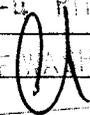


NO. 37668-7-II

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COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON

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**COURT OF APPEALS, DIVISION II  
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

ALAN EARL SANT, APPELLANT

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Appeal from the Superior Court of Pierce County  
The Honorable Katherine M. Stolz

No. 07-1-03475-9

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**BRIEF OF RESPONDENT**

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Was there sufficient evidence to convict defendant of first degree trafficking in stolen property, where the evidence showed that defendant stole a drill and later presented it to a pawnbroker as collateral for a \$100 loan?

B. STATEMENT OF THE CASE.

1. Procedure

On July 2, 2007, the Pierce County Prosecutor's Office filed an information charging ALAN EARL SANT, hereinafter "defendant," with one count of first degree trafficking in stolen property and one count of second degree possession of stolen property. CP 1-2. The matter proceeded to trial before the Honorable Katherine M. Stolz on February 27, 2008. 1RP<sup>1</sup> 4-5. After hearing the evidence, the jury found defendant guilty on both counts. CP 26-27, 4RP 77-78. The court sentenced defendant to 18 months on the first degree trafficking charge and eight months on the second degree possession of stolen property charge, to be served concurrently in the Department of Corrections. CP 47-58, 6RP 6. The court also ordered defendant to pay monetary penalties. *Id.* From

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<sup>1</sup> There are six (6) volumes of Verbatim Reports of Proceedings: 1RP, 2/27/08; 2RP, 2/28/08; 3RP, 3/3/08; 4RP, 3/4/08; 5RP, 3/14/08; 6RP, 3/6/08.

entry of this judgment, defendant filed a timely notice of appeal. CP 59-60. Defendant only appeals his conviction for first degree trafficking in stolen property. Br. of Appellant at 1 (Assignment of Error #1).

## 2. Facts

On the morning of May 16, 2007, one of the workers at Creative Ornamental Iron was getting his truck ready when he noticed that his welding leads were missing. 3RP 121-22. The welding leads had been taken off of a work truck that was parked in a company parking lot enclosed by a fence. 3RP 121-22. Richard Bate, owner of Creative Ornamental Iron, went out to look at the truck and noticed that extension cords were also missing. 3RP 121-23. Workers then noticed that a Hilti drill from the back of the truck was also missing. 3RP 123. The drill, in its case, had been slid into a space about 10-12 inches wide between a portable welder and the back cage on the cab. 3RP 135. Bate discovered later that an aluminum extension ladder was also missing. 3RP 124. Bate discovered that a hole had recently been cut in the fence at the backside of the shop, directly behind the truck. 3RP 124, 127-28, 132-33. Bate notified the police, who came to Creative Ornamental and investigated the theft that morning. 3RP 121, 123, 135-36.

On May 17, 2007, defendant and his girlfriend, Theresa Anne Sampson, brought a Hilti into Randy's Loan, a pawn shop. 3RP 160, 4RP 6-7. Sampson gave the drill to the pawnbroker, Theodore Wilkinson, as

collateral for a loan. 3RP 160. Wilkinson asked Sampson for identification, and Sampson gave him her Washington State ID. 3RP 160. Wilkinson then checked the drill to see if it was in working condition and recorded the serial number. 3RP 161-63. Sampson was able to pawn the drill for \$100, which she then gave to defendant. 3RP 169, 195-96; 4RP 6-7.

Bate and his business partner drove around to several pawn shops looking for the stolen drill. 3RP 136-37. One of the pawn shops Bate went to was Randy's Loan, which is about a mile away from Bate's business. 3RP 137. Bate asked Wilkinson if he had a big drill. 3RP 136-37. Wilkinson replied, "Well, I just took one in," but would not let Bate see the drill because it was still on pawn. 3RP 137. Bate notified Officer Peterson of the Tacoma Police Department, described the drill to her, and told her that the drill might be at Randy's Loan. 3RP 137, 139.

Bate told Officer Peterson that the drill had several different sized bits inside the case, that there was a latch on each end of the case, and that there were plastic covers on the case with the model number. 3RP 139. Officer Peterson passed that information along to Detective Dave Hofner of the Tacoma Police Department, who then investigated the incident. 3RP 176. Bate actually had the plastic cover for the drill, which he gave to Detective Hofner to match it with the drill. 3RP 139, 176-79. Detective Hofner went to the pawn shop on May 21, 2007 to investigate. He examined the plastic cover to see if it matched the missing latch on the

drill. It was the same drill that had been stolen from Bate's truck. 3RP 137, 140-41, 167, 179-80, 182.

Bate testified that he does not know the defendant. 3RP 141. Bate also testified that defendant never had permission to either possess or sell the drill. 3RP 141-42. The drill, which was in good condition, was worth between \$500 and \$700 according to Bate, and the drill bits were worth another \$600-800. 3RP 145-46, 156.

After finding the drill, Detective Hofner contacted Sampson and defendant. 3RP 183. Defendant told Detective Hofner that he had found the drill at night. 3RP 184. The drill was still in its case, hidden in some bushes about 100 yards from Creative Ornamental Iron. 3RP 185. Defendant drew a sketch to show Detective Hofner where he found the drill. 3RP 186-87. Defendant then stated that he put the drill on his bicycle and took it to Sampson's residence. 3RP 189. Defendant also told Detective Hofner that he had gone to Randy's Pawn Shop with Sampson on May 17, 2007, to pawn the drill. 3RP 184. Defendant also signed a written statement, in which he stated, in part, that he was "99 percent sure that the item in question was stolen." 3RP 190-92.

Defendant claimed that someone named Jason Elkins had committed the burglary, owed him money, and had therefore told him where to find the drill. 3RP 192-93. Detective Hofner later determined that Elkins was in custody at the Pierce County Jail during the burglary. 3RP 194.

Detective Hofner arrested defendant on June 29, 2007. 3RP 194. Detective Hofner asked defendant about the incident again during the arrest. 3RP 194. Defendant told him that his story was still the same. 3RP 195. He also told detective Hofner, "I did something that I shouldn't have done. I'll accept what I did wrong. There's no more to say." 3 RP 195.

Defendant testified at trial. 4RP 12-28. Defendant testified that he was walking with his bicycle up Lawrence Street when he noticed the color of the drill case in the bushes. 4RP 13, 22-23. Defendant testified that he went to look and saw a drill, along with an extension cord, fencing, and other items. 4RP 13. Defendant testified that he came upon the items at 10 a.m. on May 16, 2007. 4RP 13-14. Defendant testified that he went with Sampson to the pawnshop the following morning to pawn the drill. 4RP 14-15. Sampson used her identification because defendant did not have identification that the pawnshop would accept. 4RP 15. Defendant testified that he told Detective Hofner the first time they spoke that he had found the drill in the bushes. 4RP 18-19. He also testified that he did write in a statement that he was 99 percent sure that the drill was stolen, although he explained in his testimony that he meant that he was 99 percent sure the drill could have been stolen. 4RP 19-20.

C. ARGUMENT.

1. THERE WAS SUFFICIENT EVIDENCE TO CONVICT DEFENDANT OF FIRST DEGREE TRAFFICKING IN STOLEN PROPERTY BECAUSE THE EVIDENCE SHOWED THAT DEFENDANT STOLE THE DRILL AND LATER PRESENTED IT TO A PAWNBROKER AS COLLATERAL FOR A \$100 LOAN.

Due process requires that the State bear the burden of proving each and every element of the crime charged beyond a reasonable doubt. *State v. McCullum*, 98 Wn.2d 484, 488, 656 P.2d 1064 (1983); *see also Seattle v. Gellein*, 112 Wn.2d 58, 61, 768 P.2d 470 (1989); *State v. Mabry*, 51 Wn. App. 24, 25, 751 P.2d 882 (1988). The applicable standard of review is, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime charged beyond a reasonable doubt. *State v. Joy*, 121 Wn.2d 333, 338, 851 P.2d 654 (1993); *State v. Green*, 94 Wn.2d 216, 221-22, 616 P.2d 628 (1980). A challenge to the sufficiency of the evidence admits the truth of the State's evidence and any reasonable inferences from it. *State v. Barrington*, 52 Wn. App. 478, 484, 761 P.2d 632 (1987), *review denied*, 111 Wn.2d 1033 (1988) (*citing State v. Holbrook*, 66 Wn.2d 278, 401 P.2d 971 (1965)). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. *State v. Anderson*, 72 Wn. App. 453, 458, 864 P.2d 1001, *review denied*, 124 Wn.2d 1013 (1994).

Circumstantial and direct evidence are considered equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). The trier of fact may properly rely solely on circumstantial evidence to render a guilty verdict. *State v. Kovac*, 50 Wn. App. 117, 119, 747 P.2d 484 (1987). In considering this evidence, “[c]redibility determinations are for the trier of fact and cannot be reviewed upon appeal.” *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990) (citing *State v. Casbeer*, 48 Wn. App. 539, 542, 740 P.2d 335, review denied, 109 Wn.2d 1008 (1987)). This is because the written record of a proceeding is an inadequate basis on which to decide issues based on witness credibility. The differences in the testimony of witnesses create the need for such credibility determinations. The trier of fact, who is best able to observe the witnesses and evaluate their testimony, should make these determinations. On this issue, the Supreme Court of Washington said:

great deference . . . is to be given the trial courts factual findings. *In re Sego*, 82 Wn.2d 736, 513 P.2d 831 (1973); *Nissen v. Obde*, 55 Wn.2d 527, 348 P.2d 421 (1960). It, alone, has had the opportunity to view the witness’ demeanor and to judge his veracity.

*State v. Cord*, 103 Wn.2d 361, 367, 693 P.2d 81 (1985).

Therefore, when the State has produced evidence of all elements of a crime, the decision of the trier of fact should be upheld.

A person is guilty of the crime of first degree trafficking in stolen property when he “did knowingly initiate, organize, plan, finance, direct, manage, or supervise the theft of property for sale to others, or did

knowingly traffic in stolen property.” CP 7-25 (Jury Instruction #11);  
RCW 9A.82.050(2).

In the present case, the trial court gave the jury the following  
instruction:

“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:

- (1) That on or about the 17<sup>th</sup> day of May, 2007, the  
defendant either
    - (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 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.”

CP 7-25 (Jury Instruction #11).

In *State v. Strohm*, 75 Wn. App. 301, 879 P.2d 962 (1994), the  
trial court gave the jury a substantially similar instruction. *Strohm*, 75  
Wn. App. at 307. Strohm was charged with, amongst other crimes, twelve  
counts of first degree trafficking in stolen property. *Id.* at 303-04. The  
State dismissed two of the trafficking charges, and the jury returned a  
general guilty verdict on seven of the ten remaining trafficking charges.  
*Id.* at 304. On appeal, Strohm argued that there was insufficient evidence

to convict him of the trafficking charges. *Id.* at 304. In affirming Strohm's convictions, the court held, "Since the jury returned a general verdict there must be substantial evidence that Strohm knowingly (1) initiated, (2) organized, (3) planned, (4) financed, (5) directed, (6) managed, (7) supervised the theft of property for sale to others, and (8) knowingly trafficked in stolen property." *Id.* at 309 (*citing* RCW 9A.82.050(2)).

In the present case, defendant only argues that the evidence was insufficient regarding (1)(a) of the "to convict" instruction. Br. of Appellant at 1 (Assignment of Error #1). There was sufficient evidence presented to the jury that defendant knowingly initiated, organized, planned, financed, directed, managed, and supervised the theft of the drill. Defendant sold the drill on May 17, 2007, fewer than two days after the drill was stolen. Defendant told Detective Hofner that he was 99 percent sure that the drill was stolen, indicating that had knowledge about who removed the drill from Bate's truck. 3RP 190-92.

Defendant's explanation for how he knew the drill was stolen, however, was implausible. Defendant told Detective Hofner that it was Elkins who let him know the location of the drill and that anything to do with Elkins was probably stolen. 3RP 192-93. Detective Hofner investigated defendant's claim and found that Elkins was in custody when the drill was stolen. 3RP 193.

Defendant also gave conflicting accounts regarding how he came to possess the drill. Defendant testified that he found the drill the morning before he pawned it. 4RP 13-14. Defendant, however, gave police a different version of events than the one he recounted in his testimony, telling them that he had found the drill in the bushes at night. 3RP 184. Additionally, if defendant's testimony at trial were accurate, that would mean defendant found several items belonging to Creative Ornamental merely 100 yards from the burglary at roughly the same time the police were at the business investigating the theft. 3RP 135-36, 4RP 13-14. Based on defendant's possession of the drill, pawning it fewer than two days after it was stolen, and defendant's continual inability to present a credible explanation for how he came to possess the drill, the jury could have reasonably concluded that defendant stole the drill himself. Therefore, there was sufficient evidence that defendant knowingly initiated, organized, planned, financed, directed, managed, and supervised the theft of the drill.

The evidence connects defendant to the theft of the drill. During closing argument, the prosecutor argued that the evidence demonstrated that defendant was guilty under either theory of Jury Instruction #11: that defendant either knowingly initiated, organized, planned, financed, directed, managed, and supervised the theft of the drill; or defendant knowingly trafficked in stolen property; the drill. 4RP 53-56, CP 7-25 (Jury Instruction #11). The prosecutor argued that the aforementioned

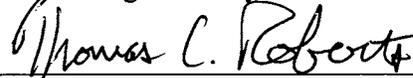
evidence proved that defendant stole the drill himself. *Id.* Defense counsel argued during closing that defendant did not even know that the drill was stolen, despite his written statement that he was “99 percent sure” that it was stolen. 4RP 67-69. The jury rejected defendant’s argument and determined that defendant was guilty of first degree trafficking in stolen property. Because the State presented the aforementioned circumstantial evidence that defendant stole the drill, a reasonable jury could have found that defendant knowingly initiated, organized, planned, financed, directed, managed, or supervised the theft of property for the sale to others.

D. CONCLUSION.

Defendant received a full and fair trial. The State presented sufficient evidence for the jury to find all elements of the crime charged beyond a reasonable doubt. The State respectfully requests that defendant's conviction and sentence be affirmed.

DATED: FEBRUARY 3, 2009.

GERALD A. HORNE  
Pierce County  
Prosecuting Attorney

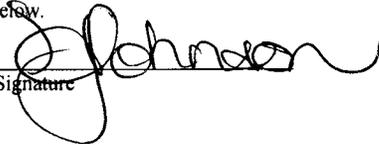


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Rule 9

Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

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