# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II

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| STATE OF WASHINGTON,<br><br>Respondent,<br><br>v.<br><br>MICHAEL T. SCHULTZ,<br><br>Appellant. | No. 39662-9-II<br><br>UNPUBLISHED OPINION |

Armstrong, J. — Michael Schultz appeals his Mason County convictions of second degree burglary and attempted first degree theft, challenging the sufficiency of the evidence.[1] In a pro se statement of additional grounds (SAG), he also argues that there were inconsistencies between the testimony of prosecution witnesses and statements they had made in police reports, and the prosecutor misstated facts during closing argument.[2] We affirm.

FACTS

Earl Iddings is the owner of Dewatto Bay Development, a construction company that specializes in "dirt work" and levy repair work. Report of Proceedings (RP) at 62-63. The company maintains a staging area called a "lay down yard" for various heavy equipment, including trucks, backhoes, and boats. RP at 62-63. The lay down yard is a completely fenced-in area of about 5 or 6 acres. It is situated on a 40-acre parcel that is fenced on two thirds of its perimeter.

On the morning of October 10, 2008, Iddings and a friend, James Sprague, were driving

[1] A commissioner of this court initially considered this matter pursuant to RAP 18.14 and referred it to a panel of judges.

[2] Schultz also asserts that he never received a copy of the trial transcripts. Our records indicate that they were sent to him on May 14, 2010.

through the front gate of the main property when Iddings saw and heard activity near the inner fence. They hurried over to the lay down yard and, as they approached, they saw two men running out of the inner gate. The two men ran toward a large pile of topsoil where an old beat-up black Ford Ranchero was parked.

Sprague and Iddings drove up to block the truck's exit and confronted the two men, who appeared nervous. The men explained that they had come to the property to take some beauty bark. There was about half a wheelbarrow's worth of rotten bark in the back of their truck. Sprague and Iddings looked into the Ranchero to see whether the two men had taken anything other than the old mulch. They saw only garbage, a square bucket, and tools, including two wrenches that did not appear to be from the yard.

Iddings did not believe the explanation provided by the two men, but he was worried that they might have weapons. Accordingly, he agreed to let them go without calling the police if they showed him their licenses. The two men, one of whom was Schultz, complied and left. Iddings also took down the license plate number of the Ranchero.

After the men left, Iddings and Sprague entered the yard. They heard a beeping or a buzzing noise, and they traced it to the depth finder on a jet sled in the yard. The jet sled had a 90 horse power outboard motor. They discovered that somebody had tilted the motor down, cut the wires and harnesses, and stripped all the nuts and bolts. Iddings had seen the sled the day before and had not noticed the beeping. He testified at trial that the beeping would last about an hour before the battery died. After he and Sprague discovered the sled, the depth finder continued to beep for approximately 15 minutes, and then the battery died.

Iddings and Sprague called law enforcement and filled out reports about the incident. A sheriff's deputy later found Schultz and interviewed him. Schultz admitted that he had been on Iddings's property and that the Ranchero was his. At trial, he made the same admissions but he insisted that neither he nor his companion had gone into the lay down yard. The jury convicted him as charged.

ANALYSIS

Schultz argues that the evidence was insufficient to support the theft conviction because he denied going near the motor and nobody actually saw him do so. Likewise, he argues that the evidence was insufficient for the burglary conviction because nobody saw him inside the lay down yard, which was the only entirely enclosed area on the property. His argument is meritless.

Evidence is sufficient to support a verdict in a criminal prosecution if viewed in the light most favorable to the State, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Scoby*, 117 Wn.2d 55, 61, 810 P.2d 1358 (1991). Circumstantial evidence is as reliable as direct evidence. *State v. Turner*, 103 Wn. App. 515, 520, 13 P.3d 234 (2000). A claim of insufficiency admits the truth of the State's evidence and all reasonable inferences therefrom. *Turner*, 103 Wn. App. at 520.

With regard to the burglary charge, the State had to prove that Shultz entered or remained in a building with intent to commit a crime against a person or property therein. *State v. Engel*, 166 Wn.2d 572, 576, 210 P.3d 1007 (2009). "Building" includes any curtilage of a building, including any area that is completely enclosed either by fencing alone or fencing and other structures. *Engel*, 166 Wn.2d at 576, 580; RCW 9A.04.110(5).

As to attempted first degree theft, the State had to prove that with intent to commit that crime, Shultz did an act that was a substantial step in its commission. *State v. Delmarter*, 94 Wn.2d 634, 636, 618 P.2d 99 (1980); RCW 9A.28.020(1). One commits theft if one wrongfully obtains or exerts unauthorized control over property of another with the intent to deprive him or her of that property. In 2009, the legislature amended RCW 9A.56.030 to require proof of property value in excess of $5,000 for first degree theft. RCW 9A.56.020, .030; Laws of 2009 § 7, cmt. 431.

Iddings testified that Schultz and his friend ran out of the fully enclosed lay down yard as he and Sprague approached. Immediately thereafter, he discovered the sled motor with the wires cut and the battery quickly draining. The bolts holding the motor to the sled had all been loosened, and Shultz's truck had been hidden nearby. It contained tools that could have been used to loosen the bolts. This evidence supports a reasonable inference that Schultz and his friend were the ones who tampered with the motor. It provided ample support for the verdicts on both charges.

Schultz's SAG issues are also meritless. He argues that the prosecutor misstated the facts during closing argument when he asserted that Schultz's truck had been hidden behind a pile of dirt. That comment was consistent with Iddings's testimony. Schultz's claims regarding inconsistencies between the testimony of Iddings and Sprague and their written statements to the police pertain to the witnesses' credibility. However, credibility determinations are solely the province of the jury, and we do not review them. *State v. Thomas*, 150 Wn.2d 821, 874, 83 P.3d 970 (2004).

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Armstrong, J.

We concur:

Van Deren, J.

Worswick, A.C.J.