IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. ALAN EARL SANT, Appellant.	No. 37668-7-II UNPUBLISHED OPINION

Quinn-Brintnall, J. — A jury found Alan Earl Sant guilty of first degree trafficking in stolen property and second degree possessing stolen property. Sant appeals only his first degree trafficking in stolen property conviction, arguing that the trial court violated his right to a unanimous jury verdict because sufficient evidence does not support the first alternative means charged. We affirm.

FACTS

On May 16, 2007, a worker at Creative Ornamental Iron, a business in South Tacoma, Washington, noticed items missing from a work truck that had been parked overnight in a fenced lot. Among the missing items were a Hilti power drill, aluminum ladder, and extension cords. Richard Bate, the owner of Creative Ornamental Iron, noticed that a hole had been cut into the fence near the truck, and reported the burglary to the Tacoma Police Department.

The following day, on May 17, 2007, Sant and his girl friend, Theresa A. Sampson, brought a Hilti power drill into Randy's Loan & Coin Shop, a pawnshop located about one mile from Bate's business. Sampson used the Hilti drill as collateral for a $100 loan. She gave the money to Sant. Bate searched local pawnshops for his stolen property and came across the Hilti drill at Randy's Loan & Coin Shop. Bate told the Tacoma Police Department that he believed the drill was the same drill missing from his truck.

Tacoma Police Detective Dave Hofner examined the drill and matched a broken piece of the missing drill's case that Bate provided to the pawned drill to confirm that it was the same one taken from Bate's business. Hofner then contacted Sampson who told the detective that Sant had brought the drill to her house the night of May 15, 2007.

On June 6, 2007, Detective Hofner contacted Sant, who was in custody on an unrelated charge. Sant told Hofner that, on the night of May 15, 2007, he had found the drill hidden in bushes about 100 feet from Creative Ornamental Iron. He stated he took the drill to Sampson's house and that he was with Sampson when she used her driver's license to pawn the drill. Sant also indicated that he believed Jason Elkins had stolen the drill to repay Sant for money Elkins owed him. Sant drew Hofner a map detailing the location of the bushes where Sant claimed Elkins had told him he would find the drill and signed a handwritten statement in which he stated he was "99 percent sure the [Hilti drill] was stolen." Report of Proceedings (RP) (Feb. 28, 2008) at 42.

Shortly thereafter, Detective Hofner discovered Elkins had been in custody on May 16, 2007, and could not have committed the burglary of Bate's business. Hofner arrested Sant on June 29, 2007, and Sant told Hofner his "story [was] still the same." RP (Mar. 3, 2008) at 195.

Sant also said: "I did something that I shouldn't have done. I'll accept what I did wrong. There's no more to say." RP (Mar. 3, 2008) at 195.

On July 2, 2007, Pierce County charged Sant with one count of first degree trafficking in stolen property and one count of second degree possession of stolen property. On February 28, 2008, the trial court held a CrR 3.5 hearing in which it found that all the statements Sant had made to the detectives were voluntary and admissible.

At trial, contrary to his written statement to police, Sant testified he found the Hilti drill and other items in the bushes at approximately 10 am on May 16, 2007. Sant also clarified that his written statement was meant to convey he was 99 percent sure the Hilti drill *could* have been stolen, not that it was, in fact, stolen.

The trial court instructed the jury on two alternative methods of committing first degree trafficking in stolen property.[1] Jury instruction no. 11 stated:

> To convict the defendant of the crime of Trafficking in Stolen Property in the First Degree as charged each of the following elements of the crime must be proved beyond a reasonable doubt:
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> (1) That on or about the 17th day of May, 2007, the defendant either
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> (a) did knowingly initiate, organize, plan, finance, direct, manage, or supervise the theft of property for the sale to others, or
>
> (b) did knowingly traffic in stolen property; and
>
> (2) That the defendant acted with the knowledge that the property had been stolen; and
>
> (3) That the acts occurred in the State of Washington
>
> If you find from the evidence that elements (2) and (3) and either (1)(a) or element (1)(b) have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. Elements (1)(a) and (1)(b) are alternatives and only one need be proved.

[1] RCW 9A.82.050(1) states: "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."

Clerk's Papers at 20.

On March 4, 2008, the jury found Sant guilty as charged. On April 11, 2008, the trial court sentenced Sant to concurrent sentences of 18 months incarceration for the first degree trafficking in stolen property conviction and 8 months incarceration for the second degree possessing stolen property conviction.

Sant appeals only his first degree trafficking in stolen property conviction.

ANALYSIS

Sant argues his right to a unanimous jury verdict was violated because the State failed to present sufficient evidence to support the first alternative means in jury instruction no. 11; that he did knowingly initiate, organize, plan, finance, direct, manage, or supervise the theft of property for the sale to others. In light of the deficient evidence, Sant argues he is entitled to a new trial because of the trial court's failure to instruct the jury that it needed to be unanimous as to which means Sant used in committing the offense to convict him of first degree trafficking in stolen property. We disagree.

A fundamental protection accorded to a criminal defendant is that a jury of his peers must unanimously agree on guilt. Const. art. I, § 21; *State v. Stephens*, 93 Wn.2d 186, 190, 607 P.2d 304 (1980). It is also well established, however, that when the crime charged can be committed by more than one means and substantial evidence supports a guilty verdict for each means, an error in failing to instruct the jury that they must be unanimous as to the means the defendant actually used to commit the offense is harmless. *State v. Kitchen*, 110 Wn.2d 403, 410-11, 756 P.2d 105 (1988). The defendant's constitutional right to a unanimous jury verdict is assured when the State must present substantial evidence supporting each of the alternative means

presented. *State v. Smith*, 159 Wn.2d 778, 783, 154 P.3d 873 (2007); *State v. Whitney*, 108 Wn.2d 506, 510-12, 739 P.2d 1150 (1987) (if substantial evidence supports each of the alternative means by which the defendant committed a crime, a defendant's right to unanimous jury verdict is protected because the reviewing court infers that the jury rested its decision on a unanimous finding as to the means).

The requirement that there be substantial evidence to support a conviction is satisfied if there is sufficient evidence on which any rational trier of fact could find the defendant guilty beyond a reasonable doubt. *State v. Ortega-Martinez*, 124 Wn.2d 702, 708, 881 P.2d 231 (1994) (Evidence is sufficient if "'after viewing the evidence in a light most favorable to the State, any rational trier of fact could have found the essential elements of the charged crime beyond a reasonable doubt'") (quoting *State v. Rempel*, 114 Wn.2d 77, 82, 785 P.2d 1134 (1990)). 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 jury's verdict and interpreted most strongly against the defendant. *State v. Partin*, 88 Wn.2d 899, 906-07, 567 P.2d 1136 (1977).

It is a function and province of the jury to weigh evidence, determine the credibility of the witnesses, and decide disputed questions of fact. *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004). Credibility determinations are for the trier of fact and are not subject to review. *Thomas*, 150 Wn.2d at 874-75. Circumstantial evidence and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). Thus, the trier of fact may properly rely solely on circumstantial evidence and render a valid guilty verdict. *State v. Kovac*, 50 Wn. App. 117, 119, 747 P.2d 484 (1987).

Here, jury instruction no. 11 set forth two possible alternative means of committing the

crime of first degree trafficking in stolen property.[2] Under the first alternative, the State must prove beyond a reasonable doubt that Sant knowingly initiated, organized, planned, financed, directed, managed, or supervised the theft of property for sale to others. In addition to wrongfully obtaining property belonging to another, a person who exerts unauthorized control over or appropriates property belonging to another is guilty of theft.[3]

Under the second alternative, the State must prove that Sant trafficked in stolen property. RCW 9A.82.050(1). To "traffic" in stolen property means to "sell, transfer, distribute, dispense, or otherwise dispose of stolen property to another person, or to buy, receive, possess, or obtain control of stolen property, with intent to sell, transfer, distribute, dispense, or otherwise dispose of the property to another person." RCW 9A.82.010(19).

Initially, we note that the two alternative means of first degree trafficking in stolen property are not repugnant because proof of one does not disprove another. *State v. Richardson*, 24 Wn. App. 302, 305, 600 P.2d 696 (citing *State v. Parmenter*, 74 Wn.2d 343, 352, 444 P.2d 680 (1968)). Specifically, proof that Sant had knowingly initiated, organized, planned, financed, directed, managed, or supervised the theft of property for sale to others would not prove that Sant had not trafficked in stolen property or vice versa. Moreover, under RCW 9A.82.050, either

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[2] RCW 9A.82.050

[3] RCW 9A.56.020(1) defines "theft" as:

> (a) To wrongfully obtain or exert unauthorized control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services; or
>
> (b) By color or aid of deception to obtain control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services; or
>
> (c) To appropriate lost or misdelivered property or services of another, or the value thereof, with intent to deprive him or her of such property or services.

wrongfully exerting unauthorized control over the property of another or transferring stolen property constitutes first degree trafficking in stolen property.

Here, substantial evidence supports Sant's conviction under each of the alternative means. The record shows that Sant accompanied his girl friend when she pawned the stolen Hilti drill one mile from the victim's business the day after the burglary. Sampson gave Sant the $100. Sant told police that he "was 99 percent sure" the Hilti drill was stolen and he told the jury that he was 99 percent sure the drill "could" have been stolen. RP (Mar. 4, 2008) at 19. Sant also misrepresented Elkins's involvement in the burglary and gave conflicting accounts regarding how he came to possess the drill. *State v. Clark*, 143 Wn.2d 731, 765, 24 P.3d 1006 (no error in admitting testimony concerning inconsistent statements defendant made to the police), *cert. denied*, 534 U.S. 1000 (2001); *State v. Allen*, 57 Wn. App. 134, 143, 788 P.2d 1084 (1990) (false or inconsistent information given to the police is admissible evidence relevant to defendant's consciousness of guilt).

On this evidence, any rational trier of fact could find that by having Sampson pawn the drill for him, Sant knowingly orchestrated the theft by wrongfully exerting unauthorized control over the drill with intent to deprive the rightful owner, Bate, of his property, and that he sold, transferred, distributed, dispensed, or otherwise disposed of stolen property to another person, Randy's Loan & Coin Shop. RCW 9A.82.050(1). Thus, substantial evidence supports the jury's verdict finding that Sant was guilty of committing first degree trafficking in stolen property under either alternative means.

Accordingly, we affirm.

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

QUINN-BRINTNALL, J.

We concur:

BRIDGEWATER, P.J.

HUNT, J.