

NO. 50202-0-II

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

STATE OF WASHINGTON,

Respondent,

v.

DALTON W. JOHNSON,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF
KITSAP COUNTY, STATE OF WASHINGTON
Superior Court No. 16-1-01597-1

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

I. COUNTERSTATEMENT OF THE ISSUES.....1

II. STATEMENT OF THE CASE.....1

 A. PROCEDURAL HISTORY.....1

 B. FACTS2

III. ARGUMENT4

 A. SUFFICIENT EVIDENCE SUPPORTED THE RECKLESSNESS ELEMENT OF TRAFFICKING IN STOLEN PROPERTY IN THE SECOND DEGREE.....4

IV. CONCLUSION.....7

TABLE OF AUTHORITIES

CASES

State v. Delmarter,
94 Wn.2d 634, 618 P.2d 99 (1980)..... 4

State v. Green,
94 Wn.2d 216, 616 P.2d 628 (1980)..... 4, 5

State v. Hermann,
138 Wash.App. 596, 158 P.3d 96 (2007)..... 5

State v. Moles,
130 Wn. App. 461, 123 P.3d 132 (2005)..... 4

State v. Pirtle,
127 Wn.2d 628, 904 P.2d 245 (1995), *cert. denied*, 518 U.S.
1026 (1996)..... 4

State v. Rich,
184 Wash.2d 897, 365 P.3d 746 (2016)..... 4

State v. Salinas,
119 Wn.2d 192, 829 P.2d 1068 (1992)..... 4

State v. Scoby,
117 Wn.2d 55, 810 P.2d 1358 (1991)..... 5

State v. Walton,
64 Wn. App. 410, 824 P.2d 533 (1992)..... 5

STATUTORY AUTHORITIES

RCW 9A.82.010 (19)..... 5

RCW 9A.82.010(16)..... 5

RCW 9A.82.055 (1)..... 5

I. COUNTERSTATEMENT OF THE ISSUES

1. Whether there was sufficient evidence to support the recklessness element of trafficking in stolen property second degree?

II. STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

Dalton W. Johnson was charged by information filed in Kitsap County Superior Court with trafficking in stolen property in the second degree. CP 1. Before trial a first amended information was filed charging trafficking in stolen property in the first degree and trafficking in stolen property second degree. CP 8.

A hearing pursuant to CrR 3.5 was held to determine the admissibility of Johnson's out-of-court statements to law enforcement. 1RP 27. The arresting deputy read Johnson his rights and Johnson expressed no confusion. 1RP 31-32. Johnson never requested an attorney. 1RP 33. The trial court's oral ruling found that Johnson voluntarily made statements to law enforcement after knowingly, intelligently, and voluntarily waived his *Miranda* rights. 1RP 41. Findings of Fact and Conclusions of Law for Hearing on CrR 3.5 were entered. CP 16.

Johnson was found guilty on count II, trafficking in stolen property second degree. CP 36. Judgment of acquittal was entered regarding count I. CP 37. Johnson received a standard range sentence of eight months.

CP 41. This appeal was timely filed. CP 53.

B. FACTS

Peter Aguiar noticed that a generator, a chainsaw, a leaf blower, and a laser were missing from his home. 1RP 75. He called local pawn shops and a woman at one shop said she had a generator answering the description of Mr. Aguiar's generator. 1RP 76.

Mr. Aguiar contacted police: they asked him for a serial number for the generator which he found and provided. 1RP 77. Police check the serial number with the item in the pawn shop and it matched. 1RP 77. Mr. Aguiar then retrieved the generator. 1RP 77-78. A police officer later got the pawn slip and a surveillance video from the pawn shop. 1RP 90.

The pawn shop takes information on the item and the person pawning the item. 1RP 111. The pawn slip for Mr. Aguiar's generator was identified by the pawn shop manager. *Id.* The slip was admitted as exhibit 8. 1RP 112. The slip contained the name, address, and driver's license number of the defendant, Dalton Johnson. 1RP 113.

The pawn slip can be time-referenced to the video surveillance. 1RP 118. By this method, the pawn shop manager was able to view the video of the generator transaction. 1RP 118. At the time the generator was pawned, Johnson told the pawnbroker that it had been given to him as

a gift by his grandfather. 1RP 141.

When arrested, Johnson agreed to speak to law enforcement. 2RP 191. Johnson told the investigator, Deputy Hedstrom, that he had become involved in pawning the generator to help a friend, Sean, and he received \$10 and a pack of cigarettes for his trouble. 2RP 192. Johnson said that he did not think the generator was “legit.” 2RP 192. He knew that his friend had gone to prison for theft. Id. Johnson said that Sean told him that he got the generator from his, Sean’s, parents. 2RP 196.

In his testimony, Johnson added that his friend Sean had been hanging out with not very good people. 2RP 218. Sean called and asked him for help pawning the generator. 2RP 220-21. Johnson testified that he questioned Sean about the provenance of the generator. 2RP 221-22. Johnson claimed that Sean’s answers satisfied him. 2RP 223. Johnson denied that he had told Deputy Hedstrom that he did not think the generator was legit. 2RP 230. He also denied that he told the deputy about Sean’s past of stealing things. 2RP 230.

III. ARGUMENT

A. SUFFICIENT EVIDENCE SUPPORTED THE RECKLESSNESS ELEMENT OF TRAFFICKING IN STOLEN PROPERTY IN THE SECOND DEGREE.

Johnson argues that the evidence was insufficient to support the guilty finding on the trafficking in stolen property second degree count. This claim is without merit because under the appropriate standard of review the evidence and the reasonable inferences therefrom adequately supported the verdict. “The sufficiency of the evidence is a question of constitutional law that we review de novo.” *State v. Rich*, 184 Wash.2d 897, 903, 365 P.3d 746 (2016).

It is well settled that evidence is sufficient if, taken in a light most favorable to the state, it permits a rational trier of fact to find each element of the crime beyond a reasonable doubt. *State v. Pirtle*, 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 reasonable inferences that 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). 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). Thus the relevant inquiry 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. Scooby*, 117 Wn.2d 55, 61, 810 P.2d 1358 (1991). An appellate court's role is not to reweigh the evidence and substitute its judgment for that of the jury. *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980).

By RCW 9A.82.055 (1) “A person who recklessly traffics in stolen property is guilty of trafficking in stolen property in the second degree.”

The term “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). Pawning a stolen item comes within the definition of trafficking. *See State v. Hermann*, 138 Wash.App. 596, 604, 158 P.3d 96 (2007). (“Evidence that a defendant knowingly pawns stolen goods is sufficient to support a charge of trafficking in stolen property.”). In turn, “‘stolen property’ means property that has been obtained by theft, robbery, or extortion.” RCW 9A.82.010(16). “The statute defining the crime of trafficking in stolen property in the second degree does not include the

phrase “knowing it was stolen.” *State v. O’Neal*, 158 Wn. App. 1047, __P.3d __, (2010) (UNPUBLISHED AND UNBINDING).

In the present case, the “to convict” instruction, in relevant part, required the jury to find beyond a reasonable doubt “that on or about November 22, 2016, the defendant recklessly trafficked in stolen property with reckless disregard of whether the property was stolen.” CP 33 (instruction 13). This instruction parrots the definition of recklessness given in instruction 11 (CP 31). That instruction provides that

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 this disregard is a gross deviation from conduct that a reasonable person would exercise in the same situation.

Instruction 11 is a direct quote of WPIC 10.03.

But Johnson baldly asserts that in order to convict him of trafficking in the second degree “the state had to establish beyond a reasonable doubt that Johnson knew the generator was stolen, and recklessly disregarded this knowledge when he sold it to the pawn shop.” Brief at 7. No authority tells the state or this court how it is that a knowledge requirement is imported into a statute that requires recklessness only. From Johnson’s bold type when reciting the recklessness standard (Brief at 6), it appears that he is arguing that the use of the phrase “knows of” in the recklessness definition requires knowledge

of the stolen nature of the trafficked item. This is simply incorrect.

The larger phrase “knows of and disregards” goes to the phrase “a substantial risk.” It is illogical to read it otherwise: if Johnson had actual knowledge that the generator was stolen, the rest of the instruction would be irrelevant. If he knows, he is likely guilty of trafficking first degree. But the jury acquitted on the first degree charge and thereby indicated that it did not find knowledge of the stolen nature of the generator. The jury did, however, find that Johnson knew there was a “substantial risk” that it was stolen and that he disregarded that risk.

And the jury could easily so find given Johnson’s statements that he doubted the piece was “legit” and that he knew his friend had been involved in stealing before. Taken in a light most favorable to the state, this evidence is enough to establish the recklessness element. Johnson’s chief complaint here is really that the jury did not believe his testimony that he did not say those things to the police. Substantial evidence supports the verdict. Johnson’s claim fails.

IV. CONCLUSION

For the foregoing reasons, Johnson’s conviction and sentence should be affirmed.

DATED October 24, 2017.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "John L. Cross". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

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