IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,	)	No. 29715-2-III
Respondent,	)	
v.	)	
JOSHUA J. GRIFFIN,	)	UNPUBLISHED OPINION
Appellant.	)	

Brown, J. • Joshua J. Griffin appeals his convictions for second degree burglary and third degree theft. He contends insufficient evidence supports his convictions. We disagree and affirm.

FACTS

On August 23, 2010, at around 8:30 p.m., Daniel Pickett, foreman for a Moses Lake construction company, was sleeping at his firm's property in an industrial park next to property occupied by Inland Empire Weatherization Company. Mr. Pickett's dog growled while looking out a window and woke him. Mr. Pickett arose, looked out the window, and saw two people and a pickup truck at Inland, one was standing inside the

fence encircling Inland and the other was standing outside the fence, near the pickup truck. No one lived in the area and normally Mr. Pickett does not see people out walking in the area. It is an industrial park without homes or restaurants.

Mr. Pickett saw the person inside the fence throw a white bag or bucket over the fence to the other person, who put it in the bed of the truck. It was dusk and no lights illuminated the area but he thought both people were men. He called 911 describing what he saw and the truck. While making the call, he saw the truck drive away with two people in it. The truck was heading south and still did not have its lights on. Mr. Pickett did not see other items thrown over the fence, or see anyone enter a trailer located inside Inland's fence. He did not see how the person inside the fence got there or see the two people get in the truck because he was calling 911. Responding police stopped a matching pickup truck about one mile away from Inland.

The driver, Anjannette Million, and the passenger, Mr. Griffin, were arrested. After rights-warnings, Mr. Griffin admitted entering Inland's property, saying he had cut across the property in order to meet Ms. Million, who was there to pick him up. When asked about the item Mr. Pickett had seen being thrown over the fence, Mr. Griffin said he was carrying a white bag of clothing with him, as well as another bag, and those were what he threw over the fence to Ms. Million. Mr. Griffin never talked with police about entering any building on the property or taking anything from the property. The police

executed a search warrant on the impounded truck, finding electrical components, old power boxes, meter boxes, rolls of cable, a bag with painted copper tubing, aluminum bike rims, and three, white five-gallon buckets containing silverware in the truck bed (covered in white plastic garbage bags). In the truck's cab the police found clothing on the floor, and apparently a white bag in the cab that may have been plastic.

Mr. Griffin was charged with one count of second degree burglary and one count of third degree theft. At trial, the jury heard the above facts. And, John Rickey, Inland's owner, testified the three buckets and silverware found in Ms. Million's truck were his. He had kept the buckets inside an unlocked trailer on the Inland property. He had not used the silverware for a number of years. Mr. Rickey had never given Mr. Griffin permission to enter the property or take the buckets of silverware stored in his trailer. Police did not test the buckets or the trailer door for fingerprints. The jury found Mr. Griffin guilty as charged. He appealed.

ANALYSIS

The issue is whether sufficient evidence supports Mr. Griffin's convictions for second degree burglary and third degree theft.

Due process requires the State to prove every element of the crime beyond a reasonable doubt. *Apprendi v. New Jersey*, 530 U.S. 466, 477, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000); *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368

(1970); U.S. Const. amend. XIV; Const. art. I, § 3. Evidence sufficiently supports a conviction if, viewed in the light most favorable to the State, it would permit any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). An insufficiency claim admits the truth of the State's evidence and requires that all reasonable inferences be drawn in the State's favor and interpreted most strongly against the defendant. *Id.* In determining whether the necessary quantum of proof exists, we need not be convinced of the defendant's guilt beyond a reasonable doubt. *State v. Galisia*, 63 Wn. App. 833, 838, 822 P.2d 303 (1992). Circumstantial evidence is equally as reliable as direct evidence. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

First, to prove second degree burglary, the State had to show, beyond a reasonable doubt, that Mr. Griffin entered or remained unlawfully in a building with intent to commit a crime against a person or property therein. RCW 9A.52.030(1). A building includes a fenced area. RCW 9A.04.110(5). Mr. Griffin concedes he unlawfully entered the fenced area. Br. of Appellant at 6. But he argues the evidence was insufficient to prove he intended to commit a crime.

The State responds the unlawful entry sufficiently shows intent to commit a crime. RCW 9A.52.040 provides:

> 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, unless such entering or

> remaining shall be explained by evidence satisfactory to the trier of fact to have been made without such criminal intent.

This "inference is supported by common knowledge and experience." *State v. Brunson*, 76 Wn. App. 24, 27, 877 P.2d 1289 (1994). And, "noncriminal reasons for unlawfully entering . . . are few." *State v. Bishop*, 90 Wn.2d 185, 189, 580 P.2d 259 (1978).

Mr. Griffin's unlawful entry into Inland's fenced area was not excused by his explanation of cutting across the property to get a ride with Ms. Million. The area is an industrial park, it was dusk, and based on the surrounding circumstances the jury was entitled to reject his explanation and infer criminal intent. Additionally, Mr. Pickett saw Mr. Griffin throw one white bag or bucket over the fence from Inland's property to Ms. Million, who placed it in the bed of her truck; three white buckets were found in the bed of Ms. Million's truck about a mile after it left Inland; and the buckets had been taken from a trailer inside Inland's fenced area. Considering all the evidence when viewed in the light most favorable to the State, and with all reasonable inferences drawn in the State's favor and interpreted most strongly against Mr. Griffin, permitted the jury to find he entered the fence with intent to commit a crime. Accordingly, the evidence sufficiently supports his second degree burglary conviction.

Second, to prove third degree theft, the State had to show, beyond a reasonable doubt, that Mr. Griffin wrongfully obtained or exerted unauthorized control over the property of another (valued at $750 or less), with intent to deprive the other of such

property. RCW 9A.56.020(1)(a), .050(1)(a). To wrongfully obtain or exert unauthorized control over the property of another means to take the property or have the property in one's possession, custody, or control and use it. RCW 9A.56.010(22)(a).

Mr. Griffin argues the evidence was insufficient to prove he took the silverware or even knew it was in Ms. Million's truck. He does not dispute the value of the silverware. But just as the evidence supports a finding Mr. Griffin intended to take the silverware, it supports a finding he actually took it. He was seen passing a white bag or bucket over the fence to Ms. Million, who put it in her truck bed, and the two were arrested nearby with stolen white buckets of silverware in the truck bed. Given all, the evidence sufficiently permitted the jury to find Mr. Griffin guilty of third degree theft beyond a reasonable doubt.

Affirmed.

A majority of the panel has determined 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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Brown, J.

WE CONCUR:

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Korsmo, C.J. Siddoway, J.