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Division III
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III
No. 36391-1-III

STATE OF WASHINGTON,

Plaintiff/Respondent,

vs.

ALEJANDRO JOSE SAAVEDRA,

Defendant/Appellant

Respondent's Brief

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| A. Did the State present evidence beyond a reasonable doubt to establish that Appellant Alejandro Saavedra committed the crime of Malicious Mischief in the 2 nd degree, between the dates of March 6, 2018, and April 10, 2018? Answer: Yes. | |
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I. IDENTITY OF RESPONDENT

The State of Washington appears through the Kittitas County Prosecuting Attorney's Office.

II. STATEMENT OF RELIEF SOUGHT

The State respectfully requests that this Court deny the Petitioner's request to reverse and remand for dismissal with prejudice his conviction for Malicious Mischief in the 2nd degree.

III. ASSIGNMENT OF ERROR

- A. The State proved each and every element of malicious mischief committed by the Appellant in an amount exceeding \$750 occurring between March 6, 2018, and April 10, 2018.

IV. STATEMENT OF THE CASE

The appellant, Alejandro Saavedra, was a student at Central Washington University (CWU), in the spring of 2018. RP 108, 141.¹ On April 10, 2018, at approximately 8 P.M., he was in the North

¹ Mr. Saavedra was originally charged with Count 1, Malicious Mischief in the Second Degree for property damage to his dorm room on April 10, 2018, (this was later amended to a range between March 6, 2018, and April 10, 2018, RP 135, 137), Count 2, Assault in Fourth Degree (which was later amended to attempted Assault in the Fourth Degree. RP 100), and Count 3, Malicious Mischief in the Third Degree for damage to ceiling tiles in North Hall, (this last charge was dismissed by the State before the trial got underway. RP 16, 17). Ultimately, Mr. Saavedra was found guilty of only Count 1, Malicious Mischief in the Second Degree. RP 222.

Hall lounge where Resident Hall Coordinator, Luke Poole, observed Mr. Saavedra using a pool cue to poke holes into the ceiling. RP 37, 41. Mr. Poole asked Mr. Saavedra to be respectful of other people's property and to stop the poking. RP 41, 42. Mr. Saavedra responded that "others are doing it," but briefly stopped. RP 42. He then resumed the activity and Mr. Poole twice again asked him to cease. *Id.* Mr. Saavedra then approached the area where Mr. Poole was working and tried to take Mr. Poole's papers. Mr. Poole indicated that he needed to use some degree of force to grip them back from Mr. Saavedra. RP 43.

CWU practices a quarterly fire drill exercise to evacuate students. One of Mr. Poole's jobs is to monitor this exercise process. RP 41. It was during the interaction with Mr. Saavedra, that this exercise took place. RP 41. According to Mr. Poole, Mr. Saavedra did not evacuate. RP 44. Mr. Poole testified that he looked Mr. Saavedra in the eye and told him a couple of times that he needed to evacuate, but Mr. Saavedra did not do so. RP 44, 45. Mr. Poole then stepped outside to call the police. Mr. Saavedra testified that he had left but no one had seen him exit, and when he realized it was only a drill, he returned. RP 146, 147.

When law enforcement arrived, CWU Officer Ross attempted to speak with the defendant while Officer Williams stood by. RP 46, 63, 66-68. It was clear that Mr. Saavedra did not want to talk with the officers as he put his earbuds in and turned the music up loud enough for Officer Ross to hear. RP 67, 69. Mr. Saavedra asked the two officers why they were standing over him with Glocks. RP 69. Officer Ross testified that the officers had not been doing that, but were merely trying to speak with Mr. Saavedra. *Id.* According to Mr. Saavedra, he had not wanted to talk with the officers. RP 149, 150. Officer Ross went back out to his vehicle to check his in-car computer when Mr. Saavedra came out to Officer Ross. RP 69, 70. When the officer asked Mr. Saavedra if he could help him, Mr. Saavedra pointed towards Mr. Poole and said in a hostile tone of voice, "Whatever this fucking asshole wants." RP 71. According to Officer Ross, he could see Luke Poole, who appeared shaken at that point. RP 71.

Mr. Poole testified that as Mr. Saavedra had walked out of the building past him, Mr. Saavedra had pivoted towards Mr. Poole, cleared his throat, and that it was Mr. Poole's impression that Mr. Saavedra had spit either on Mr. Poole's shoes, or on the floor. RP 47.

While Officer Ross was transporting Mr. Saavedra to the jail, Mr. Saavedra asked about the officer's family, his kids, and his wife.

RP 71. Officer Ross felt that the Appellant's statements to him were meant to be intimidating, including one that the officer 'better call my (the officer's) parents before -- before (inaudible) the night.'

RP 72, 73.

Officer Williams testified that as she was getting a statement from Mr. Poole about the spitting incident, a resident advisor, Ms. Caneda, who had just finished her nightly exterior rounds, approached the officer to tell her of damage that the resident advisor had just observed to room 131. RP 77, 78, 83. Officer Williams went to the outside of room 131 and observed a fist sized break to the window. RP 83. There was no apparent damage to the rear door of the unit, and all of the glass was contained within the screen mesh and the window itself. RP 86. Officer Williams did not observe any glass outside the window screen. *Id.*

Room 131 is an ADA compliant dorm room designed for one student occupancy. RP 49. According to Mr. Poole,

...prior to a student taking residence staff members enter the vacant room and complete a room condition report, where they note the condition of every piece of furniture, all the furnishings, the carpet, ceiling, et cetera. And this is stored online. Then when a

student enters they review it with the staff member to confirm it to be correct. *Id.*

When asked, Mr. Poole indicated that a student would not be allowed to take residency in a room with structural damage. *Id.*

Ian Miller, the director of Residence Life at CWU, responsible for student housing, testified that the process for obtaining campus housing was similar to a lease process. RP 105, 107. A student submitted an application and deposit, signed housing and dining contracts, was apprised of policies and procedures, and informed of their responsibility for damages. RP 107. Mr. Saavedra had been checked into room 131 on March 6, 2018, and checked out on June 25, 2018. RP 108. Mr. Miller testified similarly to Mr. Poole that staff would go in and check the condition of the space prior to the student moving in, and then again when the student moved out. *Id.* Both Mr. Miller and Mr. Saavedra indicated that Mr. Saavedra was given only one key which he was told not to copy. RP 109, 154. Mr. Saavedra testified that in addition to having the only non-staff key, he always kept his room locked and had given no one permission to enter room 131. RP 153, 161.

Mr. Poole stated that he had been unaware of any damage to room 131 before April 10, 2018, and had learned of it only when the

resident advisor had approached him and Officer Williams about 55 minutes after the fire alarm. RP 48, 55, 59, 163.

Mr. Poole contacted Mr. Miller who contacted Pat Devlin, the CWU facilities manager, to either repair the window or to put up plywood to secure the building. RP 87. Officer Williams was outside room 131, taking pictures of the broken window when Mr. Devlin attracted her attention, and asked the officer if she had seen what was inside the room. RP 87. Officer Williams had not, and while she remained outside the window, Mr. Devlin pointed out a broken closet door, broken chair, broken metal rail, and what looked like an ADA shower stool that had been ripped from the wall. RP 88-90.

Pat Devlin testified that he was a maintenance mechanic 3, had worked for CWU for 33 years, was responsible for 174 apartments in six buildings, and supervised 13 individuals. RP 112. It was his testimony that he had experience repairing windows, purchasing supplies, performing labor, and overseeing others in the replacement of windows. RP 116, 117. It was his testimony that

the materials for the window were \$175, and that a glazier's labor at \$52 an hour would run about \$156.²

According to Mr. Devlin, materials for the window were \$175, materials for the shower bench \$750, materials for the shower head \$12.50, materials for the towel bar \$12, materials for the closet bar unknown, cost to repair the light fixture unknown, cost to replace the chair \$150-\$250, cost to replace the solid core closet door \$175, cost to board the window \$20. RP 119-129. PLA 13.

Mr. Devlin testified that the ADA shower bench seat was completely detached, ripped from the wall, and the tile behind it destroyed. RP 122-124. The shower bench seat had required anchor bolts to be affixed to the wall. RP 123.

According to Mr. Devlin, when he had arrived at room 131 at approximately 10 P.M., the night of April 10, 2018, the back door was secure, and there was no sign of a break-in. RP 130-133. Officer Williams also testified that there was no indication of damage to the back door. RP 86.

² Mr. Devlin testified regarding costs of both materials and labor. Regarding the window, Mr. Devlin indicated that the glazing of the window was a specialized skill requiring outside assistance, however trial counsel argued that labor should not be part of the damages/restitution figure as that was the job of the facilities department. To address the specific issue of whether or not the State proved damages in an amount exceeding \$750, going forward, the State will address only those costs of materials as testified to by Mr. Devlin.

Mr. Saavedra testified that he had left room 131 at around noon on April 10, 2018, and although it had been a “bit messy” with clothes thrown around, none of the damage had occurred before he left. RP 141-143. He testified that at he was unaware of the damage at the time of his arrest. RP 143, 152. Mr. Saavedra stated that his room had been broken into by an unknown individual who had not only damaged room 131, but had also stolen both his television and his computer. RP 152, 153. Mr. Saavedra had no idea who the individual could have been. RP 157. As far as he knew, no one bore him any ill will. *Id.* Mr. Saavedra testified that he’d had no chance to report the break-in and theft to anyone at the time, but then acknowledged that he had never reported it to anyone during the ensuing four month period between the incident and trial. RP 157, 160.

V. ARGUMENT

APPELLANT WAS THE SOLE OCCUPANT OF ROOM 131 AT CENTRAL WASHINGTON UNIVERSITY; HE WAS THE SOLE NON-STAFF KEY HOLDER TO ROOM 131; THERE WERE NO SIGNS OF A BREAK-IN; AND THE AMOUNT OF DAMAGE WITHIN HIS ROOM EXCEEDED \$750

Appellant is incorrect in his assertion that it was the State’s theory of the case that Mr. Saavedra committed the destruction to his room in retaliation for his interaction with Mr. Poole, and so had

only a very limited, if any, window of opportunity in which to cause the damage. This retaliatory theory was never asserted nor argued. To the contrary, the charging dates of the information were amended during trial to relate back to the date that Mr. Saavedra had first taken possession of room 131. It was the fact that Mr. Poole was informed by a R.A. on April 10, 2018, at approximately 8:30 P.M. of the broken window in room 131, that led Mr. Poole to contact Mr. Miller who in turn led to him contacting Mr. Devlin who entered the apartment to board up the window and discovered the destruction of the shower chair, student chair, closet door, light fixture, towel bar, etc. constituting an amount of damage that exceeded \$750.

Mr. Saavedra testified that his apartment had been broken into between noon and the time of the discovery, however he also admitted that he had never reported either the break-in or theft to anyone at any time. It was only Mr. Saavedra's bald assertion that some other individual of whom Mr. Saavedra was unaware, who had no key, and who had caused no damage in his or her entering of room 131, had for some unknown reason caused the extensive damage that Mr. Devlin and Officer Williams had observed within that room.

Evidence is sufficient to support a conviction if, when viewed in the 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. Joy*, 121 Wn.2d 333, 338, 851 P.2d 654 (1993). “When the sufficiency of the evidence is challenged in a criminal case, all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant.” *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Moreover, “[a] claim of insufficiency admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom.” *Id.* See also *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980), *State v. DeVries*, 149 Wn.2d 842, 849, 72 P.3d 748 (2003), *State v. Partin*, 88 Wn.2d 899, 906-907, 567 P.2d 1136 (1977).

In its second paragraph, WPIC 5.01 states that “[t]he law does not distinguish between direct and circumstantial evidence in terms of their weight or value in finding the facts in this case. One is not necessarily more or less valuable than the other.” Circumstantial evidence and direct evidence carry equal weight when reviewed by an appellate court. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

In Mr. Saavedra's case, he was the sole occupant of room 131. Prior to his taking residency, the room was checked for his habitation. He had one key to room 131, and testified that he had never given it to anyone. Mr. Saavedra was unaware of anyone who would have wished to enter his room and cause the extensive damage found there. There was no sign of a break-in to room 131, and despite his assertions of a break-in and theft, Mr. Saavedra never reported that event to anyone at any time. A reviewing court must defer to the finder of fact in resolving conflicting evidence and credibility determinations. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). Mr. Saavedra's interactions with Mr. Poole and Officers Williams and Ross were not introduced to somehow argue a theory of when the destruction occurred, but rather were relevant in regards to his then recent interactions with Mr. Poole and the ensuing alleged assault of Mr. Poole.³ The upshot was that the jury heard of an angry young man whom they chose not to believe when he said that he had been unaware of the damage, and that it had been done in his absence.

³ As stated previously, Mr. Saavedra was found not guilty of an amended charge of Attempted Assault in the Fourth Degree.

VI. CONCLUSION

The jury heard of extensive damage in an amount exceeding \$750 excluding labor which had been done to Mr. Saavedra's room on the CWU campus. The Appellant claimed that the damage had been done for some unknown reason by some unknown individual. The jury chose not to believe Mr. Saavedra, but instead relied on circumstantial evidence and common sense. The State proved its case and the requisite elements of the charge of Malicious Mischief in the Second Degree beyond a reasonable doubt. For the foregoing reasons, the State respectfully requests that Appellant's motion to reverse his conviction and remand for dismissal with prejudice be denied, and that the finding of the Trial Court be upheld.

Dated this 24th day of April, 2019.



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KITTITAS COUNTY PROSECUTOR'S OFFICE

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Comments:

The attached Respondent's Brief will replace the Respondent's Brief filed April 24, 2019 and corrects a typo on page 1.

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