

NO. 41277-2-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

JOSEPH EHRHARDT,

Appellant.

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DIVISION II
PORT ORCHARD, WA

ON APPEAL FROM THE SUPERIOR COURT OF
KITSAP COUNTY, STATE OF WASHINGTON
Superior Court No. 10-1-00490-2

BRIEF OF RESPONDENT

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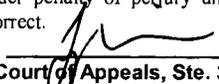
This brief was served, as stated below, via U.S. Mail or the recognized system of interoffice communications. I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.
DATED May 9, 2011, Port Orchard, WA 
Original **AND ONE COPY** filed at the Court of Appeals, Ste. 300, 950 Broadway, Tacoma WA 98402; Copy to counsel listed at left.

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I. COUNTERSTATEMENT OF THE ISSUES

1. Whether the trial court erred in declining to give Ehrhardt's proposed jury instruction when that instruction was incomplete and potentially misleading, and when the instructions actually given by the trial court: mirrored the language of the relevant statutes; did not misstate the law or mislead the jury; and allowed Ehrhardt to argue his theory of the case?

2. Whether the trial court erred in instruction the jury regarding expert testimony when the trial court's instruction was an accurate statement of the law and the instruction did not prejudice Ehrhardt?

3. Whether Ehrhardt's claim that the trial court improperly denied him the opportunity to voir dire the witness regarding his qualifications as an expert is without merit when Ehrhardt never asked to voir dire the witness below?

4. Whether Ehrhardt's claims that the trial court improperly instructed the jury regarding the definition of "value" and that the State presented insufficient evidence of value are without merit when the court's instruction used the exact definition of "value" found in the statute and when the evidence regarding the value of the stolen items, taken in the light most favorable to the State, was sufficient to permit a rational jury to find each the relevant element of the crime beyond a reasonable doubt?

5. Whether Ehrhardt's claim that the State presented insufficient evidence to show that he was guilty of burglary is without merit when the evidence, taken in the light most favorable to the State, was sufficient to permit a rational jury to find each element of the crime beyond a reasonable doubt?

II. STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

Joseph Ehrhardt was charged by amended information filed in Kitsap County Superior Court with burglary in the second degree and theft in the second degree. CP 6. Ehrhardt was found guilty of the charged offenses following a jury trial. CP 63. The trial court then entered a standard range sentence. CP 67. This appeal followed.

B. FACTS

On June 15, 2010 Brian Glaze left his home on Phillips Road for work around seven in the morning. RP 65, 72. His wife, however, remained at the home during the day until she went to work around 5:00 pm. RP 72. Mr. Glaze came home from work around 6:00 pm; thus, the home was left unoccupied for approximately one hour. RP 72. As Mr. Glaze returned home he pulled into the driveway of his residence and saw a pickup truck in his driveway with its hood up and a man (later identified as Ehrhardt) working on the truck underneath the hood. RP 65-67. Mr. Glaze had never

seen Ehrhardt before that date. RP 69.

Mr. Glaze asked Ehrhardt if he needed any help, and Ehrhardt said that he was having problems with the truck. RP 67. Mr. Glaze explained that Ehrhardt seemed “really nervous.” RP 67. Ehrhardt showed Mr. Glaze that a bolt on the truck’s solenoid had broken. RP 68. Ehrhardt eventually got the truck started. RP 68. As the truck was blocking the driveway, Mr. Glaze asked Ehrhardt to pull the truck up the driveway and turn around in his front yard so that Mr. Glaze could pull his vehicle in. RP 69. Ehrhardt pulled the truck in and made a big looping u-turn and then drove back down the driveway leaving the area. RP 69-70.

Mr. Glaze then pulled up to his house and as he did so he could see a pile of his tools sitting near his house. RP 70-71. Mr. Glaze explained that he kept these tools in a storage shed next to a carport, and that the tools had all been in the shed when he left for work that day. RP 71-72. The tools that had been piled up included two roto-hammers, a pressure washer, a chain saw, an air compressor, a couple of nail guns, and a box of stereo wiring. RP 71.

Mr Glaze called his wife to see if she had moved the tools, and he then called 911 to report a break-in and possible theft. RP 73. Deputy John Loftus was dispatched to the reported burglary. RP 42-43. When Deputy

Loftus arrived at the scene he contacted Mr. Glaze who gave a description of the suspect and the suspect's vehicle. RP 43, 74. Mr. Glaze also showed Deputy Loftus the pile of tools and explained where they had been stored. RP 74.

After Deputy Loftus left the scene Mr. Glaze kept looking around the property to see if anything else had been taken and he noticed that the gas caps on his lawn mowers and two "quad runners" had been removed and that all of the gas had been removed from these items. RP 75. He also noticed that a gas can that he kept near the quad runners was missing. RP 75.

Later that day, another deputy contacted Deputy Loftus and advised him that a person and vehicle matching the description had been located at the Christian Life Center in South Kitsap. RP 44. Deputy Loftus went to that location and contacted Ehrhardt. RP 44-45. Deputy Loftus asked Ehrhardt about what had gone on at the house on Phillips Road earlier in the day, and Ehrhardt stated that his car had broken down. RP 47. Deputy Loftus explained to Ehrhardt that the homeowner had discovered that numerous items from his house and outbuilding had been stacked up next to the driveway. RP 47-48. Ehrhardt, however, stated that he "didn't do any burglary." RP 48.

Deputy Loftus then called Mr. Glaze, and Mr. Glaze informed him

about the missing gas cans and described them for the deputy. RP 77-78. Deputy Loftus then found two gas cans (one that was labeled “dirt bike only” and one labeled “motor bike only”) in Ehrhardt’s truck. RP 48, 51. Mr. Glaze then came to the scene and identified the gas cans as belonging to him. RP 51, 78.

At trial, Mr. Glaze testified that he worked in the construction industry as a framer and foreman, and that he had been building houses for four years. RP 79. He also explained that a majority of the tools that had been piled up next to his house were items that he used for work, although some of them were personal items. RP 80.

Mr. Glaze was then asked about the value of the tools that had been moved. Mr. Glaze was first asked about the air compressor and was asked if he was familiar with the “fair market value of that item today.” RP 81. Mr. Glaze testified that it was worth about a hundred dollars. RP 81. The Defendant did not object to this question or answer. RP 81.

Mr. Glaze next explained that he purchased the pressure washer in June of 2010 from Home Depot for approximately \$200. RP 82. Mr. Glaze estimated the cost of the Dewalt roto-hammer to be about \$450 and the Bosch roto-hammer also cost about \$450. RP 85, 87-88. He also testified that the two nail guns cost about \$230 a piece. RP 86-87. With respect to the box of

stereo wiring, Mr. Glaze estimated that he had paid about a hundred dollars for the items in the box. RP 84. No objection was ever raised to any of this testimony.

Jury Instructions

At the close of evidence the parties discussed jury instructions with the trial court. One of the State's proposed instructions was WPIC 6.51, which provides that,

A witness who has special training, education, or experience may be allowed to express an opinion in addition to giving testimony as to facts.

You are not, however, required to accept his or her opinion. To determine the credibility and weight to be given to this type of evidence, you may consider, among other things, the education, training, experience, knowledge, and ability of the witness. You may also consider the reasons given for the opinion and the sources of his or her information, as well as considering the factors already given to you for evaluating the testimony of any other witness.

CP 49. The trial asked the State why this instruction was being proposed and the State responded that Mr. Glaze had testified concerning his knowledge of certain items because of his employment. RP 101. Ehrhardt objected to the instruction, arguing that Mr. Glaze was not "classified enough detail [sic] as an expert witness at this point." RP 101-02. The trial court decided that the instruction was appropriate, noting that,

“He did testify about an opinion, and he had a background that I think not many jurors had. So his information was useful to the jury that way. He wasn’t technically labeled an expert, but he certainly gave helpful information. So I am going to use Instruction No. 5.”

RP 102. This instruction was then given at trial. CP 49.

The State also proposed using WPIC 79.20, which states “Value means the market value of the property at the time and in the approximate area of the act.” CP 19. Ehrhardt objected to this instruction, but the trial court chose to use the instruction, as it was a WPIC and a “correct statement.”

RP 104.

Ehrhardt also proposed an instruction stating that, “Mere possession of stolen property alone is insufficient to find the defendant guilty of either theft 2 or burglary 2.” CP 38. As this was not a WPIC instruction, the trial court asked the defense to explain the justification for the instruction. RP 105. Ehrhardt explained that concern was that the jury would only consider that he had stolen property in his truck and that the instruction was proposed so the jury would look at all the evidence before convicting on either count. RP 106. The trial court looked at the “to-convict” instructions and noted that the burglary count required the jury to find that the defendant entered or remained unlawfully in a building, so the proposed instruction was not needed on that count. RP 107. The court also noted that *Mace* opinion, upon

which the instruction was based, was distinguishable. RP 107-08. The trial court further explained that the instruction was not a WPIC which the trial court typically wouldn't use unless needed, and here the defense would be free to argue that the jury couldn't convict based on mere possession, and thus, the trial court declined to use the proposed instruction. RP 110.

III. ARGUMENT

A. THE TRIAL COURT DID NOT ERR IN DECLINING TO GIVE EHRHARDT'S PROPOSED JURY INSTRUCTION BECAUSE THAT INSTRUCTION WAS INCOMPLETE AND POTENTIALLY MISLEADING, AND BECAUSE THE INSTRUCTIONS ACTUALLY GIVEN BY THE TRIAL COURT: MIRRORED THE LANGUAGE OF THE RELEVANT STATUTES; DID NOT MISSTATE THE LAW OR MISLEAD THE JURY; AND ALLOWED EHRHARDT TO ARGUE HIS THEORY OF THE CASE.

Ehrhardt argues that the trial court erred when it declined to give his proposed instruction that mere possession of stolen property is insufficient to support a finding of guilty on the charges of theft in the second degree or burglary in the second degree. App.'s Br. at 6. This claim is without merit because the instructions given to the jury: mirrored the language of the relevant statutes; did not misstate the law or mislead the jury; and allowed Ehrhardt to argue his theory of the case.

“Jury instructions are sufficient if they permit each party to argue his theory of the case and properly inform the jury of the applicable law.” *State v. Riley*, 137 Wn.2d 904, 909, 976 P.2d 624 (1999) (quoting *State v. Bowerman*, 115 Wn.2d 794, 809, 802 P.2d 116 (1990)).

Ehrhardt’s proposed instruction correctly states that mere possession of recently stolen property, without corroborating evidence, is insufficient to support a burglary conviction. *State v. Mace*, 97 Wn.2d 840, 843, 650 P.2d 217 (1982). Ehrhardt’s proposed instruction, however, was misleading because it failed to add additional statements that the Supreme Court made in *Mace* on this issue. For instance, the Court in *Mace* stated that although mere possession is insufficient, “[w]hen a person is found in possession of recently stolen property, slight corroborative evidence of other inculpatory circumstances tending to show his guilt will support a conviction.” “*Mace*, 97 Wn.2d at 843 (citing *State v. Portee*, 25 Wn.2d 245, 253-54, 170 P.2d 326 (1946)). Furthermore, the *Mace* Court went on to note that other corroborating evidence may include evidence of flight or presence of the defendant near the crime scene. *Mace*, 97 Wn.2d at 843. Ehrhardt’s proposed instruction (which did not include these qualifications), therefore, did not even constitute a complete statement of the Court’s holdings in *Mace*, and the instruction as proposed would have been misleading without these additional statements.

As the trial court noted, the instructions as given still allowed Ehrhardt to argue that the mere possession of stolen property did not prove that Ehrhardt had committed a burglary, as the “to-convict” instruction for the burglary count required the jury to find that the defendant entered or remained unlawfully in a building with intent to commit a crime. RP 107, CP 51.

In short, the trial court did not err by giving jury instructions that: mirrored the language of the relevant statutes; did not misstate the law or mislead the jury; and allowed Ehrhardt to argue his theory of the case. As Ehrhardt’s instruction was potentially misleading and was unnecessary, the trial court properly declined to give it.

B. THE TRIAL COURT DID NOT ERR IN INSTRUCTION THE JURY REGARDING EXPERT TESTIMONY BECAUSE THE TRIAL COURT’S INSTRUCTION WAS AN ACCURATE STATEMENT OF THE LAW AND THE INSTRUCTION DID NOT PREJUDICE THE DEFENDANT.

Ehrhardt next claims that the trial court erred in instructing the jury regarding expert testimony. App.’s Br. at 10. This claim is without merit because the instruction at issue was an accurate statement of the law and did not prejudice Ehrhardt in any way.

As stated above, “Jury instructions are sufficient if they permit each party to argue his theory of the case and properly inform the jury of the applicable law.” *Riley*, 137 Wn.2d at 909.

Ehrhardt argues on appeal that the trial court improperly instructed the jury on expert testimony because Mr. Glaze was not properly qualified as an expert. Although Mr. Glaze testified regarding the value of the tools that had been taken or removed from his shed, Ehrhardt never objected to any of this evidence at trial, thus the trial court was never required to rule on whether this testimony was admissible as expert opinion or lay opinion testimony. In addition, by failing to object, Ehrhardt waived any issue regarding the admissibility of this testimony on appeal.

Under Washington law there is some grey area regarding how to classify a property owner’s testimony regarding the value of his or her property. For instance, a lay witness may give an opinion, so long as it is rationally based on her perceptions and helpful to the jury. ER 701.¹ Washington Courts have held that a proper lay opinion can include, among other things, the value of one's own property. *State v. Kinard*, 39 Wn. App. 871, 874, 696 P.2d 603 (1985)(“A proper lay opinion would include . . . the

¹ A lay witness may give only “those opinions or inferences which are (a) rationally based on the perception of the witness, (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of rule 702.” ER 701.

value of one's own property”); *Port of Seattle v. Equitable Capital Group, Inc.*, 127 Wn.2d 202, 898 P.2d 275 (1995) (lay opinion regarding property's value admissible); *State v. Wilson*, 6 Wn. App. 443, 446, 493 P.2d 1252 (1972)(Recognizing that a property owner may offer her opinion of the market value of her own property); *State v. Hammond*, 6 Wn. App. 459, 461, 493 P.2d 1249 (1972) (citing *McCurdy v. Union Pac. R.R.*, 68 Wn.2d 457, 413 P.2d 617 (1966))(A property owner may testify as to the property's market value without being qualified as an expert in this regard).

Lay opinions regarding value, however, can of course overlap with what otherwise might be construed as “expert” testimony on this issue. Under ER 702 a witness who has specialized knowledge based on “knowledge” or “experience” may testify regarding an opinion. Thus, when a witness testifies regarding the value of his or her own property and explains that his or her value is based on her knowledge or experience with those items, it could be argued that the witness is both offering a “lay” opinion and an “expert” opinion. In the present case this issue, of course, never came up during the testimony portion of the trial because Ehrhardt did not object to Mr. Glaze’s testimony regarding the value of his tools.

Rather, this issue only came up when the trial court discussed the State’s proposed jury instruction on expert testimony. RP 101-02. The actual jury instruction used, however, doesn’t include the word “expert.” Rather,

the instruction only state's that,

A witness who has special training, education, or experience may be allowed to express an opinion in addition to giving testimony as to facts.

You are not, however, required to accept his or her opinion. To determine the credibility and weight to be given to this type of evidence, you may consider, among other things, the education, training, experience, knowledge, and ability of the witness. You may also consider the reasons given for the opinion and the sources of his or her information, as well as considering the factors already given to you for evaluating the testimony of any other witness.

CP 49. Given the fact that Washington courts allow property owners to express an opinion about the value of their property, the above instruction would seem to be a proper statement of the law as it relates to value regardless of whether the witness was technically testifying as an expert or as a lay witness. All the instruction says is that a witness can offer an opinion based on their experience, but that the jury is not required to accept that opinion. This second point, of course, was helpful to Ehrhardt, as it told the jury that they were not required to accept Mr. Glaze's testimony regarding the value of his tools.

Thus, in the present case the trial court did not err in giving the State's proposed instruction as it was an accurate statement of the law and was based on Mr. Glaze's testimony that he had working in the construction field for a number of years and was familiar with the tools in his shed.

In addition, even if this testimony is properly construed as “lay” opinion testimony, the instruction did not improperly instruct the jury since the instruction only said that a witness may offer an opinion based on their experience and that the jury is not bound by that opinion. This fact, of course is true of both lay and expert opinion testimony.

Finally, any error that might have occurred was clearly harmless, since the instruction ultimately worked in Ehrhardt’s favor and instructed the jury that they were not bound by Mr. Glaze’s opinion testimony. For all of these reasons the trial court did not err in giving WPIC 6.51.

C. EHRHARDT’S CLAIM THAT THE TRIAL COURT IMPROPERLY DENIED HIM THE OPPORTUNITY TO VOIR DIRE THE WITNESS REGARDING HIS QUALIFICATIONS AS AN EXPERT IS WITHOUT MERIT BECAUSE EHRHARDT NEVER ASKED TO VOIR DIRE THE WITNESS BELOW.

Ehrhardt next claims that the trial court erred when it denied him the opportunity to voir dire the witness regarding his qualifications as an expert. App.’s Br. at 14. This claim is without merit because Ehrhardt never sought to voir dire the witness below.

ER 104(a) states that “[p]reliminary questions concerning the qualification of a person to be a witness ... shall be determined by the court.”

The admission of expert testimony is within the discretion of the trial court, and once the basic qualifications of an expert are shown, any claimed deficiencies go to the weight of the testimony rather than its admissibility. *State v. Hightower*, 36 Wn. App. 536, 545, 676 P.2d 1016 (1984) (citing *State v. Gilchrist*, 15 Wn. App. 892, 893, 552 P.2d 690 (1976), and *State v. Parker*, 9 Wn. App. 970, 972, 515 P.2d 1307 (1973)).

In the present case Mr. Glaze testified that he had worked in the construction industry for a number of years and the State then proceeded to ask Mr. Glaze about the value of his tools. RP 79-81. The Defendant never objected to this testimony nor did he ever ask to voir dire the witness regarding his experience regarding value, and the Defendant did not go into this issue at all on cross examination.

Ehrhardt, however, cites to *City of Bellevue v. Lightfoot*, 75 Wn. App. 214, 877 P.2d 247 (1994), for the proposition that the trial court erred in not allowing him to voir dire the witness. App.'s Br. at 15-16. That case, however, is clearly distinguishable.

In *Lightfoot*, the defendant reserved examination of the expert's qualifications for cross-examination. *Lightfoot*, 75 Wn. App. at 216. But when Lightfoot inquired into the expert's qualifications on cross-examination, the prosecutor objected on the basis of relevancy, and the trial court sustained

the objection. *Lightfoot*, 75 Wn. App. at 217. Thus, the defendant was denied any opportunity to question the expert on qualifications and was entirely precluded from questioning the radar device expert on his general qualifications. *Lightfoot*, 75 Wn. App. at 223.

In the present case, however, there is no allegation that Ehrhardt was unable to question Mr. Glaze as to his qualifications. Rather, Ehrhardt never asked to voir dire the witness nor otherwise sought to challenge his qualifications. Thus, unlike in *Lightfoot*, the trial court in the present case never curtailed Ehrhardt's attempt to cross examine or voir dire the witness on the basis of his opinion; rather, Ehrhardt never made any attempt at all. *Lightfoot*, therefore, is inapplicable.

Ehrhardt has cited no authority that requires a trial court to sua sponte give a defendant an opportunity to voir dire a witness when the defendant has raised no objection to the witness's testimony nor otherwise asked for an opportunity to voir dire the witness. Ehrhardt's claim, therefore, is without merit.

D. EHRHARDT’S CLAIMS THAT THE TRIAL COURT IMPROPERLY INSTRUCTED THE JURY REGARDING THE DEFINITION OF “VALUE” AND THAT THE STATE PRESENTED INSUFFICIENT EVIDENCE OF VALUE ARE WITHOUT MERIT BECAUSE THE COURT’S INSTRUCTION USED THE EXACT DEFINITION OF “VALUE” FOUND IN THE STATUTE AND BECAUSE THE EVIDENCE REGARDING THE VALUE OF THE STOLEN ITEMS, TAKEN IN THE LIGHT MOST FAVORABLE TO THE STATE, WAS SUFFICIENT TO PERMIT A RATIONAL JURY TO FIND EACH THE RELEVANT ELEMENT OF THE CRIME BEYOND A REASONABLE DOUBT.

Ehrhardt next claims that the trial court erred when it instructed the jury regarding the definition of “value” by using WPIC 79.20. App.’s Br. at 16. Ehrhardt also argues that there was insufficient evidence of the value of the stolen items to support the theft charge. App.’s Br. at 20. This claim is without merit because the trial court’s instruction was an accurate statement of the law and allowed Ehrhardt to argue his theory of the case, and because the evidence regarding the value of the stolen items, taken in the light most favorable to the State, was sufficient to permit a rational jury to find each element of the crime beyond a reasonable doubt.

“Jury instructions are sufficient if they permit each party to argue his theory of the case and properly inform the jury of the applicable law.” *Riley*, 137 Wn.2d at 909. Evidence is sufficient if, taken in the light most favorable

to the State, it permits a rational jury to find each element of the crime beyond a reasonable doubt. *State v. Pirile*, 127 Wn.2d 628, 643, 904 P.2d 245 (1995), *cert. denied*, 518 U.S. 1026 (1996); *State v. Green*, 94 Wn.2d 216, 220-21, 616 P.2d 628 (1980). A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom. *State v. Moles*, 130 Wn. App. 461, 465, 123 P.3d 132 (2005), *citing State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Circumstantial and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

In the present case the trial court's instruction on value stated that "Value means the market value of the property at the time and in the approximate area of the act." CP 19. This instruction uses the exact definition of "value" found in RCW 9A.56.010(18)(a). The instruction, therefore, accurately states the law and the trial court did not err in using this instruction.

Ehrhardt, however, also argues that the State's evidence regarding value was insufficient because Mr. Glaze did not testify as to the "market value" of the items but only testified as to what the items cost when they were purchased. App.'s Br. at 16, 19.

Under Washington law, however, evidence of what price was paid for an item is sufficient to show value. For instance, in *State v. Melrose*, 2 Wn. App. 824, 470 P.2d 552 (1970) the defendant was charged with stealing a camera and a light meter, and the victim testified that the items had been purchased for \$320 several years earlier and that he didn't know the what the items would be worth at the time of trial but he did know that the price of cameras drops rapidly. *Melrose*, 2 Wn. App. at 830. On appeal the defendant argued this evidence was insufficient to show that the value of the cameras was over \$75. *Melrose*, 2 Wn. App. at 830. The Court of Appeals, however, held that although the evidence regarding value was sparse, it was nonetheless sufficient and the Court specifically noted that "the price paid for an item of property, if not too remote in time, is proper evidence of value." *Melrose*, 2 Wn. App. at 831. The Court also noted that under Washington law "evidence of price paid is entitled to great weight," and the Court also pointed out that it is "not essential that there be direct evidence of value-a fact in issue-because reasonable inferences from substantial evidence may suffice." *Id* at 831. *See also, State v. Hermann*, 138 Wn. App. 596, 602,158 P.3d 96 (2007)(citing *Melrose* and holding that evidence of price paid is entitled to great weight and that value need not be proven by direct evidence as the jury may draw reasonable inferences from the evidence). Finally, the *Melrose* Court noted that,

The state would have aided the jury if it had offered expert opinion testimony concerning the market value of the property in question. Even had such evidence been offered, however, its weight would still be for the jury. *Moyer v. Clark*, 75 Wash.Dec.2d 814, 454 P.2d 374 (1969); *Gerberg v. Crosby*, 52 Wn.2d 792, 329 P.2d 184 (1958); 31 Am.Jur.2d Expert and Opinion Evidence s 183 (1967). If the jury rejected such expert testimony, it could determine market value from the evidence in the record, using the judgment of persons of ordinary experience and knowledge. See 5 Meisenholder, Wash.Prac. s 352 (1965). The evidence of market value, while sparse, was sufficiently substantial to survive the motion in arrest of judgment.

Melrose, 2 Wn. App. at 832.

The Washington Supreme Court has similarly held that “evidence of retail price *alone* may be sufficient to establish value. *State v. Longshore*, 141 Wn.2d 414, 430, 5 P.3d 1256 (2000)(emphasis in original), *citing State v. Kleist*, 126 Wn.2d 432, 436, 895 P.2d 398 (1995). As the Court noted in *Kleist*, a defendant is free to attempt to rebut the claim that the price paid or the store price is representative of fair market value, but these issues go to the weight of the evidence, and the jury, of course, is ultimately charged with deciding this factual issue. *Kleist*, 126 Wn.2d at 440.

In the present case the State was required to show that the value of the property exceeded \$750 in value. CP 60. In support of this allegation the State presented evidence from Mr. Glaze that the “fair market value” of the air compressor at the time of trial was about a hundred dollars. RP 81. Mr.

Glaze also testified that he had recently (in June of 2010 – approximately two to three months before the trial below) purchased the pressure washer from Home Depot for approximately \$200. RP 82. Mr. Glaze estimated the cost of the Dewalt “roto-hammer” to be about \$450 and he also stated that the Bosch roto-hammer cost about \$450. RP 85, 87-88. He also testified that the two nail guns cost about \$230 a piece. RP 86-87. With respect to the box of stereo wiring, Mr. Glaze estimated that he had paid about a hundred dollars for the items in the box. RP 84.

The actual evidence before the jury, therefore, was that the air compressor had a fair market value of about one hundred dollars, and the other items had cost approximately an additional \$1660. Viewing this evidence in a light most favorable to the State and drawing all reasonable inferences from this evidence, a reasonable juror could have concluded that the value of the items exceeded \$750.

E. EHRHARDT’S CLAIM THAT THE STATE PRESENTED INSUFFICIENT EVIDENCE TO SHOW THAT HE WAS GUILTY OF BURGLARY IS WITHOUT MERIT BECAUSE THE EVIDENCE, TAKEN IN THE LIGHT MOST FAVORABLE TO THE STATE, WAS SUFFICIENT TO PERMIT A RATIONAL JURY TO FIND EACH ELEMENT OF THE CRIME BEYOND A REASONABLE DOUBT.

Ehrhardt next claims that there was insufficient evidence to support the jury’s finding of guilt on the burglary count. App.’s Br. at 19. This claim is without merit because the evidence showed that there was a burglary; Ehrhardt was found in possession of several of the items taken; and Ehrhardt was found in the victim’s driveway near to the location where other items belonging to the victim had been removed from a shed and placed in a pile. The evidence, therefore, was sufficient as it not only demonstrated that Ehrhardt was in possession of recently stolen property, but the evidence also demonstrated “slight corroborative evidence of other inculpatory circumstances tending to show [the defendant's] guilt” as Ehrhardt was found at the scene of the burglary in the time frame when the crime was committed.

Evidence is sufficient if, taken in the light most favorable to the State, it permits a rational jury to find each element of the crime beyond a reasonable doubt. *Pirtle*, 127 Wn.2d at 643; *Green*, 94 Wn.2d at 220-21. A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom. *Moles*, 130 Wn. App. at

465. Circumstantial and direct evidence are equally reliable. *Delmarter*, 94 Wn.2d at 638. Additionally, credibility determinations are for the trier of fact and are not subject to review. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). Accordingly, a reviewing court defers 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). The relevant inquiry, therefore, 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. Scoby*, 117 Wn.2d 55, 61, 810 P.2d 1358, 1362 (1991), *citing State v. Baeza*, 100 Wn.2d 487, 490, 670 P.2d 646 (1983).

Although Ehrhardt is correct that mere proof of possession of recently stolen property does not prove burglary, such possession accompanied by ‘slight corroborative evidence of other inculpatory circumstances tending to show [the defendant’s] guilt will support a conviction.’ *State v. Mace*, 97 Wn.2d 840, 843, 650 P.2d 217 (1982) (*quoting State v. Portee*, 25 Wn.2d 246, 253-54, 170 P.2d 326 (1946)). Corroborating evidence may include evidence of flight or presence of the defendant near the crime scene. *Mace*, 97 Wn.2d at 843.

Sufficient corroborative evidence is present here. Ehrhardt was in possession of stolen goods in Mr. Glaze's driveway near the residence from which the other items were taken during the time period when they were stolen. Given the wealth of incriminating inferences from the evidence, and viewing the evidence in a light most favorable to the State, the evidence was sufficient to support Ehrhardt's convictions for theft in the second degree and second degree burglary.

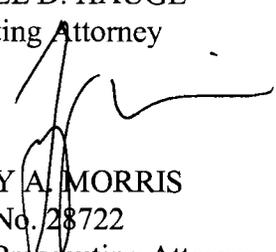
IV. CONCLUSION

For the foregoing reasons, Ehrhardt's conviction and sentence should be affirmed.

DATED May 9, 2011.

Respectfully submitted,

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