IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**No. 29886-8-III**
Respondent,	)	
	)	**Division Three**
v.	)	
MARTY JAMES CHRISTMAN,	)	
	)	**UNPUBLISHED OPINION**
Appellant.	)	

Sweeney, J. — The defendant here was convicted of attempted second degree burglary after he was caught breaking the locks on a truck stop's door in the early morning hours. He claimed he was trying to make a delivery. The court concluded on ample findings of fact that his statements to police were admissible. We agree. We also conclude that the State produced sufficient evidence to support the conviction. We therefore affirm the conviction.

FACTS

Truck driver Gregory Seek was at the GTX Truck Stop to make a delivery around 4:15 a.m. on February 12, 2011. He approached the truck stop and saw Marty Christman

look into the truck stop's front door and then walk to the back of the truck stop. Mr. Seek heard "thumping" as he positioned his trailer behind the truck stop. He looked in his rear view mirror and saw Mr. Christman "hammering away" at the back door. 2 Report of Proceedings (RP) at 36.

Balbir Singh arrived at the truck stop at about 4:25 a.m. He owns the truck stop and works there as a cook. He entered through the front door and found that the back door's lock and doorknob were broken. He opened the back door and saw Mr. Christman standing there. The men struggled, but Mr. Singh got Mr. Christman to sit on the ground until police arrived. Mr. Christman kept repeating to Mr. Singh "that he is trying to deliver—he had a delivery and we was not opening the door." 2 RP at 32.

Spokane County Deputy Sheriff Darrin Powers arrived. He saw signs that somebody tried to break the locks off of the door. Deputy Lamand Petersen arrived around 4:30 a.m. and questioned Mr. Christman. Mr. Christman told Deputy Petersen that "he was there to drop off a load from a truck" and that "he was told when he arrived at the business if no one answered the back door, he was to break into the business to make sure the load was dropped off safely." 2 RP at 50. Mr. Christman explained that a woman gave him these instructions over the phone. Mr. Christman did not know the name of this woman. Deputy Petersen asked Mr. Christman where his truck was. Mr.

Christman replied that another man drove it away. Mr. Christman could not give Deputy Petersen the man's name or description.

Mr. Christman moved to suppress this statement. Deputy Petersen testified at the hearing. He testified that Mr. Christman was already handcuffed when he got there. He said he read the *Miranda*[1] rights off of a standard card. He testified that afterwards Mr. Christman said he understood his rights and wanted to speak with Deputy Petersen. According to Deputy Petersen, Mr. Christman then gave his side of the story.

The court asked Deputy Petersen about Mr. Christman's sobriety. Deputy Petersen said: "I could smell that he had been drinking, but I don't know his legal limit. He didn't seem that intoxicated to me, but I could tell he had been drinking." 1 RP at 14. The State asked if Mr. Christman had trouble walking or if his speech was slurred. Deputy Petersen answered "no" and said, "He did not seem overly intoxicated. He was answering my questions and seemed to understand at least what I was asking him." 1 RP at 14. The trial court found that "Deputy Petersen . . . testified that he could smell alcohol on the defendant's breath, but did not feel the defendant was intoxicated. Deputy Petersen testified that the defendant's speech was not slurred, that he answered questions logically, and appeared to walk in a coordinated manner." Clerk's Papers (CP) at 24.

[1] *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

The court concluded that Mr. Christman intelligently, knowingly, and voluntarily waived his *Miranda* rights.

At trial, Mr. Christman testified that he did not remember the incident at the truck stop. He was a truck driver for many years. He has had seizures since 1996. He takes Dilantin, an anti-seizure medicine, and Librium. He was warned "to avoid excessive alcohol use" because the medications could intensify alcohol's effects. 2 RP at 69. Mr. Christman explained that he tries to avoid mixing his prescription drugs and alcohol, and that he has had several blackouts from mixing the two.

On February 11, Mr. Christman took Dilantin and Librium around 6:00 p.m. Later that evening, his son invited him to a party near the truck stop. But he ended up waiting in the car, listening to the radio and drinking beer, because he did not fit in at the party. He drank two 24 ounce beers between 8:00 p.m. and 10:00 or 11:00 p.m. His son gave him a third beer around 10:00 or 11:00 p.m. He assumed that he "probably fell asleep after that." 2 RP at 71. The next thing he remembers is waking up in jail.

A jury found Mr. Christman guilty of attempted second degree burglary.

DISCUSSION

Validity of *Miranda* Waiver

Mr. Christman first contends that the evidence at his suppression hearing does not

support the finding that he was sober enough to understand and intelligently waive his *Miranda* warnings.

We review the court's refusal to suppress a defendant's statement to police by, first, determining whether substantial evidence supports the trial court's findings of fact. *State v. Grogan*, 147 Wn. App. 511, 516, 196 P.3d 1017 (2008). If they do, we then determine whether those findings support the trial court's conclusion of law. *Id.* We review the conclusion de novo. *State v. Lorenz*, 152 Wn.2d 22, 36, 93 P.3d 133 (2004).

The findings here are unchallenged and therefore verities on appeal. *State v. L.U.*, 137 Wn. App. 410, 414, 153 P.3d 894 (2007), *aff'd*, 165 Wn.2d 95, 196 P.3d 645 (2008). The court found on ample evidence that Mr. Christman understood his rights and willingly answered questions. CP at 24. And the court found that, although Mr. Chrisman had been drinking, he did not appear intoxicated, answered questions appropriately and logically and was physically coordinated. CP at 24. The question then is whether those findings support the court's conclusion that "the defendant's waiver was intelligent, knowing, and voluntary." CP at 24. And, of course, the unchallenged findings here easily support that conclusion. *State v. Veltri*, 136 Wn. App. 818, 823, 150 P.3d 1178 (2007).

Mr. Christman's statements to the police were then properly admitted into

evidence.

Intent Element of Attempted Second Degree Burglary

Mr. Christman next contends that the State did not show that he intended to commit a crime inside of the building and this is a necessary element of attempted second degree burglary. He says the evidence was that his intent, although implausible, was to deliver a load of food to the truck stop.

Evidence is sufficient to prove a crime if any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt after viewing the evidence in the light most favorable to the State. *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980).

The State charged that Mr. Christman

> with intent to commit the crime of Second Degree Burglary . . . committed an act which was a substantial step toward that Burglary, by attempting, with intent to commit a crime against a person or property therein, to enter and remain unlawfully in the building of GTX TRUCK STOP.

CP at 9. Second degree burglary in turn requires a showing that "with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a building other than a vehicle or a dwelling." RCW 9A.52.030(1).[2] A person is guilty of

[2] We quote the current version of RCW 9A.52.030(1), which was amended by Laws of 2011, chapter 336, section 370 to make the language gender neutral.

attempted second degree burglary if, with intent to commit second degree burglary, "he or she does any act which is a substantial step toward the commission of that crime." RCW 9A.28.020(1).

To prove "intent to commit a crime against a person or property therein," the defendant "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." RCW 9A.52.040. The trier of fact can infer intent from the facts and circumstance surrounding an act. *State v. Lewis*, 69 Wn.2d 120, 123, 417 P.2d 618 (1966). And intent may be inferred from conduct that plainly indicates such intent as a matter of logical improbability. *Id.* at 124.

Trying to break a lock unnoticed is sufficient to support an inference of intent. In *State v. Brooks*, there was sufficient evidence of intent when the defendant tried to get into an apartment complex and then an apartment, not by using the intercom system or knocking, but by prying doors open with a screwdriver. 107 Wn. App. 925, 929-30, 29 P.3d 45 (2001). Similarly, there was sufficient evidence of attempted second degree burglary when a man dressed in dark clothes tried to pry open a restaurant's door at 3:30 a.m. *State v. Bencivenga*, 137 Wn.2d 703, 709, 974 P.2d 832 (1999). In *Bencivenga*, the

trier of fact rejected the defendant's defense that he tried to break into the restaurant on a bet. *Id.*

Mr. Christman's conduct was not "patently equivocal" in light of the surrounding circumstances. The incident took place in the early morning hours when the truck stop was closed. Mr. Seek saw Mr. Christman look into the business's front door and then hammer away at the back door. The jury could have inferred intent from these facts. And the jury could have viewed Mr. Christman's story to Deputy Petersen as farfetched. The jury was entitled to reject Mr. Christman's alternate explanation of events.

We affirm the conviction.

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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Sweeney, J.

WE CONCUR:

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Brown, J.

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Siddoway, J.