Supreme Court No. 99556-7
(COA No. 36759-2-III)

THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JASON DAVIS,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR WHITMAN COUNTY

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER AND DECISION BELOW

Jason Davis asks this Court to review the opinion of the Court of Appeals in *State v. Davis*, No. 36759-2-III (issued on February 2, 2021). A copy of the opinion is attached as Appendix A.

B. ISSUES PRESENTED FOR REVIEW

1. The Fourteenth Amendment requires the government to establish all essential elements of the crime charged beyond a reasonable doubt. To prove residential burglary, the government must prove the defendant intended to commit a crime inside the dwelling he entered. Here, Mr. Davis only intended to seek shelter during a cold winter night. Must this Court dismiss the charge where the government failed to prove Mr. Davis intended to commit a crime inside the Seasoned House?

2. The Fourteenth Amendment requires the government to establish all essential elements of the crime charged beyond a reasonable doubt. To prove theft in the second degree, the government must prove the defendant intended to deprive another person of property belonging to that person. Here, the evidence shows Mr. Davis intended to take photos of the jewelry found on his person, and that he made no attempt to remove property from the premises of the owner.

Must this Court dismiss the charge where the State failed to prove Mr. Davis intended to deprive the property owner of her jewelry?

C. STATEMENT OF THE CASE

On the morning of February 6, 2019, Sarah Joplin, co-owner of The Seasoned House, an event space and partial residence, arrived at the House to shovel snow. RP 157, 158-59. Ms. Joplin noticed footprints in the snow leading up to the front door. RP 159. A pair of golf shoes that had been left by a guest and the entry rug were missing. RP 160. Ms. Joplin went around the building and entered through the back entrance. RP 160.

Once inside, Ms. Joplin saw a man, later identified as Jason Davis, looking at a wall of clocks and drinking a beer. RP 160. Mr. Davis told Ms. Joplin he was there to change the clock batteries. RP 172. Ms. Joplin called her business partner, Daiquiri Rock, who confirmed they had not scheduled any appointments that day, and then called 911. RP 162-63.

When the police arrived, they located Mr. Davis in an upstairs bedroom. RP 192. A silver ring and a pair of emerald earrings belonging to Ms. Rock were found on Mr. Davis's person. RP 201, 202. The earrings were in his pocket, and the ring was partly on his

finger. RP 201-02. He had plugged in his phone to charge near a window. RP 205. Additionally, many things had been moved or disturbed. RP 184. A window had been broken and the entry rug placed over it. RP 164. Candles from a candelabra had been placed in the basement, in the upstairs shower, and all over the house. RP 169. Furniture had been stacked up in piles. RP 169. The golf shoes that had previously been outside were found upstairs. RP 169. A rug had been moved to cover the broken glass from the window. RP 170. Beverages and food items had been consumed or displaced. RP 170-71. The owners found a bottle of blue curaçao hidden behind a fake wall they kept upstairs. RP 171.

There was no evidence Mr. Davis took any property out of the building or attempted to leave after Ms. Joplin discovered him inside. The State charged Mr. Davis with residential burglary, third degree malicious mischief, and second degree theft.

At trial, Mr. Davis stated he entered the Seasoned House because "[i]t was freezing outside" and he was trying to stay warm. RP 264. He did not know what the building was when he entered. RP 265. He acknowledged the police found jewelry in his pocket and on his hand, and stated that he wanted to take pictures of the jewelry to

compare to his friend's jewelry. RP 265. Mr. Davis plugged his phone in to charge in order to take those photographs. RP 265-66.

Mr. Davis admitted he broke a window to enter the building, stating, "I was freezing outside, sitting on the porch, and I made a decision to go in there due to the fact that it was freezing outside and I didn't think I could handle it anymore." RP 265. He tried to preserve the pieces of broken glass, thinking the window could be repaired easily. RP 265-66. He only intended to "possibly not freeze" when he entered the Seasoned House. RP 266. Mr. Davis was convicted as charged.

On review, the Court of Appeals concluded summarily that the evidence viewed in the light most favorable to the State was sufficient to prove both charges. Slip Op. at 6.

D. ARGUMENT WHY REVIEW SHOULD BE GRANTED

1. The State presented insufficient evidence of residential burglary and theft in the second degree.

The State is required to prove all elements of the charged offense beyond a reasonable doubt, and the failure to do so requires dismissal of the charge. *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); U.S. Const. amend. XIV. Evidence is insufficient to support a verdict where "mere speculation, rather than

reasonable inference, supports the government's case." *United States v. Nevils*, 598 F.3d 1158, 1167 (9th Cir. 2010). The remedy is reversal and remand for judgment of dismissal with prejudice. *State v. Hummel*, 196 Wn. App. 329, 359, 383 P.3d 592 (2016), *review denied*, 187 Wn.2d 1 (2017).

a. The State presented insufficient evidence of residential burglary because it failed to show Mr. Davis intended to commit a crime inside the Seasoned House.

A residential burglary conviction requires proof the defendant entered or remained unlawfully in a dwelling "with intent to commit a crime against a person or property therein." RCW 9A.52.025(1). Because the State's evidence was insufficient to prove Mr. Davis intended to commit a crime within the Seasoned House, the charge should be dismissed. *State v. Devitt*, 152 Wn. App. 907, 913, 218 P.3d 647 (2009).

To prove residential burglary, the government was obligated to prove Mr. Davis intended to commit a crime against a person or property inside the Seasoned House. The State argued Mr. Davis intended to commit theft inside the premises by stealing Ms. Rock's earrings and ring. However, the evidence established Mr. Davis entered and remained in the building in order to escape the freezing

temperatures outside, stating he "didn't think [he] could handle it anymore." RP 265.

The State's evidence showed Mr. Davis engaged in a series of odd behaviors inside the building, including moving items around, stacking furniture in piles, hiding things behind false walls, and putting on a ring that did not fit him. RP 169-171, 201-02. That jewelry was found on his person is but one fact of many that, when taken together, indicate only that Mr. Davis acted strangely inside the Seasoned House, not that he intended to steal jewelry.

There was no evidence Mr. Davis moved any items outside, gathered up valuable items, or attempted to leave the premises with any items, even after Ms. Joplin discovered him inside and called the police. Indeed, Mr. Davis testified he wanted to take pictures of the jewelry and started to charge his phone in order to do so. RP 265-66. He also attempted to cover the broken window and preserve the pieces of broken glass, indicating he was trying to stay warm. RP 164, 170.

The Court of Appeals characterizes Mr. Davis's arguments as viewing the evidence in the light most favorable to him. In doing so, the Court cherry picks only those acts which support the State's case and ignores the rest of the State's evidence. Slip Op. at 6 ("The State

presented evidence that he broke a window to enter a building without permission, rifled through the building and upstairs apartment, was found with Ms. Rock's ring and valuable earrings on his person, and when confronted by the owner of the property, lied about the reason he was present. The evidence was sufficient.")

This reasoning fails to take into account the rest of the State's evidence, which clearly shows Mr. Davis engaged in a number of strange behaviors, including the ones the State relied on to support its charges. Many of these acts were entirely unrelated to either charged offense. The Court concluded that sufficient evidence supported the charges only by selectively choosing certain acts and improperly divorcing them from the context of all of Mr. Davis's behaviors that day. In fact, these behaviors, taken as a whole, do not demonstrate an intent to commit a crime.

Contrary to the Court of Appeals's opinion, no rational trier of fact could have found beyond a reasonable doubt that Mr. Davis entered or remained inside the Seasoned House with intent to commit a crime. *State v. Randhawa*, 133 Wn.2d 67, 73, 941 P.2d 661 (1997). Reversal and dismissal of the residential burglary charge is required. *State v. Hummel*, 196 Wn. App. at 359.

b. The State presented insufficient evidence of theft in the second degree because it failed to prove Mr. Davis intended to deprive Ms. Rock of her earrings and ring.

Additionally, theft in the second degree requires proof the defendant intended to deprive a person of property or services valued over $750 but less than $5000. RCW 9A.56.040(1)(a); RCW 9A.56.020(a). Here, the State's evidence was insufficient to prove Mr. Davis intended to deprive Ms. Rock of her earrings and ring. Therefore, reversal and dismissal of the charge is required. *Hummel*, 196 Wn. App. at 359.

As discussed above, Mr. Davis's behavior within the Seasoned House was unusual. For example, he placed candles all over the building, including in the shower and in the basement, he hid a bottle of alcohol behind a false wall, and he tried to wear a ring that did not fit on his finger. Mr. Davis did not attempt to hide the jewelry or remove it once he was discovered, he did not try to leave the building or run from the police, and he did not have possession of any other valuables, despite having access to all of Ms. Rock's jewelry. RP 290.

This evidence is insufficient to prove Mr. Davis intended to deprive Ms. Rock of her jewelry. Although he was not a jeweler and did not have the proper qualifications, Mr. Davis stated he wanted to

take photos of the jewelry for comparison with his friend's jewelry, and tried to charge his phone in order to take the photos. RP 265. Certainly when placed in the context of all of his behavior inside the building, Mr. Davis's possession of the earrings and ring is merely another odd behavior, not a theft. Because the State's evidence fails to prove Mr. Davis intended to deprive Ms. Rock of her jewelry, reversal and dismissal of the charge is required.

E. CONCLUSION

Based on the foregoing, Mr. Davis respectfully requests that review be granted. RAP 13.4(b).

DATED this 4th day of March 2021.

Respectfully submitted,

/s Tiffinie B. Ma

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APPENDIX A

FILED
FEBRUARY 2, 2021
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
DIVISION THREE

STATE OF WASHINGTON, Respondent, v. JASON ANTHONY DAVIS, Appellant.	)	No. 36759-2-III UNPUBLISHED OPINION

SIDDOWAY, J. —Jason Davis appeals convictions for residential burglary and theft in the second degree, challenging the sufficiency of the State's evidence to prove the required intent. Viewed in the light most favorable to the State, the evidence and permitted inferences were clearly sufficient. We affirm.

FACTS AND PROCEDURAL BACKGROUND

Sarah Joplin and Daiquiri Rock are co-owners of the Seasoned House, an event center located in Pullman. The business operates on the first floor of a building owned

by the two women; the second floor of the building is private space that includes a furnished bedroom apartment that is sometimes used by Ms. Rock.

Ms. Joplin traveled to the event center early in the morning of February 6, 2019, to shovel snow. She initially noticed an unusual number of footprints in the snow, including leading up the front stairs. She then noticed that a window to the left of the front door was broken and a rug that belonged on the floor of the entry way had been tacked up over the broken window opening.

The front door had no exterior key accessibility, so Ms. Joplin went to the back door, which she entered using a key pad. Upon entering, she saw Jason Davis standing directly across the room from her, looking at clocks on the wall and drinking a beer from her refrigerator. Ms. Joplin introduced herself and asked Mr. Davis if he had an appointment. Mr. Davis said he did; that "he was there to fix the clocks . . . to change the batteries." Report of Proceedings (RP) at 172. Ms. Joplin excused herself and went back outside, where she phoned Ms. Rock to find out if she had given Mr. Davis permission to be in the building. When Ms. Rock said she had not, Ms. Joplin called the police.

Two officers responded. Ms. Joplin let them into the building, and they located Mr. Davis in the upstairs bedroom apartment, where they placed him under arrest. While escorting Mr. Davis downstairs, one of the officers noticed that Mr. Davis had a ring that was only partially on his finger. Upon arriving downstairs, the officer searched Mr. Davis and found a plastic "baggy" in a pocket of Mr. Davis's jeans that contained a set of

gold earrings with green and clear stones that turned out to be emeralds and diamonds. The officer also searched Mr. Davis's backpack. Officers showed Ms. Joplin the ring, earrings, and a few other items found in Mr. Davis's possession, and she recognized the jewelry as belonging to Ms. Rock.

In walking through the building after Mr. Davis's arrest, Ms. Joplin noticed that many items were strangely out of place. Candles from a candelabra "had fallen out in the basement, upstairs in the shower, kind of everywhere in the house," furniture had been stacked, food items had been consumed, and the glass from the broken out window had been hidden under a rug. RP at 169-70. A drink had been made from blue curaçao, the bottle of which was missing. The bottle was found several weeks later, behind a temporary wall.

Mr. Davis was eventually charged with residential burglary, second degree theft, and third degree malicious mischief. At a two day jury trial, Ms. Joplin testified to the events of the morning of February 6 and identified Mr. Davis as the person she encountered in her and Ms. Rock's building. Ms. Rock identified her jewelry. The responding officers testified. A jewelry store owner testified that Ms. Rock's ring was worth about $100 and the earrings were worth about $3,000.

Mr. Davis testified in his own defense. He testified that he entered the Seasoned House after sitting on its porch for a while because it was "freezing outside and I didn't think I could handle it anymore." RP at 265. He claimed not to know the building was a

residence. He would not concede that he broke the window, saying "I don't know if the window was—like the officer said, he had stepped on that glass. Those were perfectly pieces of glass that would have been able to be put back in to the window. . . . [T]hey were not broken." RP at 265-66. When asked about the property found on his person, Mr. Davis said, "I was going to take a picture and do an appraisal." RP at 265. He said it was not his intent to steal the ring, he just wanted to "take a picture of that ring and compare it or appraise it to [his acquaintance] Mrs. Stone's ring that she wears 24/7 that looked exactly like that." RP at 266.

Mr. Davis testified "when the person had seen [him] and called [him] a ghost when she came in, the stuff was sitting next to [him] with the hammer." RP at 268. Mr. Davis said he took the jewelry "from the area where the clocks were not working to upstairs." *Id.* Mr. Davis said he was "not a hundred percent sure if" officers found the earrings in his pocket. *Id*. When asked if the ring was on his finger, Mr. Davis said, "the first time [he had] seen the ring it was on the ground." *Id.*

The jury found Mr. Davis guilty as charged. He appeals.

ANALYSIS

Mr. Davis contends on appeal that the State presented insufficient evidence of essential elements of residential burglary and second degree theft. He emphasizes evidence of his "odd behaviors" while in the Seasoned House, suggesting that the evidence indicates only that he "acted strangely." Br. of Appellant at 6-7. He contends

the State failed to show that he intended to commit a crime inside the building as required for the burglary charge because he "only intended to seek shelter during a cold winter night." Br. of Appellant at 2. He contends it failed to show that he intended to deprive Ms. Rock of her earrings and ring as required for the theft charge, because he "intended to take photos of the jewelry found on his person, and . . . made no attempt to leave to remove property from the premises." *Id.*

Due process requires the State to prove all elements of a crime beyond a reasonable doubt. *State v. Washington*, 135 Wn. App. 42, 48, 143 P.3d 606 (2006). The well settled test for sufficiency of the evidence is "whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt." *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). All reasonable inferences from the evidence are drawn in favor of the State and are interpreted most strongly against the defendant. *Id.*

"A person is guilty of residential burglary if, with intent to commit a crime against a person or property therein, the person enters or remains unlawfully in a dwelling other than a vehicle." RCW 9A.52.025(1). Burglary does not require an intent to commit a specific crime; rather, it requires an intent to commit any crime against a person or property. *State v. Bergeron*, 105 Wn.2d 1, 4, 711 P.2d 1000 (1985). Intent to commit a crime may be inferred when a person enters or remains unlawfully. *State v. Cantu*, 156 Wn.2d 819, 826, 132 P.3d 725 (2006); *State v. Bishop*, 90 Wn.2d 185, 188-89, 580 P.2d

259 (1978). By statute, a person who enters or remains unlawfully in a building may be inferred to have acted with intent to commit a crime against a person or property therein "unless such entering or remaining shall be explained by evidence satisfactory to the trier of fact to have been made without such criminal intent." RCW 9A.52.040.

"[A] person is guilty of theft in the second degree if he or she commits theft of: (a) Property or services which exceed(s) seven hundred fifty dollars in value but does not exceed five thousand dollars in value, other than a firearm as defined in RCW 9.41.010 or a motor vehicle." RCW 9A.56.040. Theft is defined as "wrongfully obtain[ing] or exert[ing] unauthorized control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services." RCW 9A.56.020.

"Intent may be inferred from all the facts and circumstances surrounding the commission of an act or acts." *Bergeron,* 105 Wn.2d at 19. "Although intent may not be inferred from conduct that is patently equivocal, it may be inferred from conduct that plainly indicates such intent as a matter of logical probability." *Id.*

The obvious problem with Mr. Davis's claim of evidence insufficiency is that he views the evidence in the light most favorable to himself, not the State. The State presented evidence that he broke a window to enter a building without permission, rifled through the building and upstairs apartment, was found with Ms. Rock's ring and valuable earrings on his person, and when confronted by the owner of the property, lied about the reason he was present. The evidence was sufficient.

Affirmed.

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

Siddoway, J.

WE CONCUR:

Pennell, C.J.

Lawrence-Berrey, J.

IN THE SUPREME COURT OF STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	
RESPONDENT,	)	
	)	
v.	)	COA NO. 36759-2-III
	)	
JASON DAVIS,	)	
	)	
PETITIONER.	)	

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SIGNED IN SEATTLE, WASHINGTON THIS 4TH DAY OF MARCH, 2021.

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