

# **Third District Court of Appeal**

## **State of Florida**

Opinion filed November 13, 2019.  
Not final until disposition of timely filed motion for rehearing.

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No. 3D18-1045  
Lower Tribunal No. 14-22751A

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**Crystal Pujol,**  
Appellant,

vs.

**The State of Florida,**  
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Ellen Sue Venzler,  
Judge.

Carlos J. Martinez, Public Defender, and James A. Odell, Assistant Public  
Defender, for appellant.

Ashley Moody, Attorney General, and Kayla Heather McNab, Assistant  
Attorney General, for appellee.

Before LINDSEY, HENDON, and GORDO, JJ.

LINDSEY, J.

Crystal Pujol appeals her conviction and sentence for burglary of an unoccupied dwelling, grand theft, and criminal mischief. For the reasons set forth below, we affirm.

## **I. FACTUAL AND PROCEDURAL HISTORY**

When Kristen Bauer and Danny Malone returned to their home on September 12, 2014, they discovered they had been burglarized. Bauer and Malone reported to law enforcement that multiple items in their home were either out of place, broken, or missing. No person witnessed the burglary and no direct physical evidence was left behind. Nevertheless, during his preliminary investigation, Miami-Dade Detective Kelvin Peguero Bruno learned that Bauer and Malone's neighbor's surveillance camera captured the incident.

The surveillance footage showed a silver Hyundai drive up to and park in front of Bauer and Malone's home. A slim, light-skinned woman with long, red hair exited from the driver's side, approached the house, and knocked on the door. Shortly thereafter, the woman returned to the vehicle. As the woman got back into the vehicle, a man exited from the passenger's side door. He then proceeded toward the back of the house, and the woman drove off. Approximately 15 minutes later, the silver car returned to Bauer and Malone's home. The man ran out of the house carrying a pillowcase and a suitcase. He placed both items in the trunk before getting back into the vehicle as it drove away.

Detective Bruno and Detective Raquel Mascarena were initially unable to identify the perpetrators based on the surveillance footage alone because they could not get a clear look at their faces. The only physical characteristics they were able to make out were the perpetrators' skin color, hair color, and build. The detectives were, however, able to discern the vehicle's license plate number. From that, the detectives were able to learn the name and address of the registered owner of the vehicle, Crystal Pujol, the defendant in this case.

Armed with this information, the detectives drove to Pujol's registered address and surveilled the property from a few blocks away in an unmarked car. Approximately 40 minutes later, the detectives witnessed two individuals who matched the descriptions of the perpetrators get in a green Toyota and drive off. The detectives followed the vehicle as it made its way from Broward County into Miami-Dade County. Once the vehicle entered Miami-Dade County, the detectives instructed a different officer in a marked police car to pull the vehicle over. Pujol and her male passenger, Antwan Holmes, were arrested and taken to the police station for processing. A search incident to arrest revealed a pair of gloves and a crowbar inside the car.

Pujol was wearing a lot of jewelry at the time of her arrest. At the police station, the officers asked Pujol to remove all the jewelry. Bauer identified two pieces of jewelry she had reported stolen. During her recorded, post-Miranda

interview, Pujol admitted that she owned the silver Hyundai, but denied being involved with the burglary. She stated that she was in the area with Holmes at the time because she was looking for a new place to rent and that she knocked on the door of a few houses displaying “for rent” signs. Pujol maintained her innocence and proceeded to trial. Holmes, however, admitted that he was the man in the surveillance footage and pled guilty to the charges against him.

At trial, Holmes testified that the woman in the video was not Pujol. He claimed it was another woman—also with red hair—that he was dating at the time. Holmes asserted that although Pujol was a friend of his, he stole her car while she was sleeping to pick up the other woman. When attempting to explain how Pujol was arrested wearing some of the stolen jewelry, Holmes testified that he had left some of the stolen jewelry in Pujol’s car. He testified that he wanted to tell Pujol she was wearing stolen jewelry when he noticed the items on her on the day they were arrested, but he remained silent, fearing Pujol would turn him in. Yet, despite Holmes’ trial testimony, Holmes had previously stipulated to the accuracy of the arrest report as part of the colloquy incident to his plea. That report listed Pujol as his codefendant. According to Holmes, he did not read the arrest report before stipulating to its contents. He testified that he stipulated to the report only to receive a more favorable plea offer from the State.

Bauer and Malone also testified at trial. The State relied primarily on their testimony to prove the value of the stolen items and the property Holmes damaged.<sup>1</sup> Bauer had difficulty remembering the value of the stolen items at first. The State refreshed her recollection by showing her a catalog for the stolen wedding ring. When she could not remember the value of her red heart pendant, the State provided Bauer with a police report containing Bauer's list of the items that were stolen and their value. Bauer testified that she prepared and submitted a report with all the receipts for the stolen items to the police. The trial court allowed the State to introduce the report as a past recollection recorded over defense counsel's timely hearsay objection. Bauer then testified as to the individual value for each stolen item, the sum of which totaled approximately \$34,000.

Malone provided testimony as to the value of the damaged property. The State relied exclusively on Malone to establish the value of the property damage as Bauer testified that she was not involved with repairing or replacing the broken items. Malone went through each item that was damaged, providing either the original purchase price, the repair cost, or both.

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<sup>1</sup> Holmes entered Bauer and Malone's home through a window, which he broke, in the back of the house. Once inside, he caused damage to a ceramic stove top, a box containing wiring for the doorbell, crown molding, and a phone box. As he was on his way out, Holmes damaged a planter box.

The jury found Pujol guilty as charged. The jury specifically found that the value of the stolen items was worth \$20,000 or more but less than \$100,000 and the damages caused during the burglary were \$1,000 or more. As a result, the grand theft charge was enhanced to a first-degree felony and the criminal mischief charge to a third-degree felony.

## **II. ANALYSIS**

“Generally, an appellate court will not reverse a conviction which is supported by competent, substantial evidence.” Pagan v. State, 830 So. 2d 792, 803 (Fla. 2002). “If, after viewing the evidence in the light most favorable to the State, a rational trier of fact could find the existence of the elements of the crime beyond a reasonable doubt, sufficient evidence exists to sustain a conviction.” Id. We review the trial court’s rulings on the admission of evidence for an abuse of discretion. See Tengbergen v. State, 9 So. 3d 729, 736 (Fla. 4th DCA 2009).

On appeal, Pujol contends the trial court erred in allowing Detective Bruno to testify that he believed Pujol was the person who committed the burglary and that the State failed to prove that the property damaged was more than \$1000.

### **A. Detective Bruno’s Testimony**

At trial, the State called Detective Bruno, the lead detective in the case, to testify about his investigation of the burglary. Detective Bruno explained his approach to the investigation from the outset including his familiarity with Pujol as

she was one of his original suspects. He continued elaborating, stating that he first contacted Bauer and Malone and then canvassed the area looking for potential witnesses or video surveillance. After stating his search for surveillance footage proved successful, the following colloquy took place:

Q. And including the - - or within the canvas and speaking to neighbors, did you speak to anyone else?

A. The guard keeper.

Q. After you conducted your investigation, what were you able to determine?

A. That Ms. Pujol was the person who committed the burglary.

Defense counsel immediately objected to the detective's answer based on a lack of foundation or personal knowledge. The trial court overruled the objection and the prosecutor continued his direct examination of the detective. The State then reverted to the previous line of questioning regarding Detective Bruno's investigation. Specifically, the State focused the next questions on the surveillance video, asking:

Q. What did you do when she -- when that was the person who you began investigating?

A. I put together the evidence I collected, and conducted a surveillance to Ms. Pujol's residence.

Q. The evidence you collected, does that

include the -- the surveillance, State's Exhibit 4, to your left?

A. Yes.

...

Q. Were you able to review the video before you made an arrest?

A. Yes.

Q. Going back to your surveillance of the defendant, did -- could you tell us about that day?

A. Me and detective Mascarena, we went over where she -- she lived at the moment. And we parked a few blocks away to see if we see the vehicle that we're looking for, or the person that we're looking for.

The remainder of Detective's Bruno testimony focused on the facts leading up to Pujol's arrest and what happened following her arrest. His opinion that Pujol was guilty was never repeated over the remainder of the two-day trial.

"[A] witness's opinion as to the guilt or innocence of the accused is not admissible." Martinez v. State, 761 So. 2d 1074, 1079 (Fla. 2000). Such testimony is ordinarily precluded because the danger of unfair prejudice substantially outweighs the opinion's probative value. While the State commendably concedes



Detective Bruno's testimony was improper, the State contends the error was harmless.<sup>2</sup> We agree.

The State introduced evidence sufficient to show that Detective Bruno's opinion testimony did not contribute to the verdict. After he stated that it was his conclusion that Pujol was the person who committed the burglary, Detective Bruno's testimony explained how he reached this conclusion. He explained that Pujol became a suspect after he learned that the car in the video was registered in her name. The search then led to the surveillance of Pujol's registered address, followed by the arrest of two individuals who matched the description of the video. One of those individuals, Antwan Holmes, admitted he committed the burglary while the other, Crystal Pujol, was wearing a few pieces of the stolen jewelry at the time of arrest. Pujol further admitted to owning the car in the video, being in the area at the time of the incident, and knocking on the door of Bauer and Malone's home.

In addition, the error was made in isolation. Detective Bruno's statement was never brought up again. There was no further inquiry by the State. Detective Bruno did not repeat his opinion nor did the State mention it during closing arguments. The jury heard the statement one time in a trial spanning two days. Further, the trial court

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<sup>2</sup> Detective Bruno's testimony that he concluded Pujol was the person who committed the burglary was objectionable. However, it would not have been objectionable for him to have testified, instead, that he concluded that there was probable cause to arrest Pujol for the burglary.

judge instructed the jury not to give additional weight to the officers' testimony because of their position in law enforcement. Thus, based on the evidence above, the State has established that the error was harmless beyond a reasonable doubt. See State v. DiGuilio, 491 So. 2d 1129, 1138 (Fla. 1986).

### **B. Amount of the Damages**

Under the criminal mischief statute, the amount of damage is an essential element of the offense, and the burden is on the State to prove the amount beyond a reasonable doubt. See Marrero v. State, 71 So. 3d 881, 887 (Fla. 2011) (“Absent proof of the amount of damage, an act of criminal mischief, as defined by the criminal mischief statute, is a *misdemeanor* of the second degree. The value of damage, therefore, is clearly an essential element of *felony* criminal mischief.”). For the criminal mischief charge herein to be enhanced to a third-degree felony, the State had to establish that the burglary resulted in \$1,000 or more in damages. See § 806.13(1)(b), Fla. Stat. (2014). Pujol asserts the State did not meet this burden. We disagree.

Pujol contends the evidence was insufficient to sustain her criminal mischief conviction, specifically with respect to the trial court's inclusion of the testimony relating to the broken window in the damage calculation. She argues the broken window should not be included because Malone paid \$1,100 to hire someone to replace the broken window with a more expensive window with a new frame. She

claims Malone should have replaced the window with a window of like value and that it was also improper to include installment price into her calculations. However, the Florida Supreme Court has approved using replacement cost when calculating damages. Marrero. 71 So. 3d at 890. This Court has also previously approved including the cost of installment when calculating the amount of damage. J.A. v. State, 247 So. 3d 710, 711 (Fla. 3d DCA 2018). Therefore, the trial court did not err in including the broken window when determining that the burglary resulted in damages exceeding \$1,000.

### **III. CONCLUSION**

Accordingly, we find no error and affirm Pujol's conviction and sentence.

Affirmed.