

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	No. 65603-1-I
Respondent,)	
)	DIVISION ONE
v.)	
)	
STEVEN LOUIE HARDING,)	UNPUBLISHED OPINION
)	
Appellant.)	FILED: <u>November 14, 2011</u>

Spearman, J. — Steven Harding was convicted by a jury of residential burglary. He challenges the sufficiency of the evidence, arguing it failed to show he entered the home or acted as an accomplice to his co-defendant. We conclude the State presented sufficient evidence as to entry and affirm. Because our conclusion as to entry is sufficient to affirm the jury’s verdict, we do not reach accomplice liability.

FACTS

On the morning of October 11, 2009, Kenneth Donaldson and his son, Joseph Donaldson,¹ were driving through their Tukwila neighborhood when they saw two unknown men, later determined to be Steven Harding and James Byrge,

¹ The Donaldsons will be referred to by their first names for clarity.

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standing on the back porch of a house. Joseph was driving and Kenneth was in the back seat. Kenneth had a clear view of the men and described them as standing “in the threshold” of the house and inside the building. The back door of the house was open and damaged, and the screen door appeared to be hanging off its hinge. Kenneth watched Harding and Byrge run away and out the back gate, then enter the alley. Kenneth called 911. The Donaldsons lost sight of Harding and Byrge for three or four minutes but saw them again at an intersection approximately 100 feet away from the house. At that time, the Donaldsons got out of their car and asked Harding and Byrge to stop and lie down on the pavement. Harding and Byrge complied. Police arrived shortly thereafter and arrested Harding and Byrge. They searched Byrge and found a small silver pin in his jacket pocket.

The State charged both Harding and Byrge with residential burglary. At Harding’s trial, the residents of the house, Rex Aston and Paul Fleury, testified. Neither of them knew Harding or Byrge. Aston testified that he was asleep in his home on the morning of October 11, 2009 when he woke up to the sound of loud banging. He then heard a loud crash and the sound of glass breaking. He got up, opened his door and, believing the noise was coming from Fleury, called out, “Paul?” When he heard no response, he walked to the kitchen and saw his back door “laying on the floor.” He left the house through the front door and used his cell phone to call 911.

Fleury testified that he was not home during the incident, but hurried home

when he saw that he had 10 or 11 missed phone calls from Aston. When he arrived, he saw that the “kitchen door was kicked in and pretty well destroyed.” He noticed that he was missing a couple of brooch pins that he kept in a dish in the dining room. Fleury later identified the brooch found in Bryge’s pocket as one he was missing. Both Aston and Fleury testified that neither Byrge nor Harding had permission to be inside their home.

The jury was instructed they could find Harding guilty as either a principal or an accomplice. Harding was found guilty as charged and sentenced within the standard range.

DISCUSSION

Harding claims the State’s evidence did not prove beyond a reasonable doubt that he entered the house or acted as an accomplice to Byrge. He contends the State proved only that he stood on the threshold of the house next to Byrge and that Byrge possessed a brooch taken from the house, but not that he “entered” the residence. He relies on State v. Bergeron, 105 Wn.2d 1, 711 P.2d 1000 (1985).

In reviewing the sufficiency of the evidence, the question is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). “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) (quoting State v. Theroff, 95 Wn.2d 385, 622 P.2d 1240 (1980)). Circumstantial and direct evidence are equally reliable. State v. Fiser, 99 Wn. App. 714, 718, 995 P.2d 107 (2000). A reviewing court defers to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. Id. at 719.

To convict Harding of residential burglary the State was required to prove beyond a reasonable doubt that he “unlawfully entered a dwelling” with the “intent to commit a crime against a person or property therein.” Where the jury was instructed that Harding could be found guilty as a principal or as an accomplice, his claim fails if the State’s evidence showed either (1) that he entered the house or (2) that he acted as an accomplice to Byrge.

We conclude that direct evidence was presented as to unlawful entry.² Kenneth testified that Harding and Byrge were standing “in the threshold” of the house, and when asked whether that meant they were “inside the building,” responded “yes.” Although Joseph testified only that he saw the men standing on the porch, there is no conflict in the men’s testimony, and even if there were, we defer to the jury on issues of conflicting testimony. Harding’s reliance on Bergeron is misplaced. In that case, where the juvenile respondent was convicted of attempted burglary, whether he actually entered the residence was not at issue. Bergeron, 105

² Harding does not claim that he had permission to be in the house, so we need not address whether any entry was “unlawful.”

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Wn.2d at 4-5. In light of our conclusion on unlawful entry, we need not address accomplice liability.

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Affirmed.

Spencer, J.

WE CONCUR:

Dupe, C. S.

Schiveller, J.