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APR 28, 2014
Court of Appeals
Division III
State of Washington

NO. 31380-8-III
IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III

In Re the APPELLANT BRIEF of
LYNN ARNHOLD,

Petitioner,

STATE'S RESPONSIVE BRIEF

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I. STATEMENT OF THE CASE

The defendant was arrested and charged with one count of Theft in the first degree for stealing a utility trailer with construction tools inside, one count of obstructing a law enforcement officer, and one count of resisting arrest on May 26, 2012.

At trial, Jose Dominguez, a nephew of the owner of the trailer, testified that on the date in question, he was working at the Duck Brand restaurant. 12/11/12 RP 260-261. When going outside to empty the garbage, he saw a woman hooking his uncle's trailer up to a green Ford Explorer. RP 262. After hooking the trailer up, she drove off. *Id.* Thinking it odd, he took a picture of the vehicle and its license plate. *Id.* He also noted that there was a young child in the vehicle at the time. *Id.* He then returned to the restaurant and asked his uncle, Teo Dominguez, if he had loaned the trailer to someone else. *Id.* Teo Dominguez then called police and reported the trailer as stolen. *Id.* at 264. Teo told the police that the trailer contained his construction tools, including, among other things, drills, saws, air compressor tanks and other tools. *Id.* Further, Jose showed the picture on his cell phone of the vehicle and its license. *Id.*

Albertano Dominguez, Teo's brother, also worked at the Duck Brand, and also worked with Teo performing construction. He testified that Teo had the trailer about two years, and kept tools in it. 12/11/12 RP 268. He described the trailer as being made of black and galvanized metal, about 4 feet wide and 9 feet long. *Id.* He had been with Teo on a jobsite earlier in the day, and had helped Teo use a hop saw, two skill saws, and two electric planers. *Id.* at 269.

After the report of the stolen trailer was made, a description of the vehicle and the trailer was broadcast. 12/11/12 RP 273. Upon hearing that a green Ford Explorer was involved, Officer Ty Sheehan of the Twisp Police Department went to Ms. Arnhold's house, as he knew she drove that type of vehicle. *Id.* at 274. When he arrived at her house at about 8:30 p.m., he observed the Explorer parked in her driveway with a black and silver utility trailer hooked to it. *Id.* The trailer matched the description of the one reported stolen. *Id.* He noticed that the front door of the residence was open. *Id.* Further, he noted that the Explorer's engine was running. *Id.* at 275.

He reported to dispatch that he had found a vehicle and trailer matching the description of the stolen trailer. 12/11/12 RP 275. He walked around the trailer and noted that it had a padlock on the back of the trailer, and then went to the front door of the house and called

for the defendant. *Id.* She answered him, and he put his head into the house and began talking with her. *Id.* at 276. He asked her where she had gotten the trailer. She didn't say anything in response, but just shrugged her shoulders and shook her head. *Id.* He then asked her what was inside the trailer and she replied that she did not know. *Id.* at 277. He then asked her if she had a key for the lock on the trailer and she stated that the key was inside the trailer. *Id.* He then asked her how the trailer had gotten to her house. She replied that the trailer was at her house when she arrived. *Id.* She further stated that had had hooked it up to her vehicle because she thought she was supposed to. *Id.*

At that point, Officer Sheehan advised her that she was being detained and that Winthrop officers were in route to determine if the trailer he had found was the one being sought as stolen. 12/11/12 RP 277. He told her that he wasn't arresting her, but just detaining her until things could be sorted out. *Id.* At that point, the defendant turned and tried to move to the back of the house. *Id.* He and Reserve Officer Jones physically stopped her from leaving, and she resisted their efforts, screaming and yelling. *Id.* at 278–281; at 288–90. She was eventually controlled, handcuffed, and arrested. *Id.* at

281. She was then escorted out of the house and turned over to Winthrop officers who had arrived during the incident. *Id.*

Officer Sheehan also identified several pictures showing the trailer and the green Ford Explorer., 12/11/12 RP 300 – 302, which were admitted without objection. *Id.*

Teo Dominguez and a family member had arrived with the Winthrop officers and identified the trailer as his trailer. Further, Winthrop officers ran the trailer's Vehicle Identification Number through dispatch and it returned the registered owner as Teo Dominguez. 12/11/12 RP 295. At that point she was placed under arrest for theft of the trailer. *Id.* at 310. The defendant was read her Miranda rights and she acknowledged that she understood her rights and agreed to talk with officers. *Id.* at 296. She told officers that she thought she was told to take it from the Twisp Chevron. *Id.*; at 311. She did not say who told her to take the trailer. *Id.*

After she was booked into the Okanogan County Jail, she agreed to talk further with Winthrop Marshall Dahlstrom 12/11/12 RP 311. She told Marshall Dahlstrom that the trailer was at her house, that it had been there for a while, and she thought that she should hook it up. *Id.* at 312. When told that the trailer was in Winthrop earlier in the day and that someone saw her hooking it up to her

vehicle, she declined to speak with Marshall Dahlstrom further. *Id.* At that point, the interview was terminated. Marshall Dahlstrom, on re-direct, also testified that the defendant did not say, during the transport and subsequent interview, that someone had called her to tell her to take the trailer. *Id.* at 313. At this point the State rested its case. *Id.* at 314.

The defense's motion for directed verdict on Count 2, obstructing a law enforcement officer, was granted. 12/11/12 PR 320. An order dismissing that count was entered. CP 47. Further, the court also reduced the Count I from first degree theft to second degree theft. *Id.* An order reflecting that amendment was entered. CP 46.

Ms. Arnold testified that she was in Winthrop on that day and that she took the trailer. 12/11/12 RP 322. She stated that she was moving it for a friend who lived out of town. *Id.* She said that she, his brother and her were going to live and work in the trailer in the oil fields of South Dakota. *Id.* at 322. When asked, she stated that she had received an "email text message" asking her to move the trailer. *Id.* at 329. She said she received general directions on how to get to the trailer, found a trailer, and hooked it up because she thought she was supposed to. *Id.* at 341.

On cross-examination, Ms. Arnhold, when asked, refused to provide the name of the individual who asked her to pick up the trailer "since he is not here to testify." 12/11/12 RP 329. She testified that she didn't know where this person lived, only that he was somewhere in South Dakota working in the oil fields. *Id.* When asked if she had shown the text message she allegedly received to officers, she stated "Nobody asked to see it" nor did she volunteer to show it to the officers. *Id.* at 330. She also admitted that the text did not describe the trailer she was to get, and that it did not meet the general description of a trailer which was to be lived in. *Id.* at 331. She denied ever having said that she picked it up at the Twisp Chevron *Id.* , and also denied having struggled with the officers. *Id.* at 333-34.

The Court's instructions to the jury included an instruction for theft in the second degree and an alternative instruction for theft in the third degree as a lesser included offense. 12/12/12 RP 361-63. The jury convicted Ms. Arnold of theft in the second degree and resisting arrest. *Id.* at 381; CP 20-21. Ms. Arnhold then timely appealed. CP 4.

II. ARGUMENT

A. **The State presented sufficient evidence of the value of the items taken for the jury to convict Appellant of theft in the second degree.**

Evidence is sufficient to support a conviction if, when viewed in the light most favorable to the State, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. State v. Salinas, 119 Wash. 2d 192, 201, 829 P.2d 1068 (1992)(citing State v. Green, 94 Wash. 2d 216, 220-222, 616 P.2d 628 (1980)). A claim of insufficiency admits the truth of the State's evidence and all reasonable inferences that a trier of fact can draw from that evidence. State v. Salinas, 119 Wash. 2d 192, 201, 829 P.2d 1068, 1074 (1992). Circumstantial evidence is considered to be as reliable as direct evidence. State v. Myers, 133 Wash. 2d 26, 38, 941 P.2d 1102 (1997).

Appellant argues that, because there was no testimony at trial about a specific value of the items taken, the State failed to prove the value of the items beyond a reasonable doubt. App. Brief 4. The Appellant's argument that there must be direct evidence of value is misplaced. While it is preferably to provide direct evidence of value, value need not be proved by direct evidence.

State v. Ehrhardt, 167 Wash. App. 934, 944, 276 P.3d 332 (2012)(citing State v. Hermann, 138 Wash. App. 596, 602, 158 P.3d 96 (2007)). The jury may draw reasonable conclusions from the evidence. State v. Melrose, 2 Wash. App. 824, 831, 470 P.2d 552 (1970).

Here, the evidence presented was substantial. Photographs were admitted into evidence without objection that showed the utility trailer and its condition. Its size was described to the jury, as well as its color and metal from which it was made. Further, contents of the trailer were also described, to the best of the witnesses recollection. The witnesses in this case had very recent knowledge of the contents, as one of them had been in the trailer, working with its contents that very day. Skill saws, a table saw, drills, multiple compressors and air tools, as well as boxes containing additional tools were there. Between the testimony regarding the trailer, the photographs from the scene, and the description of the trailer's contents, the jury had substantial evidence from which to make a reasonable inference as to the value.

B. The State presented sufficient evidence for the jury to conclude that she intended to take the trailer.

In the present case the testimony is clear that Ms. Arnhold took the trailer. A witness saw her hooking it up and driving off with it. It was found shortly thereafter at her residence, in her driveway. There can be no doubt that she intended "to take" the trailer.

Appellant argues, however, that the State failed to prove beyond a reasonable doubt that Ms. Arnhold intended to deprive the rightful owner of the trailer of his property. App. Brief, p. 6. She cites to her belief that she thought she had permission to take the trailer from her unnamed friend. She did not, however, have this friend testify on her behalf. Nor would she provide this person's name when asked on cross-examination. The credibility of witnesses is for the trier of fact to determine and cannot be reviewed on appeal. State v. Camarillo, 115 Wash. 2d 60, 71, 794 P.2d 850 (1990). It is clear that the jury weighed her answers and the information provided by the State, and concluded that the facts presented did not support her story. Therefore, they convicted her of theft in the second degree.

III. CONCLUSION

Based upon all of the exhibits and testimony admitted in this case, there was more than sufficient evidence for a rational trier of fact to find the defendant not only intended to steal the trailer, but that substantial evidence exists that allowed the jury to conclude that she was guilty of theft in the second degree. The State respectfully urges this Court to uphold the conviction entered in this matter for theft in the second degree.

Respectfully submitted this 28th day of April, 2014.

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COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON)	COA No. 313808
Plaintiff/Respondent)	
vs.)	
)	
Lynn Marie Arnhold)	PROOF OF SERVICE
Defendant/Appellant)	
_____)	

I, Yadi Godina, do hereby certify under penalty of perjury that on the 28th day of April, 2014, I personally served a true and correct copy of the Respondent's brief to:

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Having obtained prior permission, I also served Kenneth H. Kato at khkato@comcast.net by email using Division III's e-service feature.

Dated this 28th day of April, 2014.



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