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COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

ELLIOT MONROE PEDEN,

Appellant.

Appeal from the Superior Court of Pierce County
The Honorable John R. Hickman

No. 18-1-02046-0

BRIEF OF RESPONDENT

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I. INTRODUCTION

The Defendant has been convicted of residential burglary, theft of a motor vehicle, and multiple counts of trafficking in stolen property. He challenges the sufficiency of the evidence for a single trafficking count, arguing that there is insufficient evidence that the DVDs he sold to Half Price Book were stolen. The evidence is that the Defendant burglarized the victim's home, moving property into the Defendant's own storage unit and then selling the victim's property to pawn shops. The Defendant sold the DVDs to Half Price Books. They belonged to the victim of the burglary. The victim identified the property as his before and after it was recovered. He did not give the Defendant permission to enter his home, much less take and sell his property. Under the correct legal standard, this is sufficient evidence. The Defendant's judgment and sentence must be affirmed.

II. RESTATEMENT OF THE ISSUE

Two DVDs which the Defendant pawned were identified by and returned to the true owner along with many other items which the Defendant had stolen from the same victim's burglarized home and pawned in the same few weeks. Viewing the evidence in the light most favorable to the state and drawing all reasonable inferences most strongly against the Defendant, is there sufficient evidence that the two DVDs had been stolen?

III. STATEMENT OF THE CASE

Andrew Baldwin II and his wife owned a home in Lakewood. 5RP 359-60. They passed away in 2010 and 2008, respectively, leaving the home to their son Andrew Baldwin III (hereinafter Baldwin). *Id.* Mr. Baldwin lived in Mexico and worked in Alaska and Mexico as a hunting and fishing guide. 5RP 358-61. He stayed at the Lakewood house one to two months a year and used it for storage. 5RP 382-83, 398. His childhood friend Steve Howard occupied the home as a house sitter for a while, but moved down the street in early 2018 to help his own elderly parents. 5RP 373-74, 418-20.

Police responded to Baldwin's house several times in the spring of 2018 at the report of neighbors. 3RP 109-11, 209. Neighbor Omar Stokes called the police when he caught the Defendant Elliot Monroe Peden in Baldwin's garage and later noticed that Baldwin's Jeep and motorcycle had gone missing. 3RP 189-96. Neighbor Denise Brown also called the police after her daughter frequently observed Baldwin's garage door open with blankets hanging down blocking the inside view of the garage. 3RP 209, 217.

When Mr. Baldwin returned to his Lakewood house, he found it had been ransacked and vandalized. 5RP 374-79. Many of the stolen items were unique, for example, figurines and Japanese art. 4RP 334. Mr.

Baldwin's motorcycle was painted with an image of his mother. 3RP 212-13. The hood of his Jeep was painted with blue and black flames. 3RP 115-16.

Lakewood Police Officer Jonathan Beard located the Jeep parked at the Biltmore Hotel. 3RP 116. The Jeep was registered to the room where the Defendant had been staying and which was "packed full of bags, boxes, and computers." 3RP 116-18. In security video, the officer could see that the Jeep arrived with an outboard motor "very similar" to one stolen from Baldwin's home. 3RP 118-22.

The Defendant was arrested and spoke with police after receiving the Miranda advisement. 3RP 128; 4RP 310, 312; 6A RP 11. Confronted with a video of himself at his storage unit with Mr. Baldwin's property, Peden said, "'Gee, I'm going to get in trouble for this.'" 6A RP 113. Based on the Defendant's various statements and his consent, police lawfully searched three storage units and the Defendant's hotel room. 3RP 131; 4RP 325. At the hotel, the Defendant Peden returned two sheep horns belonging to Mr. Baldwin, but many items that the officer had observed earlier had already disappeared. 3RP 130, 132. Mr. Baldwin was able to positively identify many of the items found in two of the storage units as his own. 4RP 337; 6A RP 17-19. The identified property was consistent with the items

that Mr. Baldwin reported lost such as fishing lures and hunting items. 4RP 346.

Through Leads Online, Detective Karen Herritt located property which the Defendant sold or pawned at eight different stores in April and May. 6A RP 13, 28-29. She then asked Mr. Baldwin to review the list and to mark which items were his. 6A RP 28-29. For example, at Half Price Books, the Defendant had sold two DVDs, one of which still remained at the shop. 6A RP 30-31. Detective Karen Herritt retrieved that DVD and returned it to Baldwin who had identified it as his property. 6A RP 28-29, 31.

Pawn transactions: On April 9, 2018, Peden pawned three swords to Topkick Jewelry & Loan on Pacific Avenue in Tacoma. 4RP 287, 289. On April 28, 2018, Peden sold buffalo horns to Gold & Silver Traders on South Tacoma Way. 3RP 147, 156. On April 30, 2018, Peden pawned three Knives of Alaska to Ponder Pawnbrokers in Lakewood. 3RP 252, 258-260. On May 5, 2018, Peden sold two DVDs titled: "Doom," and "Extreme Pinball" to Half Price Books store in Tacoma. 3RP 264, 267, 271, 274. On May 10, 2018, Peden pawned a torque wrench to Old Sarge's Pawn Shop in Lakewood. 4RP 297-302. On three separate occasions, once on May 2, 2018, once the following day on May 3, 2018, and the lastly on May 22, 2018. 3RP 236-37, 239-44; 6A RP 104-105. Peden sold ammunition,

firearms-related items, and some electronics to Don's Estate Jewelry & Coin in Federal Way on these occasions. 3RP 236-37, 239-44.

The Defendant's testimony: The Defendant Peden testified that when Mr. Baldwin had been burglarized on an earlier occasion, he had become familiar with Baldwin's property by assisting in an inventory. 6A RP 70. He claimed Mr. Baldwin had given him keys to his home and asked him to work on his Jeep and keep his motorcycle "updated." 6A RP 64-65, 67-69, 117. The Defendant divulged that he had been regularly admitting himself to Mr. Baldwin's home, claiming he traveled between his own residence in Fife to Mr. Baldwin's home in Lakewood to pick up Baldwin's mail and secure the property. 6A RP 63-64, 67. He claimed that if he wanted anything, all he had to do was ask Mr. Baldwin who would "absolutely" give him the items "because [they] were friends." 6A RP 89. And yet, he admitted that he would not see Baldwin for three or four years at a time and that Baldwin did not trust Peden to know when he would be coming and going. 6A RP 68-69.

The Defendant posted a picture of Baldwin's motorcycle to Facebook ten days before it was reported missing. 6A RP 75-76, 90-91. When confronted with the stolen Jeep, Peden first claimed he had a bill of sale only to backtrack and claim he borrowed the Jeep when his own vehicle needed repairs. 6A RP 108-09. The Defendant could not explain how

Baldwin's horns and boat motor wound up inside the Jeep. 6A RP 110-11. Yet he subsequently sold the boat motor together with some fishing poles, purportedly to buy parts for Mr. Baldwin's Jeep. 6A RP 84.

Where the pawned property was unmistakably Baldwin's, Peden claimed he had been acting as an agent for a friend and did not know the property was stolen. 6A RP 91-92. He would claim other property was actually his own, held in storage for ten years and coincidentally put up for sale only after Baldwin had been burglarized. 6A RP 70, 84-87, 99-100. The Defendant claimed that the torque wrench had been his for 25 years and that he had pawned it for \$15 in gas money "to do some running around" coincidentally in the same time period that Mr. Baldwin's torque wrench had gone missing. 6A RP 81-82, 107-08. The Defendant also claimed that the DVDs that he sold were his, "probably from Arizona." 6A RP 81-83. When asked whether the ammunition or other items sold to Don's Estate and Jewelry ever belonged to Mr. Baldwin, Peden responded, "not that I'm aware of." 6A RP 83.

Peden told a convoluted story of driving long distances (all the way to Federal Way from Lakewood on multiple days) to pawn long-stored items for gas money. 6A RP 101-05. The storage units were in Tacoma, but he chose eight pawnshops in Federal Way and Lakewood. 3RP 239-40, 255; 6A RP 16, 29.

The victim's testimony: Mr. Baldwin testified that the items pawned by Peden throughout April and May of 2018 belonged to him. 5RP 394. He confirmed that items such as the swords, the horns, and the knives of Alaska, which were special to Alaska, were his. 5RP 393-94. Detective Herritt testified that when she returned the pawned items to Mr. Baldwin, he was able to identify each of the items as his property. 6A RP 30-38. Mr. Baldwin was able to identify the DVD recovered from Half Price Books as his own property upon its return without trouble. 6A RP 30-31, 37-38.

Mr. Baldwin testified that he had never given permission to pawn any of his items. 5RP 394-95. He knew the Defendant as a former neighbor, someone who had rented a house across the street and had helped Mr. Baldwin's father with work on a Jeep. 5RP 363-64. Mr. Baldwin was able to recall that the last time he had any contact with Peden was in December of 2017. 5RP 395-96. Mr. Baldwin recounted that during his interaction with the Defendant, Peden had approached and asked him if he could live or rent the home, to which he responded, "No way." *Id.* Mr. Baldwin also confirmed that he had never given Peden a copy of the keys to his home. 5RP 402. The Defendant did not have permission to be in the Baldwin home. RP 376, 402.

The Defendant was charged with one count of residential burglary (count I), seven counts of trafficking in stolen property in the first degree (counts II-VIII), and theft of a motor vehicle (count IX). CP 1, 3-6. The jury convicted him of all charges. CP 59-67; 7RP 509-12.

The Defendant appeals only whether there was sufficient evidence that the DVDs, trafficked as count VII of his charges, were stolen.

IV. ARGUMENT

A. Standard of Review

The applicable standard of review for sufficiency of the evidence is whether, “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 beyond a reasonable doubt.” *State v. Joy*, 121 Wn.2d 333, 338, 851 P.2d 654 (1993). A challenge to the sufficiency of the evidence admits the truth of all of the State’s evidence. *State v. Cardenas-Flores*, 189 Wn.2d 243, 265, 401 P.3d 19 (2017). “[A]ll reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant.” *Cardenas-Flores*, 189 Wn.2d at 265; *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

A reviewing court defers to the trier of fact on issues of conflicting testimony, witness credibility, and persuasiveness of the evidence. *State v.*

Thomas, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004); *State v. Goodman*, 150 Wn.2d 774, 783, 83 P.3d 410 (2004) (the weight of the evidence is determined by the fact finder and not the appellate court.) After viewing the evidence in the light most favorable to the State, interpreting all inferences in favor of the state and most strongly against the defendant, the Court must determine whether any rational trier of fact could have found the essential elements beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); *Salinas*, 119 Wn.2d at 201.

B. There is sufficient evidence that the DVDs which the Defendant trafficked on May 5, 2018 were stolen.

The Defendant Peden challenges only whether there is sufficient evidence in the record to show that the DVDs which were sold to Half Price Books on May 5, 2018 were stolen. The evidence is that the victim Mr. Baldwin viewed Leads Online listings of items which the Defendant had pawned in the relevant time period. He then identified property which he believed to have been stolen from him. The detective retrieved those items which were recoverable. She brought them to Mr. Baldwin who identified them a second time as belonging to him. The detective then returned those items to Mr. Baldwin.

Relevant to count VII, the Defendant sold the DVDs titled "Doom," and "Extreme Pinball" to the Tacoma Half Price Books store. 3RP 264,

267, 271, 274. Mr. Baldwin identified the two DVDs sold to Half Price Books. Only one DVD still remained at the store. Detective Herritt recovered this DVD, bringing it to Mr. Baldwin who identified the item a second time. 6A RP 31. She then “gave it back to Mr. Baldwin.” *Id.* Mr. Baldwin was able to identify all of the items pawned by the Defendant without trouble, including those pawned at Half Price Books. 6A RP 30-31, 38.

Mr. Baldwin did not give the Defendant permission to enter his home or take any property. Mr. Baldwin maintained that he never gave Peden permission to pawn *any* of his items. 5RP 394.

This one count occurred in the context of an unchallenged residential burglary and multiple other unchallenged convictions of trafficking in stolen property which occurred over several weeks in April and May of 2018. CP 3-6. The Defendant was found in possession of Mr. Baldwin’s property whether in his storage unit or his hotel room or his pawn claim. He had a different, unbelievable story for each item. In one theme, Mr. Baldwin was lying. The property which was from Alaska and appropriate for an Alaskan hunting and fishing guide actually came from Idaho or Arizona. In another theme, Mr. Baldwin was mistaken. He had either given the Defendant permission to take and sell the property or would

have given him permission. And in a third theme, someone else had stolen it and used the Defendant to sell or store the property.

The Defendant did not claim that Mr. Baldwin gave him the DVDs. He claimed that they were always his. However, he did not have a lot of confidence, claiming that they were “probably” duplicates between his and his girlfriend’s collections. 6A RP 81-83. He did not seem to know that the Doom DVD was a popular collectible video game, believing Half Price Books had shown an interest in a bargain bin movie. *Id.*

The plain inference from all the evidence is that the Defendant had not secured Mr. Baldwin’s home, but ransacked it, damaging entryways and windows. 5RP 378, 404. He coveted catalogued, and appropriated Mr. Baldwin’s property – filling a storage unit and selling what he could. Mr. Baldwin and the Defendant were not close friends. Mr. Baldwin did not trust the Defendant to enter the house when he was not there, would not rent to him, did not give him keys, and did not even inform the Defendant when he would be home – for years at a time. If the Defendant was in possession of Mr. Baldwin’s property, it was because he stole it. Mr. Baldwin identified the property as stolen.

The jury believed Mr. Baldwin and disbelieved the Defendant.

Viewing the evidence in the light most favorable to the State, when the detective asked Mr. Baldwin to “identify” pawned property, she was not

asking him what the objects were. *Cf.* Br. of Appellant at 10 (arguing that to identify means only to name). She was asking whether the items were his. *See also* Merriam-Webster (identify has a primary definition “to establish the identity of”)

Q. ... did you know which of those items that were pawned might belong to Butch?

A. Yes.

Q. And how did you determine that?

A. I showed Butch a printout and asked if -- he had already told us a lot of the stuff I knew -- I had a good idea. I showed him a printout and asked him to go through and mark the ones that were his.

Q. Was he able to do that?

A. Yes.

6A RP 28-29. When the detective retrieved the property and asked for a second identification (6A RP 30-31), she was asking the same question. And Mr. Baldwin again identified the retrieved DVD, i.e. he identified the item as his own property. The context of the identification, occurring while the item was being returned to Mr. Baldwin's possession, further demonstrates that he was identifying the property as belonging to him.

This identification, coupled with Mr. Baldwin's position that he never gave Peden permission to pawn any of his belongings, provides sufficient evidence for a reasonable jury to conclude that the DVDs in question belonged to Mr. Baldwin and were sold/pawned with knowledge that he did not have Mr. Baldwin's permission.

There is sufficient evidence that the DVDs were stolen.

V. CONCLUSION

There is sufficient evidence for a reasonable jury to have found beyond reasonable doubt that that the DVDs in count VII were stolen. Therefore, the State respectfully requests that this Court affirm the Defendant's convictions.

RESPECTFULLY SUBMITTED this 30th day of March, 2020.

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