driver's side of the truck and positioned himself behind A.M. D.W.W. and Daniel then chased A.M. around the truck until A.M. finally got inside. But before A.M. could lock the passenger side door, D.W.W. opened the door and began hitting him. D.W.W. unlocked the driver's side door for Daniel, who then opened the door and pulled A.M. onto the ground. D.W.W. grabbed A.M.'s legs while Daniel hit A.M. approximately three times. A.M. took a knife out of his pocket and, while Daniel pinned him, reached around Daniel to stab him in the back. A.M. got up at some point and began walking away, and Daniel got up and hit A.M. on the head with a softball-sized rock.

Deputy Jason Zimmerman responded to the hospital where A.M. received care following the fight. Deputy Zimmerman observed a "goose egg" on the left side of A.M.'s forehead and a "laceration" on the back of A.M.'s head. RP (June 30, 2009) at 18. A.M. received two stitches for the laceration to his head and had to return to the hospital later in the day due to pain. He retained a scar from the injury.

The juvenile court found D.W.W. guilty of second degree assault, as both a principal and accomplice.

First, D.W.W. argues that the State failed to present sufficient evidence that he was liable as an accomplice for Daniel's assault on A.M. We review a claim of insufficient evidence for whether "'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, 622 P.2d 1240 (1980).

A person is guilty of second degree assault when he or she intentionally assaults another and thereby recklessly inflicts substantial bodily harm. RCW 9A.36.021(1)(a). A person is liable as an accomplice of another person in the commission of a crime if, "With knowledge that it will promote or facilitate the commission of the crime, he . . . aids or agrees to aid such other person in planning or committing it." RCW 9A.08.020(3)(a)(ii). An accomplice need not participate in each element of the crime or be present when the crime is actually committed. *State v. Boast*, 87 Wn.2d 447, 455-56, 553 P.2d 1322 (1976); *State v. Galisia*, 63 Wn. App. 833, 840, 822 P.2d 303, *review denied*, 119 Wn.2d 1003 (1992). Instead, an accomplice need have only general knowledge that he is encouraging or assisting in the criminal act. *State v. Ferreira*, 69 Wn. App. 465, 472, 850 P.2d 541 (1993). Thereafter, having agreed to participate in the criminal act, he runs the risk that the principal will exceed the scope of the preplanned illegality. *State v. Jackson*, 87 Wn. App. 801, 818, 944 P.2d 403 (1997), *aff'd*, 137 Wn.2d 712, 976 P.2d 1229 (1999).

The State presented evidence that D.W.W.: (1) hit A.M. while inside the truck cab; (2) unlocked the driver's side door to let Daniel in; and (3) held A.M.'s legs as Daniel hit A.M. Any rational trier of fact could have found that, with knowledge that it would promote or facilitate the assault on A.M., D.W.W. aided in the assault by hitting A.M., giving Daniel access to A.M., and pinning A.M. down while Daniel hit him. Thereafter, D.W.W. ran the risk that Daniel would exceed the scope of the intended assault, including hitting A.M. with a rock. The State presented sufficient evidence to support the juvenile court's finding that, as an accomplice, D.W.W. is liable for Daniel's assault on A.M.

Second, D.W.W. argues that A.M.'s injuries do not amount to substantial bodily harm, so his assault does not constitute second degree assault. "'Substantial bodily harm' means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part." RCW 9A.04.110(4)(b).

D.W.W. relies on *State v. Atkinson*, 113 Wn. App. 661, 54 P.3d 702 (2002), *review denied*, 149 Wn.2d 1013 (2003). But *Atkinson* is more similar to than distinguishable from this case. In *Atkinson*, the victim suffered visible injuries including scrapes, bruises, and a subconjuctival hemorrhage. *Atkinson*, 113 Wn. App. at 665-66. The State charged Atkinson with second degree assault and presented an instruction to the jury that defined "'[d]isfigurement'" as "'that which impairs or injures the beauty, symmetry, or appearance of a person or thing; that which renders unsightly, misshapen, or imperfect, or deforms in some manner.'" *Atkinson*, 113 Wn. App. at 667. Division Three of this court affirmed Atkinson's conviction and held that the jury instruction accurately supplemented and clarified the statutory language defining substantial bodily injury. *Atkinson*, 113 Wn. App. at 667-68.

The State presented evidence that A.M. suffered (1) a large, protruding red bump on his forehead, (2) a laceration on the back of his head where the scalp was exposed and covered in blood, and (3) a scar on his head. Any rational trier of fact could have found that such visible injuries substantially impaired or injured "the beauty, symmetry, or appearance" of A.M., rendered A.M. "unsightly, misshapen, or imperfect," or deformed A.M. in some manner. *Atkinson*, 113 Wn. App. at 667. The State presented sufficient evidence to support the juvenile court's finding that D.W.W. inflicted substantial bodily harm involving temporary but substantial disfigurement of

A.M.

Substantial evidence supports D.W.W.'s conviction for second degree assault.

Affirmed.

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

Bridgewater, J.

We concur:

Quinn-Brintnall, J.

Penoyar, A.C.J.