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NO. 352692

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

STATE OF WASHINGTON

Respondent

vs.

EUGENIA ANN REUTER,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FROM SPOKANE COUNTY
The Honorable Linda G. Tompkins

AMENDED APPELLANT'S OPENING BRIEF

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I. ASSIGNMENTS OF ERROR

1. The State failed to prove every element of residential burglary beyond a reasonable doubt.

2. The State's evidence did not prove the defendant intended to commit a crime when she mistakenly entered the trailer.

II. ISSUE PRESENTED

Did the State's evidence prove residential burglary beyond a reasonable doubt? (Assignments of Error 1 & 2)

III. STATEMENT OF THE CASE

Christopher Berentson (Mr. Berenston) returned home from work and found Eugenia Ann Reuter (Ms. Reuter) inside his trailer. Ms. Reuter had mistakenly entered Mr. Berenston's trailer, believing it belonged to her friend, John, whom she had visited there several times before. 3/17/17 RP 388; 1/17/17 RP 206-07.

John worked for the same excavating company as Mr. Berentson. Although the two never worked together, Mr. Berentson knew a John lived in a similar looking trailer, situated in the same spot, at the very back of the company's property, as his trailer. 1/17/17 RP 194; 177-80.

Out front on the property were two shops and two other trailers used for offices. The property was surrounded by an 8-foot tall, barbed wire fence with a sliding gate. The gate was the only entrance to the property, and it was generally kept open during business hours. 1/17/17 RP 177-80; 1/17/17 RP 215-16.

About 15 to 20 people worked on site, at the property, during day.
1/17/17 RP 177-80; 1/17/17 RP 215-16. Mr. Berentson did not work at the property. He worked for the company as a laborer, off site, at various locations. But he lived on the property, with his dog, and functioned as after hour security. 1/17/17 RP 167; 181-82.

The day Mr. Berentson found Ms. Reuter in his trailer, he had just returned home from work and noticed a screen on the ground and the window open. 1/17/17 RP 182. He looked through the window and saw Ms. Reuter sitting on his bed. 1/17/17 RP 218. She looked as if she had been asleep and had just been roused from her rest. 1/17/17 RP 218. She was wearing a pair of black sweatpants and the BMW T-shirt a co-worker had found and had given to Mr. Berentson. 1/17/17 RP 190; 209. His dog was laying on the couch, neither fazed nor agitated by Ms. Reuter's presence in the trailer. 1/17/17 RP 187.

Mr. Berentson confronted Ms. Reuter, through the window, and asked what she was doing there. According to Mr. Berentson, Ms. Reuter told him she was there to see George and asked, "Should I not be here?" 1/17/17 RP 243. Mr. Berentson walked around the trailer to open the door and noticed an empty beer can, on the ground out front, under a step. 1/17/17 RP 190.

Before he could reach the door, Ms. Reuter had already unlocked the dead bolt and opened it. 1/17/17 RP 187; 219. Mr. Berentson told Mr. Reuter he was calling law enforcement. Ms. Reuter became frantic, said she did not need this right now, and took off running towards the gate. 1/17/17 RP 268; 1/17/17 RP 191.

Mr. Berentson noticed the gate was slightly ajar. So, he yelled for a truck driver, who was near the gate, to close it. 1/17/17 RP 192; 194. The driver closed the gate and to Mr. Berentson's surprise, Ms. Reuter scaled the 8-foot barbed wire fence, and ran down the street. 1/17/17 RP 194-95.

Mr. Berentson called 9-1-1 and ran after her. All the while he was on the phone with 9-1-1, he pursued Ms. Reuter from a distance. He described for the 9-1-1 operator what Ms. Reuter was wearing and kept the operator apprised of where she was headed. 1/17/17 RP 198.

A responding officer noticed Ms. Reuter, who matched the description Mr. Berentson had given the 9-1-1 operator, walking down the street. The officer pulled over and stopped her. 1/17/17 RP 238-39. Mr. Berentson, who was still in pursuit, caught up to the officer, pointed to Ms. Reuter, and identified her as the woman he found inside his trailer. 1/17/17 RP 241. The officer suspected Ms. Reuter was under the influence of something. 1/17/17 RP 111; 119; 135. He asked for her name and birth date. She told him her name was Babette Grady and her birth date was April 30, 1966. 1/17/17 RP 239-40.

The officer placed Ms. Reuter under arrest and advised Ms. Reuter of her Miranda rights. Ms. Reuter told the officer she understood her rights and agreed to answer his questions. 1/17/17 RP 240-43. The officer asked if she had been in Mr. Berentson's trailer and she told him she had been. When the officer asked why, she told him she was there to see George, believing John's confidentiality was stake, and queried, something like, "Should I not be there?" 1/17/17 RP 243; 3/17/17 RP 388.

The officer noticed a sizeable tear in the black sweat pants Ms. Reuter was wearing and blood on her left, from “a pretty good cut.” The officer called for medical assistance to treat Ms. Reuter’s hand. 1/17/17 RP 244; 259.

After medics treated Ms. Reuter’s cut, the officer transported her back to Mr. Berentson’s trailer. 1/17/17 RP 248. Mr. Berentson had already returned home. 1/17/17 RP 245. Ms. Reuter stayed in the patrol car while the officer investigated the area. Outside the trailer, the officer noticed an empty can under the front step. 1/17/17 RP 269. And Mr. Berentson showed the officer where the screen had been removed from the window. 1/17/17 RP 248.

Inside the trailer, the officer saw clothes strewn around, like they had been rummaged through, several empty beer cans, and, partially eaten 5-month-old chicken. 1/17/17 RP 251-52; 206. Valuables like a Blu-ray player, 3D television, watches, and pocket change were untouched. 1/17/17 RP 215-17.

The officer then looked around the gate line. He found a piece of black fabric that appeared to be sweat pant material, caught in the barbed wire. 1/17/17 RP 253-54. He collected the material, along with the BMW T-shirt and Ms. Reuter’s sweat pants as evidence. 1/17/17 RP 257. As they were about to leave, Ms. Reuter looked over at Mr. Berentson and yelled from the patrol car, “I’m sorry.” 1/17/17 RP 261.

The officer drove Ms. Reuter to hospital for further treatment on her hand. 1/17/17 RP 261. While she was being treated, the officer ran the name she gave him, Babette Grady, in a booking system. 1/17/17 RP 262. A Babette Grady,

alias Babette Howard, appeared in the system, but the booking photo was not of Ms. Reuter. 1/17/17 RP 240; 263.

The officer confronted Ms. Reuter with the discrepancy. She readily admitted she was not Babette Grady and told the officer she only lied because she did not want to get stuck with the hospital bill. 1/17/17 RP 125.

The State charged Ms. Reuter, with residential burglary, third-degree theft, and making a false statement. CP 9-10. A jury found her guilty on all charges. 1/18/17 RP 341; CP 109, 110, 149. The trial court sentenced Ms. Reuter to 63 months in prison, the low-end of the standard range, with credit for time served. 1/18/17 RP 386; CP 181-195. Ms. Reuter filed a notice to appeal her convictions. CP 196-223.

IV. ARGUMENT

WITHOUT SUFFICIENT EVIDENCE TO PROVE MS. REUTER INTENDED TO COMMIT A CRIME WHEN SHE ENTERED MR. BERENTSON'S TRAILER BY MISTAKE, THE STATE COULD NOT HAVE MET ITS BURDEN TO PROVE RESIDENTIAL BURGLARY BEYOND A REASONABLE DOUBT.

Analysis

A criminal defendant may always challenge the sufficiency of the evidence used to support a conviction for the first time on appeal. State v. Hickman, 135 Wn.2d 97, 103 n. 3, 954 P.2d 900 (1998) (noting that “[a]ppeal is the first time sufficiency of evidence may realistically be raised”). The standard of review for a such a challenge is whether, viewing the evidence “in a 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. Sweany, 174 Wn. 2d 909, 914, 281

P.3d 305, 307 (2012), citing, State v. Randhawa, 133 Wn.2d 67, 73, 941 P.2d 661 (1997) (citation omitted) (internal quotation marks omitted) (quoting State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980)).

The State must prove all essential elements of a charged crime beyond a reasonable doubt, In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970). The essential elements of residential burglary include “enter[ing] or remain[ing] unlawfully in a dwelling other than a vehicle,” “with intent to commit a crime against a person or property therein.” See RCW 9A.52.025. A person enters or remains unlawfully in a building “when he or she is not then licensed, invited, or otherwise privileged to so enter or remain.” RCW 9A.52.010(5). And a person acts with intent to commit a crime “when he or she acts with the objective or purpose to accomplish a result which constitutes a crime.” RCW 9A.08.010(1)(a).

Here, the State had to prove every element of residential burglary, including intent. Intent may be inferred from conduct. State v. Varga, 151 Wn.2d 179, 201, 86 P.3d 139 (2004). However, generally, inferences are disfavored in criminal law. State v. Cantu, 156 Wn.2d 819, 826, 132 P.3d 725 (2006). A jury may, however, infer the defendant’s specific criminal intent from his or her conduct if it is not “‘patently equivocal’ “and instead “ ‘plainly indicates such intent as a matter of logical probability.’” State v. Bergeron, 105 Wn.2d 1, 20, 711 P.2d 1000 (1985) (quoting State v. Bergeron, 38 Wn.App. 416, 419, 685 P.2d 648 (1984), aff’d, 105 Wn.2d 1)); see State v. Lewis, 69 Wn.2d 120, 124, 417 P.2d 618 (1966).

Courts have found sufficient evidence to infer intent to commit a crime where a defendant entered surreptitiously and took flight upon discovery, State v. Couch, 44 Wn.App. 26, 32, 720 P.2d 1387 (1986); where a defendant was aware the house was occupied by a person he did not know, he forced open the kitchen door, and fled upon being discovered, State v. Grayson, 48 Wn.App. 667, 671, 739 P.2d 1206, review denied, 109 Wn.2d 1008 (1987); and, where a defendant's conduct "plainly" indicated his criminal intent where he broke a basement window at 3:15 a.m. and fled, State v. Bergeron, 105 Wn.2d 1, 20, 771 P.2d 1000 (1985).

On the other hand, courts have overturned convictions where the evidence presented was just not enough for any rational jury to have inferred intent. For example, in State v. Woods, 63 Wn.App. 588, 592, 821 P.2d 1235 (1991), Division One of this Court reversed a juvenile's adjudication, because the evidence presented to prove intent was tenuous, at best.

Woods was adjudicated of second degree burglary of his friend's mother's apartment. She had revoked her son's privilege to enter her apartment unless she was at home and she had taken his key. One morning that the mother stayed home from work sick, Woods and his friend kicked in the front door and were quickly confronted by the mother.

At trial, Woods explained he and his friend were on their way to Southcenter when it began raining and that they stopped at his friend's mother's house to get a jacket and bus fare. This court reversed the adjudication and found the friend's belongings were still in the house. Even if he were actually

going after money, there is no evidence that he had no money of his own in the house. Similarly, their fleeing when the friend's mother yelled at them can as well be explained by fear of her anger at their forceful entry. In sum, inference of intent to commit a crime does not flow as a matter of logical probability from these circumstances. Woods, 63 Wn.App. at 591–92.

Similarly, in State v. Sandoval, 123 Wn.App. 1, 3, 94 P.3d 323 (2004), an intoxicated Sandoval kicked in the front door of a stranger's home in the middle of the night, went inside, and shoved the occupant. A jury found Sandoval guilty of burglary, but this Court reversed because the State failed to show that Sandoval entered the home intending to commit another crime. Sandoval, 123 Wn.App. at 5. This Court reasoned Sandoval loudly kicked open the door and shoved the stranger only when the stranger confronted him. Sandoval, 123 Wn.App. at 5. And, Sandoval did not know the homeowner, and he was surprised to see anybody home. Sandoval, 123 Wn.App. at 5.

Like Woods, and Sandoval, Ms. Reuter did not have permission to enter Mr. Berentson's trailer. But the mere fact she entered his trailer unlawfully, did not support an inference she did so, with an intent to commit a crime. Ms. Reuter did not attempt to conceal her presence on the property. Like Sandoval who loudly kicked open a door, Ms. Reuter walked on a job site, during work hours, when generally there were anywhere from 15 to 20 people working, and strode to the very back of the property, to where she believed John's trailer still stood.

1/17/17 RP 177-80; 1/17/17 RP 215-16.

And like Woods, nothing about Ms. Reuter's actions clearly indicated she entered the trailer intending to commit a crime once inside. Totally believing she was at friend's trailer, she felt comfortable enough to don his clothes, help herself to whatever was in the fridge, and take a nap, all in the presence of a dog. At some point during her stay, she even enjoyed a beer outside. 1/17/17 RP 218; 187; 190; 209; 269. And when she went back inside the trailer, presumably to take the nap, she locked herself in. 1/17/17 RP 187; 219.

What's more, she did not disturb anything of value in the trailer. Mr. Berentson's Blu-ray player, television, watches, and pocket change were exactly where he left them. 1/17/17 RP 215-17.

When asked why she was at the trailer, believing she could be there, she queried, in reply, "Should I not be there?" 1/17/17 RP 243. She realized the gravity of her mistake, as she sat in back of the patrol car, and she apologized to Mr. Berentson. 1/17/17 RP 261. Even in the light most favorable to the State, such facts do not prove Ms. Reuter intended to commit a crime.

V. CONCLUSION

We ask this court to reverse Ms. Reuter's residential burglary conviction. Without sufficient evidence to prove she entered Mr. Berentson's trailer with the intent to commit a crime, the conviction cannot stand.

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DECLARATION OF SERVICE

I declare under penalty and perjury of the laws of Washington State that on **Monday, February 12, 2018**, I filed this **AMENDED APPELLANT'S OPENING BRIEF** with Division Three Court of Appeals and served copies of the same to the following counsel of record and/or other interested parties:

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