

FILED

MAR 20 2012

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 29902-3-III
Consolidated with No. 30087-1-III

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

THE STATE OF WASHINGTON

Respondent

v.

DOUGLAS R. PITTS &
CHRISTIE SHEA SANFORD

Appellants

BRIEF OF RESPONDENT

Ms. Shadan Kapri
Senior Deputy Prosecuting Attorney
Attorneys for Respondent

Stevens County Prosecutor's Office
215 S. Oak Street
Colville, WA
(509) 684-7500

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I.

ASSIGNMENTS OF ERROR

1. The evidence was insufficient to support the convictions against Mr. Pitts and Ms. Sanford for second-degree malicious mischief.
2. The court erred by allowing evidence of other acts contrary to ER 404(b).

II.

ISSUES PRESENTED

1. Whether substantial evidence supported the convictions for second-degree malicious mischief against Mr. Pitts and Ms. Sanford.
2. Whether the court erred in admitting evidence under ER 404(b).

III.

STATEMENT OF THE CASE

The State accepts the Appellants Statements of the Case.

IV.

ARGUMENT

A. SUBSTANTIAL EVIDENCE SUPPORTED THE CONVICTIONS FOR SECOND-DEGREE MALICIOUS MISCHIEF AGAINST THE APPELLANTS, MR. PITTS AND MS. SANFORD.

The Appellants argue on appeal that there was insufficient evidence to support the convictions for second-degree malicious mischief. When reviewing a challenge to the sufficiency of the evidence, appellate courts must determine, considering the evidence in the light most favorable to the prosecution, whether “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *State v. Green*, 94 Wash.2d 216, 221, 616 P.2d 628 (1980).

The Court of Appeals draws all reasonable inferences from the evidence in the prosecution's favor, and interprets the evidence most strongly against the defendant. *State v. Joy*, 121 Wash.2d 333, 339, 851 P.2d 654 (1993); *State v. Salinas*, 119 Wash.2d 192, 201, 829 P.2d 1068 (1992).

The Court assumes the truth of the prosecution's evidence and all inferences that the trier of fact could reasonably draw from it. *State v. Wilson*, 71 Wash. App. 880, 891, 863 P.2d 116 (1993), *rev'd on other grounds*, 125 Wash.2d 212, 883 P.2d 320 (1994).

The elements of second-degree malicious mischief occur when a person or persons “knowingly and maliciously” causes physical damage to another person’s property in the amount exceeding \$750. RCW 9A.48.080.

Both Appellants argue on appeal that there was insufficient evidence to establish damage in excess of \$750. Therefore, they argue that the convictions should be reversed.

Damage to another’s property is defined as “physical” damage which includes the reasonable cost of repair or *the reasonable cost of restoration to its former condition*. RCW 9A.48.100(1); *State v. Gilbert*, 79 Wn. App. 383, 385, 902 P.2d 182 (1995) (emphasis added)

During trial, the landlord testified that when she took possession of the trailer after the eviction of Mr. Pitts and Ms. Sanford, the home smelled, there were piles of garbage in the home, the carpets were filthy, the counters were filthy, and the bathroom toilet was unusable. Report of Proceedings (RP) 155 – 177. She also testified that the Pergo flooring that she had previously replaced for \$500 had been damaged and bubbled up and separated in some places. (RP 213; 225-226) She also testified that she spent up to 70 hours repairing the home, \$128 on paint, and \$100 to rebuild shelves and closets as well. (RP 209 – 211)

Based upon this testimony, it was not unreasonable for the jury to conclude that the damage was in excess of \$750. Even if the jury had ascertained her labor per hour at minimum wage, the total amount to repair the

damage would result in **well over** \$750 when the flooring, shelves, paint, and closet repair costs were added. The evidence presented at trial supported the jury's verdict against the Appellants for second-degree malicious mischief. (RP 155 – 177, 213, 225 – 226, 209 – 211)

B. THE TRIAL COURT DID NOT ERR IN ADMITTING
EVIDENCE UNDER ER 404(b).

The Appellants argue on appeal that the trial court abused its discretion in allowing evidence that either Appellant had altered the rental agreement and rental receipts to show that the agreement was a lease with option to buy instead of strictly a lease agreement. They argue that this was contrary to ER 404(b).

ER 404(b) prohibits evidence of other crimes to show that the defendant acted in conformity with that character, or in other words, had a propensity to commit the crime. ER 404(b). However, evidence of prior bad acts or crimes can be admitted for “motive, opportunity, intent, preparation, plan, knowledge.” ER 404(b). A trial court must determine on the record whether the danger of undue prejudice substantially outweighs the probative value of such evidence. ER 403; ER 404(b); *State v. Dennison*, 115 Wn. 2d 609, 628, 801 P.2d 193 (1999).

The trial court has wide discretion in balancing probative value against potential prejudice. *Stenson*, 132 Wn.2d at 701. The appellate courts will not reverse absent a showing the court's exercise of its discretion is “manifestly

unreasonable or based upon untenable grounds or reasons. *Stenson*, 132 Wn.2d at 701.

Here, the court explained its reasoning on the record in allowing the evidence of the altered rental agreement and receipts and affidavit. The judge explained that it was

“...highly probative of the fact that Mr. Pitts and Ms. Sanford hotly contested their eviction from this mobile home. I agree that there is some danger of getting off on a tangent, which often-Evidence Rule 404(b) evidence can do. But I think the State is entitled to go into this in order to establish their theory of the case of this being the motive for the malicious mischief that they claim has been committed on the – on the property..... Now, is it more prejudicial than probative? Well, there’s some prejudice in that it tends to really establish a motive, but it’s not unfairly prejudicial.” (RP 29)

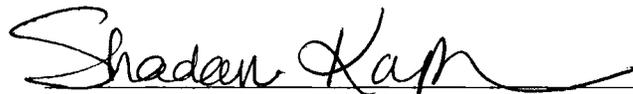
The record shows that the trial court did not abuse its discretion in allowing the evidence to be presented to the jury. *Stenson*, 132 Wn.2d at 701.

V.

CONCLUSION

Based upon the legal arguments above, the State requests that the jury convictions be affirmed against the Appellants.

Dated this 16th day of March, 2012.



Shadan Kapri WSBA # 39962
Senior Deputy Prosecuting Attorney
Stevens County Prosecuting Attorney's Office
Attorney for Respondent

Affidavit of Certification

I certify under penalty of perjury under the laws of the State of Washington, that I mailed a true and correct copy of the foregoing Brief of Respondent to:

The Court of Appeals, Division III, 500 N. Cedar Street, Spokane, WA 99201;

Mr. David Gasch, Attorney at Law, P.O. Box 30339, Spokane, WA 99223;

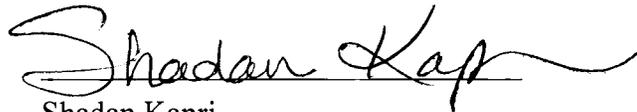
Mr. Douglas R. Pitts, P.O. Box 3924, Spokane, WA 99220;

Ms. Marie Trombley, Attorney at Law, P.O. Box 28459, Spokane, WA, 99228;

Ms. Christie Shea Sanford, 35312 North Newport Highway, #17, Chattaroy, WA 99003

The Respondent's Brief was mailed to all of the above on March 16, 2012.

3/16/2012

A handwritten signature in black ink that reads "Shadan Kapri". The signature is written in a cursive style with a long, sweeping tail on the letter "i".

Shadan Kapri

Senior Deputy Prosecuting Attorney