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Supreme Court No. 862702

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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON,
Respondent,

v.

LEYSA LYNN SWEANY
Petitioner.

AND

THE STATE OF WASHINGTON,
Respondent,

v.

LEAH LYNN SWEANY
Petitioner.

PETITION FOR REVIEW OF THE COURT OF APPEALS,
DIVISION III
NO. 28860-9 & 28875-7
(CONSOLIDATED)

RESPONDENT'S SUPPLEMENTAL BRIEF

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ISSUES

1. What is the standard on review regarding a sufficiency of evidence challenge?
2. If the defendants' argument is accepted, is there sufficient proof that the fair market value of the property was ten thousand dollars or more?
 - A. What is the evidence concerning the fair market value of the trailer?
 - B. Is the trailer the only property involved?
3. In any event, should the "property valued at ten thousand dollars or more with intent to collect insurance proceeds" provision refer to fair market value or insurance value?
 - A. Does the context of the phrase "property valued at ten thousand dollars or more with intent to collect insurance proceeds" assist with interpretation?
 - B. Is the absence of the phrase "fair market value" from RCW 9A.48.020 important?
 - C. What is the ordinary meaning of "property value at ten thousand dollars or more with intent to collect insurance proceeds."
 - D. Does the defendants' interpretation make sense?

E. Is the citation to Oklahoma authority helpful?

STATEMENT OF FACTS

The Background: The defendants' financial situation was dire and their property was overinsured

Going into 2009, the financial outlook for Leysa Sweany, (hereafter Mrs. Sweany) and her daughter Leah Sweany, (hereafter Miss Sweany) were bleak: Mrs. Sweany had been receiving \$1,000.00 per month in death benefits on behalf of her minor son, pursuant to her late husband's job with the railroad. (01/13/10, RP 210). Those benefits stopped in August 2008, when the son turned 18. (01/13/10, RP 210). They had to resort to selling their blood or plasma to help make ends meet. (01/13/10, RP 322). On December 9, 2008, they were given a 20-day-notice to vacate the mobile home park where they lived, 2105 North Steptoe, #105, Kennewick, Washington. (01/13/10, RP 234). Management verbally gave them until December 31, 2008, to vacate.

(01/13/10, RP 233). However, it would cost \$15,000.00 to move the mobile home; they did not have that much money. (01/13/10, RP 325).

The mobile home was insured for \$65,000.00, a small outbuilding on the property was insured for \$6,500.00, and their personal property was insured for \$32,500.00. (01/13/10, RP 219).

On January 6, 2009, Miss Sweany spoke to some friends about their problems and said they were going to burn down their house for insurance money. (RP 01/13/10, 283).

The plan to set fire to the mobile home and the investigation:

The following day, on January 7, 2009, after the smoke detectors were removed from the wall with the batteries taken out, and after leaving their pets with neighbors, Mrs. and Miss Sweany left the residence at around 11:40 a.m. (01/12/10, RP 18, 47, 01/13/10, 283, 322).

Around 1:04 p.m., a neighbor spotted smoke coming from the Sweanys' mobile home and called

911. (01/12/10, RP 35, 46). The origin of the fire was the left-rear burner of the stove according to Kennewick Fire Marshall Mark Yaden, firefighter and fire investigator Rob Buckley, and fire insurance investigator Joel Felder. (01/12/10, 49-50, 98, 122). There were many combustible items including paper and cardboard in that area. (01/12/10, RP 99). The control knob of that burner was turned to nine, the highest setting. (01/12/10, RP 152).

The defendants claimed that the stove was not working. (01/13/10, RP 323). However, according to forensic engineer and fire investigator, Douglas Barovsky, the burner would heat when turned on (01/14/10, RP 400, 413).

The crime charged and the elements:

The defendants were charged with Arson in the First Degree by alternative means, under RCW 9A.48.020 (1)(b) and (d), that they started a fire which damaged a dwelling or on property valued at over ten thousand dollars (\$10,000.00)

with the intent to collect insurance proceeds.

(CP 4).

Therefore, the elements were:

- 1) The defendant(s) caused a fire.
- 2) The fire:
 - a. Damaged a dwelling or
 - b. Was on property valued at ten thousand dollars or more and was with the intent to collect insurance proceeds, and
- 3) The defendant(s) acted knowingly and maliciously, and
- 4) The acts occurred in the State of Washington. (CP 38)

The defendants were convicted. The defendant on appeal raised the issue of whether element 2(b) was proven, and specifically whether "property valued at ten thousand dollars or more" should be determined by the fair market value of that property.

ARGUMENT

1. A CHALLENGE TO THE SUFFICIENCY OF THE EVIDENCE IS VIEWED IN THE LIGHT MOST FAVORABLE TO THE STATE AND DETERMINED BY WHETHER ANY RATIONAL JURY COULD HAVE FOUND THE ELEMENTS OF THE CHARGED CRIME BEYOND A REASONABLE DOUBT.

State v. Brown, 162 Wn.2d 422, 428, 173 P.3d 245 (2007).

Further, a claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Substantial evidence means evidence in the record of a sufficient quantity to persuade a fair-minded, rational person of the truth of the finding. *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994).

2. THE CONVICTIONS SHOULD BE AFFIRMED WHETHER OR NOT THE COURT ACCEPTS THE DEFENDANTS' ARGUMENT BECAUSE THE EVIDENCE IS THAT THE FAIR MARKET VALUE WAS TEN THOUSAND DOLLARS OR MORE.

The assessed value of the mobile home was \$8,350.00. (01/13/10, RP 329-30). The defendants argue that based on this assessment, the fair market value of the mobile home was not over \$10,000.00. However, even if the value of the property is based on the fair market value, the argument overlooks at least three things: first,

the assessment may not be precisely accurate; second, there were many statements, including Mrs. Sweany's, that the fair market value of the mobile home was over \$10,000.00; third, the personal property destroyed by the arson added to the assessed value of the mobile home is over \$10,000.00.

A. There was sufficient evidence that the market value of the trailer alone was \$10,000.00, or more.

There were actually a number of statements about the market value of the mobile home. For example:

- Mrs. Sweany stated the mobile home's market value was over \$10,000.00. (01/14/10, RP 474-75)¹. Since Mrs. Sweany is the owner of the mobile home, that opinion should carry some weight. (01/14/10, RP 446).
- The mobile home park manager believed a pre-1995 single-wide mobile home could sell for up to \$12,000.00. (01/13/10, RP 238).
- The underwriters for the insurance company must have believed the market value of the mobile home was valued at over \$10,000,00

¹ "Q You'd agree the mobile home was worth maybe 10,000, maybe a little bit less, in that area anyway?

A A little bit more maybe because of my interior."

since it was insured for well over that amount. (01/13/10, RP 219).

- The asking price of the mobile home in 2001 was \$15,000.00. (01/14/10, RP 386). Mrs. Sweany's mother purchased it for \$10,500.00. (01/14/10, RP 374).
- The defendants assume that the assessed value of the mobile home of \$8,350.00 is precisely accurate. (01/13/10, RP 329-30). However, the fair market value could be over or under the assessed value, and the jury did not have to accept it as gospel. (01/13/10, RP 330).

The defendants assume that a fair market price of the mobile home in 2001 was \$10,500.00, and that it must have depreciated after the sale. However, neither assumption is supported by the record. The sellers in 2001 may have needed to quickly sell the mobile home, and the purchaser, Ms. Silver, Mrs. Sweany's mother, may have taken advantage of that situation.

B. The defendants' appliances, furniture, and clothing were also destroyed in the fire and must be included in the calculation of the property value.

RCW 9A.48.020(1)(d) provides, "A person is guilty of arson in the first degree if he or she

knowingly and maliciously...causes a fire or explosion on property valued at ten thousand dollars or more with intent to collect insurance proceeds." Since the statute does not limit "property" to real property, personal property should be included in the \$10,000.00 calculation.

In this case, the defendants' refrigerator, washer and dryer, television, microwave oven, purses, shoes, jewelry, bed, bookshelves and other furniture, pictures, books, and "professional" clothing were all damaged in the fire. (01/14/10, RP 428, 436, 461, 464). In fact, the personal property was insured for \$13,000.00.

Even accepting the argument that the mobile home's value is \$8,350.00, a jury could conclude that adding the personal property, the fire caused damages to property valued at \$10,000.00 or more.

3. THE TERM "VALUE" AS USED IN THE STATUTE ON ARSON IN THE FIRST DEGREE, RCW 9A.48.020, SHOULD REFER TO THE INSURANCE VALUE OF THE PROPERTY DAMAGED.

The most reasonable interpretation of the statute, RCW 9A.48.020, is that "property valued at ten thousand dollars or more with intent to collect insurance proceeds" must refer to the value of the insurance policy on such property. Please consider the following points.

A. The context indicates that the phrase "property valued at ten thousand dollars" refers to the amount of insurance proceeds available.

As the Court of Appeals stated, "When interpreting a statute, the court's fundamental objective is to ascertain and carry out the legislature's intent." *State v. Sweany*, 162 Wn. App. 223, 230, 256 P.3d 1230 (2011). In determining the plain meaning of a provision, the Court looks to the text of the statutory provision in question as well as the context of the statute in which that provision is found,

related provisions, and the statutory scheme as a whole. *State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 281 (2005). The statute is designed to penalize arsonists who commit the crime to collect insurance proceeds. Insurance fraud cannot occur if the property is underinsured. If the mobile home, appliances, jewelry, clothing, and furniture herein could be sold for \$50,000.00, but were insured for \$10,000.00, the defendants would not have benefited from setting fire to the goods. The phrase "property valued at ten thousand dollars or more" must be read together with the phrase "with intent to collect insurance proceeds."

B. The Statute does not refer to "fair market value."

RCW 9A.48.020(1)(d) refers to the "value" of property, not the "fair market value." "Value" and "fair market value" have different meanings and have not been used interchangeably by the legislature. Note that RCW 9A.48.020 does not include a definition of "value." Nor does RCW

9A.48.010 "Definitions" include a definition of "value" for the purpose of the chapter. In contrast, RCW 9A.48.100 defines "value" for the purpose of the malicious mischief statutes, RCW 9A.48.070 to 9A.48.090. It is also in contrast to RCW 9A.56 "Theft and Robbery" which does have a provision defining the word "value." See RCW 9A.56.010(21). "Value," pursuant to RCW 9A.56.010(21)(a), refers to market value. If the legislature had intended that "value" under RCW 9A.48.020 meant "market value," it would have so provided.

C. The ordinary meaning of "property valued at" refers to an assigned amount of value, as in an insurance policy, rather than the price arrived at through negotiation.

If a term is not defined by statute, it should be given its usual and ordinary meaning. *Burton v. Lehman*, 153 Wn.2d 416, 422, 103 P.3d 1230 (2005). The term "property valued at" is not defined by the statute. Therefore, it should be given its plain and ordinary meaning. "The

plain and ordinary meaning of 'valued at' is of a value that is not inherent or objective but which is, or has been, assigned." *State v. Sweany*, 162 Wn. App. at 231. The fair market value implies some negotiation between a willing buyer and seller. The statute refers to a pre-assigned amount, rather than an amount that is subject to negotiation.

The defendants hoped to receive well over the fair market value of the mobile home, plus their appliances, jewelry, clothing, and other personal items as a result of the fire. For the defendants, the mobile home was valued at \$65,000.00, and their personal property was valued at \$13,000.00, the amount for which they were insured.

D. The defendants' interpretation of RCW 9A.48.020(1)(d) in the context of the purpose of that statute, would result in an unlikely, absurd or strained result.

A common rule in statutory interpretation is to avoid a result which is "unlikely, absurd, or

strained." *In re Parentage of J.M.K.*, 155 Wn.2d 374, 387, 119 P.3d 840 (2005). Here, the defendants' interpretation of RCW 9A.48.020 does result in an unlikely or absurd result.

Obviously, the legislature wanted a harsher penalty for someone who sets fire to his automobile with the intent of defrauding an insurance company than someone who sets fire to an automobile to see it burn. The only way to profit from an arson is for the owner to over-insure their property and hope that the insurance company pays out. The value of the property in this situation is not the fair market value.

The phrases "property valued at ten thousand dollars or more" and "with intent to collect insurance proceeds" must be read together. "Property valued at ten thousand dollars or more" refers to the "intent to collect insurance proceeds." If the insurance proceeds are less than \$10,000.00, an individual has not committed the crime of Arson in the First Degree. The

intent of RCW 9A.48.020(1)(d) is to harshly penalize a person who attempts to defraud an insurance company of \$10,000.00 or more. If a person has under-insured property, that person cannot defraud an insurance company by causing a fire. So, the legislature did not intend "property valued at ten thousand dollars or more" to mean "property whose fair market value is ten thousand dollars or more."

Think of the 73rd home run hit by Barry Bonds in 2001. Immediately after the baseball season ended the ball could have sold for \$1,000,000.00. The fan who caught the ball could have insured it for that amount, \$1,000,000.00. However, as each passing year has brought more evidence that Mr. Bonds' accomplishments were tainted by steroid abuse, the fair market value in 2004 was \$500,000.00. Perhaps in 2011, the fair market value is \$1,000.00. Either way, the value to the fan and the insurance company is \$1,000,000.00. Likewise, for the purposes of the arson statute,

the baseball would be "valued at ten thousand dollars or more" where the intent is to collect insurance proceeds.

E. The defendants' citation to Oklahoma authority is not on point.

The Oklahoma statute for arson in the third degree includes the provision, "the property ignited or burned be worth not less than fifty dollars (\$50.00)." 21 O.S. § 1403 [21-1403] (A). The statute does not involve an attempt to defraud an insurance company, nor does the Oklahoma statute use the same language as RCW 9A.48.020. The Washington statute uses the phrase, "property valued at ... ," which implies a set amount, while the Oklahoma statute used the phrase "property ... worth ... ," which implies a fair market value.

In *Jackson v. State*, 818 P.2d 910 (Okl.Cr., 1991), the defendant set fire to a plastic trash can on wheels. The defendant argued that he should have been found guilty of a lesser

offense, malicious mischief, because the prosecution had not proven the cart was worth more than \$50.00. The Oklahoma court held that "worth" as used in the context of that statute, referred to fair market value. Those facts, and the Oklahoma statute, have nothing to do with the facts and the Washington statute.

CONCLUSION

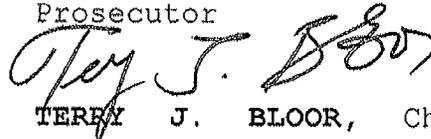
Even accepting the defendants' argument, the convictions should be affirmed. The jury could have reasonably concluded, based on Mrs. Sweany's own testimony, that the mobile home alone had a fair market value of over \$10,000.00. When adding the outbuilding, the appliances, the jewelry, and clothing to the fair market value of the mobile home, the result is even more clear. Nevertheless, based on the context of the statute, this Court should reject the defendants' argument that "property valued at ten thousand dollars or more with the intent to collect insurance proceeds" refers to the market value of

the property insured rather than the amount which could be collected in insurance proceeds.

In either case the convictions should be affirmed.

RESPECTFULLY SUBMITTED this 30th day of
November 2011

ANDY K. MILLER
Prosecutor



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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this day I served, in the manner indicated below, a true and correct copy of the foregoing document as follows:

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