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Court of Appeals
Division II
State of Washington
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No. 53621-8-II

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON

V.

ELLIOTT PEDEN

BRIEF OF APPELLANT

Allyson Barker
WSBA #35448
Attorney for Appellant

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A. ASSIGNMENTS OF ERROR

1. There was insufficient evidence to prove beyond a reasonable doubt that Mr. Peden committed trafficking in stolen property in the first degree as charged in Count 7.

Issues Pertaining to Assignment of Error

1. Was there sufficient evidence presented to support the jury's verdict that Mr. Peden was guilty of knowingly trafficking in stolen property on May 5, 2018 where there was no evidence presented that the item at issue in that count was stolen?

B. STATEMENT OF THE CASE

1. Procedural Facts

Elliott Monroe Peden was charged with one count of Residential Burglary, seven counts of Trafficking in Stolen Property in the First Degree and one count of Theft of a Motor Vehicle. CP 1-3. A 3.5 hearing was held, and Mr. Peden's statements to officers were found to be admissible against him at trial. CP 13-15.

The case was submitted to the jury and Mr. Peden was found guilty of all counts. CP 65-73. The court imposed a standard range sentence of 60 months on counts one through eight and 33 months on count nine for a total

of 60 actual months of confinement. CP 97. Mr. Van Arman timely appealed. CP 104.

2. Substantive Facts

Andrew Baldwin owned a home in Lakewood, Washington that he inherited from his parents. 5RP 359.¹ Mr. Baldwin worked in Alaska as a hunting guide and in Mexico as a hunting and fishing guide. 1RP 361. Because he was often away from the Lakewood home, he mostly used it to store his and his late parent's possessions. 1RP 361.

On May 15, 2018, Omar Stokes, a neighbor of Mr. Baldwin's passed by his house and saw the garage door of Mr. Baldwin's house open and somebody in the garage. 3RP 192. He spoke to the person, who he later learned was Mr. Peden, who told him he was kicking squatters out of the house. 3RP 192-93. Mr. Stokes saw a motorcycle and a jeep either in the garage or near the garage. 3RP 193. He went home and talked to his mom and then went back to Mr. Baldwin's house where he met up with another neighbor. 3RP 194. When he got back to the house, the jeep and the motorcycle were gone. 3RP 194. Mr. Stokes' neighbor called the police. 3RP 195.

¹ The record in this case will be referenced as follows: 1RP for proceedings on March 14, 2018; 2RP for proceedings on March 18, 2019; 3RP for proceedings on March 19, 2019; 4RP for proceedings on March 20, 2019; 5RP for proceedings on March 21, 2019; 6ARP for proceedings on March 25, 2019, 6BRP for proceedings on March 26, 2019; and 7RP for proceedings on March 27, 2019. 6A RP is not numbered consecutively with other volumes because it was prepared by a different court reporter.

Officer Jonathon Beard responded to the call from Mr. Stokes' neighbor and went to Mr. Baldwin's house. 3RP 109. He had been there previously regarding suspicious people camping in the backyard, people going in the home, and things being taken out of the home. 3RP 109. On previous visits he saw an older Jeep and a black motorcycle. 3RP 110. On May 15, he did not see either the Jeep or the motorcycle. 3RP 110. He got the license plate and vin number of the Jeep and then drove around the area looking for Mr. Peden because he had information that he lived nearby. 3RP 115.

Officer Jordan happened to drive by the Biltmore Motel and recognized the Jeep that he previously saw at Mr. Baldwin's Lakewood home. 3RP 116. He knocked on the door of the room that the Jeep was registered under and spoke with a woman who told him that Mr. Peden left the night before and she did not know where he was. 3RP 117.

Officer Jordan was able to watch surveillance video of the motel and saw the jeep drive in with an outboard motor attached to the back of it. 3RP 121. The motor was one that he previously saw at Mr. Baldwin's residence. 3RP 121. An employee of the motel testified that he reviewed surveillance video from the Biltmore and it appeared to him that Mr. Peden was driving the Jeep. 3RP 179.

Mr. Baldwin testified that Mr. Peden used to live across the street from his house. 5RP 365. He also testified that he never sold his Jeep to Mr. Peden or gave it to him for any reason. 5RP 371.

Mr. Peden was eventually contacted and interviewed by officers on May 18, 2018. 6A RP 11. Following that interview, officers consulted the LeadsOnline database, which contains records of pawn transactions, and discovered that a number of items had recently been pawned with Mr. Peden as the recorded person pawning the items. 6A RP 13. Detective Karen Herritt then went to the pawn shops and retrieved the items that had been pawned. 6A RP 29.

She retrieved a torque wrench from Old Sarge's Pawn Shop that was pawned by Mr. Peden on May 10, 2018 and Mr. Baldwin identified it as his. 6A RP 29-30. She retrieved one of two DVDs pawned at Half Price Books on May 5, 2018 by Mr. Peden and gave it to Mr. Baldwin. 6A RP 31. At trial she was asked, "Did Mr. Baldwin identify that when you gave it back to him?" In response she said, "Yes." She retrieved ammunition, hunting accessories, a mixed lot of ammo, clips, and a holster from Don's Estates and Jewelry that were pawned by Mr. Peden on May 2, 2018 and miscellaneous firearms related items, a knife, and some electronics that were pawned by Mr. Peden at Don's Estates and Jewelry on May 3, 2018. 3RP 244, 6A RP 32-33. Mr. Baldwin identified these items as belonging to him.

6A RP 35. She went to Ponder's Pawnbroker and recovered three "knives of Alaska," pawned by Mr. Peden on April 30, 2018 that Mr. Baldwin identified as belonging to him. 6A RP 35-36. Next, she went to Gold and Silver Traders and recovered horns pawned by Mr. Peden on April 28, 2018 that Mr. Baldwin identified as his. 6A RP 36. Finally, she went to Topkick Jewelry and Loans and recovered three swords pawned by Mr. Peden on April 9, 2018 that Mr. Baldwin identified as belonging to him.

Detective Herritt and Dective Jordan also obtained and executed search warrants for storage units belonging to Mr. Peden. 6A RP 13-14. Mr. Baldwin was present for the execution of those search warrants, and he identified numerous items of property in the units as belonging to him. 6A RP 17-19.

After Detective Herritt visited the pawn shops and after the search of the storage units, Mr. Peden was interviewed by Detectives Herritt and Jordan. 6A RP 38-39. Following that interview Mr. Peden was arrested and charged with Residential Burglary, seven counts of Trafficking in Stolen Property, and once count of Theft of a Motor Vehicle. CP 1.

C. ARGUMENT

1. THERE WAS INSUFFICIENT EVIDENCE FOR THE JURY TO FIND BEYOND A REASONABLE DOUBT THAT MR. PEDEN KNOWINGLY TRAFFICKED STOLEN PROPERTY ON MAY 5, 2018

In criminal prosecutions, due process requires that the State prove every fact necessary to constitute the charged crime beyond a reasonable doubt. In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970). Where a defendant challenges the sufficiency of the evidence, the proper inquiry is, when viewing the evidence in the light most favorable to the prosecution, whether there was sufficient evidence for a rational trier of fact to find guilt beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); State v. Green, 94 Wn.2d 216, 220-21, 616 P.2d 628 (1980). The proper remedy where the evidence is deemed insufficient to support a conviction is reversal of the conviction and dismissal of the charge with prejudice. State v. Hickman, 135 Wn.2d 97, 103, 954 P.2d 900 (1998).

“A person who knowingly initiates, organizes, plans, finances, directs, manages, or supervises the theft of property for sale to others, or who knowingly traffics in stolen property, is guilty of trafficking in stolen

property in the first degree.” Wash. Rev. Code Ann. § 9A.82.050 (2019).

A core requirement of this statute is that the property was, in fact, stolen.

Consistent with the statute, the jury instruction in this case for count seven required the jury to find, beyond a reasonable doubt:

- (1) That on or about the 5th day of May, 2018, the defendant knowingly trafficked in stolen property;
- (2) That the defendant knew the property was stolen; and
- (3) That this act occurred in the State of Washington.

Inherent in the instruction is also a requirement that the jury find beyond a reasonable doubt that the property was stolen.

Count 7 was alleged to have occurred on May 5, 2018. CP 1. As charged in the Information, count 7 concerned a DVD that was allegedly stolen and trafficked by Mr. Peden on that date. CP 1. That transaction took place at Half Price Books. 3RP 270.

When Detective Herritt went to Half Price Books to retrieve items pawned by Mr. Peden, she recovered one DVD. 6A RP 31. She was asked if she remembered whether the title was “Doom” or “Extreme Pinball,” to which she answered that she could not remember. 6A RP 31. She was asked what she did with the item she recovered and she said that she gave it to Mr. Baldwin. 6A RP 31. She was asked, “Did Mr. Baldwin identify that when you gave it back to him?”, and she answered, “Yes.”

She did not testify that he identified it *as his* as she did for every other item she recovered from a pawn shop and gave to Mr. Baldwin.

The Cambridge Dictionary defines “identify” as “to recognize or be able to name someone or something, or to prove who or what someone or something is.” Cambridge Dictionary online: <https://dictionary.cambridge.org/us/dictionary/english/identify> (last visited January 29, 2020). The fact that Mr. Baldwin was able to “identify” the item she gave to him does not provide any evidence about whether it was something that he owned that he believed was stolen from him. His identification demonstrates only that he was able to describe what the item was.

Without testimony that Mr. Baldwin identified the DVD given to him by Detective Herritt as his, there was no evidence presented to the jury that the item was a stolen item. There was no evidence of which title was returned and there was no evidence that Mr. Baldwin gave a list of which DVD titles were missing from his home. Without evidence that the DVD was stolen, no rational trier of fact could have found that Mr. Peden trafficked stolen property when he pawned the DVD returned to Mr. Baldwin by Detective Herritt. Because no rational trier of fact could have found that Mr. Peden trafficked stolen property when he sold the DVD, there was insufficient evidence presented to sustain a conviction for Count

7 and Mr. Peden's conviction on that count should be reversed and the charge dismissed with prejudice.

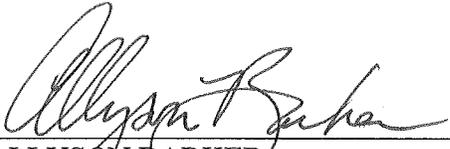
D. CONCLUSION

Mr. Peden's conviction for Trafficking in Stolen Property in Count Seven was not supported by sufficient evidence because no evidence was present that the DVD at issue in that count was stolen. Therefore, this court should reverse his conviction on that count and dismiss it with prejudice.

DATED this 29th day of January, 2020.

Respectfully submitted,

Law Office of Thomas E. Weaver



ALLYSON BARKER
WSBA No. 35448

THE LAW OFFICE OF THOMAS E. WEAVER

January 29, 2020 - 3:46 PM

Transmittal Information

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Appellate Court Case Title: State of Washington, Respondent v. Elliott M. Peden, Appellant
Superior Court Case Number: 18-1-02046-0

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

STATE OF WASHINGTON,) Court of Appeals No.: 53621-8-II
)
Plaintiff/Respondent,) DECLARATION OF SERVICE OF
) BRIEF OF APPELLANT
vs.)
)
ELLIOTT PEDEN,)
)
Defendant/Appellant.)

STATE OF WASHINGTON)
)
COUNTY OF KITSAP)

I, Alisha Freeman, declare that I am at least 18 years of age and not a party to this action.

On January 29, 2020, I e-filed the Brief of Appellant in the above-captioned case with the Washington State Court of Appeals, Division Two; and designated a copy of said document to be sent to Kristie Barham of the Pierce County Prosecuting Attorney's Office via email to: kristie.barham@piercecountywa.gov through the Court of Appeals transmittal system.

On January 29, 2020, I deposited into the U.S. Mail, first class, postage prepaid, a true and correct copy of the Brief of Appellant to the defendant:

Elliott Peden, DOC #416602
Washington State Penitentiary
1313 North 13th Avenue
Walla Walla, WA 99362

////

////

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

3 DATED: January 29, 2020, at Bremerton, Washington.
4

5 
6 _____
Alisha Freeman

THE LAW OFFICE OF THOMAS E. WEAVER

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