

NO. 47546-4-II

COURT OF APPEALS, DIVISION II

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STATE OF WASHINGTON,

Respondent,

vs.

JASON R. STOMPS,

Appellant.

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APPEAL FROM THE SUPERIOR COURT  
FOR CLARK COURT  
The Honorable Derek Vanderwood, Judge  
Cause No. 14-1-00772-8

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BRIEF OF APPELLANT

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THOMAS E. DOYLE, WSBA NO. 10634  
Attorney for Appellant

P.O. Box 510  
Hansville, WA 98340  
(360) 626-0148

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A. ASSIGNMENTS OF ERROR

01. The trial court erred in not taking count I, burglary in the first degree, from the jury for lack of sufficiency of the evidence.
02. The trial court erred in not taking count II, kidnapping in the second degree, from the jury for lack of sufficiency of the evidence.
03. The trial court erred in not taking count III, kidnapping in the second degree, from the jury for lack of sufficiency of the evidence.
04. The trial court erred in not taking count IV, kidnapping in the second degree, from the jury for lack of sufficiency of the evidence.
05. The trial court erred in not taking count V, assault in the second degree, from the jury for lack of sufficiency of the evidence.
06. The trial court erred in not taking count VI, assault in the second degree, from the jury for lack of sufficiency of the evidence.
07. The trial court erred in not taking count VII, assault in the second degree, from the jury for lack of sufficiency of the evidence.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

01. Whether there was sufficient evidence that Stomps intended to commit a crime against a person or property inside the building to support his conviction for burglary in the first degree as charged in count I? [Assignment of Error No. 1].

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02. Whether there was sufficient evidence that Stomps intended to abduct each of the three individuals to support his convictions for kidnapping in the second degree as charged in counts II-IV? [Assignments of Error Nos. 2, 3 and 4].
03. Whether there was sufficient evidence that Stomps intended to create in each of the three individuals apprehension and fear of bodily injury to support his convictions for assault in the second degree as charged in counts V-VII? [Assignments of Error Nos. 5, 6 and 4].

C. STATEMENT OF THE CASE

01. Procedural Facts

Jason R. Stomps was charged by third amended information filed in Clark County Superior Court April 14, 2015, with burglary in the first degree, count I, three counts of kidnapping in the second degree, counts II-IV, and three counts of assault in the second degree, counts V-VII, each with a firearm sentencing enhancement, contrary to RCWs 9A.08.020, 9A.52.020, 9A.40.030, 9A.36.021, and 9.94A.533. [CP 42-44].

Subject to further evidentiary objections, Stomps's statements to the police were ruled admissible at trial, which commenced April 13, the Honorable Derek Vanderwood presiding. [RP 25-26; CP 128-131].

Neither objections nor exceptions were taken to the jury instructions. [RP 339].

Stomps was found guilty, including weapon enhancements, sentenced below his standard range, and timely notice of this appeal followed. [CP 80-110].

02. Substantive Facts

On March 20, 2014, near 8:30 in the evening, police were dispatched to the scene of a reported forced entry in progress at the residence of Annette Waleske and her husband, which was located in Clark County. [RP 79, 131, 145-46]. The Waleskes' daughter Tayler had called 911 to report that there was "someone at my house right now banging on our door and asking for someone that doesn't live here, and he has a gun." [RP 115-16]. Upon arrival at the scene, police observed that the front door of the residence had been "blown completely off its hinges" and that Stomps, a bail enforcement agent, was standing just inside the entryway holding a fully loaded operable handgun. [RP 148-49, 209, 217]. He was immediately detained without incident. [RP 108, 151].

Prior to the deputies arrival, Stomps had pounded on the front door and said he was looking for Courtney Barnes. [RP 80-81, 83, 101, 114]. "He said, 'Open the fucking door now, or I'm going to kick it in.'" [RP 84]. At the same time, David Smith, Stomps's partner, was banging on the

unlocked slider at the the back of the house. [RP 103, 172]. After the residents said they didn't know Barnes and to go away, Stomps broke down the door with a large hammer. [RP 101, 114, 172]. Once inside, he and Smith ordered the three residents out of the upstairs bedroom and into the downstairs living room at gunpoint. [RP 90-92, 104-05, 128]. Stomps ordered 20-year-old Quincey Waleske, who had just gotten out of the shower and had only a towel wrapped around him, and 19-year-old Nathan Panosh to handcuff themselves to each other before ordering them to get on the floor along with Quincey's 18-year-old sister Tayler, who had earlier called 911. [RP 78, 92-94, 105-06]. Stomps and Smith said they were bail bond recovery agents looking for a fugitive. [RP 106]. All three occupants said that Stomps never identified himself before entry into the house, only that he was looking for Barnes and that if they didn't open the front door he would kick it in. [RP 86-87, 101-02].

Stomps told the police he was there to serve a fugitive warrant and that the fugitive's girlfriend who had posted the bail lived at the residence, adding that Regan Bail Bonds, his employer, owned the house. [RP 169-171]. He thought the fugitive was in his 30s. [RP 171]. Smith had called him to assist in apprehending the fugitive, telling Stomps that one of the males inside the house matched the description of the fugitive. [RP 170-71]. Stomps "said he identified himself as bail enforcement and told the

occupants to come to the door.” [RP 172]. Before going to the door, Stomps “told a bail lady” to call law enforcement to inform them they were forcing entry. [RP 173]. He said “he hadn’t had time to clear the house looking for Mr. Barnes prior to the arrival of law enforcement.” [RP 175]. He did not think any of the occupants were Barnes. [RP 175].

He said that he went –that they went - - he said, “I went off a CI tip and a description that fit the size of the fugitive, Mr. Barnes.”

[RP 175].

Courtney Barnes’s bail contract had been arranged by his girlfriend Sinan Hang, who had listed the Waleskes’ residence as her address on the bail bond contract signed November 26, 2013. [RP 226-27, 233]. Annette Waleske had known Hang since high school and had given her permission in the past to use her address as her mailing address, which she did. [RP 140]. Hang was never given permission to use the address as her home residence. [RP 141].

Stomps’s wife Victoria,<sup>1</sup> who was a bail agent with Regan Bail Bonds, was at the scene and testified that Stomps had knocked on the door and yelled, ““Bail enforcement, open up.”” [RP 242-43]. She called 911:

I told 911, I believe, this is Victoria with Regan Bail Bonds. I think I gave them the address, and I told

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<sup>1</sup> The two were married after the incident. [RP 240].

them that my two agents were about to force entry into the home.

[RP 244].

Jason Stomps testified that prior to entry into the house he had identified himself multiple times as “bail enforcement” and that he was there for Courtney Barnes. [RP 259-60]. He was wearing a black fugitive recovery vest with yellow lettering indicating “Fugitive Recovery.” [RP 158, 220, 242, 281]. Looking into the house, Stomps believed he “had spotted the fugitive myself.” [RP 261]. He then instructed his wife to call 911 and to bring him his tool, a railroad tie driver that’s like a sledgehammer, weighing about 10 pounds, which he used to take the door off its hinges. [RP 264-66]. Upon entry he pulled out this gun and told the three people to come downstairs because he needed to search the house. [RP 266-69]. He did not think anyone of the three individuals was the fugitive. [RP 279, 282]. He told the two males to handcuff themselves together for safety reasons “because I needed to clear the house and they were not listening to us.” [RP 269]. “I had no idea how many people were in the house, who was in the house, if there were weapons in the house.” [RP 269]. He wanted the people out of the way because he “did not (want) anybody to get hurt or us to get hurt or - - I was concerned for everybody’s safety, just not mind.” [RP 270]. He denied he ever went upstairs in the

house or that he pointed his firearm at the the three individuals. [RP 271, 279]. He had “verified the same address that the cosigner (Hang) had listed as her address along with several other addresses.” [RP 272]. The search engine he used to do this indicated that Hung used the Waleskes’ address between January 2012 and January 2013. [RP 290].

D. ARGUMENT

THERE WAS INSUFFICIENT EVIDENCE  
THAT STOMPS COMMITTED BURGLARY  
IN THE FIRST DEGREE, COUNT I, KIDNAPPING  
IN THE SECOND DEGREE, COUNTS II-IV, OR  
ASSAULT IN THE SECOND DEGREE, COUNTS  
V-VII.<sup>2</sup>

Due Process requires the State to prove beyond a reasonable doubt all the necessary facts of the crime charged. U.S. Const. Amend. 14; Const. art. 1, § 3; In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970). The test for determining the sufficiency of the evidence is whether, after viewing the evidence in 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). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant.

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<sup>2</sup> As the sufficiency argument is similar for each of the counts, the counts are addressed collectively herein for the purpose of avoiding needless duplication.

Salinas, at 201; State v. Craven, 67 Wn. App. 921, 928, 841 P.2d 774 (1992). Circumstantial evidence is no less reliable than direct evidence, and criminal intent may be inferred from conduct where “plainly indicated as a matter of logical probability.” State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). A claim of insufficiency admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom. Salinas, at 201; Craven, at 928.

To prove burglary in the first degree, the State was required to prove each of the following elements beyond a reasonable doubt, as reflected in the court’s to-convict instruction:

- (1) That on or about March 20, 2014 the defendant entered or remained unlawfully in a building;
- (2) That the entering or remaining was with intent to commit a crime against a person or property therein;
- (3) That in so entering or while in the building or in immediate flight from the building the defendant or an accomplice in the crime charged was armed with a deadly weapon; and
- (4) That any of these acts occurred in the State of Washington.

[CP 59].

The State's evidence was insufficient to prove the second element: that Stomps intended to commit a crime against a person or property inside the building.

The jury was further instructed that,

A person who enters or remains unlawfully in a building may be inferred to have acted with intent to commit a crime against a person or property therein. This inference is not binding upon you and it is for you to determine what weight, if any, such inference is to be given.

[CP 61].

This inference, however, does not relieve the State of its burden to prove each element of the crime without violating due process. This is so because the State must show that the permitted inference more likely than not flows from the proven fact if the inference is offered as the sole and sufficient proof of intent to commit a crime in the building. State v. Cantu, 156 Wn.2d 819, 826, 132 P.3d 725 (2006).

Here, instead of relying solely on the statutorily permissible inference, the State offered evidence of the other charged offenses of kidnapping in the second degree and assault in the second degree to prove not only the second element of burglary in the first degree but the other offenses as well.

To prove kidnapping in the second degree, as charged in counts II-IV, the State was required to prove that Stomps intentionally abducted each of the three individuals. [CP 67-69]. To prove assault in the second degree, as charged in counts V-VII, the State had to prove that Stomps assaulted the same three people. As argued [RP 385] and instructed,

An assault is also an act, with unlawful force, done with the intent to create in another apprehension and fear of bodily injury, and which in fact creates in another a reasonable apprehension and imminent fear of bodily injury even though the actor did not intend to inflict bodily injury.

[CP 70].

What is at issue is whether there was sufficient evidence that Stomps intentionally abducted the three individuals in the building or intended to create in them apprehension and fear of bodily injury. This was required because the State had to prove that Stomps intended to commit a crime within the building in order to convict him of burglary in the first degree, in addition to the other offenses. The State failed to carry its burden in this regard.

There is no issue but that Stomps approached the Waleskes' residence as a bail bond recovery agent looking to arrest Courtney Barnes, a fugitive. That was and remained his only intent throughout the events. He thought he had seen Barnes inside the residence and knew after entry

that the three young occupants were not Barnes. His purpose and intent at that point was to clear the house as he continued to look for Barnes. He had no idea how many, if any, other people were in the house or if “there were weapons in the house.” He just wanted the people out of the way because he was concerned for everybody’s safety, not just his own. [RP 270]. Deputy Sheriff Tim Boardman was of similar mind, explaining that the police also checked the house after Stomps was secured to see if Barnes was there: “We made a quick check to make sure - - I mean, because people lie to us, too – and he wasn’t there.” [RP 167].

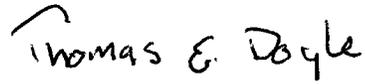
Stomps purpose and intent for being in the residence never changed from when he first approached the house until the police arrived, a point a which he still “hadn’t had time to clear the house looking for Mr. Barnes.” [RP 174]. He did not enter nor remain in the residence with the intent to commit a crime against a person or property therein. Sufficient evidence did not support Stomps’s convictions for the charged offenses, with the result that they must be dismissed.

E. CONCLUSION

Based on the above, Stomps respectfully requests this court to dismiss his convictions consistent with the arguments presented herein.

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DATED this 20<sup>th</sup> day of November 2015.



THOMAS E. DOYLE  
Attorney for Appellant  
WSBA NO. 10634

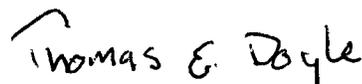
CERTIFICATE

I certify that I served a copy of the above brief on this date as follows:

Anne M. Cruser  
Prosecutor@Clark.wa.gov

Jason R. Stomps #382459  
Washington State Reformatory  
P.O. Box 777  
Monroe, WA 98272

DATED this 20<sup>th</sup> day of November 2015.



THOMAS E. DOYLE  
Attorney for Appellant  
WSBA NO. 10634

**DOYLE LAW OFFICE**

**November 20, 2015 - 4:21 PM**

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