

FILED
Feb 27, 2017
Court of Appeals
Division III
State of Washington

34527-1-III
COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

JUSTIN CROSON, APPELLANT

APPEAL FROM THE SUPERIOR COURT
OF SPOKANE COUNTY

BRIEF OF RESPONDENT

LAWRENCE H. HASKELL
Prosecuting Attorney

Larry Steinmetz
Deputy Prosecuting Attorney
Attorneys for Respondent

County-City Public Safety Building
West 1100 Mallon
Spokane, Washington 99260
(509) 477-3662

INDEX

I. APPELLANT’S ASSIGNMENTS OF ERROR 1

II. ISSUE PRESENTED..... 1

III. STATEMENT OF THE CASE 1

Substantive facts..... 2

IV. ARGUMENT 5

A. THERE WAS SUFFICIENT EVIDENCE TO SUPPORT THE CONVICTION FOR RESIDENTIAL BURGLARY. THERE WAS NO EVIDENCE PRESENTED THAT MR. CROSON OR HIS COMPANION, MS. DILLARD, HAD PERMISSION TO ENTER OR REMAIN IN THE UNOCCUPIED RESIDENCE AND DISMANTLE THE KITCHEN..... 5

1. Unlawful entry. 6

2. Sufficiency of the evidence..... 8

V. CONCLUSION 9

TABLE OF AUTHORITIES

WASHINGTON CASES

State v. Bergeron, 105 Wn.2d 1, 711 P.2d 1000 (1985)..... 6

State v. Bishop, 90 Wn.2d 185, 580 P.2d 259 (1978)..... 6

State v. Couch, 44 Wn. App. 26, 720 P.2d 1387 (1986)..... 8

State v. J.P., 130 Wn. App. 887, 125 P.3d 215 (2005)..... 7, 8

State v. Larson, 184 Wn.2d 843, 365 P.3d 740 (2015)..... 5

State v. Morton, 83 Wn.2d 863, 523 P.2d 199 (1974)..... 7

State v. Salinas, 119 Wn.2d 192, 829 P.2d 1068 (1992) 5

State v. Thomas, 150 Wn.2d 821, 83 P.3d 970 (2004) 6

State v. Thomson, 71 Wn. App. 634, 861 P.2d 492 (1993) 6

State v. Woods, 63 Wn. App. 588, 821 P.2d 1235 (1991) 6

STATUTES

RCW 9A.48.070..... 9

RCW 9A.52.010..... 6

RCW 9A.52.025..... 6

I. APPELLANT'S ASSIGNMENTS OF ERROR

Insufficient evidence supports Mr. Croson's conviction for residential burglary.

II. ISSUE PRESENTED

Admitting the truth of the State's evidence and drawing all reasonable inferences from that evidence, was there sufficient evidence presented from which a rational jury could find all of the essential elements of residential burglary beyond a reasonable doubt?

III. STATEMENT OF THE CASE

The defendant/appellant, Justin Croson, was charged in the Spokane County Superior Court with one count of residential burglary, first degree malicious mischief, and failure to remain at the scene of an accident-attended vehicle. CP 1.

Prior to the commencement of trial, the court conducted a CrR 3.5 hearing, and determined statements made by Mr. Croson to law enforcement would be admissible at the time of trial. CP 17-18; RP 20-51.

The matter proceeded to a jury trial in front of the Honorable John Cooney, and Mr. Croson was found guilty of residential burglary. CP 56; RP 266-67.

Substantive facts.

William Long lived next door to the residence at 18707 East Terrapin Lane in Spokane. RP 122-23. On September 11, 2015, he and another neighbor, Dan Robisch, approached the residence because of suspicious activity. RP 122-24, 139. Mr. Long observed a car and trailer backed up to the front door of the residence. RP 124. The vehicle and trailer did not have license plates, the door to the trailer had been removed, and set aside. RP 126. Subsequently, Mr. Robisch called 911. RP 126-27.

Shortly thereafter, Mr. Croson exited the unoccupied home and appeared in a hurry to leave. RP 127-28, 130, 194. After exiting the home, Mr. Croson placed the gate back on the trailer. RP 129. Mr. Croson and a female companion entered the vehicle, began to drive away, and stopped. RP 131. Mr. Long asked if he could help, and Mr. Croson replied. “No, we’re here checking on the welfare of the residence on behalf of the bank.” RP 131. Mr. Long questioned this story, and Mr. Croson quickly accelerated away, almost striking Mr. Long with the trailer. RP 131-33.

Mr. Long pursued the vehicle on foot. RP 134. Shortly thereafter, Mr. Croson abruptly stopped as Mr. Robisch had blocked the road with his vehicle. RP 135-36. In an attempt to get away, Mr. Croson damaged Mr. Robisch’s pickup. RP 136.

Soon thereafter, Mr. Croson and his companion, Starla Dillard,¹ were stopped by Spokane County Sheriff's deputies. RP 151, 177-79. Deputy Ryan Walter eventually made contact with Mr. Croson and asked him what he was doing at the residence.² RP 155. Mr. Croson responded that he was installing a stove and working on cabinets for Ms. Dillard's employer. RP 155. The deputy remarked that the residence had been vacant for several years, and it had a notice to vacate posted on the door. RP 157. Deputy Walter observed that a rear basement door to the residence had been removed, although the date of its removal was unknown. RP 160, 167-68, 186.

The residence was described as a large home and unoccupied. RP 193-94. Inside the residence, deputies observed that the stove had been placed on a dolly and cabinets had been removed. RP 160. A 2012 eviction notice was also found in the residence. RP 162-63. Specifically, with regard

¹ The property was gated, and Ms. Dillard had the code to gain entry to the residence. RP 165-66.

² Deputy Melville had the opportunity to look into Mr. Croson's vehicle and observed a real estate sign, various tools, hammers, a screwdriver, bolt cutters, and a battery-powered reciprocating saw. RP 181-82.

to the damage in the kitchen area of the residence, Deputy Marc Melville stated:

The center island was in several pieces, the countertop was removed, [and] there were no appliances left on that. It was obvious that one was missing. There was a handcart in the middle of -- well, sort of the middle of the floor that had tie-down straps holding it, a wall oven, to the handcart. There was a -- a wall-mounted microwave in there as well that it appeared to have been attempted to be removed. There were screws missing -- or, I'm sorry, screws were being tamper[ed] with and some of them were kind of stripped out. The molding around the edges was bent and broken in places.

RP 183.

The only scheduled work on the property at the time of the incident was to move a septic system on the property and remove some trash. RP 61. After the incident, the property management company boarded up the back door. RP 63. The residence was in foreclosure and had a foreclosure value of approximately 1.2 million dollars. RP 64, 72. The kitchen area of the residence did not require any repair and it was in good condition before the burglary. RP 68.

Ryan Fuller, a listing agent³ for Wells Fargo, was assigned to the property. RP 52-53, 57. At the time of the incident, Mr. Fuller oversaw all of the work on the property, and gathered bids for the seller regarding the

³ On a foreclosed property, a listing agent coordinates the cleaning of the property and lists it for sale. RP 53-54.

services performed on the property. RP 73. Mr. Fuller did not give permission to either Mr. Croson or Ms. Dillard to enter onto the property or into the residence, or to conduct any work in the kitchen. CP 75-76.

IV. ARGUMENT

A. THERE WAS SUFFICIENT EVIDENCE TO SUPPORT THE CONVICTION FOR RESIDENTIAL BURGLARY. THERE WAS NO EVIDENCE PRESENTED THAT MR. CROSON OR HIS COMPANION, MS. DILLARD, HAD PERMISSION TO ENTER OR REMAIN IN THE UNOCCUPIED RESIDENCE AND DISMANTLE THE KITCHEN.

Mr. Croson challenges the sufficiency of evidence supporting his conviction for residential burglary.

The State must prove all elements of a charged crime beyond a reasonable doubt. *State v. Larson*, 184 Wn.2d 843, 854, 365 P.3d 740 (2015). When a criminal defendant challenges the sufficiency of the evidence, an appellate court determines whether, viewing the evidence in the light most favorable to the State, “any rational trier of fact could have found guilt beyond a reasonable doubt.” *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). The court accepts as true all of the State’s evidence and any inferences that the jury could reasonably have drawn from it. *Id.* at 201. The reviewing court considers both circumstantial and direct evidence as equally reliable and defers to the trier of fact on issues of

conflicting testimony, witness credibility, and the persuasiveness of the evidence. *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004).

To prove that Mr. Croson committed residential burglary, the State had to establish beyond a reasonable doubt that “with intent to commit a crime against a person or property therein” he entered or remained unlawfully in a dwelling other than a vehicle. RCW 9A.52.025. Entry into a residence is unlawful if it is made without invitation, license or privilege. RCW 9A.52.010(2); *State v. Thomson*, 71 Wn. App. 634, 637-38, 861 P.2d 492 (1993). License to enter a premises may be granted only by the person who resides in or otherwise has authority over the property. *See, e.g., State v. Woods*, 63 Wn. App. 588, 821 P.2d 1235 (1991). The finder of fact looks at all the facts and circumstances surrounding the act. *State v. Bergeron*, 105 Wn.2d 1, 19-20, 711 P.2d 1000 (1985). Indeed, “noncriminal reasons for unlawfully entering a dwelling are few.” *State v. Bishop*, 90 Wn.2d 185, 189, 580 P.2d 259 (1978).

1. Unlawful entry.

Mr. Croson asserts there was insufficient evidence to establish he unlawfully entered or remained in the residence. He tends to recap the evidence in his argument in a way that supports his theory that the evidence at trial was insufficient to show he unlawfully entered the residence. This is contrary to the standard of review which requires all facts and reasonable

inferences be considered in a light most favorable to the State, and most strongly against the defendant. *State v. Morton*, 83 Wn.2d 863, 868, 523 P.2d 199 (1974).

Nonetheless, he argues the “realtor acknowledges the possibility that the property owner acted separate and apart from his involvement, and testified only as to what ‘generally’ occurred rather than what expressly occurred in this instance.” *See* Appellant’s Br. at 11. This argument is unpersuasive for several reasons. First, even though it was purely speculative as to whether the owner took any action independent of Mr. Fuller with regard to the home, it belies the point that there was no evidence the “owner” permitted Mr. Croson to enter his home and dismantle the kitchen.⁴ Second, Mr. Fuller testified that he specifically did not give Mr. Croson or Ms. Dillard permission to enter or remain in the residence.⁵

⁴ It is not necessary for the owner of the residence to testify that Mr. Croson did not have permission to enter or remain in the house to establish the burglary. *See State v. J.P.*, 130 Wn. App. 887, 894, 125 P.3d 215 (2005).

⁵ Mr. Croson’s argument that no listing contract was entered into evidence outlining Mr. Fuller’s duties and responsibilities regarding the property is equally unpersuasive. Mr. Fuller testified to his responsibilities and obligation with respect to the property, absent entering any contract into evidence. RP 53, 60-61. Mr. Croson has provided no authority that a listing contract is necessary to establish the essential elements of residential burglary. The State met its burden of production by producing evidence, which, if the jury believed, supported the elements of residential burglary.

There is no evidence otherwise that Mr. Croson was given permission to enter or remain in the residence. Third, the jury was provided this information and rejected it. This claim fails.

2. Sufficiency of the evidence.

Circumstantial evidence alone can be sufficient to establish the element of unlawful entry. *State v. J.P.*, 130 Wn. App. 887, 893, 125 P.3d 215 (2005); *State v. Couch*, 44 Wn. App. 26, 720 P.2d 1387 (1986).

In this case, there is sufficient evidence of a residential burglary. Mr. Croson was found *exiting* the home with his companion. He had no ownership interest in the dwelling, and he did not have permission to be inside the building or to conduct any work in the residence.

Moreover, there was sufficient evidence of intent to commit a crime. The stove had been removed and was resting on a dolly for transport, cabinets had been removed, and there was evidence the microwave had been tampered with, indicating an attempt to remove it from its location in the kitchen. A reasonable jury making rational inferences could have found beyond a reasonable doubt that Mr. Croson's unlawful entry into the house and his intent was criminal in nature. First, a jury could have inferred that the removal of the license plates from the vehicle and trailer was an attempt to mask the identity of the vehicle at or leaving the crime scene. Second, the door to the trailer had been removed, and a jury could infer this allowed for

access and placing a large item, i.e., a stove, or other large kitchen items into the trailer. Third, there was no evidence Mr. Croson had permission to enter into or remain in the residence, other than his self-serving statement to Mr. Long, before he promptly fled the crime scene. Fourth, it may logically be inferred that his plan to remove the property from the kitchen and load it into the trailer was abruptly interrupted by Mr. Long and Mr. Robisch. Finally, Mr. Croson admitted being inside the residence.

Mr. Croson additionally argues that the jury's verdict of not guilty regarding the first-degree malicious mischief established that he had no unlawful intent while inside the building. Appellant's Br. at 12. This argument is not well taken. The most likely reason he was found not guilty of the first-degree malicious mischief charge was because the State did not specifically establish Mr. Croson caused damage inside the residence exceeding five thousand dollars, which was necessary to prove the first degree malicious mischief at the time of trial. *See* RP 63-64; RCW 9A.48.070(1)(a). This claim has no merit.

V. CONCLUSION

There is sufficient evidence from which a reasonable juror could infer that Mr. Croson was not licensed, invited or privileged to enter the house and dismantle the kitchen. The evidence was sufficient to support the

conviction of residential burglary. The State requests this Court affirm the conviction.

Dated this 27 day of February, 2017.

LAWRENCE H. HASKELL
Prosecuting Attorney



Larry D. Steinmetz #20635
Deputy Prosecuting Attorney
Attorney for Respondent

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

STATE OF WASHINGTON,

Respondent,

v.

JUSTIN CROSON,

Appellant.

NO. 34527-1-III

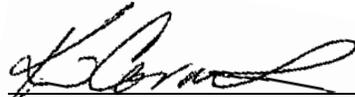
CERTIFICATE OF MAILING

I certify under penalty of perjury under the laws of the State of Washington, that on February 27, 2017, I e-mailed a copy of the Brief of Respondent in this matter, pursuant to the parties' agreement, to:

John C. Julian
john@jcjulian.com

2/27/2017
(Date)

Spokane, WA
(Place)


(Signature)

SPOKANE COUNTY PROSECUTOR

February 27, 2017 - 8:34 AM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 34527-1
Appellate Court Case Title: State of Washington v Justin Wayne Croson

The following documents have been uploaded:

- 345271_20170227083257D3104013_9395_Briefs.pdf
This File Contains:
Briefs - Respondents
The Original File Name was Croson Justin 345271 Resp br LDS.pdf

A copy of the uploaded files will be sent to:

- john@jcjulian.com

Comments:

Sender Name: Kim Cornelius - Email: kcornelius@spokanecounty.org

Filing on Behalf of: Larry D. Steinmetz - Email: lsteinmetz@spokanecounty.org (Alternate Email: scpaappeals@spokanecounty.org)

Address:

1100 W Mallon Ave
Spokane, WA, 99260-0270
Phone: (509) 477-2873

Note: The Filing Id is 20170227083257D3104013