

62964-6

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NO. 62964-6-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

ARTHUR O'NEAL,

Appellant.

FILED
COURT OF APPEALS
STATE OF WASHINGTON
DIVISION I
2010 JUL -6 PM 4:33

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE CATHERINE SHAFFER

BRIEF OF RESPONDENT

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A. ISSUE PRESENTED

Evidence is sufficient to support a conviction if, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime proved beyond a reasonable doubt. Here, there was abundant evidence presented at trial which led the jury to find O'Neal guilty of the crime of Trafficking in Stolen Property in the Second Degree. Should O'Neal's claim of insufficiency of the evidence be rejected because the jury concluded that the evidence presented at trial demonstrated O'Neal acted recklessly?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS.

On March 27, 2008, Arthur O'Neal was charged by information with Trafficking in Stolen Property in the First Degree. CP 1-4. After a jury trial O'Neal was found guilty of the lesser charge of Trafficking in Stolen Property in the Second Degree. CP 32. O'Neal filed a timely appeal. CP 42.

2. SUBSTANTIVE FACTS.

Marilou Shrinker's house was burglarized on July 30, 2007. CP 44. During the course of the burglary Ms. Shrinker's digital camera and camera lenses, which were stored together in a camera bag, were stolen. Id. Ms. Shrinker testified that she paid several hundred dollars for the camera when she purchased it. Id. Ms. Shrinker does not know Arthur O'Neal and she did not give anyone permission to take her camera from her house. Id. On August 20, 2007, Arthur O'Neal went to Palace Jewelry and Loans and pawned a camera and camera lenses. Id. The camera that O'Neal pawned on August 20, 2007, was the same camera that was stolen from Marilou Shrinker on July 30, 2007. Id. In November of 2007, O'Neal returned to Palace Jewelry and Loan and tried to redeem the camera. Id. At that time Mr. O'Neal was informed that the camera was stolen and could not be redeemed. Id. The Seattle Police Department Pawn Unit had informed Palace Jewelry and Loan that the camera was stolen within a week of O'Neal trying to redeem it.

Officer Tara Hirjak who was assigned to the Seattle Police Department Pawn Unit contacted O'Neal via telephone regarding the stolen camera. CP 45. O'Neal spoke to Officer Hirjak three

times; once on January 3, 2008, and twice on January 10, 2008. Id. O'Neal confirmed that he was the person who pawned the camera. Id. O'Neal purchased the camera for \$100.00 from Terry Miller, a man he knew only as "T". Id.; CP 46. O'Neal knew "T" through O'Neal's friend and "T's" brother Charles Miller. CP 46. O'Neal testified that he was not interested in getting to know "T." Id. When "T" initially offered to sell O'Neal the camera O'Neal was not interested in purchasing the camera. Id. O'Neal told Officer Hirjak that he initially did not purchase the camera from "T" because he thought the camera might be stolen. CP 45. "T" persisted in his efforts to sell O'Neal the camera and eventually O'Neal purchased the camera for \$100.00. CP 46. O'Neal testified that he thought the camera was something nice so he put it in the pawnshop for safekeeping. 11/10/08 RP 18; CP 47.

C. ARGUMENT

**THERE WAS SUFFICIENT EVIDENCE TO CONVICT
O'NEAL OF TRAFFICKING IN STOLEN PROPERTY IN
THE SECOND DEGREE.**

O'Neal argues that there was insufficient evidence to prove that he committed the crime of Trafficking in Stolen Property in the Second Degree because the evidence failed to show that he acted

recklessly. His argument fails. The State presented evidence that O'Neal purchased an expensive camera on the street for a very reduced price, the camera was purchased from a man that O'Neal barely knew, but was hesitant to get involved with and that O'Neal thought the camera might be stolen when he purchased it. When viewing the evidence in the light most favorable to the State, a rational trier of fact easily could have found that O'Neal acted recklessly when he pawned the camera in question. Thus, this Court should affirm the jury's verdict.

Evidence is sufficient to support a conviction if, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime proved beyond a reasonable doubt. State v. Hendrickson, 129 Wn.2d 61, 81, 917 P.2d 563 (1996). The elements of a crime may be established by either direct or circumstantial evidence, one being no more or less valuable than the other. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). When claiming insufficiency of evidence, defendant admits truth of state's evidence and all inferences that can reasonably be drawn there from. State v. Myers, 133 Wn.2d 26, 38, 941 P.2d 1102 (1997). All reasonable inferences from the evidence must be drawn in favor of the State

and interpreted most strongly against the defendant. Id. Credibility determinations are for the finder of fact and cannot be reviewed on appeal. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). Thus, an appellate court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. State v. Walton, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992).

“A person who recklessly traffics in stolen property is guilty of trafficking in stolen property in the second degree.” RCW 9A.82.050(1). “Traffic’ means to sell, transfer, distribute, dispense, or otherwise dispose of stolen property to another person, or to buy, receive, possess, or obtain control of stolen property, with intent to sell, transfer, distribute, dispense or otherwise dispose of the property to another person.” RCW 9A.82.010(19). “A person is reckless or acts recklessly when he or she knows of and disregards a substantial risk that a wrongful act may occur and his or her disregard of such substantial risk is a gross deviation from conduct that a reasonable person would exercise in the same situation.” RCW 9A.08.010(1)(c).

Reckless conduct includes a subjective and objective component. Whether an act is reckless depends on both what the

defendant knew and how a reasonable person would have acted knowing these facts. State v. R.H.S., 94 Wn. App. 844, 974 P.2d 1253 (1999). In this case there was ample evidence from which the jury could find that O'Neal acted recklessly as to whether the camera was stolen when he purchased the camera from Terry Miller and subsequently pawned it. A reasonable person in O'Neal's position would know that a digital camera with camera lenses would cost more than \$100.00. Further, a reasonable person in O'Neal's shoes would also know that in purchasing a camera, or any item, on the street from a person they did not really know they took a substantial risk that they were buying stolen property. O'Neal actually knew more about "T" than he would know about a stranger, he knew enough about "T" to know this was a person he did not want to be friends with. CP 46. Finally, and perhaps most significantly, O'Neal told Officer Hirjak that initially he did not purchase the camera from "T" because he thought the camera *might* be stolen. O'Neal, in admitting the camera might be stolen, admitted that he acted recklessly. Admitting that he thought the camera might be stolen is the equivalent of O'Neal saying he knew there was a risk that the camera was stolen, but disregarded that risk, bought the camera and pawned it despite that risk. There

was both objective, and subjective evidence presented that O'Neal acted recklessly as to whether the camera was stolen.

D. CONCLUSION

After viewing the evidence presented at trial in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime proved beyond a reasonable doubt.

The trial court should be affirmed.

DATED this 6th day of July, 2010.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

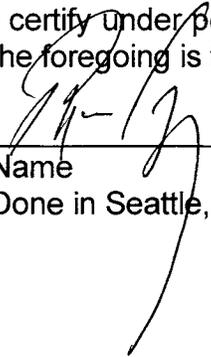
By: 

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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Thomas Kummerow, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Brief of Respondent, in STATE V. ARTHUR O'NEAL, Cause No. 62964-6-1, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



Name
Done in Seattle, Washington

07-06-10

Date

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