IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. W.B., Appellant.	No. 39533-9-II UNPUBLISHED OPINION

Armstrong, J. — W.B. appeals his adjudication for residential burglary and theft in the second degree, arguing insufficient evidence supports it. We affirm.

FACTS

On May 17, 2009, Cody Cramer and his wife left their home for approximately three hours to go swimming at Fort Lewis. Upon returning, they noticed the lights were on, cupboards were open, and the back door was ajar. Several items were missing, including an Xbox video game system, 15 Xbox games, and a laptop computer. Other items had been moved to different locations within the house, including Cramer's two firearms and a flat-screen television. Pierce County Sheriff Deputy J. Oetting responded to Cramer's 911 call and contacted J.Z., who witnessed W.B. and W.B.'s friend D.B. entering the Cramer home through the front door earlier that day.

Before leaving for Fort Lewis, Cramer saw D.B. and several other persons standing together in the street near the Cramer home. W.B. was in the street with D.B., and W.B. watched the Cramers depart. Although Cramer and W.B. did not previously know each other, D.B. had visited Cramer's home on several occasions beginning in late 2008 to use the microwave or borrow cooking ingredients.

The State charged W.B. with residential burglary and first degree theft. RCW 9A.52.025; RCW 9A.56.030. Following a bench trial, the trial court found W.B. guilty on the burglary charge and guilty of second degree theft.

ANALYSIS

W.B. contends that insufficient evidence supports findings of fact VIII[1] and XI.[2] When facing an insufficiency claim, we examine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt, viewing the evidence in the light most favorable to the State. *State v. Brockob*, 159 Wn.2d 311, 336, 150 P.3d 59 (2006) (citing *State v. Hughes*, 154 Wn.2d 118, 152, 110 P.3d 192 (2005)). An insufficiency claim admits the truth of the evidence and all reasonable inferences. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). We consider circumstantial and direct evidence equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

"A person is guilty of residential burglary if, with intent to commit a crime against a

[1] "While [Cramer] and his wife were away from the home, J.Z., a 15-year-old neighbor, saw [W.B.] and D.B. enter through the front door of [Cramer]'s house. J.Z. testified he was in his mother's car and thought [W.B.] was wearing a beanie, and saw the backs of these persons." Clerk's Papers (CP) at 23.

[2] "J.Z. testified at trial and again identified [W.B.] as the person he saw entering Cody Cramer's house on May 17, 2009. This court finds the testimony of J.Z. credible." CP at 23.

person or property therein, the person enters or remains unlawfully in a dwelling other than a vehicle." RCW 9A.52.025(1). "In any prosecution for burglary, any person who enters or remains unlawfully in a building may be inferred to have acted with intent to commit a crime against a person or property therein." RCW 9A.52.040. This inference can be refuted with "evidence satisfactory to the trier of fact that the entry was made without such criminal intent." RCW 9A.52.040.

"A person is guilty of theft in the second degree if he or she commits theft of . . . [p]roperty or services which exceed(s) two hundred fifty dollars in value but does not exceed one thousand five hundred dollars in value." Former RCW 9A.56.040(1)(a) (2008). Theft means "[t]o wrongfully obtain or exert unauthorized control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services." RCW 9A.56.020(1)(a).

W.B. contends that the State cannot meet its burden through pure speculation, citing *State v. Prestegard*, 108 Wn. App. 14, 23, 28 P.3d 817 (2001). Specifically, W.B. argues he "was not positively identified at trial as a participant in the crimes" because J.Z. hesitated in testifying as to whether he saw W.B. enter the home.[3] Br. of App. at 6. We disagree.

J.Z. recognized W.B. in the courtroom. J.Z. stated that W.B.'s nickname is "Little Will" and that he attends school with W.B. In uncontested testimony, Officer Oetting stated that J.Z. "said he saw two people enter the front door around 1300 hours, 1 o'clock, and he said it was

[3] The State's brief erroneously stipulates that the appellant challenges findings of fact VIII and IX, while he in fact challenges findings of fact VIII and XI. Since finding of fact IX is substantially supported by Cramer's uncontested testimony and the appellant has not challenged this finding, we will offer it no further consideration.

D.B. and Little Will." Report of Proceedings at 56. J.Z. also gave Officer Oetting a written statement describing the appearance of the persons he saw entering the Cramer residence. W.B. admitted that he was near the Cramer home with D.B. on the date of the burglary while wearing clothing fitting this description.

Cramer testified that D.B. had been in his home on several previous occasions and that D.B. was familiar with the layout and contents of the residence. Cramer identified D.B. standing in the street with several other persons prior to his departure.

Although W.B. denied entering Cramer's house, the court found his testimony not credible. The court determined the testimony of Oetting, J.Z., and Cramer to be credible. We accept the trial court's credibility determinations. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

In his statement of additional grounds (SAG), W.B. claims he was on the street in front of the Cramer residence for only 5 to 10 minutes before leaving for the waterfront, thereby contesting finding of fact XII.[4] Yet in his testimony, W.B. stated he was on the street for 30 to 40 minutes. The trial court already having found W.B. not credible, we will not further consider his statement. Next W.B. asserts his conviction was not supported by "real evidence." SAG at 2. This issue having already been addressed by counsel, we will not offer it further consideration.

Drawing all reasonable inferences from the evidence in the light most favorable to the

[4] "[W.B.] testified at trial and admitted being in the neighborhood with D.B. on May 17, 2009. [W.B.] claimed he was in the neighborhood for only 15-20 minutes and denied entering Cody Cramer's house. This court finds the testimony of [W.B.] not credible." CP at 24.

State, sufficient evidence supports the conviction. We affirm.

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:

Bridgewater, P.J.

Quinn-Brintnall, J.