IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

ROBERT WILLIE WILSON, JR.	)	
	)	
Appellant,	)	**NOT FOR PUBLICATION**
	)	
v.	)	**No. F-2021-554**
	)	
STATE OF OKLAHOMA,	)	
	)	
Appellee.	)	

SUMMARY OPINION

HUDSON, VICE PRESIDING JUDGE:

Appellant, Robert Willie Wilson, Jr., was tried and convicted by a jury in the District Court of Okfuskee County, Case No. CF-2019-51, of Count 1: Accessory to Burglary in the Second Degree, After Former Conviction of Two or More Felonies, in violation of 21 O.S.2011, § 173;[1] and Count 2: Carrying Weapons, a misdemeanor, in violation of 21 O.S.Supp.2018, § 1272. The jury sentenced Wilson to twenty years imprisonment plus a $5,000.00 fine on Count 1 and thirty days in the county jail plus a $250.00 fine on Count 2.

[1] The jury acquitted Appellant of Burglary in the Second Degree, the original charge in Count 1, and convicted him of the lesser offense of Accessory to Burglary in the Second Degree.

The Honorable Lawrence Parish, District Judge, presided at trial. Judge Parish pronounced judgment and sentence in accordance with the jury's verdicts and ordered the sentences in this case to run concurrently each to the other but consecutively to Appellant's sentence in CF-2016-115.

Wilson now appeals and alleges the following propositions of error:

I. APPELLANT'S CONVICTION SHOULD BE REVERSED BECAUSE THE STATE PRESENTED INSUFFICIENT EVIDENCE TO PROVE THE ACCESSORY ELEMENTS;

II. APPELLANT RECEIVED AN UNLAWFUL SENTENCE; and

III. ERROR OCCURRED WHEN JURORS DELIBERATED OVER AND CONVICTED APPELLANT OF AN IMPROPERLY LISTED LESSER INCLUDED OFFENSE.

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, exhibits and the parties' briefs, we find that relief is warranted on Appellant's first proposition of error. For the reasons discussed below, the judgment and sentence of the district court on Count 1 is **REVERSED AND REMANDED WITH INSTRUCTIONS TO DISMISS**. The judgment and sentence of the district court on Count 2, however, is **AFFIRMED**.

In his first proposition, Appellant challenges the sufficiency of the evidence supporting his conviction for accessory to burglary in the second degree. Appellant complains that the State failed to prove that he actively concealed or aided Justin White after the commission of the burglary at the laundromat with the intent that White may avoid or escape from arrest, trial, conviction, or punishment for same. *See* 21 O.S.2011, § 173 ("All persons who, after the commission of any felony, conceal or aid the offender, with knowledge that he has committed a felony, and with intent that he may avoid or escape from arrest, trial, conviction, or punishment, are accessories.").

The issue in this proposition is whether, taken in the light most favorable to the State, any rational trier of fact could have found the essential elements of this crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Davis v. State*, 2011 OK CR 29, ¶ 74, 268 P.3d 86, 111. This analysis requires examination of the entire record. *Young v. State*, 2000 OK CR 17, ¶ 35, 12 P.3d 20, 35. "This Court will accept all reasonable inferences and credibility choices that tend to support the verdict." *Davis*, 2011 OK CR 29, ¶ 74, 268 P.3d at 111. "[T]he law makes no distinction between direct

and circumstantial evidence and either, or any combination of the two, may be sufficient to support a conviction." *Baird v. State*, 2017 OK CR 16, ¶ 31, 400 P.3d 875, 884.

Taken in the light most favorable to the State, insufficient evidence was presented at trial to allow any rational trier of fact to find beyond a reasonable doubt that Appellant committed the crime of accessory to burglary in the second degree. The evidence uniformly showed that Appellant was present as a passenger in the truck during the relevant events surrounding the burglary in this case. However, there is no evidence showing that Appellant concealed or aided White either in escaping from the crime scene or in disposing of the cash register or its contents. Instead, the record evidence uniformly showed that White committed the burglary that night and Appellant was along for the ride before, during and after but did not participate in any respect.

At most, the State proved beyond a reasonable doubt that Appellant had knowledge of White's commission of the burglary, but that is only one element of the crime of accessory. *See* 21 O.S.2011, § 173. Appellant's mere presence during White's commission of the burglary and White's discarding of the cash register was insufficient

to sustain his conviction on Count 1 for any crime, including accessory. *See Lipe v. State*, 1986 OK CR 45, ¶ 14, 716 P.2d 700, 704 ("The mere presence at or acquiescence of a crime, without participation, does not constitute a crime."). The State did not show Appellant rendered any assistance personally to White so that he may avoid arrest or prosecution for the burglary. *See Farmer v. State*, 1935 OK CR 8, 56 Okl.Cr. 380, 40 P.2d 693 ("In order to make one an accessory after the fact some overt active assistance rendered to a felon personally is necessary."). Nor does the record show that Appellant took any other action to conceal or aid White such as lying to law enforcement. *See Wilson v. State*, 1976 OK CR 167, ¶ 16 n.16, 552 P.2d 1404, 1406 n.16. There is no evidence—either direct or circumstantial—that allowed the jury to find beyond a reasonable doubt the essential elements of the crime of accessory to burglary in the second degree. At most, the State's evidence established a mere suspicion or probability that Appellant was an accessory to the laundromat burglary due to his presence for the pertinent events. That is insufficient to prove beyond a reasonable doubt the essential elements of this crime.

The State says the jury could reasonably infer that Appellant was an accessory to the burglary by disbelieving White's testimony that Appellant had nothing to do with the crime. Portions of White's testimony certainly were subject to disbelief, particularly those portions of his testimony that were inconsistent with his prior written statement. Disbelief of White's testimony, however, does not provide a sufficient basis for inferring that Appellant concealed or aided White, with knowledge that White had committed the burglary, and with intent that he, White, may avoid or escape from arrest, trial, conviction, or punishment for this crime. The commission of perjury by White is not, by itself, sufficient to infer that a separate crime or wrongful conduct by Appellant has occurred.

In the present case, there is no affirmative evidence showing that Appellant said anything to White that night about the burglary, let alone what was said. Nor is there any evidence showing Appellant assisted with breaking into the cash register or with its disposal. Again, the testimony showed simply that White committed the burglary that night and Appellant was along for the ride. The State's evidence established a mere suspicion of Appellant's guilt, not proof beyond a reasonable doubt sufficient to convict.

Relief is therefore granted for Proposition I. This decision renders moot the remaining claims in this appeal.

DECISION

The Judgment and Sentence of the District Court on Count 1 is **REVERSED AND REMANDED WITH INSTRUCTIONS TO DISMISS**. The Judgment and Sentence of the District Court on Count 2 is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2022), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

AN APPEAL FROM
THE DISTRICT COURT OF OKFUSKEE COUNTY
THE HONORABLE LAWRENCE PARISH, DISTRICT JUDGE

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OPINION BY: HUDSON, V.P.J.
ROWLAND, P.J.: CONCUR
LUMPKIN, J.: CONCUR
LEWIS, J.: CONCUR IN RESULTS
MUSSEMAN, J.: CONCUR