



Nathaniel Osborne appeals his conviction by jury of attempted robbery as a class A felony.<sup>1</sup> We affirm.

The sole issue for our review is whether there is sufficient evidence to support Osborne's conviction.

The facts most favorable to the verdict reveal that on March 14, 2007, Michael Vaal gave seventeen-year-old Osborne a .22 automatic handgun. Osborne signed a receipt showing that he took custody of the gun. In the early morning hours of April 16, 2007, David Kist and Randy Bratcher picked up Osborne in Kist's stepfather's car. Because he had been drinking, Kist asked Osborne to drive. The three men drove around while waiting to visit a friend of Osborne's.

Osborne pulled into the parking lot of the Kentucky Avenue Kroger. Kist got out of the car and approached 58-year-old Wendell Anderson, who was getting out of his truck. Kist demanded money from Anderson. Anderson responded that he only had three dollars. Kist told Anderson, "Give me all you got." State's Exhibit 66, Osborne's Police Statement at 13. As Anderson backed up towards Kroger with his hands raised in the air, he said, "F\*\*\* you." State's Exhibit 66, Osborne's Police Statement at 13. Kist shot Anderson two to three times and ran back to the car.

Osborne, who was waiting for Kist in the car with Bratcher, saw Anderson back up from Kist with his hands up in the air. He also saw Kist shoot Anderson. When Kist got in the car, Osborne asked him why he shot Anderson. Kist responded that Anderson

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<sup>1</sup> Osborne was also convicted of carrying a handgun without a license as a class A misdemeanor. He does not appeal that conviction.

“tested a gangster.” State’s Exhibit 66, Osborne’s Police Statement at 13. Osborne sped out of the parking lot at a high rate of speed with the car’s lights off.

A witness noticed the car speed out of the parking lot and followed it at speeds up to 80 miles per hour to get the license plate number. The witness returned to the Kroger parking lot and provided the information to the police. In the meantime, Osborne drove to his mother’s house. The three young men put the gun in a plastic bag and hid it by a barn. Kist and Bratcher returned to their homes, and Osborne went to bed. When he awoke the following afternoon, Osborne learned that Anderson had died from gunshot wounds. Osborne took the gun to a friend’s house and hid it. He subsequently learned that the police were looking for him, and agreed to give a statement. Osborne told the police that he was driving the car Kist jumped into after shooting Anderson; however, he denied knowing that Kist had a gun. Shell casings found at the crime scene were fired from Osborne’s .22 handgun.

The State charged Osborne with murder, felony murder, class A felony attempted robbery, and class A misdemeanor carrying a handgun without a license. A jury convicted him of attempted robbery and carrying a handgun without a license. He appeals only the attempted robbery conviction.

Osborne’s sole argument is that there is insufficient evidence to support his conviction of class A felony attempted robbery. Our standard of review for sufficiency of the evidence is well-settled. We neither reweigh the evidence nor judge the credibility of witnesses. *Berry v. State*, 819 N.E.2d 443, 449 (Ind. Ct. App. 2004), *trans. denied*. We consider only the evidence that is favorable to the verdict along with all reasonable

inferences to be drawn therefrom to determine whether there was sufficient evidence of probative value to support a conviction. *Id.* We will affirm the conviction if there is substantial evidence of probative value from which a reasonable trier of fact could have drawn the conclusion that the defendant was guilty of the crime charged beyond a reasonable doubt. *Id.*

A person commits the crime of robbery as a class A felony when he knowingly or intentionally takes property from another person and it results in serious bodily injury to any person other than the defendant. Ind. Code § 35-42-5-1. To establish an attempt, the State must prove that the defendant acted with the culpability required for the commission of the crime and that he engaged in conduct that constituted a substantial step toward the commission of the crime. *See* Ind. Code § 35-41-5-1. In other words, attempted robbery as a class A felony occurs when a person knowingly or intentionally takes a substantial step toward taking property from another person and it results in serious bodily injury to any person other than the defendant.

Here, the State sought to convict Osborne as an accomplice. To do so, the State had to prove that Osborne knowingly or intentionally aided, induced, or caused another person to commit attempted robbery, regardless of whether that other person had been prosecuted, convicted, or acquitted of that offense. *See* Ind. Code § 35-41-2-4. There is no separate crime of being an accessory or aiding and abetting the perpetrator of a crime. *Berry*, 819 N.E.2d at 450. Rather, a defendant may be convicted as a principal upon evidence that he aided or abetted in the perpetration of the charged crime. *Id.* The

individual who aids another person in committing a crime is as guilty as the actual perpetrator. *Id.*

Under accomplice liability, an accomplice is criminally responsible for all acts committed by a confederate which are a probable and natural consequence of their concerted action. *Id.* The accomplice need not participate in each and every element of the crime in order to be convicted of it. *Id.* Mere tangential involvement in the crime can be sufficient to convict a person as an accomplice. *Id.*

In determining whether a person aided another in the commission of a crime, our supreme court had long considered the following four factors: 1) presence at the scene of the crime; 2) companionship with another engaged in criminal activity; 3) failure to oppose the crime; and 4) a defendant's conduct before, during, and after the occurrence of the crime. *Id.* (citing *Garland v. State*, 788 N.E.2d 425, 431 (Ind. 2003)). Although the defendant's presence during the commission of the crime, or his failure to oppose the crime are, by themselves, insufficient to establish accomplice liability, the jury may consider them along with other facts and circumstances tending to show participation. *Id.* (citing *Hodge v. State*, 688 N.E.2d 1246, 1248 (Ind. 1997)).

In order to sustain a conviction as an accomplice, there must be evidence of the defendant's affirmative conduct, either in the form of acts or words, from which an inference of common design or purpose to effect the commission of a crime may be reasonably drawn. *Id.* It is not necessary for the State to show that a defendant was a party to a preconceived scheme; it must merely demonstrate concerted action or participation in an illegal act. *Id.*

Here, our review of the evidence reveals that Osborne owned the gun that Kist used in the attempted robbery. In addition, Osborne watched Kist approach Anderson, and saw Anderson hold his hands up as he backed away from Kist. Osborne then watched Kist shoot Anderson with Osborne's gun. After the shooting, Osborne sped away from the crime scene, drove home, and hid the gun by a barn. When he learned that Anderson died from the gunshots, Osborne took the gun to a friend's house and hid it. When he gave his police statement, Osborne denied knowing that Kist had a gun.

Osborne was present at the scene of the crime and did not oppose it. Further, his conduct before, during, and after the attempted robbery is consistent with that of an accomplice. We therefore find sufficient evidence to support his conviction. Osborne's arguments merely ask us to reweigh the evidence and assess witness credibility, which we will not do.

Affirmed.

FRIEDLANDER, J., and VAIDIK, J., concur.