

FILED

NOV 17, 2011

Court of Appeals
Division III
State of Washington

NO. 296296-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON, Respondent

v.

LUIS CISNEROS VALENCIA, Appellant

APPEAL FROM THE SUPERIOR COURT
FOR BENTON COUNTY

NO. 10-1-00072-4

BRIEF OF RESPONDENT

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RESPONSE TO DEFENDANT'S ASSIGNMENT OF ERRORS

The defendant's conviction is supported by substantial evidence.

ISSUES PRESENTED IN DEFENDANT'S BRIEF

1. DID THE STATE PRESENT SUFFICIENT EVIDENCE TO SUPPORT THE DEFENDANT'S CONVICTION FOR ATTEMPTED BURGLARY IN THE SECOND-DEGREE?

STATEMENT OF THE CASE

On the night of January 13, 2010, around 11:00 p.m., Dana Holt and her son Evan Kosterman were talking in Kosterman's bedroom. (RP¹ 10). While in Kosterman's room, the two noticed a Jeep pull into their neighbor's driveway. (RP 10-11). The headlights of the Jeep were turned off. (RP 10). Holt and Kosterman knew that their neighbor, Flora Goodale, was in the process of moving and no longer occupying the residence. (RP-8, 10). Being well acquainted with Ms. Goodale and not recognizing this vehicle, they became concerned. (RP 8, 10, 21-22). Ms. Holt

¹ The Verbatim Report of Proceeding for the Jury Trial and Motion (one volume) referred to as "RP."

asked her son to go next door to find out who had pulled into the driveway. (RP-10).

When Kosterman walked over to Ms. Goodale's back yard, he observed two males at Goodale's sliding glass door. (RP 24, 39, 65). One of the males was on his knees with a flashlight on his head. (RP-24). The other male was standing next to the first with a broomstick. (RP 24). It appeared to Kosterman that the two were working together to pry the door off its track; one pushing on the door while the other maneuvered the broom handle like a lever. (RP 24). When Kosterman confronted the duo, a physical altercation took place. (RP-25). The two males then fled to their car and sped away, leaving skid marks in Goodale's driveway. (RP 25, 36).

Officers arrived on the scene in time to see the Jeep leave Goodale's driveway. (RP 34). The headlights and parking lights of the Jeep were still turned off. (RP 34). One of the officers activated his emergency lights and pursued the

vehicle. (RP 34). After following the vehicle a short distance, the officer turned on his siren because the Jeep was not stopping. (RP 34). Officers were finally able to apprehend the two males when the Jeep got stuck in some ice. (RP 34).

When the area behind Ms. Goodale's house was examined, her glass door was found to be ajar, and bore pry marks where someone had attempted to pry it open. (RP 36, 65). Also, near the sliding door laid an illuminated headlamp, a long-handled screwdriver type tool, and a broom handle. (RP 36, 77).

Inside the suspect's vehicle, officers located a second headlamp in the front-center console. (RP 51, 56). A pair of gloves was also found near, but not inside, the same console. (RP-56). Additionally, the back seat was folded down and covered with a tarp or blanket. (RP 43, 112). Atop the tarp, officers found two sets of

pliers, one capable of cutting wire, a crowbar, and two channel locks. (RP 42-43, 55).

The defendant's nephew, Juan Garcia, testified at trial on behalf of the defense. (RP 97). Mr. Garcia, who had already pled guilty to attempted residential burglary, explained that his uncle did not know that he was trying to break into Goodale's home to steal a television. (RP 97-98, 101). He told the jury that he had asked the defendant for a ride to Ms. Goodale's house, and that the defendant had borrowed the Jeep from another relative. (RP 97-98, 101). Mr. Garcia stated that he was the one who had used the broom handle to pry open the sliding door. (RP 115). He also claimed that he had taken the gloves and headlamp with him to the scene. (RP 107). However, he stated that he did not wear the headlamp at any time, but instead, kept it in his pocket. (RP-107-08).

ARGUMENT

1. THE STATE PRESENTED SUFFICIENT EVIDENCE TO SUPPORT THE DEFENDANT'S CONVICTION.

A defendant's conviction is supported by sufficient evidence when, after viewing the evidence in a light most favorable to the State, any rational trier of fact could have found the defendant guilty beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980). Under this test, all reasonable inferences from the evidence will be drawn in favor of the State and interpreted most strongly against the defendant. *State v. Partin*, 88 Wn.2d 899, 906-07, 567 P.2d 1136 (1977). By claiming insufficient evidence, the defendant admits the truth of the State's evidence, and all inferences that can reasonably be drawn from that evidence. *State v. Theroff*, 25 Wn. App. 590, 593, 608 P.2d 1254 (1980), *aff'd*, 95 Wn.2d 385, 622 P.2d 1240 (1980).

There was no dispute at trial that the defendant's nephew, Juan Garcia, attempted to unlawfully enter the home of Flora Goodale in order to steal a television. The only issue in dispute was whether the defendant knew that his actions were aiding and/or assisting his nephew in this crime.

The reasonable inference that can be drawn from the evidence in this case is that the defendant and his nephew were working together to pry open Ms. Goodale's sliding glass door to steal a television when Kosterman caught them in the act. Kosterman testified that he saw both men actively trying to open Goodale's sliding glass door. (RP 24). Additionally, Mr. Garcia denied wearing a headlamp that night, leading to the conclusion that it was the defendant who was wearing the headlamp that was found on the ground, still illuminated. (107-08).

Also, there were a number of tools found either at the scene, or in the Jeep: a broom

handle, two other pry tools; two "pliers" that also served as wire cutters; two head lamps, one near the door still illuminated; gloves; and a blanket laid in the back of the Jeep. The number of tools recovered at the scene and in the Jeep were indicative of a two-person job. (RP 39 ,41-43, 51, 54-57). Moreover, it would be difficult to imagine that the defendant would not have been aware of his nephew's illegal intentions given the arsenal of burglary tools and attempt to enter the home at night from the back door.

Finally, the defendant was driving the Jeep. He turned off the headlights of the Jeep prior to entering Ms. Goodale's driveway. (RP 10). Once confronted, the defendant sped away with sufficient acceleration to leave skid marks in the driveway. (RP 25, 36). Furthermore, with his headlights still off, the defendant did not stop when signaled to do so by the police; finally stopping only because the Jeep had become disabled by the icy road conditions. (RP 34).

Based upon the evidence presented, a reasonable finder of fact could easily conclude that the defendant and his nephew were attempting to break into Ms. Goodale's house to steal a television set when caught in the act by Mr. Kosterman.

CONCLUSION

Based upon the above arguments, the defendant's conviction should be affirmed.

RESPECTFULLY SUBMITTED this 17th day of November 2011.

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