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Division III
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STATE OF WASHINGTON
5/5/2023
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Supreme Court No. 101961-1
(COA No. # 386066 cons. with # 389227)

THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

Peter G. Wilson,

Petitioner.

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

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Peter Wilson, petitioner here and appellant below, asks this Court to accept review of the Court of Appeals decision terminating review pursuant to RAP 13.3 and RAP 13.4.

B. ISSUES PRESENTED FOR REVIEW

1. Whether the evidence was insufficient to prove Mr. Wilson took a substantial step towards second degree kidnapping.

2. Whether the evidence was insufficient to find Mr. Wilson guilty of first degree trafficking in stolen property, where the State failed to prove that the DeWalt Miter saw Mr. Wilson pawned was stolen.

C. STATEMENT OF THE CASE

While attending the Hoopfest event in Spokane, eleven year old E.C.R. was standing in a line, with his mother Jessica Vasquez, to purchase pizza from a vendor. (CP 2, 18, 258). Peter Wilson approached the pair and asked Ms. Vasquez if the children around her were her children. (CP 3-5, 19-21, 258-

259). Ms. Vasquez told Mr. Wilson that E.C.R. was her son. (CP 3, 5, 19, 21, 258).

Without warning, Mr. Wilson grabbed E.C.R. around the waist, and attempted to pull E.C.R. from the grasp of Ms. Vasquez. (CP 2-6, 18-22, 258). Ms. Vasquez clutched E.C.R. close to her to keep Mr. Wilson from removing E.C.R. from her. (CP 3-4, 19-20, 258). She was afraid that Mr. Wilson would have taken E.C.R. from her if she had lost her grasp on E.C.R.; she did not know Mr. Wilson's intentions. (CP 3, 19).

Six bystanders observed Mr. Wilson attempt to remove E.C.R. from Ms. Vasquez's grasp. (CP 3-6, 19-22, 258-259). Bystanders pulled Mr. Wilson away from E.C.R. and held Mr. Wilson for law enforcement. (CP 2-3, 5-8, 18-19, 21-24, 259). Law enforcement detained Mr. Wilson. (CP 6, 22, 259).

Mr. Wilson told law enforcement he works for Allied Security and he saw that a child was lost, and he grabbed ahold of the child to find his mother. (CP 7, 23).

Prior to Mr. Wilson attempting to pull E.C.R. from her grasp, Ms. Vasquez observed Mr. Wilson walking around to numerous people with a phone and showing a phone to people. (CP 4, 19). A bystander heard Mr. Wilson yelling "Amber Alert! Amber Alert!" prior to observing him attempt to remove E.C.R. from Ms. Vasquez's grasp. (CP 4, 20, 258-259).

The State charged Mr. Wilson with one count of attempted second degree kidnapping. (CP 16-17).

A few weeks prior to the incident set forth above, Mr. Wilson, along with another individual named Cameron Brunson, pawned a Dewalt Miter saw at a Pawn One store in Spokane. (CP 159, 162, 254-255). At the time, Mr. Wilson was living in a rental property owned by Richard Kraiker. (CP 160, 254). The property was being managed by Hallie Burchinal. (CP 160, 254).

Mr. Kraiker had many tools stored in the basement and shed on the property. (CP 160, 254). He was not completely

sure of all the tools he had stored there, but he knew he had a Dewalt Miter saw. (CP 160-161, 254).

Another tenant in the rental property, John Looper, informed Ms. Burchinal that Mr. Wilson had stolen a 12-inch Dewalt Miter saw from the property. (CP 161, 254).

Mr. Kraiker gave Ms. Burchinal a list of tools that he had purchased, which showed some of the tools he had stored there. (CP 160, 162). A Dewalt Miter saw was on the list. (CP 160, 162, 254). There were not any serial numbers listed on the tool list provided by Mr. Kraiker. (CP 162).

The State charged Mr. Wilson with one count of first degree trafficking in stolen property. (CP 158).

Mr. Wilson agreed to enter the Felony Mental Health Court program on both cases, attempted second degree kidnapping and first degree trafficking in stolen property. (CP 101-105, 190-194; RP[1] 4-8).

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[1] The Report of Proceedings consists of two separately paginated volumes, one reported by Terri A. Cochran and one

Mr. Wilson agreed that "should I be terminated from the treatment program, I will proceed to a bench trial based solely upon the information in the police report(s)." (CP 101, 190; RP 5). The State agreed to dismiss each charge if Mr. Wilson successfully completed the treatment program. (CP 102, 191).

Subsequently, Mr. Wilson was arrested on new charges and terminated from the Felony Mental Health Court program. (CP 107-109, 130-131, 197-198, 224-225; RP 10-39). The trial court then reviewed the police reports in each case, and found Mr. Wilson guilty as charged. (CP 134-146, 228-240; RP 39-40). The trial court entered written findings of fact and conclusions of law in each case. (CP 253-256, 257-260).

Mr. Wilson appealed both cases, and this Court consolidated the cases for review. (CP 148-149, 242-243). The Court of Appeals affirmed, failing to consider each of the required elements necessary to sustain a conviction for

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reported by Joe Wittstock. References to "RP" herein refer to the volume reported by Joe Wittstock.

attempted second-degree kidnapping. Appendix at 7-8. As to the trafficking in stolen property conviction, the Court of Appeals misconstrued Mr. Wilson's argument to be that the State had to prove *he* stole the DeWalt Mitre, and thus failed to fairly consider that his conviction was infirm absent evidence the tool was stolen by *anyone*. Appendix at 8.

The Court of Appeals affirmed Mr. Wilson's convictions, finding the evidence sufficient for both attempted kidnapping and trafficking in stolen property. Appendix at 1.

D. ARGUMENT

This Court should accept review because Mr. Wilson's convictions for attempted kidnapping and trafficking in stolen property rest on insufficient evidence.

The trial court erred in finding Mr. Wilson guilty of attempted second degree kidnapping, where the evidence was insufficient to prove that he took a substantial step towards kidnapping E.C.R. The evidence is also sufficient to establish Mr. Wilson committed the offense of trafficking in stolen

property, since there was no evidence the pawned DeWalt Miter was stolen.

Under the federal and state constitutions, due process requires that the State prove every element of a crime beyond a reasonable doubt. U.S. Const. amend. XIV; Const. art. I, § 3; *State v. Johnson*, 188 Wn.2d 742, 750, 399 P.3d 507 (2017).

Where a person challenges the sufficiency of the evidence, the proper 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) (citing *State v. Green*, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980)). "[A]ll reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant." *Id.* (citing *State v. Partin*, 88 Wn.2d 899, 906-07, 567 P.2d 1136 (1977)). Furthermore, "[a] claim of insufficiency admits the truth of the State's evidence and all

inferences that reasonably can be drawn therefrom." *Id*. (citing *State v. Theroff*, 25 Wn. App. 590, 593, 608 P.2d 1254 (1980)).

Sufficiency of evidence in a bench trial is reviewed for "whether substantial evidence supports the challenged findings of fact and whether the findings support the trial court's conclusions of law." *State v. Smith,* 185 Wn. App. 945, 956, 344 P.3d 1244 (2015) (citing *State v. Alvarez,* 105 Wn. App. 215, 220, 19 P.3d 485 (2001)). "Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the finding's truth." *State v. Stevenson*, 128 Wn. App. 179, 193, 114 P.3d 699 (2005).

The trial court's legal conclusions are reviewed de novo. *State v. Gatewood*, 163 Wn.2d 534, 539, 182 P.3d 426 (2008). The findings of fact must support the elements of the crime beyond a reasonable doubt. *Alvarez*, 104 Wn. App. at 220.

The remedy for insufficient evidence to prove a crime is reversal, and retrial is prohibited. *State v. Smith*, 155 Wn.2d 496, 505, 120 P.3d 559 (2005).

a. The evidence was insufficient to prove Mr. Wilson took a substantial step necessary for conviction of second-degree kidnapping.

The Court of Appeals erred in affirming Mr. Wilson's conviction for attempted second degree kidnapping because the evidence was insufficient to prove he took a substantial step towards kidnapping E.C.R.

Here, Mr. Wilson does not challenge the trial court's factual findings, only the conclusions of law drawn from those facts; therefore, review is de novo. *See Gatewood,* 163 Wn.2d at 539.

In order to find Mr. Wilson guilty of attempted second degree kidnapping, the trial court had to find that Mr. Wilson, with the intent to commit the crime of second degree kidnapping, committed an act which was a substantial step towards that crime, by attempting to intentionally restrain E.C.R. by secreting or holding him in a place where he is not likely to be found. (CP 16, 259); *see also* RCW 9A.40.030(1); RCW 9A.40.010(1)(a); RCW 9A.40.010(6).

"[E]nticing or seeking to entice the contemplated victim of the crime to go to the place contemplated for its commission constitutes a substantial step." *State v. Sivins*, 138 Wn. App. 52, 64, 155 P.3d 982 (2007) (alteration in original) (internal quotation marks omitted) (citations omitted). "'Any slight act done in furtherance of a crime constitutes an attempt if it clearly shows the design of the individual to commit the crime.'" *Id.* (*quoting State v. Price*, 103 Wn. App. 845, 852, 14 P.3d 841 (2000)).

"In determining whether there is sufficient evidence of restraint by means of secreting the victim . . . the setting of events and the physical surroundings must be examined carefully." *Green*, 94 Wn.2d at 225–26. In *State v. Billups*, the defendant leaned out of the window of the van he was driving, and said to two girls who were preparing to cross the street in front of the van: "Hi girls. I'll pay you a dollar if you'll come down to Shilshole with me." *State v. Billups*, 62 Wn. App. 122, 124, 813 P.2d 149 (1991). The girls then ran across the street

to a nearby house, and used the telephone to call one of their mothers. *Id.* The defendant was charged with and convicted of two counts of attempted second degree kidnapping. *Id*.

On appeal, the defendant argued there was insufficient evidence to support the convictions. *Id*. at 125-27. The court disagreed, holding that "the trier of fact could probably have found [the defendant's] actions sufficient to demonstrate both that he took a substantial step toward the commission of second degree kidnapping and that he had an intent to abduct." *Id.* at 126. The court found the defendant's efforts was a substantial step towards kidnapping the girls because by offering the girls money, the defendant "sought to entice the girls into his van." *Id.* Had they complied, "their movements would have been restrained by their presence in the van." *Id.* Restraint in the van "would have been secreting or holding the girls in a place where they were not likely to be found." *Id.* at 126-27.

In *State v. Stubsjoen*, the defendant was convicted of second degree kidnapping of a baby. *State v. Stubsjoen*, 48 Wn.

App. 139, 141-143, 738 P.2d 306 (1987). On appeal, the defendant argued there was insufficient evidence that she secreted or held the baby in a place the baby was not likely to be found, because "virtually all of the time she had the child, they were in public areas where the child could easily be seen." *Id*. at 144. The court rejected the argument, reasoning that the defendant "in effect concealed the child by acting as though the child was her own." *Id*. at 145. The court found "a reasonable interpretation of the current kidnap statute, which is consistent with its purpose, is that a child is abducted when held in areas or under circumstances where it is unlikely those persons directly affected by the victim's disappearance will find the child." *Id*. The court found that "[h]ere, such persons were the child's parents, legal guardian or custodian, and law enforcement officers." *Id*.

Here, the evidence is insufficient to prove Mr. Wilson took a substantial step towards kidnapping E.C.R., by attempting to intentionally restrain E.C.R. by secreting or

holding him in a place where he is not likely to be found. There is no evidence that Mr. Wilson enticed or sought to entice E.C.R. to go to a place contemplated for committing the crime. *See Sivins*, 138 Wn. App. at 64. Examining the setting of events and physical surroundings carefully, there is not sufficient evidence of attempted restraint by means of secreting E.C.R. *See Green*, 94 Wn.2d at 225-26.

It is pure speculation that Mr. Wilson could have secreted or held E.C.R. in a place where he is unlikely to be found. The encounter occurred at the Hoopfest event in Spokane, with six bystanders observing. (CP 2-6, 18-22, 258-259). Mr. Wilson attempted to remove E.C.R. from his mother's grasp; he failed; and the encounter ended. (CP 2-6, 18-22, 258-259).

Mr. Wilson was on foot; there is no indication he was affiliated with a vehicle where he could have taken E.C.R. (CP 4, 19, 258); *cf. Billups*, 62 Wn. App. at 124-27. Mr. Wilson made no attempt to secret E.C.R. or hold E.C.R. in a place

where he is not likely to be found, such as a vehicle or a building. *Id.*

In addition, Mr. Wilson was not able to remove E.C.R. from his mother, and then act as if the child was his own. (CP 2-6, 18-22, 258-259); *cf. Stubsjoen*, 48 Wn. App. at 144-145. Mr. Wilson also made no attempt to act as if the child was his own. To the contrary, Mr. Wilson told law enforcement he works for Allied Security and he saw that a child was lost, and he grabbed ahold of the child to find his mother. (CP 7, 23). Prior to Mr. Wilson attempting to pull E.C.R. from her grasp, E.C.R.'s mother observed Mr. Wilson walking around to numerous people with a phone and showing a phone to people. (CP 4, 19). A bystander observed Mr. Wilson yelling "Amber Alert! Amber Alert!" before approaching E.C.R. and his mother. (CP 4, 20, 258-259). The facts demonstrate Mr. Wilson was looking for a lost child, not that he was acting as if E.C.R. was his own child. The trial court erred in concluding that the fact that Mr. Wilson stated "Amber Alert" indicated he

knew that his behavior constituted as attempt to abduct a child. (CP 260).

Mr. Wilson tried to grab a child from his mother, and he failed. (CP 2-6, 18-22, 258-259). Without any additional facts, the trier of fact could not know, surmise, or speculate what Mr. Wilson's next steps would have been had he successfully removed E.C.R. from his mother's grasp.

The trial court concluded "Mr. Wilson unlawfully restrained E.C.R. under RCW 9A.40.010(6), because E.C.R. was under sixteen years old and his mother had not acquiesced to the restraint." (CP 259). The trial court then found that "[i]n unlawfully restraining E.C.R., Mr. Wilson took a substantial step that was beyond mere preparation toward abducting E.C.R., and consequently toward second degree kidnapping." (CP 260).

The trial court erred in concluding Mr. Wilson took a substantial step toward abducting E.C.R., based on the fact of restraint alone. (CP 259-260). While the facts do arguably

show that Mr. Wilson restrained E.C.R. pursuant to RCW 9A.40.010(6)(b), because E.C.R. was under sixteen years old and his mother did not acquiesce to the restraint, what is required for a conviction here is more than restraint alone. See CP 16, 259; *see also* RCW 9A.40.010(6)(b); RCW 9A.40.030(1).

The trial court had to find that Mr. Wilson committed an act which was a substantial step towards second degree kidnapping, by attempting to intentionally abduct E.C.R. See CP 16 (emphasis added); CP 259; *see also* RCW 9A.40.030(1) ("Abduct" means to restrain a person is a specific way, not just restraint alone). RCW 9A.40.010(1); see also CP 259. Where, as here, there is no allegation of deadly force, the trial court had to find Mr. Wilson attempted to intentionally restrain E.C.R. by secreting or holding him in a place where he is not likely to be found. *See* RCW 9A.40.010(1)(a).

Thus, the trial court's conclusions of restraint alone are only half of the analysis required for attempted second degree

kidnapping. Attempted second degree kidnapping requires restraint, but that restraint must be done by "secreting or holding him . . . in a place where he . . . is not likely to be found." RCW 9A.40.010(1)(a); *see also* RCW 9A.40.030(1). As set forth above, the facts here do not prove that Mr. Wilson took a substantial step towards abducting E.C.R., because there is insufficient evidence of restraint by means of secreting E.C.R. The Court of Appeals similarly failed to engage in analysis of all of the required elements, summarily finding the proof was adequate to show "Wilson used threatening force to restrain [E.C.R]." Appendix at 7.

The evidence is insufficient to support a conviction for attempted second degree kidnapping. This Court should accept review. RAP 13.4(b)(3).

b. The evidence was also insufficient to find Mr. Wilson guilty of first degree trafficking in stolen property, where the State failed to prove that the DeWalt Miter saw Mr. Wilson pawned was stolen.

The evidence supporting Mr. Wilson's conviction for first degree trafficking in stolen property is insufficient because the State failed to prove that the DeWalt Miter saw Mr. Wilson pawned was stolen.

In order to find Mr. Wilson guilty of first degree trafficking in stolen property, the trial court had to find, beyond a reasonable doubt, that Mr. Wilson knowingly trafficked in stolen property. (CP 158, 254-255); *see also* RCW 9A.82.050(1) (first degree trafficking in stolen property). "Stolen" means obtained by theft. *See* RCW 9A.82.010(16) (defining "stolen property."). The conduct here that is alleged to constitute trafficking is Mr. Wilson pawning a Dewalt Miter saw at a Pawn One store in Spokane. (CP 158, 254-255).

Thus, Mr. Wilson could be found guilty of first degree trafficking in stolen property only if the DeWalt Miter saw he

pawned was stolen, meaning obtained by theft. The evidence was insufficient to prove the DeWalt Miter saw Mr. Wilson pawned was stolen, i.e., obtained by theft. Although there was evidence that Mr. Wilson had stolen a Dewalt Miter saw from the rental property owned by Mr. Kraiker, there was no evidence to establish the Dewalt Miter saw pawned by Mr. Wilson was this same Dewalt Miter saw stolen from Mr. Kraiker's rental property. (CP 159-163, 254-255).

Mr. Kraiker knew he had a Dewalt Miter saw at the rental property. (CP 160-161, 254). However, he did not provide a serial number for his saw. (CP 162). Therefore, Mr. Kraiker's Dewalt Miter saw from his rental property could not be identified as the same Dewalt Miter saw that was pawned by Mr. Wilson. *Cf. State v. Cutts*, No. 43453-9-II, 2013 WL 6244554, *3 (Wash. Ct. App. Dec. 3, 2013) (upholding a conviction for second degree trafficking in stolen property, where the trafficked property contained an inventory sticker linking it to the property owner) (GR 14.1(a)).

In addition, Mr. Kraiker did not identify the Dewalt Miter saw pawned by Mr. Wilson as his Dewalt Miter saw. (CP 159-163). Mr. Kraiker did not view the still shots of video surveillance of Mr. Wilson pawning a Dewalt Miter saw, and confirm that the saw belonged to him. (CP 159-163, 254-255); *cf. State v. Peden*, No. 53621-8-II, 2021 WL 461687, *1-2 (Wash. Ct. App. Feb. 9, 2021) (upholding a conviction for first degree trafficking in stolen property; concluding a reasonable juror could conclude a DVD was stolen property, where a detective returned the property to the owner, and the owner did not have any trouble identifying the property) (GR 14.1(a)).

Substantial evidence does not support the trial court's finding of fact 6, "[Ms.] Burchinal had located the saw at a Pawn One shop, located at 3023 E. Sprague, Spokane WA 99202." (CP 254). There is evidence that Ms. Burchinal went to Pawn One and learned that Mr. Wilson had pawned a miter saw, but there is no evidence that she identified this saw as the saw that belonged to Mr. Kraiker. (CP 161).

Likewise, substantial evidence does not support the trial court's finding of fact 9, "[p]hotos obtained from Pawn One confirmed that the male selling the stolen miter saw was Peter Wilson." (CP 254). There is no evidence that this saw pawned by Mr. Wilson was the saw that belonged to Mr. Kraiker, "the stolen miter saw." (CP 159-163).

The DeWalt Miter saw Mr. Wilson pawned was not identified by any witness as belonging to Mr. Kraiker. The facts establish nothing identifying or unique about the DeWalt Miter saw pawned by Mr. Wilson.

The trial court erred in concluding the Dewalt Miter saw pawned by Mr. Wilson was the Dewalt Miter saw owned by Mr. Kraiker. (CP 255, CL 6, 7). As argued above, there was no link made between the Dewalt Miter saw pawned by Mr. Wilson and the Dewalt Miter saw owned by Mr. Kraiker. (CP 159-163, 254-255).

When the evidence presented at the bench trial is viewed in the light most favorable to the State, a rational trier of fact

could not find, beyond a reasonable doubt, that the DeWalt Miter saw pawned by Mr. Wilson was stolen, i.e., obtained by theft. *See Salinas,* 119 Wn.2d at 201 (citing *Green,* 94 Wn.2d at 220-22). There was no evidence connecting the saw pawned by Mr. Wilson to the saw owned by Mr. Kraiker.

Without evidence that Mr. Kraiker identified the Dewalt Miter saw pawned by Mr. Wilson as his, there was no evidence that the pawned saw was a stolen item. Without evidence that the pawned saw was stolen, no rational trier of fact could have found that Mr. Wilson trafficked stolen property when pawned a Dewalt Miter saw at Pawn One. The Court of Appeals however, failed to address this evidentiary deficiency, misconstruing Mr. Wilson's argument to be that he asserted the State had to prove *he* stole the property. Appendix at 8. This Court should accept review. RAP 13.4(b)(3).

E. CONCLUSION

Based on the foregoing, petitioner Peter Wilson respectfully requests this that review be granted pursuant to RAP 13.4(b)(3).

In compliance with RAP 18.17, this petition contains 3,732 words.

DATED this 4th day of May, 2023.

Respectfully submitted,

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APPENDIX

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Court of Appeals Opinion 1

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

STATE OF WASHINGTON, Respondent,	)	No. 38606-6-III cons. with No. 38922-7-III
v.	)	UNPUBLISHED OPINION
PETER G. WILSON, Appellant.	)	

FEARING, J. — Peter Wilson challenges the sufficiency of the evidence to convict him of attempted kidnapping and trafficking in stolen property. Because ample evidence supports each conviction, we affirm the convictions.

FACTS

This prosecution arises from two unrelated events in the life of appellant Peter Wilson. We borrow the facts from police reports.

The first event covers a missing valuable saw. Richard Kraiker owned and rented a Spokane resident to tenants. Kraiker stored tools in the dwelling's basement and a shed on the property. He stored a DeWalt Miter saw in the basement.

In 2019, Jason Lemieux, Cameron Brunson, and John Looper rented Richard Kraiker's residence. Peter Wilson also lived at the residence as Lemieux's guest.

On June 7, 2019, Cameron Brunson and Peter Wilson informed John Looper that the two contemplated selling some of the tools from the shed on the rental property. Looper told Brunson and Wilson that the DeWalt Miter saw in the home's basement was the only tool worth value. On June 9, Looper noticed the DeWalt Miter missing from the basement and promptly called the property's manager, Hallie Burchinal, to report the absent saw.

Hallie Burchinal contacted law enforcement. Burchinal listed, for the police, the tools Richard Kraiker stored in the basement and the shed on the property. Burchinal did not know the serial number for the DeWalt Miter saw.

In investigating the reported theft, law enforcement officers contacted Pawn One. The pawn shop gave the officers a slip that recorded the pawning of a DeWalt Miter saw for $125 on June 9, 2019. From photographs taken of the transaction, police identified Peter Wilson as the seller of the saw. The photographs also pictured Cameron Brunson accompanying Wilson.

The second event occurred during June 2019 Hoopfest. Peter Wilson approached Jessica Vasquez and her eleven-year-old son, who we pseudonymously name Juan, while the two waited in line for pizza. Wilson incongruously repeatedly yelled "Amber alert!" Clerk's Papers (CP) at 4. Wilson asked Vasquez if the boy was her son. After Vasquez confirmed that Juan was her son, Wilson grabbed the boy around the waist and attempted to pull him from Vasquez. Vasquez held the son close to prevent an abduction.

Others in the Hoopfest congregation observed the tussle between Peter Wilson and Jessica Vasquez for physical control of Vasquez's son. Some bystanders grabbed Wilson and restained him until law enforcement arrived.

PROCEDURE

The State of Washington charged, in two separate prosecutions, Peter Wilson with first-degree trafficking in stolen property and attempted second-degree kidnapping. The superior court ordered a competency evaluation. The evaluation revealed that Wilson was competent to form the requisite intent to commit each crime.

The State assigned the prosecutions of Peter Wilson to Felony Mental Health Court. Under the terms of the therapeutic court, Wilson agreed, in the event the mental health court terminated him from its program, to submit to a bench trial, during which trial the court would decide his guilt or innocence based only on police reports. The State agreed to dismiss both charges if Wilson successfully completed the program.

In 2021, law enforcement arrested Peter Wilson on two violent felony charges. The Spokane County Felony Mental Health Court then terminated Wilson's participation in its treatment program.

The two earlier stayed prosecutions against Peter Wilson proceeded to a bench trial. The superior court reviewed the information contained in police reports. The court convicted Wilson of first-degree trafficking in stolen property and attempted second-degree kidnapping.

The trial court entered the following findings of fact and conclusions of law:

> Attempted Second-Degree Kidnapping Conclusions of Law
>
> 6. . . . In doing so, Mr. Wilson unlawfully restrained [Juan Vasquez] under RCW 9A.40.010(6), because [Juan] was under sixteen years old and his mother had not acquiesced to the restraint. (Elements 1.a., 1.c.)
> 7. In unlawfully restraining [Juan], Mr. Wilson took a substantial step that was beyond mere preparation toward abducting [Juan], and consequently toward second degree kidnapping. (Element 1.a.)
> 8. . . . Mr. Wilson also stated "Amber Alert," indicating he knew that his behavior constituted an attempt to abduct a child. (Element 1.b.)
> 9. When Mr. Wilson took a substantial step toward abducting [Juan] with criminal intent to restrain him, Mr. Wilson committed attempted second degree kidnapping. (Elements 1.a. and 1.b.)

CP at 259-60.

> First Degree Trafficking in Stolen Property Findings of Fact
>
> 6. Burchinal had located the saw at a Pawn One pawn shop, located at 3023 E. Sprague, Spokane, WA 99202.
> . . . .
> 9. Photos obtained from Pawn One confirmed that the male selling the stolen miter saw was Peter Wilson.

CP at 254.

First Degree Trafficking in Stolen Property Conclusions of Law

> 6. The De Walt [sic] miter saw was owned by Richard Kraiker, as established by the following facts: Mr. Wilson was living without Mr. Kraiker's permission at a rental unit Mr. Kraiker owned at 2713 E. 4th Avenue, Spokane, Washington. Mr. Kraiker stored many tools in a shed on that property, including a DeWalt [M]iter saw. Some of those tools went missing. A fellow tenant, John Looper, overheard Mr. Wilson speaking with another man named Cameron Brunson talking about selling tools from the shed to make money. Mr. Looper commented that the only tool with any value was the miter saw. A couple of days later, on June 9, 2019, Mr. Looper noticed the miter saw was gone. Video surveillance shows Mr. Wilson, with another male, selling a De Walt [sic] [M]iter saw on June 9, 2019. (Element 1.a.)
>
> 7. Mr. Wilson knew the De Walt [sic] [M]iter saw was stolen because he found it on Mr. Kraiker's property and he was part of a plan to steal and sell it to make money. (Element 1.a.)

CP at 255.

LAW AND ANALYSIS

Attempted Kidnapping

To repeat, Peter Wilson challenges the sufficiency of evidence for his two convictions. We begin with attempted second-degree kidnapping.

Sufficient evidence supports a conviction if, 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); *State v. N.B.*, 7 Wn. App. 2d 831, 837, 436 P.3d 358 (2019). Substantial evidence constitutes evidence sufficient to persuade a fair-

minded, rational person of the finding's truth. *State v. Stevenson*, 128 Wn. App. 179, 193, 114 P.3d 699 (2005). In claiming insufficient evidence, the defendant necessarily admits the truth of the State's evidence and all reasonable inferences that can be drawn from it. *State v. Homan*, 181 Wn.2d 102, 106 (2014).

Peter Wilson argues that the trial court erred when it found him guilty of attempted second-degree kidnapping because insufficient evidence established the criminal element of taking a substantial step towards kidnapping Juan. Wilson assigns no error to a finding of fact. He assigns error to the trial court's conclusions of law 6, 7, 8, and 9.

Under RCW 9A.40.030(1):

> A person is guilty of kidnapping in the second degree if he or she intentionally *abducts* another person under circumstances not amounting to kidnapping in the first degree.

(Emphasis added). The term "abduct," as used in RCW 9A.40.030, is defined as:

> *restrain*[ing] a person by either (a) secreting or holding him or her in a place where he or she is not likely to be found, or (b) using or threatening to use deadly force.

RCW 9A.40.010(1) (emphasis added). In turn, the term "restrain" is defined as:

> restrict[ing] a person's movements without consent and without legal authority in a manner which interferes substantially with his or her liberty. Restraint is "without consent" if it is accomplished by (a) physical force, intimidation, or deception, or (b) any means including acquiescence of the victim, if he or she is a child less than sixteen years old or an incompetent person and if the parent, guardian, or other person or institution having lawful control or custody of him or her has not acquiesced.

RCW 9A.40.010(6).

One commits the imperfected crime of attempt when:

> A person is guilty of an attempt to commit a crime if, with intent to commit a specific crime, he or she does any act which is a substantial step toward the commission of that crime.

RCW 9A.28.020(1). When logical probability indicates the defendant acted with criminal intent, his or her intent may be inferred from all of the facts and circumstances surrounding the act, including the defendant's conduct. *State v. Lewis*, 69 Wn.2d 120, 123, 417 P.2d 618 (1966); *State v. Billups*, 62 Wn. App. 122, 126, 813 P.2d 149 (1991). With respect to attempted kidnapping in the second degree,

> [a] substantial step is an act strongly corroborative of the actor's criminal purpose, such as lying in wait, searching for or following the intended victim of the crime, enticing or seeking to entice the intended victim to the planned site of the crime, [or] reconnoitering the planned site of the crime.

State v. Newbern, 95 Wn. App. 277, 287, 975 P.2d 1041 (1999). Factual impossibility or legal impossibility are not available defenses to an attempt charge. RCW 9A.28.020(2).

Peter Wilson's conduct and the surrounding circumstances strongly suggest that he acted with the criminal intent of restraining Juan and that he took a substantial step toward performing the crime. Wilson grabbed Juan around the waist and aggressively attempted to pull him from his mother. He did so during a crowded community event. Wilson shouted "Amber alert." Wilson used threatening force to restrain Juan. Juan was

11 years old, he did not acquiesce to being grabbed, and his mother did not acquiesce to him being grabbed.

First-Degree Trafficking in Stolen Property

Peter Wilson argues that the trial court erred when it found him guilty of first-degree trafficking in stolen property because the State did not produce sufficient evidence to establish that he stole the pawned DeWalt Miter. In making this argument, Wilson assigns error to the trial court's findings of fact 6 and 9 and conclusions of law 6 and 9.

Under RCW 9A.82.050(1),

> A person who knowingly initiates, organizes, plans, finances, directs, manages, or supervises the theft of property for sale to others, or who knowingly traffics in stolen property, is guilty of trafficking in stolen property in the first degree.

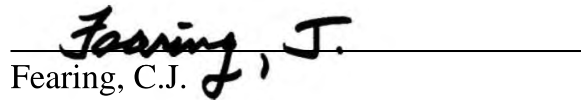
Contrary to Peter Wilsons' contention, the State need not prove that the accused stole the property in the first instance.

The evidence found in the police reports sufficed to convict Peter Wilson of knowingly trafficking stolen property. Wilson overheard others mention a desire to procure money by selling tools in the rental house. Wilson learned that the DeWalt Miter saw in the house's basement was worth value. Two days later, the DeWalt Miter went missing. Wilson pawned a DeWalt Miter saw. A receipt from the pawnshop revealed that a DeWalt Miter saw was pawned for $125 on the day it was reported missing. Pawnshop photos depicted Wilson with the DeWalt Miter saw.

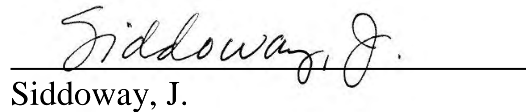
CONCLUSION

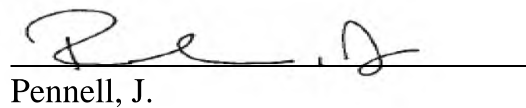
We affirm Peter Wilson's convictions for attempted kidnapping and trafficking in stolen property.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.


Fearing, C.J.

WE CONCUR:


Siddoway, J.


Pennell, J.

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 38606-6-III**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office / residence / e-mail address as listed on ACORDS / WSBA website:

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Washington Appellate Project

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