

No. 40406-1-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO

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STATE OF WASHINGTON,

Respondent,

v.

BRANDON DAVID LEE CORDER  
Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR THURSTON COUNTY

The Honorable, Judge Thomas McPhee  
Cause No. 09-1-01648-1

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BRIEF OF RESPONDENT

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SEATTLE, WASHINGTON

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A. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

1. Was there sufficient evidence to support Mr. Corder's conviction for burglary in the second degree?

B. STATEMENT OF THE CASE.

The State accepts the Appellant's Statement of the Case with the following additions and corrections.

At approximately 2 a.m. on October 17, 2009, Officer Jason Watkins, a nine year veteran of the City of Olympia police department was patrolling his normal area (referred to as the Adam South district; the city of Olympia is divided into five districts) in the southwest portion of Olympia. [RP 13]. Officer Watkins described his duties as including "being responsible for all of the 911 calls for service that come to that area, but I'm also responsible to take care of it as far as when problems arise, be proactive and just try to help the community in that area". [RP 13].

Officer Watkins testified to an unusual occurrence that captured his attention when he drove into the parking lot of the Hope Community Church:

Once I got to the back portion of the parking lot, I noticed there was a vehicle parked in the back of the parking lot that I know, because it's my area, is not typically there, and also I know the church to be closed during that time of the evening, and I – it's very seldom that there's a vehicle there that time of day or night.

[RP 13-14].

Officer Watkins contacted 911 dispatch to notify them of his status and then he approached the vehicle and made the following observations:

I found that there was no person inside the vehicle, there was two dogs, and then after I checked the front end of the vehicle, I felt that the engine compartment was still warm indicating that it hadn't been there for all night.

[RP 14].

Officer Watkins began to look around the area and noticed that one of the screens had been removed from a church window and there was another church window that was actually open. [RP 15]. Officer Watkins called for other officers to respond to the church because he felt there was someone in the area. [RP 15]. Regarding the open church window, Officer Watkins made the following observations:

The window that was opened, as he referred to earlier, kind of a construction-type easel leaned up against the wall. And to me it appeared that somebody could have used that kind of as a ladder to get into the window.

[RP 15].

As other police officers arrived at the church, they set up a perimeter around the church to make sure all sides were covered

and Officer Watkins requested that a K-9 officer respond to the scene. [RP 15]. He explained his reasons for requesting a K-9 unit as follows:

A lot of it because of safety. It's safer to have a dog on our scene, so a lot of times rather than one of us going into the building that we feel may be occupied by a person, it's safer to send the dog into there.

[RP 15-16].

Officer Watkins described what happened next in the following exchange:

- A. I was advised by our dispatcher that there was a key holder en route. And by what I mean by a key holder, it's somebody affiliated with the church that did have a key to allow access into the church for us to make it easier.
- Q. Before you go any further, can you elaborate on that how that process works, just generally speaking?
- A. Generally speaking, our dispatch center primarily ensures that most of or all of our businesses, they have cards on file that do have certain people that are willing to come out during after hours for various things such as alarms, or if we find something suspicious about their building, they're notified and, if possible, they come out to try to help us as far as either allowing access or giving us information on the building, things of that nature.

[RP 16].

While the officers were waiting for the church key holder and the K-9 unit to arrive, Officer Watkins saw a subject in the church from his viewpoint; he made the following observations of that subject:

I saw a heavier-set male wearing dark clothing, dark hoodie, dark pants, and when he came from inside the church, he entered that room through a door from the main portion of the church. One of the things that caught my attention is that I noticed he was carrying a longer object in his left hand. At the time, because I wasn't able to fully identify what it was, I thought that it may have been some sort of weapon or something of that nature like a rifle.

[RP 17-18].

Officer Hovda, another officer who saw the subject and the long object, thought the object had the size and shape of a shotgun. [RP 58].

The subject then exited that room and "disappeared" back into the main portion of the church. [RP 18]. The church key holder and the K-9 unit arrived; the church exterior door was unlocked and the police announced that they were sending the police go in; a male voice was inside the church was heard. [RP 19-20]. The subject came forward and complied with orders to lay down; the officers handcuffed the subject was identified as Mr. Corder and escorted him out of the church. [RP 20].

Officer Hovda and a couple other officers went through the church to make sure there no other people in the church; Officer Hovda described what happened next:

Q. Did you, once you didn't find any people, did you continue to look around?

A. Yes. I continued to look for what I thought was a shotgun. I wanted to locate that.

Q. Describe what you did and where you went.

A. Well, I started on the main floor, on the main floor just beyond where he was taken into custody where the offices and those doors were all broken off the hinges like someone had pried into the rooms. I could see the damage and the things that had been entered. I then moved to the downstairs because the subject had gone actually downstairs to go out the north doors, so I tried to follow the path that possibly he would take looking for what I thought was a shotgun.

Q. And did you find any?

A. I found near the north door, I found a flashlight and a screwdriver in a trash can right next to the door, and in the kitchen behind some tables there that were leaning against the wall was a pry bar that had the same similar shape and size as a shotgun and then a hammer.

[RP 61-62].

Mr. Klaus Newbert, the key holder for the Hope Community Church also toured the church after the police had searched for any other intruders and he made the following observations to the damages found within in the following exchange:

Q. And at three or four o'clock in the morning, you were allowed to go into the church, what, if anything, did you see that was unusual?

A. We had four doors that were forced open, and basically some damage to the safe.

Q. And did you see anything else unusual when you toured through the facility there?

A. Well, there were items scattered all over the place in a couple of the offices and in the room where the safe was.

[RP 70].

Mr. Neubert also testified that the safe was broken and had to be repaired. [RP 72].

Mr. Steve Morgan, a church elder and chairman of the leadership team for the church, also testified as to the damage. [RP 75-83]. Mr. Morgan also testified that he had never seen the pry bar and the hammer that the police had found in the church. [RP 81]. Mr. Morgan testified that the church was normally kept very neat and all of the doors and cabinets were kept closed and locked. [RP 79-82]. Mr. Morgan was also asked to describe how the safe normally looked compared to how it looked on this morning:

Q. That is the way it normally looks?

A. No, not at all.

Q. How would it normally be looking?

A. Well, that board that's screwed into the wall just to the right of it would have had a countertop sitting on top of it, and then there's a small access top that lifts up on the countertop and then to swing out the facing of the cabinet to give access to the safe.

Q. Otherwise, it's hidden?

A. Otherwise, it's hidden.

Q. And what about the safe itself, anything unusual about its condition in this picture?

A. Well, the electronic access panel, the keypad is not in place and the handle that would actually – that you turn to get access inside once you put in the code, that's not in place either on the lower door.

[RP 80].

Mr. Morgan also testified that no one had permission to be in that court the morning of October 17, 2009. [RP 83].

Officer Watkins photographed all of the damage in the church the morning of October 12, 2009 and those photos were admitted into evidence as Exhibits 1-49.<sup>1</sup> [RP 23-24].

### C. ARGUMENT.

#### 1. There was clearly sufficient evidence to support Mr. Knapp's conviction for possession of a stolen vehicle.

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

“[T]he critical inquiry on review of the sufficiency of the evidence to support a criminal conviction must be not simply to determine whether the jury was properly instructed, but to determine whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt.” (Cite omitted.) This inquiry does not require a reviewing court to determine whether *it* believes the evidence at trial established guilt beyond a reasonable doubt. “Instead, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any rational trier of fact* could have found

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<sup>1</sup> Some of the damaged doors appeared to have pry marks on them [RP 32 and 81].

the essential elements of the crime *beyond a reasonable doubt*. (Cite omitted, emphasis in original.)

*State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980).

“A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom.” *Salinas, supra*, at 201. Circumstantial evidence and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

Credibility determinations are for the trier of fact and are not subject to review. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). This court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992). It is the function of the fact finder, not the appellate court, to discount theories which are determined to be unreasonable in light of the evidence. *State v. Bencivenga*, 137 Wn.2d 703, 709, 974 P.2d 832 (1999).

The trial court correctly instructed the jury that a person commits the crime of burglary in the second degree when he or she enters or remains unlawfully in a building with intent to commit a

crime against a person or property therein. [RP 102]. The trial court also correctly informed the jury 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 given.

[RP 102].

The combination of the direct evidence and the circumstantial evidence was very powerful proof that Mr. Corder committed a burglary of the Hope Community Church. Mr. Corder did not have permission to be in the church. [RP 83]. Combined with the fact that he entered through a window, these facts demonstrated that he unlawfully entered the church. [RP 15]. When the police arrived on scene they observed Mr. Corder inside the church holding a long thin object that looked like a rifle or shotgun, in fact, there was no rifle or shotgun but there was a pry bar that matched the description that did not belong to the church. The pry bar was used a burglary tool as there were pry marks found on multiple doors and items in the church that had been physically forced open. There were no other people in the church when the police arrested Mr. Corder. All of these facts, coupled

with the inference instruction (Jury Instruction No. 10), clearly support proof beyond a reasonable doubt that Mr. Corder unlawfully entered the Hope Community Church in the early morning hours of October 17, 2009 with the intent to steal items from the church (and damage property in the church, including the safe, in his attempts to steal church property). Therefore, the jury clearly had sufficient evidence to find Mr. Knapp guilty beyond a reasonable doubt of burglary in the second degree.

D. CONCLUSION.

Based on the above, the State respectfully requests that this court affirm the verdict of the jury.

Respectfully submitted this 19<sup>th</sup> day of November 2010.

  
John C. Skinder, WSBA# 26224  
Attorney for Respondent

CERTIFICATE OF SERVICE

I certify that I served a copy of the BRIEF OF RESPONDENT, on all parties or their counsel of record on the date below as follows:

- US Mail Postage Prepaid
- ABC/Legal Messenger
- Hand delivered by to Supreme Court

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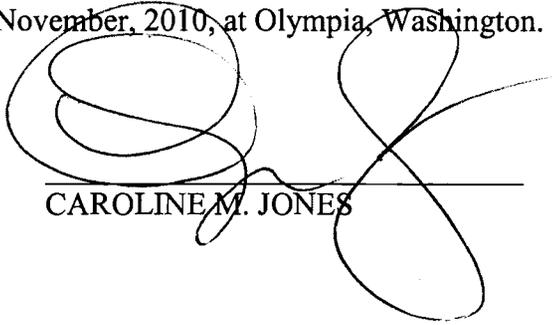
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I certify under penalty of perjury under laws of the State of Washington that the foregoing is true and correct.

Dated this 19 day of November, 2010, at Olympia, Washington.



CAROLINE M. JONES