

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**STATE OF WASHINGTON,**

**No. 28347-0-III**

**Respondent,**

**Division Three**

**v.**

**OSCAR GREGORY CANO,**

**UNPUBLISHED OPINION**

**Appellant.**

Sweeney, J. — The appellant here contends that the evidence does not support the court’s finding that he entered and damaged a market. A trier of fact determines a witness’s credibility and, accordingly, may believe all or part of that testimony. *State v. Johnson*, 2 Wn. App. 743, 744, 472 P.2d 411 (1970); *see Butler v. Ringrose*, 170 Wash. 211, 213, 15 P.2d 1117 (1932). Here, the juvenile court believed testimony that the appellant and his friends broke into the market and that the market was damaged while they were inside. This is substantial evidence and supports the challenged finding. We, therefore, affirm the juvenile court’s findings, conclusions, and order of disposition.

**FACTS**

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Oscar Cano and three of his friends, S.M., B.G., and A.A. broke into and damaged Five Foods Mercado, a local market owned by Surinder Singh.

The market was closed. Mr. Cano and A.A. broke into the back of the building. B.G. and S.M. stayed out front to watch for police. B.G. and S.M. then entered the market through the back door. Once inside, the friends broke several glass cooler doors and a glass display cabinet, and they opened and spilled food containers and other groceries onto the floor. They caused approximately \$10,000 in damage.

Mr. Cano was charged with second degree burglary and first degree malicious mischief in juvenile court for his alleged involvement in the incident. B.G. testified that he and the other three individuals broke into Five Foods Mercado to “trash the place.” Report of Proceedings (July 1, 2009) (RP) at 31. He said Mr. Cano was one of the first people to enter the market and property in the market was damaged while Mr. Cano was inside. He did not recall seeing Mr. Cano cause any of the damage. Mr. Cano denied being involved. He and his mother testified that he was home all night because he was sick.

The judge did not believe Mr. Cano or his mother. He believed B.G.’s testimony that Mr. Cano broke into and caused damage to Five Foods Mercado:

[B.G.]’s testimony was not altogether credible in that [B.G.] likely minimized his role in the incident. However, [B.G.] testified credibly when he testified that [Mr. Cano] participated in entering and causing damage to the Five Foods Mercado.

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Clerk's Papers (CP) at 55 (Finding of Fact 2.20). The court ultimately found Mr. Cano guilty of second degree burglary and first degree malicious mischief.

#### DISCUSSION

Mr. Cano challenges the sufficiency of the evidence supporting the trial court's finding that he entered and caused damage to Five Foods Mercado:

[A.A.] and [Mr. Cano] went into the store while [S.M.] and [B.G.] acted as lookouts. [S.M.] and [B.G.] subsequently joined [A.A.] and [Mr. Cano] inside. Extensive damage was done to the Five Foods Mercado by the group.

CP at 54 (Finding of Fact 2.11). He contends that B.G.'s testimony is not sufficient evidence that he entered and damaged the market because the trial court did not believe all of B.G.'s testimony.

"The credibility and weight to be attached to the testimony of witnesses are for the trier of fact and not an appellate court." *Johnson*, 2 Wn. App. at 744. Thus, a trial court may believe part of a witness's testimony and disbelieve another part of that same testimony. *Butler*, 170 Wash. at 213.

Our function on appeal is not to re-evaluate a witness's credibility. *Johnson*, 2 Wn. App. at 744. Our function is to determine whether substantial evidence supports the challenged finding of fact and, in turn, whether that finding and others support the trial court's conclusions that Mr. Cano committed burglary and malicious mischief. *State v. Alvarez*, 105 Wn. App. 215, 220, 19 P.3d

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485 (2001). Substantial evidence is a quantum of evidence sufficient to persuade a reasonable person that a finding is true. *State v. Halstien*, 122 Wn.2d 109, 129, 857 P.2d 270 (1993). We consider the State's evidence and all reasonable inferences from that evidence to be true. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). We, therefore, consider B.G.'s testimony to be true.

B.G.'s testimony supports the finding that Mr. Cano entered and damaged the market:

Q: . . . [Y]ou went to the Five Foods Mercado after it was closed with . . . [A.A., S.M., and Mr. Cano], is that correct?

A: Yes.

. . . .

Q: Okay. Did you see any damage inside the store [when you went inside]?

A: No.

Q: Did you participate in causing any damage to the store?

A: A little bit.

Q: Did you witness anyone else cause any damage to the store?

A: At that point in time, I think so.

Q: Did you see [Mr. Cano] cause any damage to the store?

A: Not that I recall.

. . . .

Q: Okay. Who went in first?

A: It was [Mr. Cano] and [A.A.].

. . . .

Judge: Okay, so is it fair to say that when [Mr. Cano] and [A.A.] and apparently [S.M.] went into the store that night. The purpose for going in was to trash the place.

A: Yes.

RP at 27-31. The judge could then reasonably infer that Mr. Cano caused some of the damage to the market from the plan to

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“trash the place” and his presence in the market when the damage occurred. Substantial evidence supports the challenged finding.

The challenged finding and other unchallenged findings, in turn, support the court’s conclusions that Mr. Cano committed second degree burglary and first degree malicious mischief. Second degree burglary requires proof that Mr. Cano entered a building with intent to commit a crime therein. RCW 9A.52.030(1). And the findings here show he broke into the market when it was closed with the intent to damage it. CP at 53-54 (Findings of Fact 2.4, 2.9, 2.10, 2.11). Similarly, first degree malicious mischief requires proof that Mr. Cano knowingly caused more than \$1,500 damage to another’s property. Former RCW 9A.48.070(1)(a) (1983). And, again, the findings and inferences from them show Mr. Cano intended to and did damage the market’s property in excess of \$10,000. CP at 53-54 (Findings of Fact 2.4, 2.11, 2.12). The findings, then, support the essential elements of second degree burglary and first degree malicious mischief.

We affirm the juvenile court’s findings of fact, conclusions of law, and order of disposition.

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

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WE CONCUR:

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Korsmo, A.C.J.

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Brown, J.