

66748-3

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NO. 66748-3-I

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

STATE OF WASHINGTON,

Respondent,

v.

PETER A. RUNCHEY,

Appellant.

BRIEF OF RESPONDENT

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I. ISSUES

1. Whether the evidence presented was sufficient to support Runchey's convictions for 2nd Degree Burglary and 2nd Degree Possession of Stolen Property under either principal or accomplice liability?

2. Whether the evidence presented was sufficient to support a finding that the value of the stolen copper wire exceeded \$750?

II. STATEMENT OF THE CASE

On November 18, 2010, around 1:00 a.m., Robert Selbe asked Peter Runchey to "come help get some wire." Around 2:00 a.m. Runchey drove Selbe to Ravenna Street, near the Chicago Bridge and Iron Company (CBI) located at 5500 First Avenue, Everett, WA. Their plan was to take wire back to Runchey's house. Runchey and Selbe got out of the car and headed down the hill into a wooded area towards a pipeline that ran adjacent to CBI. Runchey and Selbe were wearing dark clothing, skull caps, and backpacks. Runchey was carrying wire cutters in his pack; Selbe had bolt cutters in his pack. A nearby resident observed Runchey and Selbe and called 911. Exhibits 1, 2, 4; 2RP 18, 20-22, 24, 32, 71, 87, 109-111.

Police arrived at the scene at 2:16 a.m. and began staging in the cul-de-sac at the end of Ravenna Street. Officers contacted the reporting party, while Officer Braley attempted to enter the wooded area with his K-9. The area was marshland and the officers were uncertain of the depth of the water. After an initial period of silence, at 2:47 a.m., the officers heard crashing sounds coming from the woods. 2RP 20-22, 56-62, 79-81, 97, 101-104.

The noise sounded like someone coming through the woods; the officers crouched down and waited. The officers observed two individuals matching the description given by the reporting party emerge from the woods north of the pipeline. Officer Braley turned his flashlight on the two subjects and announced, "Stop, police." The two subjects turned around, started dropping the items they were carrying, and fled back into the woods; the police followed. Officer Braley located several large coils of copper wire that had been dropped by the two suspects on the north side of the pipeline. Runchey was located hiding next to the pipeline and taken into custody. Selbe was also located and taken into custody. Runchey had a headband flashlight, wire cutters, a second flashlight and a knife in his pack. Selby had bolt cutters and other tools in his pack.

Police located a hole cut in CBI's metal chain-link fence. EX 5, 7-12, 19, 20, 38; 2RP 63-71, 81-83, 85-88, 105.

Runchey told Officer Ross that at around 1:00 a.m. Selbe contacted him at his home and asked Runchey to "come help get some wire." Runchey said that he borrowed a vehicle and drove Selbe to the location on Ravenna. Runchey denied going through the hole in the chain-link fence, said that he had wire cutters to cut the ends off wires, and their plan was to take the wire to his place. When asked why he went out in the middle of the night, dressed in black, through a marsh to get the wire, Runchey replied, "I knew there was something not right about it." 2RP 109-111.

The five coils of wire were photographed and collected. Raymond Maw, the manager at CBI, identified the coils of wire as belonging to CBI; the wire was solid copper leads that had been cut from various machines at CBI. As of November 17, 2010, no wire was missing at CBI. Each coil weighed between 75-80 pounds. Maw initially estimated the value of the stolen wire at \$1,000. The CBI property is completely fenced; Maw observed the one-foot by one-and-a-half-foot hole that had been cut in CBI's metal chain-link fence. Neither Runchey nor Selbe had permission to enter or

remove copper wire from CBI. EX 5, 7-12, 13, 14, 23-26; 2RP 24, 26-29, 32-38, 40, 43, 48-50, 52, 65-69, 87-89, 94.

Maw's duties as manager at CBI include overseeing the purchase of the various metals used by the company. Based on his experience Maw knew that metals have increased in price over the last few years; copper going from 20 - 50 cents a pound to 3 - 4 dollars a pound just for scrap. Maw participated in appraising the damage and purchasing wire to replace the copper wire cut from CBI's machines. The total cost for the copper wire was between \$2,200 and \$2,300. 2RP 29-31, 45.

Following a jury trial Runchey was found guilty as charge of 2nd degree burglary and 2nd degree possession of stolen property. CP 31-33, 74-75.

III. ARGUMENT

A. SUFFICIENCY OF THE EVIDENCE.

1. Legal Standards.

Sufficiency of the evidence is a question of constitutional magnitude which a defendant may raise for the first time on appeal. State v. Alvarez, 128 Wn.2d 1, 9, 904 P.2d 754 (1995); State v. Atterton, 81 Wn. App. 470, 472, 915 P.2d 535 (1996). When reviewing a challenge to the sufficiency of the evidence, the court

determines whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Brockob, 159 Wn.2d 311, 336, 150 P.3d 59 (2006); State v. Hughes, 154 Wn.2d 118, 152, 110 P.3d 192 (2005). All reasonable inferences are drawn in the prosecution's favor and interpreted most strongly against the defendant. State v. Hosier, 157 Wn.2d 1, 8, 133 P.3d 936 (2006). "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). Evidence favoring the defendant is not considered. State v. Randecker, 79 Wn.2d 512, 521, 487 P.2d 1295 (1971) (negative effect of defendant's explanation on State's case not considered); State v. Jackson, 62 Wn. App. 53, 58 n. 2, 813 P.2d 156 (1991) (defense evidentiary inference cannot be used to attack sufficiency of evidence to convict). Circumstantial evidence and direct evidence are equally reliable. State v. Goodman, 150 Wn.2d 774, 781, 83 P.3d 410 (2004); State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980) ("In determining the sufficiency of the evidence, circumstantial evidence is not to be considered any less reliable than direct evidence."). The court

need not be convinced of the defendant's guilt beyond a reasonable doubt; it is sufficient that substantial evidence supports the State's case. State v. Galisa, 63 Wn. App. 833, 838, 822 P.2d 303 (1992) *citing* State v. McKeown, 23 Wn. App. 582, 588, 596 P.2d 1100 (1979).

In testing the sufficiency of the evidence, the reviewing court does not weigh the persuasiveness of the evidence. Rather, it defers to the trier of fact on issues involving conflicting testimony, credibility of witnesses, and the weight and persuasiveness of the evidence. State v. Delmarter, 94 Wn.2d at 638. Credibility determinations are for the trier of fact and cannot be reviewed on appeal. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). The 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).

2. Accomplice Liability.

A person is culpable as an accomplice if, with knowledge that it will promote or facilitate the commission of the crime, he "aids or agrees to aid" another person in planning or committing the crime. RCW 9A.08.020(3)(a)(ii). Mere physical presence at the

scene, even if coupled with assent, is insufficient to establish accomplice liability. State v. Luna, 71 Wn. App. 755, 759, 862 P.2d 620 (1993). The State must prove that the defendant was ready to assist in the crime. State v. Rotunno, 95 Wn.2d 931, 933, 631 P.2d 951 (1981); In re Wilson, 91 Wn.2d 487, 491, 588 P.2d 1161 (1979). One aids another when “he associates himself with the undertaking, participates in it as in something he desires to bring about, and seeks by his action to make it succeed.” Wilson, 91 Wn.2d at 491. “[I]t is the intent to facilitate another in the commission of a crime by providing assistance through his presence or his act that makes the accomplice criminally liable.” State v. Galisia, 63 Wn. App. 833, 840, 822 P.2d 303, review denied, 119 Wn.2d 1003, 832 P.2d 487 (1992), *abrogated on other grounds*, State v. Trujillo, 75 Wn. App. 913, 917, 883 P.2d 329 (1994).

The jury was instructed on accomplice liability:

A person is guilty of a crime if it is committed by the conduct of another person for which he or she is legally accountable. A person is legally accountable for the conduct of another person when he or she is an accomplice of such other person in the commission of the crime.

A person is an accomplice in the commission of a crime if, with knowledge that it will promote or

facilitate the commission of the crime, he or she either:

(1) solicits, commands, encourages, or requests another person to commit the crime; or

(2) aids or agrees to aid another person in planning or committing the crime.

The word "aid" means all assistance whether given by words, acts, encouragement, support, or presence. A person who is present at the scene and ready to assist by his or her presence is aiding in the commission of the crime. However, more than mere presence and knowledge of the criminal activity of another must be shown to establish that a person present is an accomplice.

A person who is an accomplice in the commission of a crime is guilty of that crime whether present at the scene or not.

CP 50; Instruction 14; WPIC 10.51.

In the present case, the evidence showed that around 1:00 a.m. on November 18, 2010, Selbe asked Runchey to "come help get some wire." Their plan was to bring the wire back to Runchey's house. Runchey obtained a vehicle and around 2:00 a.m. drove Selbe to Ravenna Street where the two of them got out of the car and headed down towards CBI. When the police saw Runchey he and Selbe were each carrying coils of copper wire that had been cut from machines at CBI. Both Runchey and Selbe had tools for cutting wires in their possession. This evidence was sufficient to

support finding that Runchey and Selbe were acting as accomplices in planning and committing the charged crimes.

B. ELEMENTS OF THE CRIMES.

1. Second Degree Burglary.

(1) A person is guilty of burglary in the second degree if, with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a building other than a vehicle or a dwelling.

(2) Burglary in the second degree is a class B felony.

RCW 9A.52.030. Unlawfully entering a fenced area can support a conviction for burglary. RCW 9A.04.110(5); State v. Engle, 166 Wn.2d 572, 580, 210 P.3d 1007 (2009); CP 43; Instruction 7; WPIC

2.05. The jury was instructed:

To convict the defendant of the crime of burglary in the second degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 18th day of NOVEMBER, 2010, the defendant, or a person to whom the defendant was an accomplice, 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 the acts occurred in the State of Washington.

CP 47; Instruction 11; WPIC 60.04.

2. Second Degree Possession Of Stolen Property.

(1) A person is guilty of possessing stolen property in the second degree if:

(a) He or she possesses stolen property, ... which exceeds seven hundred fifty dollars in value but does not exceed five thousand dollars in value; ...

(2) Possessing stolen property in the second degree is a class C felony.

RCW 9A.56.160. The jury was instructed:

To convict the defendant of the crime of possessing stolen property in the second degree, each of the following five elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 18th day of NOVEMBER, 2010, the defendant, or a person to whom the defendant was an accomplice, knowingly received, retained, or possessed stolen property;

(2) That the defendant acted with knowledge that the property had been stolen;

(3) That the defendant withheld or appropriated the property to the use of someone other than the true owner or person entitled thereto;

(4) That the stolen property exceeded \$750 in value

and

(5) That any of these acts occurred in the State of Washington.

CP 49; Instruction 13; WPIC 77.06.

In the present case, the State presented evidence that on November 18, 2010, Selbe contacted Runchey to help get some

wire. Runchey drove Selbe to Ravenna Street. Their plan was to take wire back to Runchey's house. Runchey and Selbe were observed getting out of the car and heading towards the pipeline adjacent to CBI. Runchey and Selbe were wearing dark clothing, skull caps, and backpacks. The police responded to the scene and after an initial period of silence the officers heard crashing sounds in the woods coming from the direction of CBI. Runchey and Selbe emerged from the woods carrying coils of copper wire. Runchey was carrying wire cutters in his pack; Selbe had bolt cutters in his pack. A hole had been cut in the metal chain-link fence that enclosed CBI. The wire possessed by Runchey and Selbe had been cut from machines at CBI. There was no wire missing from CBI prior to November 18, 2009. The stolen wire exceeded \$750 in value. Neither Runchey nor Selbe had permission to enter CBI property or to take wire from CBI. When asked about the wire Runchey stated, "I knew there was something not right about it." These acts occurred in the State of Washington.

There was sufficient evidence to support the jury's verdict that on November 18, 2010, Runchey or an accomplice unlawfully entered the fenced property of CBI in Everett, WA, with intent to commit a crime against property therein.

Contrary to Runchey's assertions, these circumstances support a reasonable inference that Runchey was in possession of the stolen copper wire recovered by the police. Possession of property may be either actual or constructive. State v. Plank, 46 Wn. App. 728, 731, 731 P.2d 1170 (1987). Possession need not be exclusive. State v. Lane, 56 Wn. App. 286, 301, 786 P.2d 277 (1989). The court looks to the totality of the circumstances to determine whether there was dominion and control over the items. State v. Paine, 69 Wn. App. 873, 878, 850 P.2d 1369 (1993). Viewed in the light most favorable to the State, the foregoing evidence was sufficient to permit any rational trier of fact to find beyond a reasonable doubt that Runchey knew the wire was stolen and was a joint participant in possessing, concealing, or retaining the wire. Accordingly, the evidence was sufficient to support Runchey's conviction for 2nd degree possession of stolen property on the basis of both principal and accomplice liability.

C. VALUE OF THE STOLEN PROPERTY.

Further, Runchey contests the valuation of the wire. Raymond Maw, the manager of CBI, testified regarding the value of the stolen copper wire. In Washington, the owner of a chattel may testify to its market value without first being qualified as an expert in

such matters. McCurdy v. Union Pac. R.R. Co., 68 Wn.2d 457, 468-69, 413 P.2d 617 (1966); State v. Hammond, 6 Wn. App. 459, 461, 493 P.2d 1249 (1972). “The owner of property is presumed to be familiar with its value by reason of inquiries, comparisons, purchases and sales.” Hammond, 6 Wn. App. at 461. “The weight of such testimony is another question and may be affected by disclosures made upon cross-examination as to the basis for such knowledge, but this will not disqualify the owner as a witness.” Hammond, 6 Wn. App. at 461. CBI manager, Raymond Maw, testified that the wire was worth more than the necessary \$750 base value. Runchey had the opportunity to cross-examine Maw and cast doubt on his valuation. See Hammond, 6 Wn. App. at 461. Runchey did not present any evidence regarding the value of the wire.

“Market value” is defined in this state as the price which a well-informed buyer would pay to a well-informed seller, where neither is obliged to enter into the transaction. State v. Clark, 13 Wn. App. 782, 787, 537 P.2d 820 (1975). Maw was a well-informed buyer who regularly purchased such items for CBI. There was no suggestion that he was under any compulsion to purchase the replacement wire.

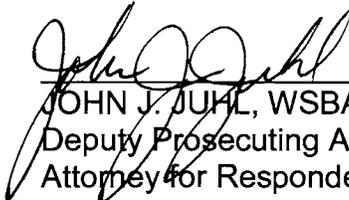
In this case, there was competent evidence relating to two market values for the copper wire in question, depending upon whether it was sold as scrap copper or purchased as wire to be used to transmit power to CBI's machinery. The copper wire was working fine while it was attached to the machines; Runchey and Selbe converted it to scrap by cutting and coiling the wire. There is no market for used copper wire other than as scrap. The scrap value of the stolen copper wire was at least \$900 (four 75 pound coils at \$3.00 per pound). The market value of the copper wire for use in transmitting power was between \$2,200 and \$2,300. In sum, the evidence sufficiently supports finding the stolen wire exceeded \$750 in value. There was sufficient evidence to support the jury's verdict that Runchey or an accomplice possessed stolen property with a value exceeding \$750.

IV. CONCLUSION

For the reasons stated above the appeal should be denied.

Respectfully submitted on November 7, 2011.

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