

704281

70428-1

NO. 70428-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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STATE OF WASHINGTON,

Respondent,

v.

JAHAD HILL,

Appellant.

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COURT OF APPEALS DIV 1  
STATE OF WASHINGTON  
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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE BARBARA A. MACK

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**BRIEF OF RESPONDENT**

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**A. ISSUES PRESENTED**

1. 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. The essential elements of an attempt are: with intent to commit a specific crime, a person does any act that is a substantial step toward the commission of that crime. Hill, who did not have permission to be in Wright's backyard, was one of three males present when an attempt to open the rear glass sliding door triggered the security alarm at the residence; he then fled when the house owner shouted at them, and lied to the police about his whereabouts when caught shortly thereafter. Is there substantial evidence in the record to support Hill's conviction for attempted residential burglary?

2. In a jury trial on a residential burglary charge, the jury is properly instructed that it can infer intent based on RCW 9A.52.040, but it is error to give such an instruction where the charge is an attempt. Here, the prosecutor argued to the court in a bench trial, that it could infer intent based on RCW 9A.52.040. Because judges are presumed to know the law, was the reference to RCW 9A.52.040 inconsequential to the judge's decision?

**B. STATEMENT OF FACTS**

1. PROCEDURAL FACTS

The State charged Jahad V.D. Hill by information with one count of attempted residential burglary. CP 1.<sup>1</sup> Fact Finding took place on April 2 and April 8, 2013, after which the trial court found Hill guilty of attempted residential burglary as charged. CP 5; RP 117-24.<sup>2</sup> On May 29, 2013, the court imposed a manifest injustice down on this case of twelve months of probation because Hill was sentenced in two other residential burglary cases to the standard range of 52-65 weeks on each, to run consecutive to each other.<sup>3</sup> CP 6-10; RP 182-83. On June 24, 2013, the court entered Findings of Fact and Conclusions of Law pursuant to CrR 6.1(d). CP 45-49.

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<sup>1</sup> Hill mistakenly states that he was charged as a principal. App. Br. at 10. The State alleged that Hill, together with others, attempted to enter unlawfully in the residence of Wright with intent to commit a crime. CP 1. The State did not characterize Hill as either the principal or an accomplice.

<sup>2</sup> The Verbatim Report of the Fact Finding and Disposition Proceedings consists of one volume, referred to in this brief as RP (April 2 & 8, 2013 and May 29, 2013).

<sup>3</sup> The transcription pages for the disposition hearing were not numbered. The number reflected for this citation is the State's numbering of the unnumbered pages.

## 2. SUBSTANTIVE FACTS

On October 31, 2012, Jim Beard, a commercial and residential general contractor, was working at 203 King, in Kent. RP 9, 12. He had been working at this location for some time and was aware of the surroundings, including the fact that there were always Asian children playing around in the street in front of the house. RP 11-12. As he was cleaning some mud trays he noticed Hill,<sup>4</sup> about 85 to 100 feet away, knocking on the house across the street, in the company of two other individuals. RP 13, 17, 22. Beard consciously paid close attention because Hill's behavior appeared suspicious. RP 13-14. All of a sudden the three men disappeared, but Beard kept watching in that direction as he thought the men had probably broken into the house. RP 15-16. About five to six minutes later, Kent Police Department Officer Paul Peter, and the owner of the house,<sup>5</sup> arrived at the scene. RP 14.

Officer Peter was dispatched to that residence as a result of a glass break alarm that had gone off at 12:01 p.m. RP 47, 50. Officer Peter did not see anything unusual in the front door but as

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<sup>4</sup> Beard identified Hill through a line up, and in court. RP 16-17, 22-24, 26.

<sup>5</sup> The owner of the house was Dao Vo. The State intended to call her as a witness but the trial court granted the defense motion to exclude her testimony as irrelevant. RP 65.

he looked around he noticed a broken window that appeared to go into the home's laundry room. RP 48. Officer Peter called for backup and about 15 minutes later, Officer Jones arrived. RP 48-49. Further inspection of the house revealed that someone had tried to pry the screen off in the back of the residence, and that the outside layer of a double-paned window had been broken. RP 48, 50. While the officers were speaking with the homeowner, another call reporting a burglary came through, and Officer Jones left the scene. RP 49.

This second call was placed by Kent Wright. RP 34. Wright lives just blocks away from the residence where Officer Peter and Jones responded to the glass break alarm. CP 46. Wright's residence is not gated, but his backyard has a fence on the perimeter that borders his neighbor's residence. RP 31. In his backyard, Wright has large trees and bushes against the fence. RP 31. Wright also has an alarm installed in his residence. RP 32. The alarm system has two modes: staying and away. RP 32. When the alarm is set in the away mode, any activity, such as an entrance to the house or any movement in the house will set the alarm off. RP 32. And when the alarm is set in the staying mode, it chirps with three sharp beeps when the front door, the back door,

the garage door, or any of the windows are opened. RP 32. The alarm has a panel that indicates which zone activated the alarm. RP 32. The rear sliding glass door has a lock and a dowel bar in the track. RP 43. The door does not need to be completely open for the alarm to go off or chirp; the lock alone, when disturbed, can cause a break in the contact and trigger the alarm. RP 43. Wright had two instances in the previous summer when his alarm went off when he was not at home. RP 43-44. The triggering place was his rear sliding door, and Wright believes it was because someone was attempting to gain entrance through the back. RP 44.

On October 31, 2012, Wright came home between 11:30 a.m. and 11:40 a.m. to change his Halloween costume and get ready for a doctor's appointment that afternoon. RP 28-29. Wright went upstairs to take a shower and as he was getting out, he heard the house alarm chirp, which to him meant that one of the windows or the doors had been opened. RP 29. He looked in the alarm panel and saw that the sensor on the rear sliding door, along the patio, had been tripped. RP 29, 32. Wright looked outside and could not see anything but heard a lot of noise "as if someone was trying to get in." RP 29. Wright ran downstairs, wrapped in only a towel, and yelled with some expletives, "You better get away from

here.” RP 29. Wright opened up the blinds to look out the window that is located next to the sliding door that tripped the alarm, and saw three individuals in his backyard. RP 33.

After Wright opened the blinds and yelled, two of the men took off running immediately, while one stared at Wright, jumped over the fence, and then ran through the neighbor’s yard. RP 33. The individual who stared at Wright and then jumped over his neighbor’s fence was positively identified as Hill. RP 39-40. Wright called 911 and the operator told him the police were in the area as a result of another break-in nearby in the neighborhood. RP 34.

Based on the description that Beard and Wright provided to the police: three males, one wearing very distinctive dark jeans with embroidery on the back pockets, a dark coat, and a furry hat with ear flaps, the police broadcasted that information through radio, and Timothy Kovich, who is the Kent School District Safety Operations Manager, conducted surveillance of the School District area. RP 17-18, 35, 67-68.<sup>6</sup> Kovich spotted three individuals that matched the general description. Specifically, he saw the male wearing a hat that had ear flaps, and the pants with embroidery in

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<sup>6</sup> The surveillance video was admitted as State’s exhibit 7 and played for the court. RP 69-71.

the rear pockets. RP 68-69, 71. Kovich saw the males walking from a trail through the school parking lot, heading towards the access road to the main entrance on campus. RP 68-69. At 12:35 p.m., he provided the suspects' location over police radio. RP 68-69. Officer Scott Rankin, a School Resource Officer at Kent Meridian High School, made contact with the three men. RP 75, 82. At the time of the contact, it did not appear that the males were going to the school. RP 82.

Hill, who was the male wearing the dark pants with embroidery and the hat with ear flaps,<sup>7</sup> was interviewed by Kent Police Department Detective Lamp. RP 98-99. After waving his Constitutional Rights, Hill told Detective Lamp that he had taken the bus from his home to Kent Station, and then another bus to Kent Meridian where he intended to seek enrollment. RP 96. In order to verify Hill's account of the events, Detective Lamp asked him which bus numbers he had taken, and at what time. RP 96. Hill did not know the bus numbers or the times of any of the buses. RP 96. Detective Lamp asked Hill if he had been with anybody that morning, and he indicated that he had been by himself the entire

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<sup>7</sup> Photos of the pants and the hat that Hill was wearing that day were admitted at trial as exhibits 2 and 3, and identified by Beard and Wright. RP 19, 21, 39-40.

time, from the moment he left the house to the moment when he arrived at Kent Meridian High School. RP 97.

**C. ARGUMENT**

1. SUFFICIENT EVIDENCE IN THE RECORD SUPPORTS HILL'S ATTEMPTED RESIDENTIAL BURGLARY CONVICTION.
  - a. The Record Supports A Logical Probability That Hill, Together With Others, Attempted To Unlawfully Enter Wright's Residence With The Intent To Commit A Crime Therein.

Hill does not challenge that he was the person identified by the witnesses in the case, including being one of the three men in Wright's backyard. App. Br. fn. 9. Hill also concedes that Wright's alarm chirped as a result of somebody trying to open the sliding door; and that the noise by Wright's widow was caused by someone trying to open it. App. Br. at 10. Nonetheless, Hill argues that there is not sufficient evidence in the record to sustain his attempted residential burglary conviction because the evidence failed to establish that he intended to commit the crime of residential burglary in Wright's residence; and because the evidence failed to establish that he took a substantial step given that the evidence did not show that Hill was the person who set off

the alarm or made the noises by the window. Because intent may be inferred from all the facts and circumstances surrounding the commission of the crime, including in attempted crimes; and because criminal liability attaches to the principal and his accomplice, there is substantial evidence in the record establishing that Hill attempted to burglarize Wright's residence, and his argument should be rejected.

It is not the role of the reviewing court to determine whether or not it believes the evidence at trial established guilt beyond a reasonable doubt; “[i]nstead the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any rational trier of fact* could have found the essential elements of the crime beyond a reasonable doubt.” State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980) (emphasis added). “A claim of insufficiency admits the truth of the State’s evidence and all reasonable inferences that reasonably can be drawn therefrom.” State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Unchallenged findings are verities on appeal. State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). A reviewing court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. Id. at 719.

Thus, in reviewing a juvenile court adjudication, the appellate court must decide whether substantial evidence supports the trial court's findings of fact and, in turn, whether the findings support the conclusions of law. State v. Alvarez, 105 Wn. App. 215, 220, 19 P.3d 485 (2001).

The State must prove each element of the charged crime beyond a reasonable doubt. State v. Ware, 111 Wn. App. 738, 741, 46 P.3d. 280 (2002). 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). The essential elements of an attempt are: "With intent to commit a specific crime," one "does any act which is a substantial step toward the commission of that crime." RCW 9A.28.020(1). Both the substantial step and the intent must be established beyond a reasonable doubt for a conviction to lawfully follow. State v. Aumick, 126 Wn.2d 422, 429-30, 894 P.2d 1325 (1995).

Intent may be inferred from all of the facts and circumstances surrounding the commission of an act. This rule is applicable in cases of attempted crimes as well as in cases where the crime has been consummated. State v. Bergeron, 38

Wn. App. 416, 419, 685 P.2d 648 (1984); State v. Nicholson, 77 Wn.2d 415, 420, 463 P.2d 633 (1969). 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. Bergeron, 38 Wn. App. at 419. Inferences are logical deductions or conclusions from an established fact, which the law allows, but does not require. State v. Jackson, 112 Wn.2d 867, 874, 774 P.2d 1211 (1989).

A person is an accomplice of another person in the commission of a crime if, with knowledge that it will promote or facilitate the commission of the crime, he solicits, commands, encourages, or requests such other person to commit it, or aids or agrees to aid such other person in planning or committing it. RCW 9A.08.020(3)(a)(i) and (ii). The word "aid" means all assistance whether given by words, acts, encouragement, support, or presence. A person who is present at the scene and ready to assist by his or her presence is aiding in the commission of the crime. However, more than mere presence and knowledge of the criminal activity of another must be shown to establish that a

person present is an accomplice. 11 Wash. Prac., Pattern Jury Instr. Crim. WPIC 10.51 (3d Ed). The same criminal liability attaches to the principal and his accomplice because they share equal responsibility of the substantive offense. State v. Rodriguez, 78 Wn. App. 769, 772-73, 898 P.2d 871 (1995), review denied, 128 Wn.2d 1015 (1996).

Here, the court found that Hill, together with others,<sup>8</sup> took a substantial step toward committing residential burglary when there was an attempt to breach the sliding glass door at Wright's home. RP 124. There was ample evidence by which a rational fact-finder could find Hill guilty of the crime of attempted residential burglary, either as a principal or as an accomplice because: 1) there was no legitimate reason for Hill to be in Wright's residence; 2) the sliding door lock was tampered enough for it to set the alarm; and 3) Hill's untruthful statements to the police were indicative of consciousness of guilt.

First, Hill did not have permission or business being in Wright's fenced backyard. As a matter of logical probability, it is reasonable to infer from all of the facts and circumstances that he and his friends planned to break into the residence. Their actions

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<sup>8</sup> Hill mistakenly states he was convicted as a principal. App. Br. at 10. The trial court did not specify that Hill was the principal.

were not patently equivocal. There was simply no legitimate reason for them to be in Wright's fenced backyard, meddle with the sliding door lock, and jump over the fence when confronted by the homeowner. If Hill had a legitimate purpose for being in Wright's residence, he would have knocked on the front door. Moreover, when confronted by Wright for being in his backyard, he would have explained his reason for being at his residence. Instead, after Wright confronted the three individuals, Hill jumped over the fence and ran into the neighbor's yard. RP 39-40. Flight may be circumstantial evidence of guilty knowledge. State v. Allen, 2014 WL 121672\*4 (Wn. App. Jan. 14, 2014) (citing State v. Bruton, 66 Wn.2d 111, 112, 401 P.2d 340 (1965)).

Second, even though the sliding door was not completely open, consistent with Hill's concessions, someone caused the alarm to chirp by trying to open the sliding door, and the noise by Wright's window was also the result of somebody trying to open it. Nonetheless, Hill argues there is no evidence to support a conclusion that he tried to break into the house. Circumstantial and direct evidence are equally reliable. State v. Fiser, 99 Wn. App. 714, 718, 995 P.2d 107 (2000).

Wright indicated that after hearing his alarm and realizing his back door had been tripped<sup>9</sup> he looked down and could not see anything, but at that time he heard a lot of noise at the windows "as if somebody was trying to get in." RP 29. Given the evident fact that someone was trying to break in, Wright ran downstairs, wrapped in only a towel. RP 29. When Wright looked through the window, located next to the sliding door, he saw the three men in his backyard. RP 33. From these facts, it is logical and reasonable to conclude that one of the three men standing in Wright's fenced backyard fiddled with the lock in an attempt to enter the residence. And because the same criminal liability attaches to him as well as the other two men attempting to enter the residence, it is immaterial which of the three actually tried to open the door.

Third, it is reasonable to infer consciousness of guilt from untruthful statements. Hill's statement to Detective Lamp--that he had taken two buses from his home to Kent Meridian High School, where he intended to seek enrollment, without knowing the times or

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<sup>9</sup> Hill assigned error to the court's written findings that Wright had determined that someone had opened his back sliding door. CP 46. This finding was consistent with Wright's testimony: "I heard my alarm chirp, which was odd because that meant that one of the doors or windows had been opened... I looked at the panel and saw that it was my rear sliding glass door that had been tripped." RP 29. However, the door was never opened. This fact was accurately reflected in the court's oral findings: "He got out of the shower, heard his alarm chirping, looked at the panel for his alarm and saw that it was his rear sliding glass door that someone was trying to breach." RP 119.

the bus numbers; and that he had been alone the entire time --was specifically rejected by the court because the video contradicted his statement. RP 123-24; CP 48. Credibility determinations are for the trier-of-fact. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

Hill suggests that because facts present in several other cases he cited were not present here; such as a broken window, the actual break of a lock, admission of intent to enter the residence, possession of burglary tools, wearing dark clothing, the lack of daylight and inclement weather, then there is not enough evidence to support an inference of intent to commit residential burglary in this case. However, an exclusive list of factors to support a conviction of this type does not exist. The relevant test here is, whether the inference can be made from Hill's conduct that plainly indicates intent to commit a crime as a matter of logical probability. Bergeron, 38 Wn. App. at 419. Criminal intent resides in the mind of the criminal, but it may be proved by facts and circumstances perceived by others. State v. Bencivenga, 137 Wn.2d 703, 710, 974 P.2d 832 (1999). The only logical inference that can be made here is that Hill, along with two others, intended to unlawfully enter Wright's residence with the intent to commit a

crime therein. The evidence consisted of more than Hill being present. Therefore, Hill is guilty of attempted residential burglary as a principal or as an accomplice.

In addition to the specific facts and circumstances that pertained to the attempted burglary in Wright's residence, which were sufficient to support Hill's conviction, there was also additional evidence presented that corroborates the conclusion that Hill was acting in concert with two others that day. Hill was positively identified by Beard as being in a residence where a glass break alarm sounded shortly before Wright's alarm. RP 13, 17, 22. Specifically, Hill was identified as knocking on the door of this residence in the company of two individuals. RP 13. After Beard saw the three men running, the police and homeowner arrived to find that someone had tried to pry the screen off, also in the back of the residence, and that the outside layer of a double-paned window had been broken. RP 14-15, 48, 50. Thus, the totality of the circumstances and this corroborative evidence confirm that Hill was acting in concert with the other two men in Wright's backyard, and Hill's conviction should be affirmed.

b. The Court Should Not Remand For Entry Of A Lesser Offense.

Hill suggests that the State may ask this Court to remand for entry of the lesser offense of attempted criminal trespass in the first degree. Because the trial court made a specific finding that all of the elements of the charged offense were met and substantial evidence supports that finding, this Court should affirm and not remand for entry of the lesser offense.

When an appellate court finds the evidence insufficient to support a conviction for a charged offense, it may remand the case and direct the trial court to enter judgment on a lesser included offense or lesser degree of the offense charged when the lesser offense was necessarily proven at trial. State v. Garcia, 146 Wn. App. 821, 830-31, 193 P.3d 181 (2008), review denied, 166 Wn.2d 1009, 208 P.3d 1125 (2009) (reversing conviction for third degree assault and remanding for entry of the lesser fourth degree assault); State v. Cobelli, 56 Wn. App. 921, 925-26, 788 P.2d 1081 (1989) (reversing conviction for possession with intent to deliver and remanding for entry of guilt on the lesser included offense of possession where the evidence of possession was undisputed).

The trial court judge, as the trier of fact, is not constrained by jury instructions and may consider the charged offense as well as any lesser included offense. State v. Peterson, 133 Wn.2d 885, 892-93, 948 P.2d 381 (1997). Thus, if the trial court in this case would have believed that Hill was guilty only of attempted criminal trespass, it would have made such finding. The trial court made a specific finding that Hill took a substantial step toward committing residential burglary by the attempt to breach the sliding door with the "intent to commit a crime against a person or property therein." RP 124. The intent to commit a crime therein is a necessary element of attempted residential burglary but not of attempted criminal trespass in the first degree.<sup>10</sup> For this reason, the State asks that this Court simply affirm Hill's conviction for attempted residential burglary.

2. THE RECORD DOES NOT SUPPORT A CONCLUSION THAT THE COURT IMPROPERLY RELIED ON RCW 9A.52.040 TO INFER INTENT, WHICH IS INAPPLICABLE IN ATTEMPTED RESIDENTIAL BURGLARY CASES.

Hill argues that the court improperly inferred criminal intent based on RCW 9A.52.040 because the prosecutor in his closing

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<sup>10</sup> A person is guilty of criminal trespass in the first degree if he or she knowingly enters or remains unlawfully in a building. RCW 9A.52.070(1).

arguments drew the court's attention to the statute. Courts have held that the jury cannot be instructed to infer intent based on RCW 9A.52.040 on attempted burglary cases. However, because this was a bench trial and the judge is presumed to know the law and apply it correctly, and Hill cannot make a showing that the verdict is not supported by sufficient evidence, his argument should be rejected.

Hill cites State v. Ogden<sup>11</sup> and Jackson to support his claim that the trial court improperly inferred intent under RCW 9A.52.040. However, both of these cases only hold that an inference instruction, based on RCW 9A.52.040, may not be given to a jury in an attempted burglary case. They do not stand for the proposition that intent may not be inferred in cases of an attempted entry.

In Ogden, the court held that an inference instruction based on RCW 9A.52.040 may not be given to the jury for two reasons: (1) the defendants were not charged with burglary and there was no evidence that they had entered the building, thus there was no evidentiary basis for the inference; and (2) the statute authorizes an inference of intent only if a person enters or remains unlawfully in a building. Ogden, 21 Wn. App. at 49.

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<sup>11</sup> 21 Wn. App. 44, 584 P.2d 957 (1989).

Relying on Ogden, the Jackson the court held that where the charge is attempted burglary, the trial court cannot instruct the jury that it may infer the defendant acted with the intent to commit a crime within the building, where the evidence is that the defendant may have attempted entrance but there exist other equally reasonable conclusions for his actions. Jackson, 112 Wn.2d at 870.

Ogden and Jackson do not apply here because this case does not involve a jury instruction. Making those cases applicable to bench trials, would be to invade the province of the fact finder by appropriating to the appellate court the role of factually determining the reasonableness of an inference. Bencivenga, 137 Wn.2d. at 708.

In Bencivenga, two individuals attempted to pry open the back door of a Kentucky Fried Chicken (KFC) restaurant. Id. at 705. A woman who lived across the street from KFC called 911. Police responded and Bencivenga was located five blocks away behind a fence. Id. At a bench trial, Bencivenga testified admitting that he tried to force the KFC door open but claimed his intent was not to steal anything but rather, he was seeking to win a bet with a friend that he could open the KFC door by removing a pin.

Id. at 706. The trial court found Bencivenga guilty of attempted second degree burglary. Id. Bencivenga appealed, and the court of appeals reversed his conviction upon its reading of Jackson. Id. at 707.

In overturning the court of appeals decision, the Supreme Court emphasized that their holding in Jackson was related only to jury instructions. Id. at 708. The court went on to say that nothing forbids a jury, or a judge, from logically inferring intent from proven facts, so long as it is satisfied the State has proved that intent beyond a reasonable doubt. Id. at 709. Likewise, this Court has made clear that its ruling in Ogden does not mean that evidence of an attempted entry, alone, is insufficient to support a conviction for attempted burglary, or that a trier of fact may not infer intent from all the facts and circumstances surrounding the attempted entry. Bergeron, 38 Wn. App. at 420. Thus, neither Jackson nor Ogden are relevant in this bench trial, where the trial judge made a reasonable inference based on the facts presented, even though Hill was charged with attempted residential burglary.

It is presumed that judges presiding over bench trials know the law and apply it correctly. State v. Adams, 91 Wn.2d 86, 93, 586 P.2d 1168 (1978); Douglas NW, Inc. v. Bill O'Brien & Sons Constr., Inc., 64 Wn. App. 661, 681, 828 P.2d 565 (1992). "In bench trials, judges routinely hear inadmissible evidence that they are presumed to ignore when making decisions." Harris v. Rivera, 454 U.S. 339, 346, 102 S. Ct. 460, 70 L. Ed. 2d 530 (1981). A defendant can rebut this presumption by showing that the verdict is not supported by sufficient admissible evidence. State v. Read, 147 Wn.2d 238, 245-46, 53 P.3d 26 (2002).

The presumption in this case is that the trial court knew that RCW 9A.52.040 is inapplicable to an instruction for the charge of attempted residential burglary. In her findings, the judge did not say she relied on the statute to infer intent. She simply stated, "I do infer intent to commit a crime against a person or property therein. There was no other reason [for Hill] to be there." RP 124. Hill argues this is the type of analysis one would logically make when applying RCW 9A.52.040. Hill's argument fails. This is precisely the analysis a reasonable person would make with the facts presented and in looking at the totality of the circumstances; it is the only logical explanation.

Hill also argues that because the judge did not correct the prosecutor when arguing the statute applied, while correcting him when the prosecutor called Hill a liar, then the court must have not known that the statute was inapplicable. Just because the court was troubled by the prosecutor calling Hill a liar, does not mean the court did not know about the applicability of RCW 9A.52.040. There was no jury to be instructed, hence, there was no reason to address whether or not a jury instruction would be supported by the statute. Additionally, Hill cannot make a showing that the verdict was not supported by the evidence. Hill was identified as being with two other individuals knocking on a residence, which triggered the glass alarm as a result of a broken window, shortly before he was found in Wright's fenced backyard. Hill or one of his two accomplices tampered with Wright's rear sliding door causing the alarm to chirp. They did not have a legitimate reason to be in Wright's backyard. When confronted by Wright, Hill jumped over the fence into the neighbor's yard. And lastly, he provided untruthful statements about his whereabouts and lack of company. Thus, there is substantial evidence in the record from which a reasonable trier of fact could find beyond a reasonable doubt that Hill attempted to burglarize Wright's residence.

D. CONCLUSION

For the foregoing reasons, the State asks this Court to affirm Hill's conviction for attempted residential burglary.

DATED this 3<sup>rd</sup> day of February, 2014.

Respectfully submitted,

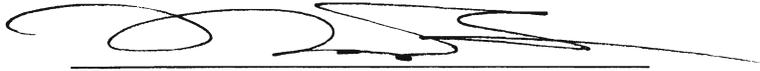
DANIEL T. SATTERBERG  
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By:   
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Richard W. Lechich, 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. JAHAD HILL, Cause No. 70428-1-I, 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.



Bora Ly  
Done in Seattle, Washington

02/03/14  
Date