

FILED
COURT OF APPEALS
DIVISION II

19 OCT -1 PM 2:26

STATE OF WASHINGTON

NO. 40406-1-II

COURT OF APPEALS, DIVISION II BY ca
CLERK

STATE OF WASHINGTON,

Respondent

vs.

BRANDON D. L. CORDER,

Appellant.

BRIEF OF APPELLANT

APPEAL FROM THE SUPERIOR COURT FOR
THURSTON COUNTY

The Honorable Wm. Thomas McPhee, Judge

Cause No. 09-1-01648-1

PATRICIA A. PETHICK, WSBA NO. 21324
Attorney for Appellant

P.O. Box 7269
Tacoma, WA 98417
(253) 475-6369

01/02/11 11:11

TABLE OF CONTENTS

	<u>Page</u>
A. ASSIGNMENTS OF ERROR	1
B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.....	1
C. STATEMENT OF THE CASE	1
D. ARGUMENT	3
(1) THERE WAS INSUFFICIENT EVIDENCE ELICITED AT TRIAL TO PROVE BEYOND A REASONABLE DOUBT THAT CORDER WAS GUILTY OF BURGLARY IN THE SECOND DEGREE.....	3
E. CONCLUSION	5

TABLE OF AUTHORITIES

	<u>Page(s)</u>
<u>Washington Cases</u>	
<u>State v. Craven</u> , 67 Wn. App. 921, 841 P.2d 774 (1992).....	4
<u>State v. Delmarter</u> , 94 Wn.2d 634, 618 P.2d 99 (1980).....	4
<u>State v. Salinas</u> , 119 Wn.2d 192, 829 P.2d 1068 (1992)	3, 4
<u>Federal Cases</u>	
<u>Jackson v. Virginia</u> , 443 U.S. 307, 61 L. Ed. 2d 560, 99 S. Ct. 2781 (1979).....	3
<u>Court Rules</u>	
CrR 3.5.....	1
CrR 3.6.....	1

A. ASSIGNMENTS OF ERROR

1. The trial court erred in failing to take the case from the jury for lack of sufficient evidence to find Corder guilty of burglary in the second degree.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether, there was sufficient evidence elicited at trial to find Corder guilty of burglary in the second degree beyond a reasonable doubt? [Assignment of Error No. 1].

C. STATEMENT OF THE CASE

1. Procedure

Brandon D. L. Corder (Corder) was charged by information filed in Thurston County Superior Court with one count of burglary in the second degree. [CP 4].

No pretrial motions regarding CrR 3.5 or 3.6 were made or heard. Corder was tried by a jury, the Honorable Wm. Thomas McPhee presiding. [RP 5-140]. Corder had no objections and took no exceptions to the court's instructions. [RP 90-91]. The jury found Corder guilty as charged of burglary in the second degree. [CP 22; RP 129-132].

The court sentenced Corder to a standard range sentence of 68-months based on an undisputed offender score of 10. [CP 23, 24, 25-34; 2-2-10 RP 9-10].

A notice of appeal was timely filed on March 4, 2010. [CP 35-45]. This appeal follows.

2. Facts

In the early morning hours of October 17, 2009, Olympia Police Officer Jason Watkins (Watkins) was on routine patrol having driven into the parking lot of the Hope Community Church where he noticed a vehicle parked behind the church, which was unusual as the church was closed at that hour. [RP 13-14]. Watkins contacted dispatch and approached the vehicle noticing that the engine was warm, but no one was inside the vehicle except for two dogs. [RP 14]. Watkins then began to look around the church discovering that a screen had been removed from a window and that the window was in fact open. [RP 15].

At this time, other officers including Olympia Police Officer Michael Hovda (Hovda) arrived and Watkins requested a K-9 unit from dispatch and was informed that someone affiliated with the church with a key was en route. [RP 15-17, 56-58]. While waiting for the arrival of the person with the church key, Watkins and Hovda looked in a window observing a man, later identified as Corder, carrying a large object in his left hand enter a room from the main church, look around, and re-enter the main church. [RP 17-18, 20, 58-61]. The K-9 unit arrived as well as Klaus Neubert (Neubert), who provided the key to enter the church. [RP 19, 69].

The K-9 unit along with Watkins and Hovda entered the church where Corder was found and taken into custody; Corder was the only person found in the church. [RP 19-21, 61]. The church was searched and it was discovered that numerous doors to offices had been forced open, multiple desk drawers had been opened, the church's safe had been damaged, and burglary tools were found. [RP 21-40, 61-63, 70, 72, 75-82]. Steven Morgan, chairman of the leadership team for the Hope Community Church, testified that Corder did not have permission to be in the church in the early morning hours of October 17, 2009. [RP 83]. Nothing of evidentiary value was found on Corder. [RP 46].

Corder did not testify.

D. ARGUMENT

- (1) THERE WAS INSUFFICIENT EVIDENCE ELICITED AT TRIAL TO PROVE BEYOND A REASONABLE DOUBT THAT CORDER WAS GUILTY OF BURGLARY IN THE SECOND DEGREE.

The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact would have found the essential elements of a crime beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992); Jackson v. Virginia, 443 U.S. 307, 61 L. Ed. 2d 560, 99 S.

Ct, 2781 (1979). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. 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.

Here, Corder was charged and convicted of burglary in the second degree. [CP 4, 22]. As instructed in Instruction No. 11, the State bore the burden of proving beyond a reasonable doubt the following:

- (1) That on or about October 17, 2009, 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; and
- (3) That this act occurred in the State of Washington.

[Emphasis added]. [CP 20].

As instructed in order to sustain Corder’s conviction for burglary in the second degree, the State bore the burden of proving beyond a reasonable doubt that Corder was in the New Hope Community Church

with the intent to commit a crime (the second element set forth above).

This is a burden the State cannot meet.

The sum of the State's evidence to prove this essential element is the fact that Corder was found inside the church, Corder did not have permission to be inside the church, burglary tools were found inside the church, and there was significant property damage done. However, nothing from the church was found on Corder—no items of evidentiary value related to a burglary. Moreover, according to Watkins's testimony Corder's vehicle was still warm when discovered leading to the logical conclusion that Corder hadn't been inside the New Hope Community Church for a long time, not long enough to have created the damage eventually found. Given these two facts, there was no "intent to commit a crime... therein." Absent this essential element, Corder's conviction for burglary in the second degree cannot stand.

This court should reverse and dismiss this conviction.

E. CONCLUSION

Based on the above, Corder respectfully requests this court to reverse and dismiss his conviction for burglary in the second degree.

DATED this 30th day of September 2010.

Patricia A. Pethick
PATRICIA A. PETHICK
Attorney for Appellant
WSBA NO. 21324

CERTIFICATE OF SERVICE

Patricia A. Pethick hereby certifies under penalty of perjury under the laws of the State of Washington that on the 30th day of September 2010, I delivered a true and correct copy of the Brief of Appellant to which this certificate is attached by United States Mail, to the following:

Brandon D. L. Corder
DOC# 892933
McNeil Island Corrections Center
P.O. Box 881000
Steilacoom, WA 98388-1000

Jon Skindar
Thurston County Dep. Pros. Atty.
2000 Lakeridge Drive SW
Olympia, WA 98502
(and the transcript)

FILED
COURT OF APPEALS
DIVISION III
10 OCT - 1 PM 2:26
STATE OF WASHINGTON
BY S DEPUTY

Signed at Tacoma, Washington this 30th day of September 2010.

Patricia A. Pethick
Patricia A. Pethick