

FILED

FEB 23 2012

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 30006-4-III

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

THE STATE OF WASHINGTON

Respondent

v.

CYNTHIA HETHERINGTON

Appellant

BRIEF OF RESPONDENT

Ms. Shadan Kapri
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I.

ASSIGNMENTS OF ERROR

1. The State's evidence was insufficient to support Ms. Hetherington's convictions for first-degree trafficking in stolen property and second-degree theft.

II.

ISSUES PRESENTED

1. Whether substantial evidence supported the jury convictions for two counts of first-degree trafficking in stolen property and second-degree theft.

III.

STATEMENT OF THE CASE

The State accepts the Appellant's Statement of the Case.

IV.

ARGUMENT

A. WHETHER SUBSTANTIAL EVIDENCE SUPPORTED THE JURY CONVICTIONS FOR TWO COUNTS OF FIRST-DEGREE TRAFFICKING IN STOLEN PROPERTY AND SECOND-DEGREE THEFT.

Ms. Hetherington argues that there was insufficient evidence to support the jury convictions for two counts of first-degree trafficking in stolen property and second-degree theft. When reviewing a challenge to the sufficiency of the evidence, appellate courts must determine, considering the evidence in the light most favorable to the prosecution, whether “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *State v. Green*, 94 Wash.2d 216, 221, 616 P.2d 628 (1980).

The Court of Appeals draws all reasonable inferences from the evidence in the prosecution's favor, and interprets the evidence most strongly against the defendant. *State v. Joy*, 121 Wash.2d 333, 339, 851 P.2d 654 (1993); *State v. Salinas*, 119 Wash.2d 192, 201, 829 P.2d 1068 (1992).

The Court assumes the truth of the prosecution's evidence and all inferences that the trier of fact could reasonably draw from it. *State v. Wilson*, 71 Wash. App. 880, 891, 863 P.2d 116 (1993), *rev'd on other grounds*, 125 Wash.2d 212, 883 P.2d 320 (1994).

The trier of fact is deferred to when resolving any conflicts in testimony, to weigh the persuasiveness of evidence, and to assess the credibility of the

witnesses. *State v. Boot*, 89 Wash. App. 780, 791, 950 P.2d 964, *review denied*, 135 Wash.2d 1015, 960 P.2d 939 (1998).

The elements for first degree trafficking of stolen property in the State of Washington occur when a person” knowingly initiates, organizes, plans, finances, directs, manages, or supervises the theft of property for sale to others, or who knowingly traffics in stolen property.” RCW 9A.82.050(1).

Second-degree theft is committed when a person commits theft of property or services which exceed seven-hundred and fifty-dollars but is less than five thousand dollars in value. RCW 9A.56.040.

Theft is statutorily defined 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. RCW 9A.56.020.

During the jury trial, Ms. Catherine Munro testified that she worked for Mr. Larry Richmond. (Report of Proceedings 145-146) He was an elderly and disabled man. (RP 145 – 147) Ms. Munro had worked for him for

approximately 14 years. (RP 146) She cleaned his house and paid his bills among other necessary duties. (RP 146) Ms. Munro testified that Mr. Richmond had asthma, diabetes, leukemia, and congestive heart failure. (RP 147)

Ms. Cynthia Hetherington became Mr. Richmond's caregiver on October 14, 2010. (RP 154) Around December 21, 2010, Mr. Richmond discovered two rings that belonged to his late wife, Priscilla, had been missing from the jewelry box inside a dresser drawer. (RP 148) Mr. Richmond was found crying when he noticed the rings belonging to his late wife had been stolen. (RP 152-153) The police were notified when the rings went missing. (RP 153)

When questioned by the police, Ms. Hetherington first denied any knowledge of the rings whatsoever. (RP 176-77, 274, 349) The police investigated the case. (RP 175-78) Officer David Watts obtained from the pawn shop transaction slips regarding the two rings. (RP 177 – 178) Ms. Hetherington's driver's license had been presented at the pawn shop for the transaction of these rings. (RP 177 – 178) The transaction slips showed that she had pawned the rings. (RP 177-178)

When questioned by the police, Ms. Hetherington stated that her driver's license must have been "stolen." (RP 178) Further investigation and inquiry by the police revealed that Ms. Hetherington's license had not been

stolen. (RP 178 – 180) Ms. Hetherington later admitted that had found the rings in a bag in the mud near her parked car. (RP 176-77, 274, 349)

In court, Ms. Munro identified the two rings that had belonged to Mr. Richmond's late wife, Priscilla Richmond. (RP 148) The couple had been married for fifty years. (RP 149)

Mr. Richmond died in March 2011. The matter came to a jury trial after his death. (RP 147) The jury found Ms. Hetherington criminally guilty of two counts of trafficking in stolen property and one count of second-degree theft. (CP 160-62)

After considering the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crimes charged beyond a reasonable doubt. *State v. Green*, 94 Wash.2d 216, 221, 616 P.2d 628 (1980).

CONCLUSION

Based upon the legal arguments and facts above, the State requests that the jury convictions be affirmed in this case.

Dated this 21st day of February, 2012.

A handwritten signature in black ink that reads "Shadan Kapri". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Shadan Kapri WSBA # 39962
Senior Deputy Prosecuting Attorney
Stevens County Prosecuting Attorney's Office
Attorney for Respondent

Affidavit of Certification

I certify under penalty of perjury under the laws of the State of Washington, that I mailed a true and correct copy of the foregoing Respondent's Brief to the Court of Appeals, Division III, 500 N. Cedar Street, Spokane, WA 99201, and mailed to Mr. David Gasch, P.O. Box 30339, Spokane, WA 99223 and Cynthia Hetherington, #350653, Washington Corrections Center for Women, N.E. 3420 Sand Hill Road, Belfair, WA 98528 on February 21, 2012.

A handwritten signature in black ink that reads "Shadan Kapri". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Shadan Kapri

Senior Deputy Prosecuting Attorney