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Court of Appeals
Division III
State of Washington
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NO. 36391-1-III

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

STATE OF WASHINGTON,

Respondent,

v.

ALEJANDRO SAAVEDRA,
Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KITTITAS COUNTY

The Honorable Scott R. Sparks, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The state failed to prove beyond a reasonable doubt the elements of malicious mischief in the second degree where the only evidence connecting Mr. Saavedra to the crime was the fact that he resided in the room where the property destruction occurred.

Issue Presented on Appeal

Did the state fail to prove beyond a reasonable doubt the elements of malicious mischief in the second degree where the only evidence connecting Mr. Saavedra to the crime was the fact that he resided in the room where the property destruction occurred, but there was no evidence that Mr. Saavedra was present in the room prior to or when the property was destroyed?

B. STATEMENT OF THE CASE

a. Procedural Facts

Mr. Saavedra was charged by amended information with malicious mischief in the second degree under RCW 9A.48.080(1)(a), and assault in the fourth degree. CP 38. The information claimed the crimes were committed on April 10, 2018. CP 38. Just before the state rested its case in chief it successfully moved to amend the charging document to allege the malicious

mischief occurred between March 6, 2018 and April 10, 2018. CP 33-34, 38; RP 135-37. Following a jury trial, Mr. Saavedra was acquitted of the assault charge and convicted on the malicious mischief charge. CP 61-62, 67-76. This timely appeal follows. CP 77-78.

b. Substantive Facts

Mr. Saavedra moved into his dormitory room in Washington Central University on March 6, 2018. RP 108. On April 10, 2018, the school participated in a routine fire drill beginning around 8:00 until 9:00 pm. RP 40, 43-44, 63. Students are required to evacuate the buildings even though there is no actual fire. RP 44. Mr. Saavedra was playing pool when the fire alarm rang and refused to leave the building. RP 44-45.

Luke Poole, the hall coordinator saw Saavedra poking his pool stick into the old ceiling tiles, an activity many students engaged in and decided to confront Saavedra. RP 41-, 52-53. Over the past four years, Poole never cited anyone for this activity, except Saavedra. RP 73-74. Angry or frustrated, Poole confronted Saavedra and the two exchanged words. RP 41-43. Poole accused Saavedra of spitting on his shoe, but the jury disagreed. RP 48; CP

61.

Poole called the police who arrived to find Saavedra sitting in a building listening to music on his computer. RP 65. Saavedra explained to the police that he did not leave the pool room because there was no fire. RP 66. The police arrested Saavedra for allegedly spitting on Poole. RP 72.

While Saavedra was detained by the police, Maya Caneda informed Poole that while walking her normal rounds, she noticed a broken window in Saavedra's dorm room at 8:30 pm. RP 55. The residence hall is a small two-story that only has 55 rooms. RP 56. The room is highly visible and Caneda reported the window as soon as she saw it at 8:30 pm. RP 55, 59.

Saavedra left his dorm room on April 10, 2018, at 11:00 am and did not return to his room until after learning of the damage. RP 142, 153. Someone stole Saavedra's computer, mouse and keyboard, as well as damaging his room. RP 161.

Patrick Devlin, the Central University maintenance manager did not complete the repairs to Saavedra's room but testified to replacing windows in the past. RP 116-17, 120. Devlin testified that labor is generally charged at \$52 per hour and he estimated three

hours to replace the broken window but could not estimate the replacement cost of the glass. RP 118, 120. Devlin guessed the cost to buy materials to repair the damage to the bathroom would be roughly \$750. RP 124. Devlin did not present an itemized list of materials or a bill for labor. Saavedra objected to the speculative nature of the costs of the damage and moved, half time to dismiss the charge for insufficient evidence. RP 138-39. The court denied the motion. RP 140.

C. ARGUMENT

THE STATE FAILED TO PROVE
BEYOND A REASONBLE DOUBT THE
ESSENTIAL ELEMENTS OF
MALICIOUS MISCHIEF IN THE
SECOND DEGREE

Someone broke a window in Mr. Saavedra's dorm room, ransacked the property, destroyed other fixtures and furniture, and stole Saavedra's computer. RP 49, 55, 161. The evidence was insufficient however to support the conviction because the evidence did not support that Saavedra knowingly and maliciously committed the damage to the property.

In a criminal case, the state must provide sufficient evidence to prove each element of the charged offense beyond a reasonable

doubt. *Jackson v. Virginia*, 443 U.S. 307, 316, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). When a defendant challenges the sufficiency of the evidence, the inquiry is “whether, after 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). Reasonable inferences from the evidence are drawn in favor of the state and a claim of insufficiency admits the truth of the state’s evidence. *Id.* In a challenge to the sufficiency of the evidence, circumstantial evidence and direct evidence carry equal weight. *State v. Goodman*, 150 Wn.2d 774, 781, 83 P.3d 410 (2004).

As charged in this case, the state was required to prove beyond a reasonable doubt that Mr. Saavedra: “knowingly and maliciously caused physical damage to the property of another in an amount exceeding seven hundred fifty dollars. CP 38; RCW 9A.48.080(1)(a).

In this case, the evidence presented by the state was limited to the fact that Mr. Saavedra’s room was ransacked and property was destroyed and stolen either before 3:00 pm or 8:30 pm on April 10, 2018, but no evidence indicated that Mr. Saavedra knowingly

and maliciously caused damage to the property of another, or had any knowledge of the crime.

The state's theory of its case was that Saavedra destroyed property in retaliation for being harassed by the police on April 10, 2018 near 8:00 pm, when during a fire drill Saavedra continued to play pool rather than exiting the building as required. RP 41-43, 63-65. However, contrary to the state's mistaken presumption, the evidence indicated that the damage to the window and room was done when Mr. Saavedra was not present in his room. RP 61.

The state claimed, without evidence that officer Caneda who wrote the report indicating the damage was done before 3:00 pm, was mistaken, but the only evidence indicating the timing of the window damage was officer Caneda's report. RP 61. Caneda did not testify and she did not report the broken window until 8:30 pm. RP 59, 61.

Reviewing this evidence in the light most favorable to the state, and any reasonable inferences from this evidence, there is insufficient evidence to support prove beyond a reasonable doubt that Saavedra knowingly and maliciously caused damage to the dorm room. *State v. Aguillar*, 153 Wn. App. 265, 275-76, 223 P.3d

1158 (2009). The circumstantial evidence merely established that before 3:00 pm or for the sake of argument alone, even if one assumes that Caneda was mistaken in noting the damage to the window at 3:00 pm, but instead meant 8:00 pm, during this time frame, beginning with the interaction with Poole and ending with the police contact, Saavedra was not in his dorm room and therefore could not have committed the crime in retaliation by 8:30 pm. RP 40, 48, 63, 116, 135.

In short, the state failed to prove beyond a reasonable doubt that Saavedra knowingly and maliciously damaged his dormitory room. The remedy when an appellate court reverses for insufficient evidence is dismissal of the charge. *State v. Hickman*, 135 Wn.2d 97, 103, 954 P.2d 900 (1998) (citing *State v. Hardesty*, 129 Wn.2d 303, 309, 915 P.2d 1080 (1996)). This court should reverse Mr. Saavedra's conviction for malicious mischief in the second degree and dismiss the charge with prejudice.

D. CONCLUSION

Alejandro Saavedra respectfully requests this Court reverse his conviction and remand for dismissal with prejudice because the state failed to prove that he knowingly and maliciously committed

malicious mischief in the second degree.

DATED this 27th day of February 2019.

Respectfully submitted,



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I, Lise Ellner, a person over the age of 18 years of age, served the Kittitas County Prosecutor's Office prosecutor@co.kittitas.wa.us and Alejandro Saavedra, 14009 34th Drive SE Unit C, Mill Creek, WA 98012 a true copy of the document to which this certificate is affixed on February 27, 2019. Service was made by electronically to the prosecutor and Alejandro Saavedra by depositing in the mails of the United States of America, properly stamped and addressed.



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