

FILED
OCT 10, 2011
Court of Appeals
Division III
State of Washington

NO. 295281-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON, Respondent

v.

GARY ALAN SHAW, Appellant

APPEAL FROM THE SUPERIOR COURT
FOR BENTON COUNTY

NO. 10-1-00838-5

BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

At 2:57 a.m. on August 11, 2010, an alarm went off at the Benton Rural Electric Association (REA) yard, located at 402 7th Street in Prosser, Washington. (Report of Proceedings¹, 13, 14). The alarm was a broken yard beam, which set off a silent alarm at the facility. (RP 14, 16). Moon Security attempted to contact the location, then contacted Mike Bradshaw, who directed that the police be contacted. (RP 14). The police were dispatched at 3 a.m. (RP 16).

The first officer to respond was Prosser Police Department Officer Michael Buck. (RP 33). He arrived within a minute or two after the call was received from Moon Security. (RP 35). Officer Buck met Sgt. Blackburn, and the two officers saw two men walking along the fence on the opposite side of the Benton REA yard. (RP 35-36). The two men were walking down the alley behind the Benton REA yard, near where the cut in

¹ Hereinafter "RP."

the fence was located. (RP 28, 53-54). Officer Buck and Sgt. Blackburn drove in a loop around the Benton REA yard to look for anyone involved. (RP 52-53). Sgt. Blackburn located and detained Roger Engel as he walked down the alley towards 7th Street. (RP 54). Engel directed the officers to where the truck was parked that he and the defendant had driven into town. (RP 37).

Officers continued looking for anyone else in the area. (RP 46-47). Deputy Monds with the Benton County Sheriff's Office assisted with the search. (RP 46). About 15 to 30 minutes after the search began, Deputy Monds looked under a loading dock on the opposite side of the alley from the Benton REA yard and located the defendant. (RP 47).

Officers also completed a sweep of the Benton REA yard. (RP 57). During the sweep, Sgt. Blackburn observed a window screen that was partially removed, footprints on a metal heat exchange cover, and tracks made by a cart across

the yard. (RP 58, 65-66). The cart had been left sitting next to a hole cut in the fence. (RP 29, 65). Sitting by the hole were three full or nearly full reels of copper wire. (RP 28-29). Each of the reels weighed approximately 300 pounds. (RP 27).

Sgt. Blackburn took photographs of the footprints on the metal heat exchanger and of the tracks from the cart. (RP 59, 66). He visually inspected the shoes of both Roger Engel and the defendant that night. (RP 63, 65). He observed that the tread of shoes the defendant was wearing was similar to the footprint left on the heat exchanger underneath the window. (RP 65).

Mike Bradshaw is the Special Service manager for the Benton REA. (RP 17). Bradshaw contacted the police after Moon Security, then went to the scene and waited in his car until the police contacted him there. (RP 19). At about 3:45 a.m., Bradshaw opened up the gate for the police, walked through the yard with them, and saw reels

of wire and hand coils of wire sitting by a hole cut in the fence. (RP 22). Bradshaw rolled the reels and coils up to the warehouse by himself, which took about 10 minutes, then reset the alarm and went home. (RP 22). He estimated the value of the copper sitting by the fence to be just under \$10,000. (RP 27). He further testified that no one had permission to be in the Benton REA yard that night. (RP 23).

The trial court, sitting as the trier of fact, concluded that the defendant was guilty in this case. (RP 96). The court clearly concluded that the circumstantial evidence in the case proved the defendant's guilt. (RP 95-96). This timely appeal follows. CP 25.

ARGUMENT

1. SUFFICIENT EVIDENCE SUPPORTS THE CONVICTION FOR POSSESSION OF METHAMPHETAMINE.

Evidence is sufficient to support a finding of guilt if, after viewing the evidence in the light most favorable to the State, any rational

trier of fact could find the essential elements of the crime beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 220, 616 P.2d 628 (1980). "When the sufficiency of the evidence is challenged in a criminal case, all reasonable inferences from the evidence must be drawn in favor of the State and interpreted *most strongly* against the defendant." *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992) (emphasis added). An inquiry on appeal regarding the sufficiency of the evidence does not require the reviewing court to determine whether it believes the evidence at trial proves guilt beyond a reasonable doubt. *State v. Green*, 94 Wn.2d at 221. Instead, the reviewing court must only ascertain that any reasonable fact-finder could have found guilt beyond a reasonable doubt based on the evidence presented at trial. *Id.*

In evaluating the sufficiency of the evidence on appeal, the court is obliged to defer to the trier of fact to resolve conflicts in

testimony, weigh evidence, and draw reasonable inferences therefrom. *State v. Hays*, 81 Wn. App. 425, 430, 914 P.2d 788 (1996), *review denied*, 130 Wn.2d 1013, 928 P.2d 413 (1996). Furthermore, circumstantial evidence is considered as reliable as direct evidence. *State v. Delmarter*, 94 Wn.2d 634, 637, 618 P.2d 99 (1980).

The State proved that the yard beam alarm went off at 2:57 a.m., that police were on the scene in less than five minutes, and that the defendant was walking away from the cut in the fence with Mr. Engel. (CP 21-22). The State also proved that valuable copper wire had been moved within the yard and was sitting at the cut in the fence, and that shoe prints inside the compound were similar to the defendant's. (CP 22). The defendant was found hiding underneath a loading dock in the immediate vicinity of the incident. (CP 21-22). A rational trier of fact could find the defendant guilty; therefore, sufficient

evidence was presented to uphold the defendant's conviction.

The defendant relies entirely on a statement made by Judge Runge at the sentencing hearing. (Appellant's brief, 9). However, the statement at sentencing was contrary to the oral ruling of the court at the conclusion of trial. The court stated "that the circumstantial evidence is clear in this case that the defendant entered or remained unlawfully in the fenced-in compound of the area of the Benton REA." (RP 96, lines 5-7). The Findings of Fact and Conclusions of Law are consistent with the court's ruling at the conclusion of the trial, and the verdict should therefore be affirmed. (CP 21-23).

CONCLUSION

The defendant received a fair trial. Sufficient evidence was presented to convict the defendant of Burglary in the Second Degree as either a primary or an accomplice. Accordingly,

the conviction of the defendant for Burglary in
the Second Degree should be affirmed.

RESPECTFULLY SUBMITTED this 10th day of
October 2011.

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this day I served, in the manner indicated below, a true and correct copy of the foregoing document as follows:

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