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THE SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

JENNIFER MEGAN MAU,

Appellant.

Review from Court of Appeals, Division Two, Case No. 41319-1-II

Respondent's Supplemental Brief

JONATHAN L. MEYER
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By:

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 ORIGINAL

TABLE OF CONTENTS

TABLE OF AUTHORITES ii

I. ISSUES.....1

II. STATEMENT OF THE CASE1

III. ARGUMENT8

A. THE STATE PRESENTED SUFFICIENT EVIDENCE
THAT MAU SUBMITTED A FALSE INSURANCE CLAIM
AND/OR PROOF OF LOSS8

 1. Standard Of Review.....9

 2. There Was Sufficient Evidence Presented To Prove
 Mau Submitted a False Claim Under Contract Of
 Insurance.....9

IV. CONCLUSION.....13

TABLE OF AUTHORITIES

Washington Cases

State v. Camarillo, 115 Wn.2d 60, 794 P.2d 850 (1990).....10

State v. Colquitt, 133 Wn. App. 789, 137 P.3d 893 (2006)9

State v. Delmarter, 94 Wn.2d 634, 618 P.2d 99 (1980)9

State v. Goodman, 150 Wn.2d 774, 83 P.2d 410 (2004)9

State v. Green, 94 Wn.2d 216, 616 P.2d 628 (1980).....10

State v. Myers, 133 Wn.2d 26, 941 P.2d 1102 (1997)10

State v. Olinger, 130 Wn. App. 22, 121 P.3d 724 (2005).....10

State v. Salinas, 119 Wn.2d 192, 829 P.2d 1068 (1992)9

Federal Cases

In re Winship, 397 U.S. 358, 90 S. Ct 1068, 25 L.Ed.2d 368
(1970)9

Washington Statutes

RCW 48.20.23011

RCW 48.30.230(1).....11

Constitutional Provisions

U.S. Constitution, Amendment XIV, § 11

Other Rules or Authorities

Black’s Law Dictionary, 806 (7TH ed.).....11

I. ISSUES

- A. Did the State present sufficient evidence to prove that Mau falsely and/or fraudulently submitted a claim under a contract of insurance?

II. STATEMENT OF THE CASE

The State filed an information on March 16, 2010 charging Jennifer Mau¹ with one count of False Insurance Claim and/or Proof of Loss. 1CP 1-3.² The State also filed an information charging David Eden³ with one count of False Insurance Claim and/or Proof of Loss and while not charged as co-defendants, Eden and Mau's cases were joined and consolidated for trial. 1RP⁴ 3-4; 1CP 17-18. The cases proceeded to jury trial which commenced on September 22, 2010. 2RP 1.

On March 30, 2007 Mau rented a U-Haul truck from the Olympia U-Haul center. 2RP 20-22; Ex. 25 and 37. Mau purchased

¹ Jennifer Mau will hereafter be referred to as Mau.

² Due to this being a consolidated case in the Court of Appeals there are two sets of Clerk's Papers that were designated by each party, Mau and David Eden. The Clerk's Papers as designated by Mau under Superior Court No. 10-1-00151-9 and Court of Appeals No. 41319-1 will be referred to as 1CP. The Clerk's Papers designated by David Eden, Superior Court No. 10-1-00152-7 and Court of Appeals No. 41320-5-II will be referred to as 2CP.

³ David Eden will hereafter be referred to as Eden. It should also be noted that Mr. Eden did not file a petition for review and while Eden and Mau's cases are consolidated in the Court of Appeals, the review in the Supreme Court is limited to Ms. Mau. Therefore, State is only responding to this Court's acceptance of Ms. Mau's petition for review

⁴ There are several volumes of verbatim report of proceedings. The State will refer to the trial confirmation hearing on 9-16-10 as 1RP; there are three volumes for the jury trial, sequentially numbered, will be 2RP; the sentencing hearing conducted on 10-18-10 will be referred to as 3RP.

the safe move protection, which covers the cargo being hauled in the U-Haul in the event of an accident, vehicle collision, upset or overturn. 2RP 39. Mau and Eden, who were in a domestic relationship, used the truck to move items and furnishings into their new home in Morton. 2RP 225-27; 373.

Mau, Eden, Arlene Black, Douglas Eden, David⁵ and Sharon Mitchell all assisted in the move. 2RP 226. According to David it had been raining on and off and there were items that were damaged by water that had leaked into the truck. 2RP 228-29. David left for a while and when he came back to the Morton residence Mau had separated out items that she wanted put back in the U-Haul. 2RP 231. Ms. Mitchell testified there was a lot of water on the floor of the U-Haul. 2RP 248. Ms. Mitchell's recollection of what was in the U-Haul differed from her statement previously given to Reilly Gibby, the insurance adjuster. 2RP 261. David admitted he only saw wet boxes and did not see any damaged items. 2RP 235-36. Mau claimed that she made five or six trips to the dump to throw out the destroyed items. 2RP 281. Mau returned the U-Haul that Sunday, April 1, 2007, to the U-Haul center in Centralia. 2RP 282. Mau complained about the trailer

⁵ David Eden's son's name is also David and will be referred to by his first name to avoid confusion, no disrespect intended.

leaking and was provided an 800 number to call U-Haul's insurance company, Republic Western Insurance. 2RP 283-84.

Mau contacted Republic Western Insurance on April 3, 2007 claiming the U-Haul truck she had rented leaked causing damage to her property being transported in the truck. 2RP 36-38, 284.

Republic Western Insurance handles all insurance claims for U-Haul. 2RP 36. A general liability claim was opened based on Mau's allegation that the U-Haul truck she rented leaked and destroyed her property. 2RP 39. This claim was not a safe move protection claim, which would only cover cargo inside the truck if the cargo was damaged in a collision. 2RP 39.

Michael Larsen, a special investigator for Republic Western Insurance, was assigned Mau's claim. 2RP 37. Republic Western Insurance is based out of southern California. 2RP 41. To assist in the investigation of Mau's claim of loss, Republic Western Insurance hired Reilly Gibby, an insurance adjuster from Rose City Adjusters, to investigate the claim. 2RP 41, 58. Mr. Larsen explained it was common place to hire an independent adjuster who was located in the area where the claim was being made. 2RP 41. Mr. Larsen consulted with Mr. Gibby during the course of the investigation of Mau's claim. 2RP 41. Mr. Larsen also requested

that a water test be conducted on the truck in question to see if it leaked. 2RP 41. The safe mover plan did not cover water damage so the claim would have to be approved under the general liability claim. 2RP 43.

Mr. Gibby, an independent insurance adjuster, receives assignments from various insurance companies and investigates and evaluates the value of the claims. 2RP 59-60. Mr. Gibby set up an appointment to meet with Mau at her home in Morton to discuss her claim and get the necessary documentation from her. 2RP 62. Mr. Gibby emphasized to Mau that "I needed documentation for presenting her claim to Republic Western Insurance." 2RP 64. Mau called Mr. Gibby and changed the meeting place to Spiffy's Restaurant, located in Lewis County, Washington, without giving an explanation of why she no longer would meet at her residence in Morton. 2RP 62-63.

Mr. Gibby met with Mau at the restaurant on April 20, 2007. RP 64. Mau brought receipts for the alleged damaged goods and prepared a seven page property inventory while Mr. Gibby sat with her. 2RP 65, 286; Ex. 5. Mr. Gibby spent 1.4 hours with Mau just preparing the inventory sheets and going over the receipts. 2RP 65. Mau had highlighted on the receipts the items she was claiming

were destroyed by the water damage from the U-Haul. 2RP 67. Mau told Mr. Gibby there were items in the truck that were not destroyed which were on the receipts and she was not requesting compensation for those items. 2RP 74. Mau later faxed Mr. Gibby dump receipts for the alleged water damaged items that were taken to the dump. 2RP 68-69; Ex. 6.

Mau gave Mr. Gibby a taped statement. 2RP 65; ID 8.⁶ Mau explained that she made two trips with the truck, one after they discovered that the truck was leaking and had damaged their items. ID 8, page 8. The second trip was on Saturday, March 31, 2007. ID 8, pages 6-9. Mau stated she called U-Haul to complain prior to returning the truck. ID 8, page 12. Mau said U-Haul told her they would have someone get a hold of her. ID 8, page 12. At the beginning of the taped statement Mr. Gibby stated,

This is Reilly Gibby and I'm taking a recorded statement from Jennifer Mau. The date today is April 20, 2007. The time is 3:06 p.m. and we're discussing a cargo loss she had as a U-Haul customer. Uh, Jennifer do you understand we're recording this and is that being done with your permission?

⁶ ID 8 was an illustrative exhibit that the jury was able to read along with when the State played the recorded statement given by Mau. The State will be referring to ID 8 because the statement was heard by the jury during the trial but the verbatim report of proceedings does not contain the recording.

ID 8, page 1. Mau stated yes and Mr. Gibby asked, "do all the answers that you intend to give, will they be true to the best of knowledge and recollection?" ID 8, page 1. Mau stated yes. ID 8, page 1. At the end of the statement Mr. Gibby asked, "And have all your answers been true and correct?" ID 8, page 21. Mau replied yes. ID 8, page 21.

Mr. Gibby met with Eden on May 7, 2007 at Spiffy's Restaurant to get Eden's statement regarding the property damage and loss. 2RP 75. Eden told Mr. Gibby that Mau had disposed of the items by driving the U-Haul truck to the dump on Saturday, March 31, 2007. 2RP 81. Mau had told Mr. Gibby that it was Eden who had driven the truck to the dump on Saturday. 2RP 81. Eden also told Mr. Gibby that the sewing machine had been taken right back onto the truck, it was heavy, and went to the dump on Saturday, while Mau had told Mr. Gibby that she did not take the sewing machine to the dump until later in the week. 2RP 81. Eden told Mr. Gibby that the truck had leaked terribly and the items had been thrashed. 2RP 82. Eden stated he did not take pictures of the damaged items and did not retain the owner's manuals. 2RP 82.

Mr. Gibby was concerned because Eden and Mau took the alleged damaged goods to the dump right away, without

documentation such as photographs to show the alleged damage and there was no opportunity for the company to mitigate damages. 2RP 106. The dump receipts Mau provided to Mr. Gibby shows a total of 440 pounds were deposited in the landfill. Ex. 6. Edward Thomson, a loss prevention agent for IKEA, testified regarding the weight of the items from IKEA that were allegedly damaged. 2RP 169-176. The total weight of the IKEA items Mau claimed were lost was 917 pounds. 2RP 176.

Ms. Black testified about helping Mau and Eden load the U-Haul to move the items to the new house. 2RP 111-116. Ms. Black rode behind the U-Haul to Morton and did not recall the weather as being rainy. 2RP 116-117. Ms. Black helped unload the U-Haul, taking the items into the new house in Morton. 2RP 117-118. Ms. Black stated the items removed from the U-Haul truck were not damaged. 2RP 119. The mattresses were new and still had the plastic wrapping around them. 2RP 118. Ms. Black even assisted by assembling some of the IKEA furniture, such as a coffee table, a little table and a large shelf. 2RP 119-120. According to Ms. Black, the electronics, such as DVD players, televisions and Play Stations were all brought into the house and did not appear damaged. 2RP

120. Ms. Black had been to the house in Morton at least 50 times and the items were still in the house. 2RP 122.

Donald Squire is a volunteer with the National Oceanographic Atmospheric Administration (NOAA) who monitors the rain in Packwood, Washington. 2RP 387-88. Packwood is 33 miles from Morton. 2RP 391. On March 30, 2007 there was no precipitation recorded in Packwood. 2RP 395. On March 31, 2007 there was .20 inches of rain in Packwood. 2RP 395.

Mr. Gibby testified that the claim for damages against U-Haul was ultimately denied because the investigation revealed no negligence on the part of U-Haul. 2RP 43.

III. ARGUMENT

A. THE STATE PRESENTED SUFFICIENT EVIDENCE THAT MAU SUBMITTED A FALSE INSURANCE CLAIM AND/OR PROOF OF LOSS.

The State presented sufficient evidence to sustain Mau's conviction for False Insurance Claim and/or Proof of Loss. When taking the evidence presented in the light most favorable to the State, the State proved that Mau submitted a false or fraudulent claim, or proof in support of the claim, for payment of a loss under a contract of insurance.

1. Standard Of Review.

Sufficiency of evidence is reviewed in the light most favorable to the State to determine if any rational jury could have found all the essential elements of the crime charged beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

2. There Was Sufficient Evidence Presented To Prove Mau Submitted a False Claim Under Contract Of Insurance.

The State is required under the Due Process Clause to prove all the necessary elements of the crime charged beyond a reasonable doubt. U.S. Const. amend. XIV, § 1; *In re Winship*, 397 U.S. 358, 362-65, 90 S. Ct 1068, 25 L.Ed.2d 368 (1970); *State v. Colquitt*, 133 Wn. App. 789, 796, 137 P.3d 893 (2006). An appellant challenging the sufficiency of evidence presented at a trial “admits the truth of the State’s evidence” and all reasonable inferences therefrom are drawn in favor of the State. *State v. Goodman*, 150 Wn.2d 774, 781, 83 P.2d 410 (2004). When examining the sufficiency of the evidence, circumstantial evidence is just as reliable as direct evidence. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

The role of the reviewing court does not include substituting its judgment for the jury's by reweighing the credibility or importance of the evidence. *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). The determination of the credibility of a witness or evidence is solely within the scope of the jury and not subject to review. *State v. Myers*, 133 Wn.2d 26, 38, 941 P.2d 1102 (1997), citing *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). "The fact finder...is in the best position to evaluate conflicting evidence, witness credibility, and the weight to be assigned to the evidence." *State v. Olinger*, 130 Wn. App. 22, 26, 121 P.3d 724 (2005) (citations omitted).

To convict Mau of false insurance claim and/or proof of loss the State was required to prove beyond a reasonable doubt that Mau did:

- (a) Present, or cause to be presented, a false or fraudulent claim, or proof in support of such a claim; for the payment of a loss under a contract of insurance; or
- (b) Prepare, make, or subscribe any false or fraudulent account, certificate, affidavit, or proof of loss, or other document or writing, with intent that it be presented or used in support of such a claim.

RCW 48.30.230(1). The State's evidence submitted at trial was sufficient for any jury to find all the elements of the crime beyond a reasonable doubt.

A person can claim a loss under contract of insurance without being a direct party to the contract. Liability insurance is "an agreement to cover a loss resulting from one's liability to a third party." BLACK'S LAW DICTIONARY, 806 (7TH ed.). The statute does not require that the person claiming the fraudulent loss be a direct party to the contract of insurance. See RCW 48.20.230. The statute only requires that there is a contract of insurance for which the person is submitting their false or fraudulent claim to. RCW 48.20.230.

Republic Western Insurance is the insurance provider for U-Haul, whom U-Haul has contracted with to handle their claims. 2RP 36. This would qualify as a contract of insurance. Mau contacted Republic Western Insurance on April 3, 2007 to initiate her claim that the U-Haul truck had damaged her and Eden's property. 2RP 36-38, 284. Mau was informed by Ms. Malmer, an employee of U-Haul, that Republic Western Insurance was the insurance company for U-Haul. 2RP 27. Mau met with, filled out forms, submitted documentation and gave a taped statement to Mr. Gibby, knowing

she was submitting a claim for loss to Republic Western Insurance in regards to damages allegedly caused by U-Haul. 2RP 64-82; ID 8.

Mau argues that she only purchased the safe move protection and it did not cover the type of damage incurred by her and Eden and therefore, this was not a claim under contract of insurance. See Petition for Review 10-14. This argument confuses the issue. The State did not argue in its briefing alone or orally to the Court of Appeals that the safe move protection was a contract of insurance between Mau and U-Haul. The safe move coverage Mau purchased when she rented the truck is irrelevant to the issue of whether or not Mau knowingly made a false or fraudulent claim and or proof of loss under a contract of insurance.

The relevant issue is that Mau initiated a fraudulent claim under U-Hal's insurance. That Mau was a third party to the insurance contract is of no consequence. Mau's actions when she met with Mr. Gibby, the insurance adjuster, plainly show Mau knew she was making a claim to U-Haul's insurance company, Republic Western Insurance.

The general liability claim was a claim for loss of goods due to the alleged negligence of U-Haul and was submitted to U-Haul's

insurance company, Republic Western Insurance. 2RP 38-39. There was sufficient evidence presented to the jury to find all elements charged beyond a reasonable doubt. The Court of Appeals decision should be affirmed.

IV. CONCLUSION

The State proved Mau falsely and/or fraudulently made a claim under contract of insurance. This Court should affirm the Court of Appeals decision and Mau's conviction should stand.

RESPECTFULLY submitted this 6th day of February, 2013.

JONATHAN L. MEYER
Lewis County Prosecuting Attorney



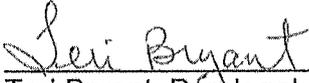
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SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	NO. 87697-5
Respondent,)	
vs.)	DECLARATION OF
)	EMAILING
JENNIFER MEGAN MAU,)	
Appellant.)	
)	
)	

Ms. Teri Bryant, paralegal for Sara I. Beigh, Senior Deputy Prosecuting Attorney, declares under penalty of perjury under the laws of the State of Washington that the following is true and correct: On February 6, 2013, the appellant was served with a copy of the **Respondent's Supplemental Brief** by emailing same to counsel for the appellant at Jahayslaw@comcast.net.

DATED this 16th day of February, 2013, at Chehalis, Washington.



Teri Bryant, Paralegal
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Attached for filing in the above referenced case is the Respondent's Supplemental Brief.

Thanks,

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