

No. 42509-2-II
(42522-0-II)

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

DAMOS L. HANDSOM,

Appellant.

On Appeal from the Pierce County Superior Court
Cause No. 10-1-03380-9
The Honorable John Hickman, Judge

OPENING BRIEF OF APPELLANT

STEPHANIE C. CUNNINGHAM
Attorney for Appellant
WSBA No. 26436

4616 25th Avenue NE, No. 552
Seattle, Washington 98105
Phone (206) 526-5001

TABLE OF CONTENTS

I.	ASSIGNMENTS OF ERROR	1
II.	ISSUE PERTAINING TO THE ASSIGNMENTS OF ERROR.....	1
III.	STATEMENT OF THE CASE	1
	A. PROCEDURAL HISTORY.....	1
	B. SUBSTANTIVE FACTS	2
IV.	ARGUMENT & AUTHORITIES	6
V.	CONCLUSION.....	10

TABLE OF AUTHORITIES

CASES

<u>City of Tacoma v. Luvene</u> , 118 Wn.2d 826, 827 P.2d 1374 (1992)	6
<u>State v. Bergeron</u> , 105 Wn.2d 1, 711 P.2d 1000 (1985)	7
<u>State v. Salinas</u> , 119 Wn.2d 192, 829 P.2d 1068 (1992)	6, 7
<u>State v. Sandoval</u> , 123 Wn. App. 1, 94 P.3d 323 (2004)	7, 8

OTHER AUTHORITIES

RCW 9A.52.020	7
---------------------	---

I. ASSIGNMENTS OF ERROR

1. The State failed to meet its constitutional burden of proving every element of the charged crime beyond a reasonable doubt.
2. The State failed to present sufficient evidence to prove beyond a reasonable doubt that Damos Handsom intended to commit a crime when he entered or remained in Rusty Parrott's trailer home.

II. ISSUE PERTAINING TO THE ASSIGNMENTS OF ERROR

1. Where the evidence showed only that Damos Handsom entered and remained inside Rusty Parrott's trailer home without permission, and that Handsom stood with a weapon and observed while co-participants committed additional criminal acts inside the trailer, did the State fail to present sufficient evidence to prove beyond a reasonable doubt that Handsom intended to commit a crime while inside Parrott's trailer home? (Assignments of Error 1 & 2)

III. STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

The State charged Damos Handsom with one count of first degree burglary (RCW 9A.52.020), and alleged that his sentence

should be enhanced because he was armed with a firearm at the time of the offense (RCW 9.94A.510, .530). (CP 113-14) Co-participants Maua Muasau, Michael Smith, and Cody Davis were also charged. (CP 113-14) Handsom, Muasau and Smith were tried together. Davis entered a guilty plea and testified as a defense witness at trial. (TRP 469)¹

The jury convicted Handsom of first degree burglary and found that he was armed with a deadly weapon during the commission of the offense. (TRP 666; CP 173-74) Handsom had no criminal history. (TRP 682; CP 225-26, 230) The trial court sentenced Handsom within his standard range to 40 months of confinement. (TRP 695; CP 232-33) This appeal timely follows. (CP 242)

B. SUBSTANTIVE FACTS

Rusty Parrott, his cousin Lois Hopkins, and her boyfriend William Edmiston lived together in Parrott's Lakewood, Washington trailer home for several years. (TRP 149, 214, 215) Hopkins' son, Cody Davis, also lived in the trailer for a short time in the summer of 2010. (TRP 150, 216) However, in August of that year Davis

¹ Any reference to the transcripts of the pretrial hearings will be to the date of the proceeding. Any reference to the transcripts of trial and sentencing proceedings, labeled Volumes I thru IX, will be to "TRP."

relapsed into drug use, and his behavior became erratic. (TRP 152, 181, 443-45, 448) Among other things, Davis was convinced that Hopkins had killed his father (who was actually alive and well), and that Parrott had taken gold given to Davis by his father and stashed it in the trailer. (TRP 152, 446, 448, 467)

Parrott eventually asked Davis to move out. (TRP 151, 217, 442-43) The next day, August 7, 2010, Hopkins and Edmiston drove Davis to downtown Tacoma and left him there. (TRP 151, 217) Just after midnight on August 8, Davis returned with three men and demanded to be let into the trailer so he could gather his personal belongings. (TRP 153-54, 185, 266, 454) But Davis did not have any belongings in the trailer, so Parrott and Edmiston refused to let him in. (TRP 152-53, 218, 221)

According to Parrott and Edmiston, the men began kicking the trailer doors, and were eventually able to break through the door and get inside the trailer. (TRP 154, 156-57, 221) A large man, who Edmiston later identified as Maua Muasau, grabbed Edmiston and Parrott and pulled them into the hallway, forced them to their knees, and demanded that they "give them the gold." (TRP 156, 160, 163, 177, 223, 228) When Parrott tried to call the police, Muasau grabbed and smashed the phone. (TRP 161-62, 224)

Muasau threatened to kill Parrott and Edmiston if they did not give them the gold. (TRP 161, 225, 230, 231)

Davis and Muasau then went into what had been Davis' bedroom and started tearing apart the room. (TRP 162, 173-74, 228) At the same time, the other two men, who could not be identified because they wore stocking caps over their faces, stood over Edmiston and Parrot. (TRP 163, 223, 228-29) One of the men held a pistol and the other held an AK-47. (TRP 159, 223) The men pointed the guns toward Edmiston and Parrott, but they did not say or do anything else. (TRP 189, 192-93, 190, 192)

When Davis and Muasau returned to the hallway, Muasau hit Parrott on the head with his fist, and the man holding the pistol hit Edmiston on the head with the gun. (TRP 159, 163, 165, 231, 232) Eventually the four men left without taking anything. (TRP 196, 172, 196-97, 232)

A neighbor saw the men trying to kick in the trailer doors, and called 911. (TRP 266; Exh. 58A) Police arrived just as a car was pulling out of the trailer's driveway. (TRP 274, 276, 357, 359, 360) Police stopped the car and removed four men, Davis, Muasau, Michael Smith and Damos Handsom. (TRP 276, 279, 281, 361)

Handsom, who was driving the car, was wearing a flack-jacket and had a ski mask pushed onto the top of his head. (TRP 282, 373, 74) When the officers searched Handsom's car, they found an AK-47 and a pistol in the trunk, and ammunition in the passenger compartment. (TRP 304, 305, 307) The officers also noted that the front license plate was different from the back license plate. (TRP 299)

When he was questioned by one of the responding officers, Handsom said that he went inside the trailer and was holding the AK-47, but that he was simply trying to keep things from escalating. (TRP 375) Smith also told one of the officers that Handsom had the gun only to "keep the peace." (TRP 404)

When they went to the trailer, the responding officers noted that the door jambs were broken and the siding and insulation had been pulled down from the walls of the bedroom. (TRP 290, 291)

Cody Davis testified at trial that Handsom had been trying to help Davis stay drug-free by giving him a place to live and by working on cars together. (TRP 440-41) But when Davis starting taking drugs again, Handsom asked him to move, and that is when he went to live with Parrott, Edmiston and Hopkins. (TRP 443) Davis testified he was "going crazy" and "freaking out," and he

believed he still had belongings in the trailer, including gold. (TRP 446, 448)

He called Handsom and asked for help getting his belongings back. (TRP 445, 446) Handsom refused, but Davis persisted and eventually Handsom agreed to help. (TRP 447) They picked up Muasau and Smith in Handsom's car, and went to the trailer. (TRP 448) Davis testified that his intent was to retrieve things that he believed belonged to him. (TRP 449) The men did not plan to hurt anyone and they did not take anything that did not belong to Davis. (TRP 448, 449, 454)

IV. ARGUMENT & AUTHORITIES

"Due process requires that the State provide sufficient evidence to prove each element of its criminal case beyond a reasonable doubt." City of Tacoma v. Luvene, 118 Wn.2d 826, 849, 827 P.2d 1374 (1992) (citing In re Winship, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970)). Evidence is sufficient to support a conviction only if, viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). "A claim of insufficiency admits the truth of the State's evidence and all

inferences that reasonably can be drawn therefrom.” Salinas, 119 Wn.2d at 201.

A person is guilty of burglary in the first degree if, with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a building and if, in entering or while in the building or in immediate flight therefrom, the actor or another participant in the crime (a) is armed with a deadly weapon, or (b) assaults any person.

RCW 9A.52.020(1). The intent required for burglary is intent to commit any crime inside the burglarized premises. State v. Bergeron, 105 Wn.2d 1, 4, 711 P.2d 1000 (1985).

In this case, the State specifically charged Handsom with first degree burglary under subsection (a), alleging that he committed the burglary while armed with a deadly weapon. (CP 113) The State did not charge Handsom with any other crimes alleged to have occurred inside the trailer. The State’s evidence did establish that Handsom “enter[ed] or remain[ed] unlawfully” in the trailer, and that he carried a deadly weapon. But the State’s evidence did not establish, beyond a reasonable doubt, that Handsom had or formed an intent to commit any other crime in addition to the unlawful entry.

The case of State v. Sandoval, 123 Wn. App. 1, 94 P.3d 323 (2004), where Division 3 overturned a burglary conviction on similar

facts, is instructive. In that case, Sandoval loudly kicked open the door of a stranger's residence, breaking a lock, a door and a door frame in the process. 123 Wn. App. at 3, 5. When confronted by the homeowner, Sandoval seemed surprised, and pushed the homeowner to the ground. 123 Wn. App. at 3, 5.

The court reversed Sandoval's burglary conviction, stating: "there is no fact, alone or in conjunction with others, from which entering with intent to commit a crime more likely than not could flow. The parties were strangers. The assault was a shove after entering. Mr. Sandoval did not try to sneak in. He was not wearing burglary-like apparel or carrying burglary tools." Sandoval, 123 Wn. App. at 5-6 (citing State v. Bencivenga, 137 Wn.2d 703, 705, 711, 974 P.2d 832 (1999)). The court also noted that Sandoval "did not try to take any of Mr. Christensen's property or confess to doing so." Sandoval, 123 Wn. App. at 6 (citing State v. Brunson, 76 Wn. App. 24, 30-31, 877 P.2d 1289 (1994), aff'd, 128 Wn.2d 98, 905 P.2d 346 (1995)). The court concluded that there was insufficient evidence to infer that Sandoval intended to commit a crime inside the home. Sandoval, 123 Wn. App. at 6.

In this case, Parrott and Davis both testified that Davis was suffering from delusions, and believed his personal belongings,

including gold bars, were inside the trailer. (TRP 242, 249-50, 256) Davis initially knocked on the door and requested that he be allowed inside to gather his personal belongings. (TRP 154, 221, 454) Davis testified that he only wanted to get items that belonged to him, and that there was no plan among the men to hurt anyone or steal anything. (TRP 446, 448, 449, 454)

Furthermore, like the defendant in Sandoval, Handsom did not try to sneak into the trailer. Rather, Davis announced their presence and told Parrott and Edmiston that they had come to get his belongings. Handsom also was not carrying any burglary tools, and did not demand, take or destroy any property. And Handsom did not strike Parrott or Edmiston.

Like Sandoval, there was insufficient evidence to prove that Handsom intended to commit another crime inside the trailer. The evidence showed instead that Handsom was merely an observer while the other three men committed additional criminal acts inside the trailer. Handsom and Smith both told the police that Handsom wanted to keep the peace and keep the situation from escalating. (TRP 375, 404) The State did not establish that Handsom had any other purpose or intent when he entered or remained in the trailer.

V. CONCLUSION

Because the State failed to prove that Handsom entered or remained in Parrott's trailer with the intent to commit a crime, the State failed to prove all of the essential elements of first degree burglary. Handsom's conviction should be reversed and dismissed with prejudice.

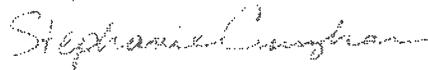
DATED: March 30, 2012



STEPHANIE C. CUNNINGHAM
WSB #26436
Attorney for Damos L. Handsom

CERTIFICATE OF MAILING

I certify that on 03/30/2012, I caused to be placed in the mails of the United States, first class postage pre-paid, a copy of this document addressed to: Damos L. Handsom, DOC#352051, Monroe Correctional Complex, P.O. Box 777, Monroe, WA 98272-0777.



STEPHANIE C. CUNNINGHAM, WSBA #26436

CUNNINGHAM LAW OFFICE

March 30, 2012 - 10:37 AM

Transmittal Letter

Document Uploaded: 425092-Appellant's Brief.pdf

Case Name: State v. Damos L. Handsom

Court of Appeals Case Number: 42509-2

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

Brief: Appellant's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Other: _____

Sender Name: S C Cunningham - Email: **sccattorney@yahoo.com**

A copy of this document has been emailed to the following addresses:

pcpatcecf@co.pierce.wa.us