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Division III  
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No. 36759-2-III  
Whitman County Superior Court No. 19-1-00025-38

IN THE COURT OF APPEALS  
OF WASHINGTON STATE  
DIVISION III

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STATE OF WASHINGTON, Respondent

v.

Jason Davis, Appellant

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BRIEF OF RESPONDENT

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Attorney for Respondent

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## **RESTATEMENT OF THE ISSUES**

- I. Does sufficient evidence exist to support a jury verdict of guilty for the charge of Residential Burglary?**
- II. Does sufficient evidence exist to support a jury verdict of guilty for the charge of Theft in the Second Degree?**

## STATEMENT OF THE CASE

Jason Davis entered the Seasoned House, an event center and private dwelling, in Pullman Washington. RP 156-158. Sara Joplin and Daquarii Rock are co-owners of the Seasoned House. RP 156-158. Ms. Rock resided in the apartment upstairs in the Seasoned House. RP 157-158. On February 6, 2019, Ms. Joplin arrived at the Seasoned House to shovel snow. RP 158. After arriving, Ms. Joplin noticed several unusual footprints in the snow and noticed that the rug that is usually in front of the front door was tacked up in the window. RP 158-160.

Ms. Joplin then went around to the back of the building to key in as the front door does not have outside key access. RP 159-160. Upon entering the Seasoned House, Ms. Joplin found a man she did not recognize inside, with a tattoo above his eye, drinking a beer. RP 160-161. Ms. Joplin did not give Mr. Davis permission to be in the building. RP 162. Mr. Davis told Ms. Joplin that he was there to replace clock batteries. RP 172. During trial, Ms. Joplin confirmed that they would not have hired someone to change the clock batteries because she could do that herself. RP 173. Ms. Joplin called her business partner to confirm that there were no appointments scheduled that day. RP 162-163. Ms. Rock confirmed that there were no appointments scheduled that day. RP 163. Ms. Rock described

Ms. Joplin's demeanor during the phone call that morning as "frazzled" and that Ms. Joplin's voice was "very frantic". RP 180.

Ms. Joplin then called police and waited in the alley for them to arrive. RP 163. Officers arrived on scene and contact Ms. Joplin. RP 190. Upon entering and searching the building, officers called out their presence as law enforcement officers. RP 210. While searching, officers heard noises upstairs and located Jason Davis in a bedroom area of the residence. RP 191-192. Mr. Davis was taken to the downstairs portion of the Seasoned House and searched incident to arrest. RP 201-203. During the search incident to arrest a pair of gold and green earring were located under a plastic baggy in the watch pocket of Mr. Davis's jeans. RP 201-202. Officers also located a ring on Mr. Davis's finger that was not pushed all the way up on his finger; while Mr. Davis was being searched, the ring fell off his finger and fell to the floor. RP 202-203.

While inspecting the premises, officers located the broken window with the rug tacked up in it and the broken glass from the window below covered with another rug. RP 204-205. Officers also inspected the upstairs area and described it as furnished and looking like somebody lived there. RP 212. Ms. Joplin was allowed entry into the residence and confirmed that the ring and earring Mr. Davis had on his finger and concealed upon his person belonged to Ms. Rock. RP 163-164. Ms. Rock also testified that

her jewelry was kept in the furnished part of the upstairs, her apartment area. RP 183. At trial, Sam Dial, a local jeweler testified as to the valuation of the jade earrings and the ring found on Mr. Davis's person. RP 233-234. Mr. Dial testified that the earrings were valued at \$3000.00 and the ring was valued at \$100. RP 234.

Mr. Davis was charged with residential Burglary, Theft in the Second Degree, and Malicious Mischief in the Third Degree. Mr. Davis was convicted as charged by the jury.

### ARGUMENT

I. THE STATE PRESENTED SUFFICIENT EVIDENCE TO CONVICT MR. DAVIS OF RESIDENTIAL BURGLARY.

When the court reviews a challenge to sufficiency of the evidence, it does in the light most favorable to the State and will reject the challenge if any rational trier of fact could find all the elements of the offense have been proven beyond a reasonable doubt. *State v. Gentry*, 125 Wn.2d 570, 597, 888 P.2d 1105 (1995). This type of claim admits the truth of the State's evidence as well as all reasonable inferences that can be drawn from it. *Id.* Further, the Court defers to the fact finders evaluation of witnesses credibility as well as resolutions of conflicting testimony. *Id.* Further, when the sufficiency of the evidence is challenged, the evidence

is not only viewed in the light most favorable to the State, but is also interpreted most strongly against the defendant. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Finally, when a claim of insufficiency of the evidence is made, the truth of the State's evidence is admitted and all inferences that can reasonably be made from such evidence can be drawn therefrom. *Id.*

In the instant case, it is undisputed that Mr. Davis did not have permission to be inside the Seasoned House. Mr. Joplin testified that she did not give him permission to be inside the Seasoned House. Ms. Joplin testified that she located Mr. Davis in the downstairs portion of the Seasoned House; when police were contacted, Mr. Davis was found by law enforcement upstairs in the residential portion of the house.

Mr. Davis told Ms. Joplin, upon her finding him inside the Seasoned House that he was there to fix the clocks and change the batteries. Ms. Joplin then contacted Ms. Rock and confirmed that no one was supposed to be inside the house.

Mr. Davis testified as to his reasons for being in the Seasoned House on February 6, 2019, but those reasons were inconsistent with the information he provided to Ms. Joplin on February 6, 2019. The inconsistent testimony was properly resolved by the finders of fact who ultimately found Mr. Davis guilty of residential burglary.

Mr. Davis broke through a window to gain entry to the Seasoned House, barred the window back up, and then rummaged through the entirety of the Seasoned House. The crime to be committed while entering or remaining in the Seasoned House was Theft in the Second Degree, which was evidenced by his possession, not only on his finger, but hidden inside a small watch pocket in his jeans, a ring and a pair of earrings.

II. THE STATE PRESENTED SUFFICIENT EVIDENCE TO CONVICT MR. DAVIS OF THEFT IN THE SECOND DEGREE.

As stated above in reference to *State v. Gentry* and *State v. Salinas*, above, the standard for reviewing the sufficiency of evidence is clear.

RCW 9A.56.040 defines Theft in the Second Degree as "...theft of: (a) Property or services which exceed(s) seven hundred fifty dollars in value but does not exceed five thousand dollars in value..." In the instant case, Mr. Davis, while unlawfully remaining in the Seasoned House, stole earrings and a ring owned by Ms. Rock. Mr. Davis concealed those items upon his person.

When Ms. Joplin entered the property, she discovered Mr. Davis in the downstairs portion of the Seasoned House, Mr. Davis told her that he was there to fix the clocks and change the batteries. When law enforcement arrived on scene, they announced their presence as they

began to search the premises. Mr. Davis was located in the residential portion of the house, near where Ms. Rock's jewelry was located.

There is no evidence that Mr. Davis attempted to flee after being located by Ms. Joplin, but he did move from the downstairs to the upstairs and did not immediately come out when law enforcement announced themselves. Finally the jewelry was located by law enforcement in a search incident to arrest on Mr. Davis's person. The ring was located on Mr. Davis's finger, and the earrings, valued at \$3000.00 were located in a small watch pocket beneath a plastic baggie. The intent to deprive Ms. Rock of her jewelry is evidenced by the fact that the jewelry was concealed upon his person.

### **CONCLUSION**

Based on the foregoing, the Respondent requests this Court affirm the defendant's conviction for Residential Burglary and Theft in the Second Degree.

Dated this 13<sup>th</sup> day of March, 2020.



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**Transmittal Information**

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