

**FILED**

MAR 20 2013

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

NO. 309215

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

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**STATE OF WASHINGTON,**

**RESPONDENT,**

**v.**

**LAMAR JAY LOOMIS,**

**APPELLANT.**

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**RESPONDENT'S BRIEF**

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**D. ANGUS LEE  
PROSECUTING ATTORNEY**

**By: Edward A. Owens, WSBA #29387  
Chief Deputy Prosecuting Attorney  
Attorney for Respondent**

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I. IDENTITY OF RESPONDENT

The State of Washington, represented by the Grant County Prosecutor, is the Respondent herein.

II. RELIEF REQUESTED

Respondent asserts no error occurred in the trial and conviction of the Appellant.

III. ISSUES

A. The trial court did not err in denying the defendant's motion to arrest judgment as to the conviction for trafficking stolen property in the first degree.

B. The State's evidence was sufficient to support a finding of guilt beyond a reasonable doubt on the charge of trafficking in stolen property in the first degree?

IV. STATEMENT OF THE CASE

The defendant, Lamar Loomis, was charged by Information with three counts: Count 1: Trafficking in Stolen Property in the First Degree, or in the Alternative, Count 2: Trafficking in Stolen Property in the

Second Degree, and Count 3: Possessing Stolen Property in the Second Degree. All of the charges stem from the defendant selling and attempting to sell stolen property of which he was in possession. (CP 25-26).

On April 28, 2010, Larry Entzel had property stored on Mark Mizer's property which is located at 1625 Highway 283 North, in Grant County, Washington. (RP 46, 70). On that date, Mr. Entzel visited the property and saw that someone had cut a padlock to get onto the property. (RP 46). He also saw that someone had cut the padlock to a trailer he stored his property in. (RP 47). Mr. Entzel then went home and called Mark Mizer and reported the break-in to him. (RP 49).

Deputy Green from the Grant County Sheriff's Office then went to 1625 Highway 283 North. (RP 54). Once there, he took a report of a theft and burglary that took place on that property.

Numerous items were reported stolen from that property. (RP 54). At trial Mark Mizer testified he received a call that his cable was down, storage vans and shop doors ajar, and things were missing. (RP 71). He specifically stated that from one of the vans 26 aluminum wheels were missing, two of them mounted with steer tires. In front of that van, five sets of steer tires, four of them mounted on steel wheels, and two mounted on aluminum wheels, were missing as well. (RP 73, 93-94). Mark Mizer

identified the steer tires and wheels as being 24.5 inches, and the other wheels as being 22.5 inches. (RP 76-77, 82, 90).

Mizer testified that when he returned to Grant County he visited the scrap yard called J & K. (RP 80). At the scrap yard he made contact with the owner, Kelly Hellewell. Mizer located two aluminum wheels mounted with steer tires that he identified as being stolen from his property. (RP 80, 81, 136). Hellewell identified the defendant, Lamar Loomis, as the individual who had sold him the tires that Mizer identified as his. (RP 147).

Hellewell informed the deputies when questioned, as well as testified at trial, that when the defendant sold Hellewell the two tires and wheels it took place on May 4, 2010. He was with a person named Chuck Leivan, who is also a regular customer. (RP 149-150).

The defendant was a regular customer who frequently sold him scrap or ferrous items like steel and sometimes non-ferrous items like copper. (RP 148). The defendant would not bring in tires at all as Hellewell could only remember the defendant bringing him scrap. (RP 148). The defendant told Hellewell he had some truck tires and wheels, and Hellewell agreed to take a look at them. (RP 150). When he came back, Hellewell went to the defendant's van, which he knows belongs to Lamar Loomis as he sees it regularly. (RP 151). Inside the van he

observed two truck tires on wheels as well as 15 to 20 aluminum wheels. (RP 154).

The defendant said the tires were obtained from Chuck's uncle when asked. (RP 153). Hellewell said he was offered to buy the aluminum wheels as well but he turned them down as he believed they were the wrong size. (RP 155). Hellewell testified that in the course of his business he might buy between 100 and 500 aluminum truck wheels in a month, but that he had never bought 15 to 20 aluminum wheels from a single person, only from commercial companies like Les Schwab. (RP 166, 176-177).

Charles Leivan testified at trial that he knows the defendant very well. (RP 98). Leivan said that on or about May 4, 2010, he and the defendant went to J & K Recycling. (RP 99). Leivan drove the defendant's van as the defendant did not have a driver's license or ID. (RP 100-101). Leivan only saw 10 truck tires and wheels in the back of the van. (RP 101-102). Leivan used his ID to sell the tires and received the check. (RP 104). Leivan testified he did not see 15 to 20 aluminum wheels in the back of the van; that he only saw aluminum wheels with truck tires on them. (RP 101-102).

Following the close of the State's case, the defendant moved for a directed verdict on the grounds that there was insufficient evidence to

satisfy the knowledge element of the trafficking charge. (RP 181). The State contended that the items that were being sold by Loomis were “exactly the same type of items that were stolen from the property.” (RP 182). Because the defendant possessed Mizer’s property and did not normally sell aluminum wheels, the State argued the jury could infer that Loomis had knowledge that the items were stolen. (RP 183).

In denying the defendant’s motion, the trial court observed that there was no evidence the defendant participated in the theft of the items from Mizer’s property, or any other evidence of how Loomis came into possession of the wheels. (RP 185). The trial court concluded there was circumstantial evidence of knowledge arising from the fact that “it’s an unusual lot of property,” specifically the number of wheels and the fact that it was a private individual rather than a company trying to sell them, and the proximity in time – six days from the time of the theft. (RP 185-186). The State further argued:

[T]he defendant is selling the tires that the victim, Mr. Mizer, identified as his, at the exact same time he was in possession and attempting to sell the same type of rims in a large quantity that was missing from Mr. Mizer’s property as well. Less than a week later. (RP 186).

The State also argued about Hellewell’s qualified testimony that he believed, but was not sure, that either Leivan or Loomis told him that the tires belonged to Leivan’s uncle, arguing that the explanation was

unreasonable when Loomis had both the tires stolen from Mizer and “the same type of stuff that’s stolen from Mr. Mizer sitting in there.” (RP 187).

The trial court agreed, ruling:

My conclusion is that there is sufficient circumstantial evidence of testimony that I’ve indicated to argue this question to the jury . . . There is, in the court’s conclusion, sufficient circumstantial evidence in the unusual lot, the proximity in time to when the theft occurred, and the representations of the sellers to the extent they’re recalled by Mr. Hellewell, for a jury to find that the defendant knew that the property was stolen. (RP 188).

The jury returned guilty verdicts on the first degree trafficking and third degree possession of stolen property charges. (CP 41-43). Defendant then filed a motion for arrest of judgment. (CP 46). Observing that Mizer testified that the wheels stolen from his property were 22.5 inch wheels, while Hellewell testified the 15 to 20 aluminum wheels in the defendant’s van were 24.5 inch wheels, the defendant concluded that because the wheels in his van could not be the wheels stolen from Mizer, the evidence was insufficient to support the possession of stolen property charge and to establish the “knowledge” element of the trafficking charge. (CP 58, 62).

The trial court granted the motion as to the possession of stolen property charge and denied it as to the trafficking charge. (RP 57). Because the possession of stolen property charge was premised on evidence that the multiple aluminum wheels in the defendant’s van when

he sold the two tires to Hellewell were stolen from Mizer, the trial court concluded that because the wheels in Loomis' van were not the same size as Mizer's wheels, there was insufficient evidence that the wheels in the defendant's van were stolen. (RP 57-60).

In regards to the trafficking charge, the court reasoned that while mere possession of stolen property close in proximity in time to the theft of the property required "some slight corroboration," corroboration could be established through the fact that Leivan acted as Loomis' accomplice. (RP 61-62).

Accordingly, the trial court sentenced Loomis to nine months incarceration. (CP 253).

## V. ARGUMENT

### A. THE EVIDENCE WAS SUFFICIENT TO SUSTAIN A CONVICTION FOR TRAFFICKING IN STOLEN PROPERTY IN THE FIRST DEGREE.

#### 1. **The trial court properly denied defendant's motion for arrest of judgment.**

The defendant moves for this court to overturn the defendant's conviction claiming the trial court erred in denying the defendant's motion to arrest judgment arguing that the conviction for trafficking in stolen

property in the first degree lacked sufficient evidence. A motion in arrest of judgment raises the question of the sufficiency of the evidence to take the case to the jury. *State v. Reynolds*, 51 Wn.2d 830, 322 P.2d 356 (1958). A trial court in ruling on a motion in arrest of judgment may not weigh the evidence to determine whether the necessary quantum has been produced; it may only test or examine the sufficiency thereof. In determining whether the necessary quantum exists, the court must assume the truth of the State's evidence and review it most strongly against the defendant and in light most favorable to the State; it must draw all inferences that reasonably can be drawn therefrom in favor of the State's position. *State v. Randecker*, 79 Wn.2d 512, 487 P.2d 1295 (1971).

When reviewing an order arresting judgment, an appellate court's function is to determine whether evidence is legally sufficient to support a jury's finding; evidence is sufficient if a rational trier of fact viewing it in the light most favorable to State could have found the essential elements of charged crime beyond a reasonable doubt. *State v. Robbins*, 68 Wn. App. 873, 846 P.2d 585 (1993). In considering a challenge to the sufficiency of the State's evidence, a court's function is to determine whether there is substantial evidence to support the charge, assuming the truth of the State's evidence and all reasonable inferences from it, and viewing it most strongly against the defendant. *State v. Sims*, 14 Wn. App.

277, 539 P.2d 863 (1975) review denied, 86 Wn.2d 1010 (1976). In reviewing the sufficiency of the evidence, which is legally the same issue as insufficiency of the proof of a material element of the crime, the standard is whether there was sufficient evidence to justify a rational trier of fact to find guilt beyond a reasonable doubt. *State v. Coleman*, 54 Wn. App. 742, 775 P.2d 986, review denied, 113 Wn.2d 1017 (1989).

A challenge to the sufficiency of the evidence in a criminal prosecution based entirely upon circumstantial evidence requires the trial court, as well as an appellate court on review, to determine only whether there is substantial evidence of guilt; the determination of whether the circumstantial evidence is consistent only with a hypothesis of guilt is for the jury. *State v. Sims* 14 Wn. App. 277, 539 P.2d 863 (1975) review denied, 86 Wn.2d 1010 (1976).

As stated in the statement of facts, the court did not abuse its discretion when finding that there was evidence to prove that the defendant was guilty in trafficking in stolen property in the first degree.

As the court stated:

There is, in the court's conclusion, sufficient circumstantial evidence in the unusual lot, the proximity in time to when the theft occurred, and the representations of the sellers to the extent they're recalled by Mr. Hellewell, for a jury to find that the defendant knew that the property was stolen. (RP 188).

2. **There was sufficient evidence produced at trial to support a finding of guilt beyond a reasonable doubt for the charge of trafficking in stolen property in the first degree.**

The defendant claims there was insufficient evidence to support the conviction for the crime of first degree trafficking in stolen property as charged in count one. To convict the defendant of trafficking in stolen property in the first degree, as charged in Count 1, each of the following elements of the crime had to be proved by the State beyond a reasonable doubt:

- (1) That on or between April 28, 2010, and August 16, 2010, the defendant sold, transferred or otherwise disposed of stolen property to another person;

- (2) That the defendant acted with knowledge that the property had been stolen; and

- (3) That the acts occurred in the State of Washington.

(CP 27-40, instruction number 6).

The mental state for this crime is “knowledge.” The court gave the jury the definition of knowledge when it gave them the jury instructions.

Knowledge was defined as:

“A person knows or acts “knowingly” or with knowledge with respect to a fact or circumstance when he is aware of the fact or circumstance. It is not necessary that the person know that the fact or circumstance is defined by law as being unlawful or an element of a crime. If a person has information which would lead a reasonable person in the same situation to believe that a fact or circumstance exists, the jury is permitted but not required to find that he acted with knowledge of that fact or circumstance.

(CP 27-40, instruction number 5).

RCW 9A.82.010 (19) defines “traffic as follows:

“Traffic” means to sell, transfer, distribute, dispense, or otherwise dispose of stolen property to another person, or to buy, receive, possess, or obtain control of stolen property, with intent to sell, transfer, distribute, dispense, or otherwise dispose of the property to another person.

“A claim of insufficiency admits the truth of the State’s evidence and all inferences that can reasonably be drawn therefrom. *State v. Wilson*, 71 Wn. App. 880, 891, 863 P.2d 116 (1993). The test for determining the 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). When the sufficiency of evidence is challenged in a criminal case, all reasonable

inferences from the evidence must be drawn in the State's favor and interpreted most strongly against the defendant. *State v. Partin*, 88 Wn.2d 899, 906-07, 567 P.2d 1136 (1977). A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992) (en banc) (citing *State v. Theroff*, 25 Wn. App. 590, 593, 608 P.2d 1254, *aff'd*, 95 Wn.2d 385, 622 P.2d 1240 (1980)).

In determining the sufficiency of the evidence, circumstantial evidence is not inherently less reliable than direct evidence. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980) (citing *State v. Gosby*, 85 Wn.2d 758, 539 P.2d 680 (1975)). Credibility determinations are for the trier of fact and will not be reviewed on appeal. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). We defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004) (citing *State v. Cord*, 103 Wn.2d 361, 367, 693 P.2d 81 (1985)).

It is a function and province of the jury to weigh evidence, determine the credibility of the witnesses, and decide disputed questions of fact. *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004). Credibility determinations are for the trier of fact and are not subject to

review. *Thomas*, 150 Wn.2d at 874-75. As stated earlier, “circumstantial evidence and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). Thus, the trier of fact may properly rely solely on circumstantial evidence and render a valid guilty verdict. *State v. Kovac*, 50 Wn. App. 117, 119, 747 P.2d 484 (1987).

In the present case, the State presented sufficient evidence that the defendant sold the stolen tires and rims to J & K Recycling knowing the items were stolen. The proximity in time to when the theft took place, April 28, 2010, and when the tires were sold, was only seven days apart. That is a very short time span for someone to come into possession of stolen items legitimately.

Another area showing there was sufficient evidence to find the defendant guilty of the crime charged is the representations of the seller, Leivan and Loomis, to the extent they were recalled by the buyer, Mr. Hellewell. Mr. Hellewell testified that the defendant was representing to him that he was selling the tires. Mr. Hellewell also said that the defendant never sold tires at J & K Recycling before even though he had been there many times before selling scrap. Mr. Hellewell stated that the types of tires he bought from the defendant and the amount of aluminum wheels he attempted to sell him mainly come from large companies such as Les Schwab or others companies of that type.

Defendant's own witnesses testified they had been on the defendant's property many times and had never seen the tires or rims on that property before. The State's witness, Charles Leivan, testified that the defendant contacted him to sell the tires for him as the defendant did not have a driver's license. Mr. Leivan also stated that the tires and rims were in the back of the defendant's van when he arrived at the defendant's residence. Mr. Hellewell also testified that the two persons selling the tires and wheels represented to him that the items they were selling came from Mr. Leivan's uncle, yet seven days after the items were stolen they were being sold at a recycling center.

The jurors had the chance to hear all the evidence presented at trial and weigh the testimony, demeanor, and representations made by witnesses at trial. After reviewing all the evidence presented by both the defendant and the State the jury found sufficient evidence to return a verdict of guilty against the defendant for the crime of trafficking in stolen property in the first degree. This court should likewise find sufficient evidence supported the jury's verdict and uphold the defendant's conviction.

VI. CONCLUSION

Viewing the evidence in the light most favorable to the State, and giving deference to the trier of fact on witness credibility, a rational trier of fact could find the defendant guilty of trafficking in stolen property in the first degree. This court should uphold the defendant's conviction.

Dated this 18<sup>th</sup> day of March 2013.

Respectfully submitted,

By:   
Edward A. Owens – WSBA #29387  
Chief Deputy Prosecuting Attorney

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION III

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	No. 309215
	)	
vs.	)	
	)	
LAMAR JAY LOOMIS,	)	DECLARATION OF SERVICE
	)	
Appellant.	)	
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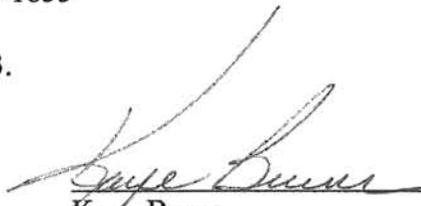
Under penalty of perjury of the laws of the State of Washington, the undersigned declares:

That on this day I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to Appellant and his attorney containing a copy of the Respondent's Brief in the above-entitled matter.

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Dated: March 18, 2013.

  
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Kaye Burns