FILED
Court of Appeals
Division III
State of Washington
5/23/2019 8:50 AM

No. 36275-2-III
IN THE COURT OF APPEALS
OF THE
STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,
Respondent,

v.

TARESSA MAE MARCHAND,
Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR OKANOGAN COUNTY
The Honorable Christopher Culp

BRIEF OF RESPONDENT

Arian Noma
Prosecuting Attorney
237 4th Avenue N.
P.O. Box 1130
Okanogan County, Washington
509-422-7280 Phone
509-422-7290 Fax

TABLE OF CONTENTS

A. Table of Authorities.....iii, iv

B. Statement of the Case.....1

C. Arguments.....3

1. The evidence was more than sufficient to find Ms. Marchand guilty of Criminal Trespass in the First Degree in Count 1.....3

2. The jury found Ms. Marchand guilty of Theft in the Third Degree and Possession of Stolen Property in the Third Degree which allowed the jury to infer the conviction of Criminal Trespass in the First Degree.....8

3. The jury instruction which stated that a building may consist of a fenced area under Criminal Trespass in the First Degree was a harmless error.....11

D. Conclusion.....13

TABLE OF AUTHORITIES

United States Supreme Court Decisions

Jackson v. Virginia,
443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979).....4

Neder v. United States,
527 U.S. 1, 19, 119 S. Ct. 1827, 144 L. Ed. 2d 35 (1999).....12

Washington Supreme Court Decisions

State v. Brown, 50 Wash. App. 873, 751 P.2d 331 (1988)...4, 5, 6, 7

State v. Brown,
147 Wn.2d 330, 339, 58 P.3d 889 (2002).....11, 12

State v. Cardenas-Flores,
189 Wash. 2d 243, 401 P.3d 19 (2017).....8

State v. Gentry,
125 Wn.2d 570, 597, 888 P.2d 1105 (1995).....4

State v. Joseph,
189 Wash. 2d 645, 405 P.3d 993 (2017).....4, 5, 6, 7

State v. Rice,
102 Wn.2d 120, 123, 683 P.2d 199 (1984).....11

State v. Salinas.
119 Wn.2d 192, 201, 829 P.2d 1068 (1992).....4

Washington State Appellate Court Decisions

State v. Hooper,
No. 70641-1-I, 2014 Wash. App. LEXIS 2365
(Ct. App. Sep. 29, 2014) 5

State v. Weaville,
162 Wn. App. 801, 815, 256 P.3d 426 (2011).....12

Statutes

RCW 9A.52.070.....3, 4, 9

RCW 9A.04.110 (5).....5

RCW 9A.56.050.....9

RCW 9A.56.170.....9

RCW 9A.52.080.....5

Other

11 Wash. Prac. Pattern Jury Instr. Crim. WPIC 2.05
(4th Ed. 2016).....12

STATEMENT OF THE CASE

Clint Ames owns a rural piece of property located in Okanogan County. (RP 240) On his real property exists his main house with a bedroom, kitchen, and bathroom, as well as three outbuildings mainly used for storage of personal belongings. (RP 241-246). On March 18th, 2018, Taressa Mae Marchand entered Ames' fenced property, his home, and his three outbuildings without permission (RP 244, 245, 247, 251, 402, 408, 402-411).

Ms. Marchand entered through an opening in the fence located directly next to the padlocked gate. (RP 245, 404). She then proceeded further onto Mr. Ames' property and entered his main house where she went through his home using a hatchet she found inside. (RP 405). She testified to using the hatchet to "clear" the home and the surrounding outbuildings. (RP 407). Along with clearing the outbuildings, she testified to taking and eating snacks (licorice, candy bars, fruit snacks, and juice) located in both the house and the outbuildings that belonged to Mr. Ames. (RP 248, 261, 265, 268, 385, 407, 410, 411). She testified that she specifically took snacks from the outbuildings and brought them into the house where she planned to stay. (RP 407). Additionally, Ms. Marchand testified to starting a fire in Mr. Ames' home and that she stayed overnight,

into the morning. (RP 385, 408). She testified that she didn't sleep at night due to fear of being somewhere unfamiliar, so she slept in Mr. Ames' home throughout the day and proceeded to straighten up the home as much as she could before departing from the property. (RP 408).

Once Ms. Marchand left the property and was arrested, multiple physical pieces of property were located on her body and in her abandoned vehicle which were previously located inside Mr. Ames' home and his outbuildings. (RP 407, 408, 410). These items included Mr. Ames' hammer, antique binoculars, batteries, and multiple items of food. (Ex. 27A, 27B, 29, 30, and 31; RP 407, 411, 416). In her testimony, and in accordance with Mr. Ames' testimony, she admitted that Mr. Ames didn't give her permission to be there, he didn't give her permission to stay there, and he didn't give her permission to burn his wood, cook his food, or spend the night at his house. (RP 245, 408).

The jury was instructed on the crime of Second Degree Burglary for Count 1. (CP 373; RP 443-444). The instruction specified that to find Ms. Marchand guilty on this count, the jury had to find she "entered or remained unlawfully in a building, to wit:

fenced area surrounding Clint Ames Property. . . ." (CP 373; RP 443-444).

The jury was also instructed on the lesser included offense of Criminal Trespass in the First Degree for Count 1, which alleged the "defendant knowingly entered or remained in a building to wit: fenced area surrounding Clint Ames' property . . . ." (CP 381; RP 445-446). A jury found Ms. Marchand guilty of the lesser included offenses of Criminal Trespass in the First Degree (Counts 1, 3, 6, and 8). (CP 417-418, 452; RP 497-500). She was also found guilty of Theft in the Third Degree (Count 5), and Possession of Stolen Property in the Third Degree (Count 10). (CP 417-418, 452; RP 497-500).

Ms. Marchand timely appealed her conviction in Count 1.

ARGUMENTS

1. The evidence was more than sufficient to find Ms. Marchand guilty of Criminal Trespass in the First Degree in Count 1.

The trial court did not err in convicting Ms. Marchand of Criminal Trespass in the First Degree in Count 1 because the evidence presented at trial was more than sufficient to convict. Specifically, the testimonial evidence presented during trial would allow, and indicated that any rational trier of fact could have found that Ms. Marchand knowingly entered and remained unlawfully in Mr. Ames'

building located inside his fenced property, therefore violating RCW 9A.52.070, the Criminal Trespass in the First Degree statute.

When reviewing a challenge to the sufficiency of the evidence, we must determine "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979). All reasonable inferences are drawn in favor of the verdict and interpreted most strongly against the defendant. *State v. Gentry*, 125 Wn.2d 570, 597, 888 P.2d 1105 (1995). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." *State v. Salinas*. 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

A person is guilty of Criminal Trespass in the First Degree if he or she knowingly enters or remains unlawfully in a building. (RCW 9A.52.070). In *State v. Brown,* the court redefined what could be considered a "building" under the First Degree Criminal Trespass statute, and made the conclusion that the legislature clearly intended to exclude fenced areas from the definition of "building." *State v. Brown*, 50 Wash. App. 873, 751 P.2d 331 (1988). Affirming this decision, the court in *State v. Joseph* concluded that First Degree

Criminal Trespass is restricted to unlawful entries into ordinary "buildings." State v. Joseph, 189 Wash. 2d 645, 405 P.3d 993 (2017). The court concluded that the more severe charge (a gross misdemeanor) is justified by the increased likelihood of trespass into a home or business. Id. All other trespasses fall under the term "premises" and are treated as simple misdemeanors. RCW 9A.52.080. This includes trespasses into premises that are "buildings" broadly conceived, but are not ordinarily thought of as buildings—as relevant in *Joseph*, vehicles; as relevant in *Brown,* fenced areas. *Brown*, 50 Wn. App. At 878; *Joseph,* 189 Wn.2d at 652-5; See also RCW 9A.04.110(5). In *State v. Hooper* the court stated that if a person knowingly enters or remains unlawfully in a building, he is guilty of First Degree Criminal Trespass, which by definition cannot be Second Degree Criminal Trespass. *State v. Hooper*, No. 70641-1-I, 2014 Wash. App. LEXIS 2365 (Ct. App. Sep. 29, 2014).

In the instant case, the evidence was more than sufficient for the jury to find Ms. Marchand guilty of Criminal Trespass in the First Degree in Count 1. On March 18th, 2018 Ms. Marchand not only snuck onto Mr. Ames' fenced property through a hole by his locked gate, she made the intentional decision to enter Mr. Ames' home

through the back door. (RP 245, 404-405). While inside, Ms. Marchand consumed Mr. Ames' food supply, burned wood in the fireplace from Mr. Ames' wood supply, and stayed the night in Mr. Ames' home. (RP: 248, 261-268, 385, 407, 410-411). Ms. Marchand searched through Mr. Ames' three outbuildings where she found food supplies, which she also took. (RP 407). Before leaving Mr. Ames' home, Ms. Marchand filled her pockets with more food supplies and took specific personal property of Mr. Ames. (RP 410-411). Clearly, Ms. Marchand knowingly entered and remained unlawfully in Mr. Ames' home and outbuildings, all of which were located in his fenced off property. Therefore, any rational person could have found the essential elements of Criminal Trespass in the First Degree beyond a reasonable doubt.

The Appellant cites *State v. Brown* and the follow up decision *State v. Joseph* to support their argument that there is insufficient evidence to support a conviction in Count 1 because Ms. Marchand entered a fenced area that did not constitute a "building" per the requirements of the First Degree Criminal Trespass statute. *Brown*, 50 Wn. App. At 878; *Joseph,* 189 Wn.2d at 652-5. However, the instant case can be distinguished from these decisions.

In *Joseph,* the court was analyzing whether a vehicle constituted a building or premises, and concluded it falls into the category of premises within Second Degree Criminal Trespass. 189 Wn.2d at 652-5. In *Brown,* the court concluded that the defendant was not guilty of First Degree Criminal Trespass because he never entered a building, but only a fenced off area. *Brown*, 50 Wn. App. At 878. However, in the instant case, Ms. Marchand specifically entered Mr. Ames' fenced property as well as his home and outbuildings to find shelter, stay the night, and help herself to Mr. Ames' supplies. (RP 407-411, 517). While both *Brown* and *Joseph* distinguished between what constitutes Criminal Trespass in the First Degree and criminal trespass in the second degree, they show that one must enter in a building to be guilty under First Degree Criminal Trespass. Based on the evidence presented at trial, it is clear that Ms. Marchand did knowingly enter and remain in Mr. Ames' home located within his fenced off property, therefore, she did in fact enter and remain in a "building" under the First Degree Criminal Trespass statute. Ms. Marchand could not have possibly been convicted of anything less than Criminal Trespass in the First Degree. Based on the multitude of evidence and testimonial admissions by Ms. Marchand, she was lucky that the jury did not convict her of burglary.

The court should uphold Ms. Marchand's guilty conviction of Criminal Trespass in the First Degree.

2. The jury found Ms. Marchand guilty of Theft in the Third Degree and Possession of Stolen Property in the Third Degree which allowed the jury to infer the conviction of Criminal Trespass in the First Degree

The trial court did not err in finding Ms. Marchand guilty of Criminal Trespass in the First Degree. This is because in order for Ms. Marchand to be charged with Theft in the Third Degree and Possession of Stolen Property in the Third Degree, the jury must have found that Ms. Marchand did in fact knowingly enter or remain in Mr. Ames' home and outbuilding.

When using a confession against a defendant, often times the prosecution must prove the corpus delicti. The corpus delicti must be proved by evidence sufficient to support the inference that a crime took place; a defendant's confession alone is not sufficient to establish that a crime took place. *State v. Cardenas-Flores*, 189 Wash. 2d 243, 401 P.3d 19 (2017). Specifically, the State must present other independent evidence that the crime a defendant described in a confession actually occurred. *Id.* Essentially, corpus

delicti is a corroboration rule that prevents defendants from being unjustly convicted based on confessions alone. *Id.*

A person is guilty of Theft in the Third Degree if she commits theft of property or services which does not exceed seven hundred fifty dollars in value. (RCW 9A.56.050). Additionally, a person is guilty of possessing stolen property in the third degree if he or she possesses stolen property which does not exceed seven hundred fifty dollars in value. (RCW 9A.56.170). Lastly, a person is guilty of Criminal Trespass in the First Degree if he or she knowingly enters or remains unlawfully in a building. (RCW 9A.52.070).

In the instant case, the jury found Ms. Marchand guilty of Theft in the Third Degree (Count 5), and Possession of Stolen Property in the Third Degree (Count 10). (CP 417-418, 452; RP 497-500). The evidence presented at trial, along with the testimony of both Ms. Marchand and Mr. Ames allowed the jury to make this determination. For instance, once arrested, the police found Mr. Ames' hammer inside Ms. Marchand's vehicle. (State's Ex. 51). Additionally during Ms. Marchand's testimony, she admitted that she took Mr. Ames' licorice, candy bars, and supplies which were located both in his home and in the outbuildings. (RP 407-408). She even admitted to taking supplies from the outbuilding and bringing them into the

house. (RP 407). In order to keep warm inside of Mr. Ames' home, Ms. Marchand admitted to burning his wood. (RP 408).

Mr. Ames testified that a lot of the items that were found in Ms. Marchand's possession, both on her body and her vehicle, were his, and the items happened to be the same articles that were missing from his home. (RP 292). Specifically, Mr. Ames testified that the hammer found in Ms. Marchand possession was a personal belonging located inside his home which he had taped specifically for his own personal use, and testified "that's my tape job" and "I know that hammer". (RP 292; State's Ex. 31, 51). Mr. Ames' specific hammer was located inside Ms. Marchand's car. State's Ex. 31, 51). Additionally, Mr. Ames testified that he had stored licorice inside his home, as well as snacks inside his home and in the outbuildings. (RP 265, 268).

By admitting to being inside Mr. Ames' house, as well as the admissions of using Mr. Ames' supplies, Ms. Marchand effectively put herself in Mr. Ames' home. The follow up testimony from Mr. Ames successfully corroborates Ms. Marchand's admissions and the physical evidence offered at trial. This shows that the error in the jury instruction was harmless because the corpus delecti proves that Ms. Marchand did in fact knowingly enter and remain in Mr. Ames' home.

The jury, by convicting Ms. Marchand of Theft in the Third Degree and Possession of Stolen Property in the Third Degree, could infer that Ms. Marchand did in fact knowingly enter and remain unlawfully in Mr. Ames' home and outbuildings.

3. The jury instruction which stated that a building may consist of a fenced area under Criminal Trespass in the First Degree was a harmless error

Considering the substantial amount of evidence presented at trial that allowed the jury to convict Ms. Marchand of First Degree Criminal Trespass, the convictions of Theft in the Third Degree and Possession of Stolen Property in the Third Degree allowing the jury to infer a conviction of First Degree Criminal Trespass, and proof of the corpus delecti of the crime, the jury instruction error misstating the definition of building should be seen as harmless.

Jury instructional errors are presumed to be prejudicial. *State v. Rice*, 102 Wn.2d 120, 123, 683 P.2d 199 (1984). Nevertheless, a jury instruction that misstates an element of the crime is subject to harmless error analysis to determine whether the error has relieved the State of its burden to prove each element of the charged offense. *State v. Brown*, 147 Wn.2d 330, 339, 58 P.3d 889 (2002). In order for an appellate court to hold that an erroneous jury instruction was

harmless, the court must be convinced beyond a reasonable doubt that the jury verdict would have been the same absent the error. *Neder v. United States*, 527 U.S. 1, 19, 119 S. Ct. 1827, 144 L. Ed. 2d 35 (1999); *State v. Brown*, 147 Wn.2d at 341. When applied to an element omitted from, or misstated in, a jury instruction, the error is harmless if that element is supported by uncontroverted evidence. *State v. Brown*, 147 Wn.2d at 341; *State v. Weaville*, 162 Wn. App. 801, 815, 256 P.3d 426 (2011).

During the trial in the instant case, the jury was read instructions on both Second Degree Burglary and the lesser included offense, Criminal Trespass in the First Degree. (CP 373, 381; RP 443-444, 445-446). Included with these instructions was the definition of building from the WPIC 2.05. (CP 374; RP 444). The Appellants argue that Ms. Marchand should not be convicted of Criminal Trespass in the First Degree because she only entered and remained in Mr. Ames' fenced area, and the broad definition "building" in the WPIC 2.05, which included fenced areas, should not be used in cases of Criminal Trespass in the First Degree. The state does not dispute this argument, as case law in Washington State conforms to this argument. 11 Wash. Prac., Pattern Jury Instr. Crim. WPIC 2.05 (4th Ed. 2016). However, because Ms. Marchand did

knowingly enter and remain in Mr. Ames' home and outbuildings, based on the foregoing and factors below, the instructional error was harmless.

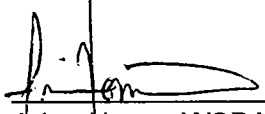
First, because of the multitude of uncontroverted evidence offered at trial, the convictions of third degree theft and Possession of Stolen Property in the Third Degree, as well as the corpus delecti, the instructional error offered by the court could only have harmless effects on the jury's decision to convict. Further, because the jury could have found Ms. Marchand guilty under the Second Degree Burglary statute, and frankly she is lucky they did not, the instructional error was harmless.

CONCLUSION

Based on the foregoing, Respondent requests that this court affirm Appellant's convictions.

Dated this 23rd day of May, 2019.

Respectfully Submitted,



Arian Noma, WSBA: 47546
Prosecuting Attorney
Okanogan County, Washington

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON Plaintiff/Respondent	)	COA No. 362752
v.	)	CERTIFICATE OF SERVICE
Taressa Mae Marchand Defendant/Appellant	)	

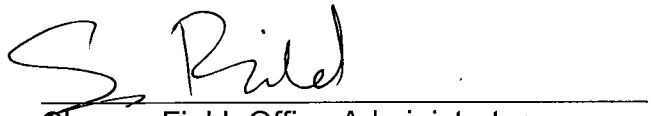
I, Shauna Field, do hereby certify under penalty of perjury that on the 23rd day of May, 2019, I caused the original Brief of Respondent to be filed in the Court of Appeals Division III and a true copy of the same to be served on the following in the manner indicated below:

E-mail: jill@ewalaw.com

Jill Shumaker Reuter
Eastern Washington Appellate Law
PO Box 8302
Spokane, WA 99203

( ) U.S. Mail
( ) Hand Delivery
(X) E-Service via Portal

Signed in Okanogan, Washington this 23rd day of May, 2019.



Shauna Field, Office Administrator

Okanogan County Prosecuting Attorney
P. O. Box 1130 • 237 Fourth Avenue N.
Okanogan, WA 98840
(509) 422-7280 FAX: (509) 422-7290

OKANOGAN COUNTY PROSECUTING ATTORNEY'S OFFICE

May 23, 2019 - 8:50 AM

Transmittal Information

Filed with Court:	Court of Appeals Division III
Appellate Court Case Number:	36275-2
Appellate Court Case Title:	State of Washington v. Taressa Mae Marchand
Superior Court Case Number:	18-1-00168-2

The following documents have been uploaded:

- 362752_Briefs_20190523084946D3449197_2753.pdf
  This File Contains:
  Briefs - Respondents
  The Original File Name was 20190523 Brief of Respondent.pdf

A copy of the uploaded files will be sent to:

- admin@ewalaw.com
- dstevens@co.okanogan.wa.us
- jill@ewalaw.com
- laura@ewalaw.com

Comments:

Sender Name: Shauna Field - Email: sfield@co.okanogan.wa.us
Filing on Behalf of: Arian Noma - Email: anoma@co.okanogan.wa.us (Alternate Email: sfield@co.okanogan.wa.us)

Address:
PO Box 1130
Okanogan, WA, 98840
Phone: (509) 422-7288

Note: The Filing Id is 20190523084946D3449197