

FILED
FEB 13, 2017
Court of Appeals
Division III
State of Washington

NO. 342310
IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

RESPONDENT,

V.

DENNY ALBERT DARE

APPELLANT.

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

A. STATEMENT OF THE CASE 1

B. ARGUMENT 3

 The State’s evidence was enough for the jury to conclude beyond a reasonable doubt that the Appellant was guilty of Residential Burglary..... 3

 1. The State proved the “unlawful entry” element to the satisfaction of the jury. 3

 2. The law allows the jury to infer intent where unlawful entry has been proven. 6

C. CONCLUSION 7

TABLE OF AUTHORITIES

Cases

<i>State v. Bencivenga</i> , 137 Wash.2d 703, 974 P.2d 832.....	7
<i>State v. Cantu</i> , Wash.2d 819, 132 P.3d 725 (2006)	6
<i>State v. Carver</i> , 113 Wash.2d 591, 781 P.2d 1308, 789 P.2d 306 (1989)	4, 6
<i>State v. Castillo-Murcia</i> , 188 Wash.App. 539, 354 P.3d 932(2015).....	4, 6
<i>State v. Farnsworth</i> , 185 Wash.2d 768, 374 P.3d 1152.....	4
<i>State v. Green</i> , 94 Wash.2d 216, 616 P.2d 628(1980)	4
<i>State v. Grimes</i> , 92 Wash.App.973, 966 P.2d 394 (1998).....	6
<i>State v. Homan</i> , 181 Wash.2d 102,330 P.3d 182 (2014)	4
<i>State v. Jackson</i> , 129 Wash.App. 95, 117 P.3d 1182(2005).....	4
<i>State v. Ortiz</i> , 77 Wash.App. 790, 895 P.2d 845(1995)	6
<i>State v. Salinas</i> , 119 Wash.2d 192, 829 P.2d 1068 (1992)	4
<i>State v. Thomas</i> , 150 Wash.2d , 83 P.3d 970(2004)	4
<i>State v. Witherspoon</i> , 180 Wash.875, 883, 329 P.2d (2014)	4

Statutes

RCW 9A.52.025	5
RCW 9A.52.040	6

A. STATEMENT OF THE CASE

On September 23, 2014, Mr. Dare was charged with one count of Residential Burglary, one count of felony Harassment, and one count of Assault in the fourth degree. (CP 142) On March 1, 2016, the case proceeded to a jury trial.

At trial, both Ms. Johnson and Mr. Dare testified that Mr. Dare had loaned \$90 to Ms. Johnson on or about September 12, 2014. (RP 95, 122-23). According to Ms. Johnson, she was to pay the money back the next day. (RP 95). The next day, around 11:30 a.m., Ms. Johnson was sitting at her table in her apartment when Mr. Dare came to her residence screaming and hollering and calling her names. (RP 96). He pushed his way through an outer screen door and entered the apartment uninvited through the open apartment door. *Id.* According to Ms. Johnson, he pushed her against the wall, and threw a basket of clothes all over the room, all the while screaming at her. (RP 97). She testified that she had fallen down when pushed, and got up and tried to calm him down. *Id.* She asked him to leave at least five times, but Mr. Dare did not do so. (RP 99). She also testified that Mr. Dare threatened to kill

her and her cat. (RP 104). After Mr. Collom came down, she said that Mr. Dare left. (RP 98-9).

A neighbor from an upstairs apartment, Joe Collom, testified that he heard the screaming and sounds like something was being thrown against the wall coming from downstairs, came down to Ms. Johnson's apartment, and observed Mr. Dare in the apartment yelling at Ms. Johnson. (RP 111-113). He testified that Mr. Dare was angry and very threatening. (RP 114-115). More specifically, Mr. Collum testified that Mr. Dare was threatening Ms. Johnson's life and the life of her cat. (RP 113-14). According to Mr. Collom, Mr. Dare made multiple threats. (RP 114). He testified that Ms. Johnson asked Mr. Dare to leave multiple times, and eventually Mr. Dare left. (RP 115-17).

Mr. Dare testified that he knows Ms. Johnson from his drinking days, but that he had been sober for about eight years. (RP 121). He had loaned her \$90 with the understanding that she would pay him back the next day. (RP 122). He stated that he was upset that she could not pay him back that morning. (RP 123). He went over to her apartment and knocked at her door and entered when he was invited in. (RP 123, 131). On cross- examination, he

denied pushing her down. (RP 131). He stated that they argued, and he told her that he ought to strangle her and her cat. (RP 124).

There were no objections or exceptions to the jury instructions. (RP 139-40). The jury was instructed on the counts for which Mr. Dare was charged, including the definition and elements instructions for Residential Burglary. (CP 41-42). The State argued that Mr. Dare had entered and remained in the apartment uninvited and unlawfully, and that the harassment and assault in the fourth degree charges were the crimes that supported the residential burglary charge. (RP 143-44). The jury returned a verdict of guilty on Count I: Residential Burglary, and acquitted him of Count II: Felony Harassment and Count III: Assault in the fourth degree. (RP 159; CP 59-61). This appeal ensued.

B. ARGUMENT

The State's evidence was enough for the jury to conclude beyond a reasonable doubt that the Appellant was guilty of Residential Burglary.

- 1. The State proved the "unlawful entry" element to the satisfaction of the jury.**

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 defendant guilty 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, 220-22, 616 P.2d 628(1980)). A claim of insufficient evidence admits to the truth of the State's evidence and all reasonable inferences that can be drawn from it. *State v. Witherspoon*, 180 Wash.875, 883, 329 P.2d 888(2014). "These inferences must be drawn in favor of the State and interpreted most strongly against the defendant." *State v. Homan*, 181 Wash.2d 102, 106,330 P.3d 182 (2014)(citing *State v. Salinas*, 119 Wash.2d 192, 201,829 P.2d 1068 (1992)). Circumstantial and direct evidence are to be considered equally reliable. *State v. Farnsworth*, 185 Wash.2d 768, 775, 374 P.3d 1152 (citing *State v. Thomas*, 150 Wash.2d 921,874, 83 P.3d 970(2004)). The appellate court must defer to the trier of fact for purposes of resolving conflicting testimony and evaluating the persuasiveness of the evidence. *State v. Homan*, 181 Wash.2d 102, 106, 330 P.3d 182 (citing *State v. Jackson*, 129 Wash.App. 95, 109, 117 P.3d 1182(2005)); see also *State v. Castillo-Murcia* 188 Wash.App. 539, 543, 354 P.3d 932(2015)(citing *State v. Carver*, 113 Wash.2d 591, 604, 781 P.2d 1308, 789 P.2d

306 (1989))(“We defer to the fact finder’s assessment of conflicting testimony, witness credibility, and evidence weight.”)

To convict a defendant of the crime of Residential Burglary, the State must convince the jury beyond a reasonable doubt that the defendant (1) entered or remained unlawfully in a dwelling other than a vehicle, and (2) that the defendant had the intent to commit a crime against a person or property in the dwelling when doing so. *RCW 9A.52.025.*

Here, the testimony from the Ms. Johnson and Mr. Collom was that Mr. Dare not only entered Ms. Johnson’s apartment uninvited, but remained there after she repeatedly asked him to leave. (RP 99, 115-16). Both testified that he was angry and, according to Mr. Collom, very threatening. (RP114-15). The jury made the determination that Mr. Dare did enter Ms. Johnson’s apartment unlawfully. As the defendant concedes, the first element of residential burglary was found by the jury to have been committed.

2. The law allows the jury to infer intent where unlawful entry has been proven.

RCW 9A.52.040 creates an “inference of intent” as applied to burglary:

In any prosecution for burglary, any person who enters or remains unlawfully in a building may be inferred to have acted with intent to commit a crime against a person or property therein, unless such entering or remaining shall be explained by evidence satisfactory to the trier of fact to have been made without such criminal intent.

Thus, whenever the evidence shows a person entered or remained in a building unlawfully, there is a permissive inference of intent to commit a crime. *State v. Cantu*, Wash.2d 819, 132 P.3d 725 (2006), as amended; *State v. Grimes*, 92 Wash.App. 973, 966 P.2d 394 (1998). The jury is allowed, but not required, to infer the necessary element of intent to commit a crime from the fact of unlawful entry. *State v. Ortiz*, 77 Wash.App. 790, 895 P.2d 845(1995). The sufficiency of the evidence is solely for the trier of fact to assess, including conflicting testimony, the credibility of the witnesses, and the weight of the evidence. *State v. Castillo-Murcia* 188 Wash.App. 539, 543, 354 P.3d 932(2015)(citing *State v. Carver*, 113 Wash.2d 591, 604, 781 P.2d 1308, 789 P.2d 306 (1989)).

Here, the jury heard testimony that could lead it to infer the logical extension of Mr. Dare's unlawful entry into Ms. Johnson's apartment. He entered, pushing her aside as he came in, and threw a basket of clothing around the room. He was angry and very threatening according to a third party witness who came into the apartment after hearing loud, crashing sounds. The interaction within Ms. Johnson's apartment was tense to say the least, and though the jury did not find Mr. Dare guilty of another crime, it reasonably inferred that he was there with the intent to commit a crime. It is in the province of the fact finder to determine the reasonableness of any inference. *State v. Bencivenga*, 137 Wash.2d 703, 708, 974 P.2d 832. Here the jury found the inference to be reasonable.

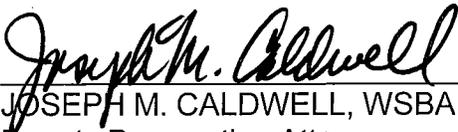
C. CONCLUSION

Based on the arguments above, and the record of proceedings, the State respectfully urges the Court to deny the Appellant's appeal, and to confirm his conviction.

DATED this 13th day of February, 2017.

Presented BY:

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BY: 

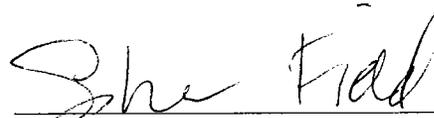
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PROOF OF SERVICE

I, Shauna Field, do hereby certify under penalty of perjury that on the 13th day of February, 2017, I provided email service to the following by prior agreement (as indicated), a true and correct copy of the Respondent's Brief:

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