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Court of Appeals
Division III
State of Washington

NO. 31802-8-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON, Respondent

v.

JON JASON KING, Appellant

APPEAL FROM THE SUPERIOR COURT
FOR BENTON COUNTY

NO. 13-1-00358-2

BRIEF OF RESPONDENT

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I. RESPONSE TO ASSIGNMENTS OF ERROR

- A. **There was sufficient evidence presented at trial to support convictions of residential burglary with aggravating circumstances.**
- B. **The case should be remanded for entry of written findings consistent with trial court's oral findings supporting an exceptional sentence.**

II. STATEMENT OF FACTS

Samantha Norris was residing in a condominium located at 289 Gage Boulevard, Richland, on March 27, 2013, which sits on the Meadow Springs Golf Course. RP¹ at 72-73, 127. She lived at the residence with Rachelle Williams. *Id.* at 73. On March 27, 2013, she returned to her residence after work at approximately 8:40 p.m. *Id.* Her roommate, Ms. Williams, was not at home. *Id.* at 75. Ms. Norris ate dinner in her room and called her mother on the telephone. *Id.* When she finished the phone call, approximately an hour after she arrived home, she heard footsteps coming down the hallway of her residence. *Id.* at 75, 79. She called out, “Who’s there? Who are you?” and no one answered, but the footsteps kept coming. *Id.* Her bedroom door then opened, she saw a male and yelled, “Hey,” and the male, later identified as the defendant, ran out of the room back toward the living room and exited the residence. *Id.* at 75, 78.

¹ Unless otherwise indicated, RP refers to the Verbatim Report of Proceedings dated June 3-4, 2013, Volumes I and II, transcribed by Renee L. Munoz.

Ms. Norris grabbed her keys and phone and fled the residence. *Id.* at 77-78. Once out of the residence, Ms. Norris called her mother and then 911. *Id.* at 78. Officer Florence with the Richland Police Department was dispatched to respond to Ms. Norris's residence after her 911 call was placed. *Id.* at 125. Officer Florence cleared the residence to ensure no other persons were present. *Id.* at 127. After the residence was cleared by law enforcement, Ms. Norris and her roommate, who had arrived home, were allowed in to see if any items had been taken. *Id.* at 79-80. The two determined that a pack of cigarettes, Camel menthol lights with two remaining in the pack, and money had been taken from the residence. *Id.* at 80-81, 183-84. Law enforcement determined that the defendant had entered the residence through a sliding door that had been left open, which faced the golf course. *Id.* at 86, 127. The stolen cigarettes would later be found on the defendant's person when he was arrested. *Id.* at 302.

Ruth LaBouy and Gary Faust live in a condominium at 365 Quailwood Place, Richland, Washington, that sits on the Meadow Springs Golf Course. RP at 243, 246. Ms. LaBouy and Mr. Faust's condo is in between Peter and Jean Smith's condo, 371 Quailwood Place, on one side and Joyce Fleming's condo, 359 Quailwood Place, on the other side. *Id.* at 244-45, 269. On March 27, 2013, Ms. LaBouy and Mr. Faust were home watching television. *Id.* At approximately 9:55 p.m., Ms. LaBouy

observed a man with a backpack on her back patio walking by. *Id.* at 245, 247. Ms. LaBouy told Mr. Faust there was someone outside their residence, which caused him to get up and see where the male went. *Id.* at 246.

Mr. Faust went outside and observed the male, later identified as the defendant, standing on his neighbors', Peter and Jean Smith's, deck by their kitchen sliding door. *Id.* at 253. Mr. Faust yelled at the defendant, "Hey, what are you doin'?" *Id.* at 254. The defendant mumbled something which Mr. Faust believed was the name "Jerry." *Id.* Mr. Faust told the defendant that "Nobody by that name lives around here. Get your ass out of here." *Id.* The defendant then walked off the patio and down the back of the Smith's condo. *Id.* Mr. Faust then went back into his residence. *Id.* at 256. However, after a few minutes he went outside to make sure the defendant left. *Id.* at 256-57.

When he went outside, he saw a flashlight beam shining in the dark kitchen of the Smith's residence so he returned inside and called 911. *Id.* at 257. The 911 operator asked Mr. Faust to go outside and keep an eye on the residence, so he remained there until law enforcement arrived on the scene. *Id.* Once law enforcement arrived, Mr. Faust observed the flashlight move from the kitchen into the living room. *Id.*

While assisting Ms. Norris at her residence, Officer Florence heard Mr. Faust's 911 call on his radio being dispatched less than a block away from the Norris residence. *Id.* at 128-29. The call was identified as coming from a neighbor of 371 Quailwood Place stating that they had confronted a male subject out on the patio of the residence and they believed he was in their neighbor's residence. *Id.* at 128. Sgt. Ruegsegger with the Richland Police Department had also responded to the burglary report at Ms. Norris and Ms. William's residence. *Id.* at 237. While en route, Sgt. Ruegsegger was advised by Officer Florence that the suspect had already left that address and was possibly on the golf course heading in Sgt. Ruegsegger's direction. *Id.* Based upon that information, Sgt. Ruegsegger went to the golf course and started looking for the subject. *Id.*

Sgt. Ruegsegger responded to the 371 Quailwood Place location, which was approximately one block from where the original burglary had occurred. *Id.* at 238. Quailwood Place is a group of condominiums that sit on the golf course. *Id.* Sgt. Ruegsegger arrived at the same time as other officers and set up containment in the back area of the condos. *Id.* at 238-39. While in the back, he observed what looked like a computer or business bag lying on some bushes right at the back steps of a condo. *Id.* at 239. The bag was later identified as belonging to Ronald Riley and had been taken from his residence. RP 229-32, 239-40, 261-62.

Sgt. Ruegsegger then walked around the front of the condo and observed another backpack on the ground and observed there was an identification card clipped on the outside of the backpack for Kadlec Regional Medical Center with the name and picture of Ronald Riley. *Id.* at 240-41.

Jean Smith, 85 years of age, and her husband, Peter Smith, live at 371 Quailwood Place, Richland. *Id.* at 88. Their residence is a two-level condominium that has a sliding door that sits on the Meadow Springs Golf Course. *Id.* at 88, 92. On March 27, 2013, Mr. Smith left the residence at approximately 6:00 p.m. to play bridge at the Richland Community Center, so Mrs. Smith was home alone. *Id.* at 92. Mr. Smith usually returns home at 10:30 to 11:00 p.m. *Id.* at 93. Mrs. Smith did not lock the door to her residence that night as she had been out for a walk and forgot to lock it, but the sliding doors had been locked. *Id.* at 94-95. Mrs. Smith was watching television downstairs until approximately 8:30 p.m. when she went upstairs in her bedroom to read for approximately 45 minutes. *Id.*

While upstairs, Mrs. Smith heard “funny little rattly (sic) noises,” but assumed it was leaves on her skylight. *Id.* at 93-94. A short time later, she heard shouting downstairs and a police officer came in and said, “Ma’am, you have to get out of your house because someone has broken in and he may have an accomplice, and we want to make sure the

accomplice is not in your house.” *Id.* at 97. Mrs. Smith was escorted by law enforcement across the street to a patrol vehicle while officers searched her residence. *Id.* While she was waiting, her husband returned home. *Id.* at 98.

Mr. and Mrs. Smith were allowed to return to their residence to determine if any items had been stolen. *Id.* Mrs. Smith found that \$100.00, that was in five \$20.00 bill denominations, had been taken from her purse that had been in the kitchen. *Id.* Also stolen from an upstairs spare bedroom dresser were collectible coins, a silver dollar and watch box from the spare bedroom closet, and medication that was in a kitchen cupboard. *Id.* at 99-100, 112-15, 118. A bottle of Canadian whiskey on the downstairs bar close to the front door and a notepad, that had the appearance of a wallet, that had been next to the telephone in the spare bedroom were also taken. *Id.* at 102, 115, 117.

Officer Crouch with the Richland Police Department as well as several other Richland Police Department officers had also responded to 371 Quailwood Place residence. *Id.* at 273-74. Officer Crouch set up containment at the front of the residence along with Richland Police Officers Parish and Nelson and Cpl. Stohel. *Id.* at 274. While in the front of the residence, Officer Crouch and Cpl. Stohel observed a flashlight in the upstairs window moving around and going through different areas on

the second floor. *Id.* at 274, 295. A short time later, a male, later identified as the defendant, was observed walking out of the front door of the residence with numerous items in his hands, including a small flashlight. *Id.* at 274-75, 298. The defendant was also wearing gloves. *Id.* at 298. Officer Crouch could see that the defendant was carrying a large bottle of alcohol, some coins and cases. *Id.* at 275.

The defendant was ordered by officers to show them his hands. *Id.* at 189. The defendant did not comply with the request and turned around and headed back toward the residence. *Id.* at 190. While doing so, the defendant unzipped his coat and several items fell out in what Cpl. Stohel observed to be an apparent effort to discard the items. *Id.* at 301. The items the defendant was discarding were later identified as the notepad and coins stolen from the Smith residence, as well as the cigarettes taken from Ms. Norris and Ms. Williams's residence. *Id.* at 302.

Officer Parish reached out and grabbed the defendant's arm and tried to handcuff him. *Id.* at 190. The defendant continued to pull away and had to be forcibly handcuffed. *Id.* at 190, 210. The defendant then repeatedly asked why he was being arrested. *Id.* at 191. The defendant was told he was being arrested for burglary. *Id.* The defendant told officers, "This is my friend's house. I have permission to be here." *Id.* The defendant was escorted to a patrol vehicle. *Id.* at 191-92. Once at the

patrol vehicle, Officer Parish attempted to search the defendant, but the defendant began actively resisting by trying to pull away and twist his body. *Id.* at 192. With the help of other patrol officers, Officer Parish was able to hold the defendant in place until he could complete the search of the defendant's person. *Id.* During the search of the defendant's person, Officer Parish located pill bottles belonging to Ronald Riley and Jean Smith, several pairs of sunglasses, a flash drive and some money, including five \$20.00 bills. *Id.* at 192-94.

Once the defendant was searched, officers attempted to put the defendant into a patrol vehicle. *Id.* at 197. Officers began collecting the defendant's shoes as evidence and he became verbally abusive to the officers. *Id.* at 277-78. The defendant refused to put his feet in the vehicle and continued to argue about the basis for his arrest and claimed it was too hot to get into the vehicle. *Id.* at 197-99. Officers had to deliver knee strikes to get the defendant to put his legs into the patrol vehicle. *Id.* at 199-202. Once the defendant was in the patrol vehicle, he complained of leg pain and thus was transported to Kadlec Regional Medical Center for medical clearance before being booked into the Benton County Jail. *Id.* at 202. The defendant was cleared by medical staff as being able to be booked into the Benton County Jail. *Id.* at 202, 207.

During his contact with the defendant, Officer Parish observed that he had slow repetitive speech and the odor of alcohol coming from his breath. *Id.* at 196. He opined that the defendant was obviously intoxicated, but not to an extreme extent. *Id.* The defendant did not vomit nor pass out and he was able to walk on his own. *Id.* at 196-97. Officer Crouch opined that the defendant was intoxicated, but not grossly intoxicated to the point of stumbling. *Id.* at 281. Officer Crouch observed that the defendant was aware of what was going on, was able to express himself regarding his alleged injuries and was able to understand what was going on. *Id.* at 289. He observed that the defendant was able to walk out of Mr. and Mrs. Smith's residence carrying an armload of items and had no problem exiting the residence all the way to the front gate. *Id.* at 281. Based upon his training and experience, Officer Crouch did not believe the defendant was too intoxicated to be booked into the Benton County Jail and was taken to the hospital only for leg pain, not a determination of his level of intoxication. *Id.* at 281-82. Officer Parish, Officer Crouch and Cpl. Stohel all testified that based upon their training and experience, the defendant's behavior had been exhibited by persons they have come into contact with that had not been under the influence of alcohol and they did not attribute his combative/non-compliant behavior to such. *Id.* at 201, 282-83, 326.

After discovery of his backpacks and identification cards, officers attempted to contact Ronald Riley. *Id.* at 143, 228. Mr. Riley is a dialysis nurse for three hospitals in the Tri-Cities area and lives in a condominium located at 239 Gage Boulevard, Richland, Washington. *Id.* at 227-28. His residence also sits on Meadow Springs Golf Course. *Id.* at 228. On March 27, 2013, he was out of town. *Id.* at 227. When he went out of town a day or two prior to the burglary, he left his sliding door, which faces the golf course, unlocked. *Id.* at 228, 234.

Mr. Riley received a telephone call from his ex-girlfriend indicating that the police had located his backpack. *Id.* at 228. The backpack had been about eight to ten feet from the backdoor to his residence on the kitchen table when he left town. *Id.* at 228-29. Inside the backpack were his hospital identification badges as well as medications. *Id.* at 229-30. Mr. Riley also found that another backpack was missing from his residence that had been in his bedroom closet. *Id.* at 231-32, 261. This bag was located at the opposite end of his residence as the other bag that was taken. *Id.* at 262. No one had permission to be in Mr. Riley's home and he had never met the defendant. *Id.* at 230. Law enforcement determined that the point of entry into the home was the sliding door facing the golf course. *Id.* at 144. One of the badges off of this backpack

was also found on the back patio of the condominium located at 359 Quailwood Place, Richland, Washington. *Id.* at 269-71.

The defendant was charged by amended information with three counts of Residential Burglary, two of which alleged the aggravating circumstance that the victim was present in the building or residence when the crime was committed. CP 29-32. The State also alleged the multiple current offenses aggravating circumstance. *Id.* The matter proceeded to trial on June 3, 2013, where the defendant was found guilty on all three counts and the jury returned verdicts of yes on the two special verdict forms regarding the burglary aggravating circumstances. CP 197-99, 203-04.

At sentencing on July 12, 2013, the trial Judge, the Honorable Bruce Spanner, sentenced the defendant to an exceptional sentence upward of 108 months on all three counts to run concurrent on a standard range sentence of 63 to 84 months. CP 232-43. At the sentencing hearing, Judge Spanner gave an oral ruling as to the basis for the imposition of the exceptional sentence and the jury's verdict forms finding the aggravating circumstances were attached to the defendant's judgment and sentence. CP 232-43; RP 07/12/2013 at 441-44. The defendant then filed this timely appeal. CP 322-23.

III. ARGUMENT

A. Sufficient evidence was presented at trial to support the jury's finding that the defendant acted with the intent to commit a crime against a person or property therein when he entered all three victims' residences.

Evidence is sufficient to support a conviction if, taking the evidence in the light most favorable to the State, it allows any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

Circumstantial and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). All reasonable inferences are drawn in favor of the State. *Salinas*, 119 Wn.2d at 201. Credibility determinations are left to the trier of fact; such determinations are not subject to appellate review. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

A voluntary intoxication defense allows the jury to consider "evidence of intoxication" to determine whether the defendant acted with the requisite intent. *State v. Coates*, 107 Wn.2d 882, 889, 735 P.2d 64 (1987). The effects of alcohol are commonly known and jurors can draw reasonable inferences from testimony about alcohol use. *State v. Kruger*, 116 Wn. App. 685, 692-93, 67 P.3d 1147 (2003), *rev. denied*, 150 Wn.2d

1024, 81 P.3d 120 (2003); *State v. Smissaert*, 41 Wn. App. 813, 815, 706 P.2d 647 (1985).

In the instant matter, more than sufficient evidence was presented to the trier of fact to support their determination that the defendant was able to form the intent to commit a crime while in the three residences he burglarized. The defendant had a methodical plan to burglarize the Meadow Springs Golf Course condominiums and came prepared to carry out the plan. The defendant was wearing gloves at the time of the burglaries, which was more likely than not done to prevent fingerprint detection, as it was late March and not glove weather in Eastern Washington. RP at 298. Additionally, the defendant also stole two backpacks to haul away the loot he planned on stealing. *Id.* at 239-41. He also came prepared with a flashlight so he did not have to turn on the lights to alert persons he was burglarizing the homes. *Id.* at 274, 298.

Although there was testimony the defendant had consumed alcohol, consumption alone does not negate intent. A person can be intoxicated and still be able to form the requisite mental state. *Coates*, 107 Wn.2d at 891. The defendant was alert and coherent enough to immediately concoct a lie when confronted by law enforcement to provide a defense to the crime of burglary when he advised officers that he had permission to be in the home. RP at 191. He also was coherent enough

when confronted by Mr. Faust to lie and say he was there trying to visit his friend Jerry. *Id.* at 254. He was coherent enough when confronted by Ms. Norris to flee the residence. *Id.* at 75.

He was also sober enough to root through all three persons' homes he burglarized to obtain the items he needed, i.e. drugs, money, cigarettes, and alcohol. *Id.* at 80-81, 98, 100, 102, 115, 183-84, 229-30. He was sober enough to go up and down the stairs in Mr. and Mrs. Smith's residence in the dark with only a flashlight going through closets and drawers while not making enough noise to alert Mrs. Smith who was home at the time. *Id.* at 106, 257, 274, 295. He also had the presence of mind to try to unload the stolen items when confronted by law enforcement when leaving Mr. and Mrs. Smith's residence. *Id.* at 301.

The defendant was also able to actively converse with law enforcement. He told them he was too hot in the patrol vehicle. *Id.* at 198, 309. He was also agile enough to keep putting his foot in the door before law enforcement could close it. *Id.* at 201, 311. The defendant did not pass out, vomit, never went to sleep and was in fact medically cleared by the hospital for booking into the Benton County Jail. *Id.* 196-97, 202, 207.

Additionally, all of the law enforcement officers that had contact with the defendant on March 27, 2013, testified at trial that although the defendant had been drinking, based upon their training and experience,

they did not believe he was extremely intoxicated and that his behavior was goal-orientated. *Id.* at 196-97, 281, 313-16. No testimony or evidence was presented at trial so show the defendant's alcohol consumption interfered with his ability to form the intent to commit the crimes of Residential Burglary.

B. Sufficient Oral Findings on the Exceptional Sentence were given at the time of sentencing and thus the matter should be remanded back before the trial judge for entry of written findings consistent with the oral ruling.

The State concedes that written findings for the exceptional sentence were not filed with the trial court. However, the trial judge, the Honorable Bruce Spanner, gave an oral ruling setting forth the rationale supporting his imposition of the exceptional sentence upward in this matter. *Id.* at 443-44. Thus, the matter should be remanded back before the Judge Spanner for entry of written findings consistent with said oral ruling.

IV. CONCLUSION

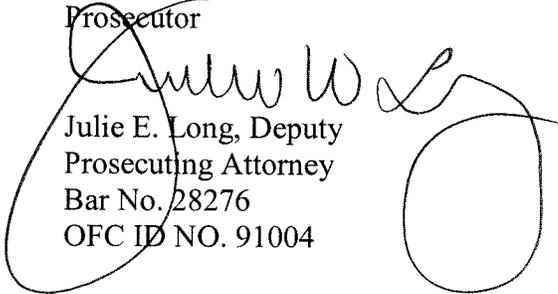
Based upon the aforementioned rationale, the defendant's appeal should be denied as sufficient evidence was presented at trial regarding the defendant's ability to form and act with intent. However, since written findings regarding the exceptional sentence were not entered, the matter should be remanded back before the trial Judge so they can be entered and

reflect the oral ruling given regarding the rationale behind the trial court's imposition of the exceptional sentence.

RESPECTFULLY SUBMITTED this 10th day of September, 2015.

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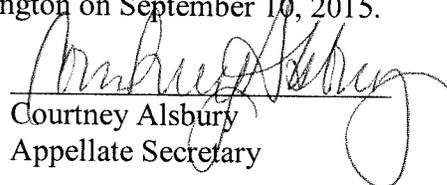
CERTIFICATE OF SERVICE

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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Signed at Kennewick, Washington on September 10, 2015.



Courtney Alsbury
Appellate Secretary