

Randall Winbush, Jr., appeals his conviction for battery¹ as a Class C felony contending that the evidence was insufficient to support his conviction under a theory of accomplice liability.

We affirm.

FACTS AND PROCEDURAL HISTORY

Winbush was convicted of battery, a Class C felony, as an accomplice. The trial court sentenced him to four years incarceration with two years suspended to probation. The facts supporting his conviction are as follows:

The victim, M.C., was an acquaintance of Winbush. One evening M.C., Winbush and others went to a pool hall and then later back to the home of another acquaintance. Afterwards, Winbush discovered that his DVD player was missing from his car. He called M.C., asking about the DVD player. She denied having or selling the DVD player². Winbush left several voice mail messages for M.C. regarding the DVD player. One of the messages included the following threat: “There’s going to be drama. If I don’t get my stuff back, if you don’t do what I tell you to do, it’s on. For real. I’m not going to ‘F’ you up because you are a female, but you are going to end up in the hospital.” *Tr.* at 661.

Approximately one week later, M.C. was at a supermarket in Hammond, Indiana when two other women, Betsy Reillo and Tiffany Winbush, Winbush’s sister, attacked her. Winbush was at the scene and watched the beating from nearby, smiling. *Id.* at 78-79, 356-

¹ See IC 35-42-2-1(a)(3).

² M.C. had taken Winbush’s DVD player and given it to another person in return for fixing her car. See *Appellant’s App.* at 131.

57. Reillo hit M.C. in the head with the butt of her handgun. M.C. suffered a fractured skull, a laceration to her scalp, a swollen nose and a black eye. *Id.* at 218, 296-97, 303-04. The skull fracture caused a depression of approximately five millimeters of M.C.’s skull. M.C.’s skull fracture also created the ongoing risks of post-traumatic seizures, infection, potentially hemorrhagic or bleeding areas of the brain, and increased risk of death from complications related to the injury. Winbush was convicted of battery as a Class C felony. Judgment was only entered on one count of battery as a Class C felony. Winbush now appeals.

DISCUSSION AND DECISION

Winbush argues that the evidence presented at trial was insufficient to support his conviction. When faced with a challenge to the sufficiency of evidence this court must decline an invitation to reweigh evidence or judge the credibility of witnesses and must only consider the probative evidence and reasonable inferences supporting the verdict. *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005). “[A]ppellate courts must affirm ‘if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt.’” *Id.* (quoting *Tobar v. State*, 740 N.E.2d 109, 111-12 (Ind. 2000)).

Winbush’s battery conviction was established under a theory of accomplice liability. Accomplice liability is codified under IC 35-41-2-4 and states: “A person who knowingly or intentionally aids, induces, or causes another person to commit an offense commits that offense” The factors used to determine accomplice liability include: 1) presence at the scene of the crime; 2) companionship with another engaged in the crime; 3) failure to oppose the commission of the crime; and 4) the course of conduct before, during, and after the crime.

Garland v. State, 719 N.E.2d 1236, 1238 (Ind. 1999). Either presence at the scene or failure to oppose the crime alone is insufficient to establish accomplice liability. *Id.* However, a jury is free to consider those factors along with other facts and circumstances that show participation. *Id.* There must be evidence of affirmative conduct on the part of the defendant, through either conduct or words, from which a reasonable factfinder may draw a reasonable inference of common design or purpose to effect the commission of a crime. *Boyd v. State*, 766 N.E.2d 396, 399 (Ind. Ct. App. 2002) (citing *Peterson v. State*, 699 N.E.2d 701, 706 (Ind. Ct. App. 1998)).

Here, Winbush was present at the scene of the beating. *Tr.* at 78-79, 356-57. Companionship with Tiffany Winbush, his sister, was established. *Id.* at 503-04. Prior to the offense, Winbush had made threatening phone calls to M.C. During one phone call, Winbush left a message telling M.C. that she would end up in the hospital. *Id.* at 661. During the beating, Winbush stood nearby, smiling, and made no effort to stop the crime. *Id.* at 78-79, 356-57. Immediately after the crime, he sped off with the two women who beat M.C. and he denied any knowledge regarding what happened to M.C. when investigators first approached him. *Id.* at 196, 539-40. Although he did not personally participate in the beating, the evidence presented was sufficient for a trier of fact to find that Winbush aided, induced, or caused Reillo and Tiffany Winbush to commit the crime.

Affirmed.

VAIDIK, J., and CRONE, J., concur.