

70066-9

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NO. 70066-9-I

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

STATE OF WASHINGTON,
Respondent,
v.
PAUL CULVER,
Appellant.



APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY
THE HONORABLE JULIE SPECTOR

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

1. To commit burglary in the second degree, a defendant must enter or remain unlawfully in a building with the intent to commit a crime against a person or property therein. "Building" includes any fenced area. The defendant was found inside a fully-enclosed fenced area attached to a barracks building that was closed to the public, attempting to cut an air compressor unit from its base after having removed another air compressor. Is there sufficient evidence from which a reasonable fact-finder could conclude that the defendant entered a building with the intent to steal or destroy property?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS.

Defendant Paul Culver was charged by information with burglary in the second degree ("burglary"); specifically, the State alleged that on or about September 13, 2011, Culver entered a building at 7101 62nd Ave NE, Seattle, with the intent to commit a crime against a person or property therein. CP 1. On January 8, 2013, a jury found Culver guilty as charged. CP 16. On March 8, 2013, the Honorable Judge Julie Spector, who presided over the

trial, imposed a standard range sentence of 51 months in prison. CP 35-42. As appellant, Culver now challenges the sufficiency of the evidence to convict him of burglary.

2. SUBSTANTIVE FACTS.

Seattle's Magnuson Park was a United States Naval Base before it was purchased years ago by the University of Washington and converted to a public park. RP 59, 102, 120-24, 182-84. Old naval buildings, including a barracks now colloquially referred to as "Building 9," still stand on the property. RP 58. The street address for Building 9 is 7101 62nd Ave NE, Seattle. RP 215.

Building 9 is a long and narrow building: three stories tall and stretching at least two city blocks. RP 102. Multiple hallways jut out perpendicularly from Building 9's center corridor. Id. The practical effect of these perpendicular hallways is that Building 9 has numerous exterior courtyards. RP 104, 139, 186. Each courtyard is surrounded on three sides by the walls of Building 9. The fourth side of each courtyard is open.

During September 2011, Building 9 was undergoing asbestos remediation and was not open to the public. RP 57-60, 120-24, 216-19. The doors to the building were chained shut.

“No Trespassing” and “Danger- ASBESTOS” signs were posted in numerous windows of the building. Loose doors and broken windows were boarded up. RP 101-03, 107-12, 183. The University of Washington and its contractors had made substantial and visible efforts to seal the building from the public and protect it from burglars and metal thieves. RP 60-62, 101-03, 107-12, 183.

Just after 8 a.m. on September 13, 2011, Jose Gonzalez arrived for work at Building 9. RP 125-29. Gonzalez was employed as a custodian and was tasked, in part, with providing maintenance and security for Building 9. RP 121, 123-24.

Gonzalez immediately noticed an unidentified man tearing metal piping from the exterior of the building. RP 127-28. He confronted the man about the apparent theft and told the man to stop. RP 125-34. Gonzalez momentarily left the man and circled around Building 9 in his truck, during which time he called and notified others of the situation. RP 131. Once Gonzalez circled completely around the building, he saw the unidentified man now dragging the torn piping to a nearby, unoccupied, black pickup truck. RP 132. Gonzalez confronted the man a second time as the man attempted to enter the driver’s seat of the truck and drive away. RP 133. Upon seeing Gonzalez block his path and hearing

Gonzalez threaten to call police, the unidentified man abandoned the black truck altogether and began fleeing the scene on foot. RP 134. Gonzalez did not pursue the man as he fled from the park. RP 135.

Asbestos remediation workers, including Josh Jennings, exited Building 9 and contacted Gonzales. RP 69, 135. As the men began to converse and take stock of the damage to Building 9, they noticed the defendant, Paul Culver, walking near one of the exterior courtyards more than halfway down the building from their location. RP 72, 139. Gonzalez and Jennings walked toward Culver. RP 140.

By the time Gonzalez and Jennings reached Culver's location, Culver had entered the courtyard. RP 72. Gonzalez and Jennings found Culver at the far corner of the courtyard, inside a fenced enclosure housing industrial-sized air compressors. RP 76-77, 95. Culver did not appear to notice Gonzalez and Jennings at first. RP 78.

The fenced enclosure was approximately 6-8' deep and 20-30' wide. RP 106, 225. Two of the four sides of the enclosure were formed by the walls of Building 9 itself, with the other two sides being formed by a chain-link fence approximately 4' tall.

RP 76, 225. The chain-link fence had a small gate through which a person could gain access to the enclosure. RP 96. Normally, there were three large air compressors mounted within the enclosure. RP 137, 140. The air compressors were attached to the exterior of Building 9. RP 137.

Gonzalez and Jennings found Culver lying on the ground inside the enclosure, behind one of the air compressors. RP 77. Culver had with him a large bag of tools. RP 143. Culver was holding an electric "sawzall" and cutting through bolts that attached the air compressor to the building. RP 77.

As Jennings approached, Culver saw him and stopped cutting. RP 78. Culver "scooted" his body closer to the air compressor. Id. Gonzalez observed that one of the three air compressors normally present in the enclosure had been removed and was now missing. RP 137, 140. Culver appeared to be in the act of removing one of the two remaining compressors. RP 140.

Jennings called out to Culver and asked what he was doing. Culver simply stated he was "cutting stuff out." RP 79. Jennings asked why he was doing that. Id. Culver "didn't really have a reason." Id. Culver provided no explanation and cited no authorization for his actions. Id. Jennings asked Culver "what

made him think he could just cut the compressors out.” Id. Culver gave no answer. Id. Jennings told Culver to get up and gather his tools, because police were on their way. RP 80. Culver complied. Id.

While waiting for police to arrive, Gonzalez overheard Culver admit that the black pickup truck parked at the end of the building belonged to him. RP 144. Police arrived soon after, spoke with Gonzalez and Jennings, and arrested Culver for burglary. RP 80, 172.

Gonzalez, Jennings, and other contractors responding to the scene after Culver’s arrest took stock of the items in the bed of Culver’s black pickup truck. RP 84, 136-37, 190-91. They recognized the plastic sheeting and telecommunications cable in the bed of the truck as having come from inside Building 9. RP 85-87, 136-37, 148, 190-91. Gonzalez recognized the air compressor in the bed of the truck as the one missing from the fenced enclosure in which Culver was found. RP 137, 145.

Culver was not authorized to enter Building 9 or its fenced enclosure. RP 144, 192, 219. Neither was Culver authorized to take any property from the site. RP 144-45, 192, 219.

C. ARGUMENT

1. SUFFICIENT EVIDENCE SUPPORTS CULVER'S CONVICTION FOR BURGLARY IN THE SECOND DEGREE.

Culver asserts that the State did not prove that he entered a “building” or intended to steal or damage any property. This argument should be rejected because there was ample evidence from which a rational fact-finder could find that Culver was in a building with the intent to steal or damage property.

The State must prove each element of the charged crime beyond a reasonable doubt. State v. Alvarez, 128 Wn.2d 1, 13, 904 P.2d 754 (1995). Evidence is sufficient to support a conviction if, viewed in a light most favorable to the State, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. State v. Goodman, 150 Wn.2d 774, 781, 83 P.3d 410 (2004).

A claim of insufficiency admits the truth of the State’s evidence and all reasonable inferences that can be drawn therefrom. Id. Circumstantial and direct evidence carry equal weight when reviewed by an appellate court. Id. A reviewing court must defer to the trier of fact on issues of conflicting testimony,

credibility of witnesses, and the persuasiveness of the evidence. State v. Fiser, 99 Wn. App. 714, 719, 995 P.2d 107, review denied, 141 Wn.2d 1023 (2000). The reviewing court need not be convinced of the defendant's guilt beyond a reasonable doubt, but only that there is substantial evidence in the record to support the conviction. Id. at 718.

A person is guilty of burglary in the second degree if he enters or remains unlawfully in a building with intent to commit a crime against a person or property therein. RCW 9A.52.030. In a burglary case, the trier-of-fact is allowed to infer the defendant's criminal intent by virtue of the defendant's unlawful entry or remaining. RCW 9A.52.040. "Building," in addition to its ordinary meaning, includes any fenced area. RCW 9A.04.110(5).

There is substantial evidence in this case to support the findings that Culver both entered a building and intended to commit a property crime therein. Indeed, appellant's claims to the contrary fly in the face of the express testimony of multiple witnesses.

The air compressor that Culver was caught attempting to steal was located within a fenced area. RP 137, 140. The fenced area was fully enclosed: the exterior walls of Building 9 formed two sides of the enclosure, and a chain-link fence formed the other two

sides. RP 76, 225. There was a small gate to allow entry to the enclosure. RP 96. The enclosure was sizeable enough to contain multiple industrial air compressors and at least one person. RP 106, 225, 230.

Witnesses Gonzalez and Jennings both testified that they saw Culver inside the fenced area. Gonzalez described seeing Culver “trying to take another air conditioner that was in there. There were actually two there in a fenced area. He was right at the end when that happened.” RP 140. Gonzalez said that Culver was “squatting down” and “trying to remove another air conditioner that was there right in the corner.” RP 141. Gonzalez described seeing Culver squatting in a narrow “hallway” toward the rear of the fenced area, between the compressors and the exterior walls of Building 9. RP 141-42.

Jennings described seeing Culver “inside the chain link area on the back side of the compressors.” RP 77. When asked for clarification about whether that location was within the fenced area, Jennings replied, “That is correct.” Id.

Regarding the gate, it appeared to Jennings as though the gate may have been “kicked in” around the time of Culver’s entry. RP 97. Another witness, a property manager, testified that he

believed the lock that usually held the gate closed “had been cut to gain access to that area,” most likely on the date of the incident.

RP 199.

In addition to direct evidence of Culver's entry into a fenced area, the jury heard compelling circumstantial evidence that Culver or his unidentified accomplice had entered Building 9 itself. The unidentified man who fled from Gonzalez was engaged in metal theft of the same type as Culver, at the same time, and against the same building. The unidentified man was seen tearing metal from Building 9 and trying to place it in the black pickup truck. RP 127-28, 132. The truck belonged to Culver. RP 144. Also in the back of the truck were items that had been taken from inside Building 9, including plastic sheeting and telecommunications cable. RP 85-87, 136-37, 148, 190-91. A property manager testified that the materials were usually “staged” just inside Building 9 and accessible only to contractors. RP 190-91. Given the continuing sequence of events described in this case, a trier-of-fact could reasonably conclude that either Culver or his unidentified accomplice had gained entry to the interior of Building 9.

Even without specific evidence of a defendant's intent to commit a property crime, a jury is reasonable in inferring such intent in cases where a defendant has unlawfully entered or remained in a building. RCW 9A.52.040. Culver was not authorized to take the compressor or enter the enclosure. RP 144-45, 192, 219. Therefore, a jury could reasonably convict him of burglary by virtue of his unlawful entry.

In this case, however, there is clear evidence of criminal intent. Culver was caught in the act of attempting to cut an air compressor from its base using a crude cutting tool. RP 77-78. When he realized he had been seen, Culver stopped cutting. Id. He moved his body closer to the air compressor unit, in a manner consistent with someone trying to hide. Id. When asked what he was doing, Culver simply said he was "cutting stuff out." Culver was unable to give any meaningful answer or justification about why he was doing so. RP 79. Culver had with him a large bag of tools. RP 143. Culver was driving a black, spray-painted truck rather than one associated with any authorized contractors. RP 68.

An identical air compressor had already been cut from its base and placed into Culver's truck. RP 137, 145. An unidentified man engaged in the same type of behavior at the same location

and time was also attempting to load stolen metal into Culver's truck. RP 132-34. The unidentified man fled when confronted by a witness, suggesting that he was involved in wrongdoing. RP 78, 135.

The presence of numerous stolen items in the back of Culver's truck is further evidence of Culver's intent. The items were identified by witnesses as originating from inside Building 9. RP 84, 136-37, 190-91. Due to the asbestos remediation project, Building 9 was sealed and the public was not allowed to enter. RP 57-60, 120-24, 216-19. The chained doors, boarded windows, and "No Trespassing" signs were sufficient to alert any reasonable person that they could not enter the building. RP 60-62, 101-03, 107-12, 183. Entering the building and removing property, then, would not have been easy; it would have required substantial and deliberate effort. Especially because it also would have involved disregarding the asbestos warnings, a jury could reasonably conclude that any such unauthorized entry was done for a criminal purpose.

In short, substantial evidence supports the jury's conclusion that Culver entered a building and that he intended to commit a property crime therein.

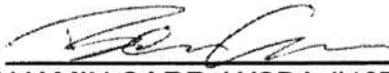
D. CONCLUSION

For all of the foregoing reasons, the State respectfully asks this Court to affirm Culver's burglary conviction.

DATED this 20th day of December, 2013.

Respectfully submitted,

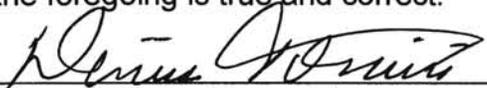
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Jan Trasen, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Brief of Respondent and this certificate of mailing, in STATE V. PAUL CULVER, Cause No. 70066-9-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



Name Divina Tomasini
Done in Kent, Washington

