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COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

EUGENIA REUTER, RESPONDENT

APPEAL FROM THE SUPERIOR COURT
OF SPOKANE COUNTY

BRIEF OF RESPONDENT

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I. ISSUE PRESENTED

Was there sufficient evidence to establish the defendant intended to or did commit a crime against property while inside a residence to support the conviction for residential burglary?

II. STATEMENT OF THE CASE

Procedural history.

Eugenia Reuter was charged by information in the Spokane County Superior Court with residential burglary, third-degree theft, and making a false or misleading statement to a public servant. CP 9-10. Ms. Reuter was convicted as charged on January 18, 2017. With an offender score of “9+” on the residential burglary, Ms. Reuter was sentenced to low standard range sentence of 63 months. CP 186. This appeal timely followed.¹

Substantive facts.

Christopher Berentson lived at 2020 North Dollar Road in the Spokane Valley. RP 167-68. Mr. Berentson owned and lived alone in a 28-foot gooseneck, fifth wheel trailer on some commercial property, which housed an excavating business, Continental Contracting.² RP 168-69, 182.

¹ Ms. Reuter does not assign error to the convictions of third-degree theft or making a false or misleading a public servant.

² Mr. Berenston had the trailer moved onto the lot in May of 2016. RP 175. During that period, Mr. Berenston was employed by Continental Contracting. RP 168.

The trailer had side and back windows and one exterior door, which had a deadbolt lock and doorknob lock. RP 170. It had typical amenities, such as a kitchen, dining area, sleeping area, bathroom, and a partial living room with a couch and a chair. RP 171-72. Mr. Berentson also had clothing and electronics inside the trailer. RP 172.

The commercial property, on which the trailer sat, was a one-acre gravel lot, with two shops (mechanic and painting), two mobile trailers, a commercial building, and machinery, which was enclosed by two eight-foot-high gates and surrounded by an eight-foot-high chain link fence, topped with three-stands of sharp barbed/security wire. RP 178-79, 215, 246-48. The entry point was posted with a two-foot by three-foot sign, which stated, "Visitors must check in with the office," and it was also posted with multiple no-trespassing signs. RP 180. After hours, a key was necessary to enter onto the property. RP 181.

Mr. Berentson was at a worksite in Coeur d'Alene on September 30, 2016, for approximately ten hours, and returned to the lot around 6:20 p.m. RP 183, 185. Mr. Berentson had locked the trailer door when he left for work. RP 187. When Mr. Berentson approached his trailer, he observed a screen had been removed from a rear window on the trailer, the window

was open, and the screen was resting on the ground.³ RP 183-84. That window was not visible from the public roadway. RP 184. Mr. Berentson peered through a window and observed Ms. Reuter sitting on the bed, inside the trailer. RP 186. Mr. Berentson had not previously met or seen Ms. Reuter. RP 186, 188-89. As Mr. Berentson peered through window, Ms. Reuter identified herself as “Debra,” and asked Mr. Berentson why she was not allowed in the trailer.⁴ RP 186. She also asked if she could stay in the trailer. RP 189. Ms. Reuter was wearing Mr. Berentson’s t-shirt when he arrived at the trailer. RP 190.

Mr. Berentson told Ms. Reuter he was going to call the police; Ms. Reuter became frantic, stating, “she did not need this right now,” and ran quickly away from the trailer toward the front gate and over the fence. RP 191-92, 194-95. Ms. Reuter traveled south on Dollar Road, crossed over to Trent Avenue, and entered a tavern, Daley’s Cheap Shots. RP 197. After several minutes, Mr. Berentson observed Ms. Reuter exit the bar, walk westbound on Trent to Fancher Road, and then southbound on Fancher. RP 200-01.

³ The entry door had been locked by Mr. Berentson when he left for work, remained locked when he returned to the trailer, and it was subsequently unlocked by Ms. Reuter when she exited the trailer. RP 187, 219, 225.

⁴ Ms. Reuter appeared to have recently awakened. RP 218.

After twenty minutes, Mr. Berentson observed a deputy contact Ms. Reuter near Broadway Avenue. RP 202-03. Mr. Berentson identified Ms. Reuter and his t-shirt to the deputy. RP 203. He also showed the deputy where Ms. Reuter had climbed the fence. RP 210. A two-inch black piece of cloth was observed entangled in the barb wire on the fence. RP 211, 253. The black patch of clothing matched a patch of sweatpants material missing from Ms. Reuter's pant leg. RP 254-56.

When Mr. Berentson's returned to his trailer, it was "trashed." RP 205. Paperwork placed into a box was strewn, Ms. Reuter had eaten some chicken and scattered food, and Mr. Berentson's clothing was in disarray. RP 205-07, 213, 227-28, 251. Ms. Reuter also drank Mr. Berentson's rum and beer inside the trailer. RP 190, 207-08. Before being taken to jail, Ms. Reuter attempted to apologize to Mr. Berentson. RP 211-12.

When Deputy James Hall contacted Ms. Reuter on the roadway, she identified herself as "Babette Grady."⁵ RP 239-40. Ms. Reuter admitted she had been inside Mr. Berentson's trailer. RP 243. She remarked that she was

⁵ The defendant's true identity was Eugenia Reuter. RP 263.

at the trailer to see a person named “George.”⁶ RP 243. The deputy observed a recent large cut and fresh blood on Ms. Reuter’s hand. RP 244.

III. ARGUMENT

THERE WAS SUFFICIENT EVIDENCE TO SUPPORT THE DEFENDANT’S CONVICTION FOR RESIDENTIAL BURGLARY.

When considering whether sufficient evidence supports a criminal conviction, this Court must “view the evidence in the light most favorable to the prosecution and determine whether any rational fact finder could have found the essential elements of the crime beyond a reasonable doubt.” *State v. Andy*, 182 Wn.2d 294, 303, 340 P.3d 840 (2014). When the sufficiency of evidence is challenged in a criminal case, an appellate court draws all reasonable inferences from the evidence in the State’s favor and interpret them most strongly against the defendant. *State v. Partin*, 88 Wn.2d 899, 907, 567 P.2d 1136 (1977). Circumstantial evidence and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). Evidence is sufficient to support a conviction if, 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. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980).

⁶ Another gooseneck travel trailer was parked on the lot. The first name of occupant of that trailer was “John.” RP 175-76. Mr. Berentson was not aware of any employee at Continental Contracting named “George.” RP 176-77.

Appellate courts defer to the jury on questions of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence.

State v. Thomas, 150 Wn.2d 821, 874, 83 P.3d 970 (2004).

Our Supreme Court has stated:

It is the province of the jury to weigh the evidence, under proper instructions, and determine the facts. It is the province of the jury to believe, or disbelieve, any witness whose testimony it is called upon to consider. If there is substantial evidence (as distinguished from a scintilla) on both sides of an issue, what the trial court believes after hearing the testimony, and what this court believes after reading the record, is immaterial. The finding of the jury, upon substantial, conflicting evidence properly submitted to it, is final.

State v. Williams, 96 Wn.2d 215, 222, 634 P.2d 868 (1981).

The defendant contends the State presented insufficient evidence to support her conviction for residential burglary. More specifically, Ms. Reuter contends the State did not establish she intended to commit a crime while inside the trailer. RCW 9A.52.025 establishes the elements of the crime of residential burglary. The statute reads:

A person is guilty of residential burglary if, with intent to commit a crime against a person or property therein, the person enters or remains unlawfully in a dwelling other than a vehicle.

RCW 9A.52.025(1); CP 132-33 (definitional and elements instructions).

There is sufficient evidence from which a jury could find Ms. Reuter entered or remained in the residence with intent to commit a crime. Indeed,

the State proved more than Ms. Reuter's presence in Mr. Berentson's residence. Without permission, Ms. Reuter gained entry into the locked residence by removing a screen and crawling through a window. While remaining inside the residence, and without Mr. Berentson's permission, Ms. Reuter consumed Mr. Berentson's alcohol, ate his food, appropriated a t-shirt, and rummaged through his personal papers, presumably searching for something of value such as money or a credit card.

Even though the residential burglary statute only requires the State prove the *intent* to a commit a crime,⁷ there was direct evidence that Ms. Reuter, at a minimum, intended to and did commit the crime of third-degree theft while remaining inside the residence. Though Ms. Reuter asserts on appeal that there was no evidence that she intended to commit a crime while inside the residence, she was *convicted* of the crime third-degree theft while inside Mr. Berentson's residence.

Despite Ms. Reuter's self-serving statement to the deputy that she was at the residence to meet with a person named "George," there was *no* evidence that "George" had the authority or gave Ms. Reuter permission to enter the residence through a window or remain unlawfully in the residence.

⁷ At trial, the State did not rely on a permissive inference instruction to establish that Ms. Reuter intended to commit a crime against a person or property while inside the residence.

Only a person who resides in or otherwise has authority over the premises may grant a license to enter or remain. *State v. Grimes*, 92 Wn. App. 973, 978, 966 P.2d 394 (1998).

Ms. Reuter's reliance on *State v. Woods*, 63 Wn. App. 588, 592, 821 P.2d 1235 (1991), is unpersuasive. In *Woods*, two juveniles went to an apartment where one had previously lived and his mother caught the two boys trying to kick in the door. *Id.* at 589. The boys claimed they went to the apartment to get a rain jacket, they did not steal anything else, and many of the one boy's personal belongings were still in the apartment. *Id.* at 589-90. Division One of this Court found it highly likely that the boys fled the scene because they feared the mother's anger rather than because they intended to commit a crime. *Id.* at 591.

Although Division One held that the defendant entered the apartment unlawfully, it found the evidence insufficient to support an inference of criminal intent necessary to support the residential burglary conviction. *Id.* at 591-92.

Likewise, *State v. Sandoval*, 123 Wn. App. 1, 94 P.3d 323 (2004), is not helpful. There the defendant kicked open an apartment door. The occupant confronted him and Sandoval gave him a shove. Sandoval was convicted of first degree burglary. This Court reversed the conviction on

appeal. This Court concluded the evidence did not support a logical inference that he intended to commit a crime inside the apartment.

[T]here is no fact, alone or in conjunction with others, from which entering with intent to commit a crime more likely than not could flow. The parties were strangers. The assault was a shove after entering. Mr. Sandoval did not try to sneak in. He was not wearing burglary-like apparel or carrying burglary tools. He did not attempt to flee. [The victim] noted: “It’s not like he was in a hurry to get out.” Mr. Sandoval did not try to take any of [the victim]’s property or confess to doing so. The inference of intent to commit the crime of first degree burglary does not then flow more probably than not from the breaking and entering here.

Id. at 5-6.

Certain facts that were key in *Sandoval* are not present here. In *Sandoval*, the defendant was very intoxicated, he did not know anyone was in the apartment, and he assaulted the resident only after he was confronted.

Id. at 3. None of Sandoval’s actions clearly indicated that he entered the apartment intending to commit a crime once inside. In contrast, here, there was no evidence Ms. Reuter was intoxicated, she snuck into the locked trailer through a window, she fled the scene once she was advised police were going to be called, she gave a false name to Mr. Berenston and to the deputy, and she committed the crime of theft once inside the trailer.

Consequently, there is sufficient evidence from which a jury could find Ms. Reuter entered or remained in the residence with intent to commit a crime.

IV. CONCLUSION

For the reasons stated herein, the State requests this Court affirm the judgment and sentence.

Respectfully submitted this 14 day of March, 2018.

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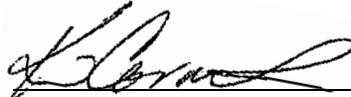
CERTIFICATE OF MAILING

I certify under penalty of perjury under the laws of the State of Washington, that on March 14, 2018, I e-mailed a copy of the Brief of Respondent in this matter, pursuant to the parties' agreement, to:

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3/14/2018
(Date)

Spokane, WA
(Place)



(Signature)

SPOKANE COUNTY PROSECUTOR

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