

FILED
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In the Office of the Clerk of Court
WA State Court of Appeals, Division III

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

STATE OF WASHINGTON,)	No. 29902-3-III
)	consolidated with
Respondent,)	No. 30087-1-III
)	
v.)	
)	
DOUGLAS RICHARD PITTS,)	
)	
Appellant.)	
_____)	UNPUBLISHED OPINION
)	
STATE OF WASHINGTON,)	
)	
Respondent,)	
)	
v.)	
)	
CHRISTIE SHEA SANFORD,)	
)	
Appellant.)	
)	

Kulik, J. — Douglas Pitts and Christie Sanford appeal their convictions for second degree malicious mischief. Second degree malicious mischief requires at least \$750 in property damage. Testimony at trial established \$728 in costs and 56 to 70 hours of

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personal labor by Tami Baump to repair damage to a trailer. Mr. Pitts and Ms. Sanford claim that the State did not prove damage in excess of \$750. They also appeal the admission of an altered rental agreement that illustrated proof of a prior bad act.

The jury could reasonably infer from the facts that Mr. Pitts and Ms. Sanford caused over \$750 in damage to the trailer. And the trial court did not abuse its discretion by admitting evidence of the altered rental agreement to show motive. Thus, we affirm the convictions.

FACTS

Mr. Pitts and his daughter, Ms. Sanford, were charged with second degree malicious mischief for allegedly damaging a trailer they rented from Ms. Baump. Mr. Pitts and Ms. Sanford were tried together.

Prior to trial, the court held a hearing on the admissibility of evidence. Mr. Pitts and Ms. Sanford moved to exclude evidence of prior bad acts under ER 404(b). Specifically, Mr. Pitts and Ms. Sanford sought to exclude evidence that they altered their rental agreement and receipts to state “Rent To Own.” Clerk’s Papers (No. 29902-3-III) at 14. The State moved to introduce this evidence to show that Mr. Pitts and Ms. Sanford were evicted from the trailer, that they contested their eviction by claiming ownership of the trailer, and that the contested eviction was motive for the malicious mischief. The

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court admitted the evidence because the evidence was highly probative of motive and not unfairly prejudicial.

At trial, Ms. Baump testified about the condition and value of some of the damaged property. She testified that she spent around \$128 on paint and 56 to 70 hours of labor painting. Ms. Baump spent \$100 to rebuild closet shelves. Additionally, Ms. Baump testified that there was damage to flooring, and that the flooring cost her \$500 when it was originally installed. The trial court gave jury instructions for malicious mischief in the second degree and jury instructions for malicious mischief in the third degree. The instructions differ in that a conviction of malicious mischief in the second degree requires the jury to find an element of monetary damages.

Mr. Pitts and Ms. Sanford were convicted of second degree malicious mischief. This appeal followed.

ANALYSIS

Sufficient Evidence. “To satisfy due process requirements the State must prove, beyond a reasonable doubt, every fact necessary to constitute the crime charged.” *State v. Baeza*, 100 Wn.2d 487, 490, 670 P.2d 646 (1983). “The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a

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reasonable doubt.” *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). On appeal, “all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant.” *Id.* “A claim of insufficiency [of the evidence] admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom.” *Id.* However, “[m]ere possibility, suspicion, speculation, conjecture, or even a scintilla of evidence, is not substantial evidence.” *State v. Taplin*, 9 Wn. App. 545, 557, 513 P.2d 549 (1973).

To commit malicious mischief in the second degree, the accused must knowingly and maliciously cause physical damage to the property of another in an amount exceeding \$750. RCW 9A.48.080(1)(a). The sum of the damage is an “element that must be proved beyond a reasonable doubt.” *State v. Timothy K.*, 107 Wn. App. 784, 789, 27 P.3d 1263 (2001). “‘Physical damage’” has “its ordinary meaning.” RCW 9A.48.100(1). “The ordinary meaning of damages includes the reasonable cost of repairs to restore injured property to its former condition.” *State v. Gilbert*, 79 Wn. App. 383, 385, 902 P.2d 182 (1995).

Presentation of a repair estimate in excess of the required damages satisfies the monetary damage element of malicious mischief in the second degree. *See State v. Newcomb*, 160 Wn. App. 184, 192-93, 246 P.3d 1286, *review denied*, 172 Wn.2d 1005

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(2011). The State may also offer a witness's testimony that estimates the total cost of repair to satisfy this element. *See State v. Coria*, 146 Wn.2d 631, 641, 48 P.3d 980

(2002). No Washington cases discuss whether the jury may use evidence of time spent on repairs to calculate the dollar amount of the damages.

Mr. Pitts and Ms. Sanford contend that the State failed to prove that the sum of the damages was over \$750. Ms. Baump testified to \$728 in property damage and 56 to 70 hours of painting. A "repair estimate" may offer more precise evidence than hours spent on repairs, but it is reasonable that a juror could determine that 56 to 70 hours of labor at minimum wage costs more than \$22. Adding the labor cost to the \$728 establishes over \$750 in property damage. Hence, a jury could conclude beyond a reasonable doubt that the defendants caused over \$750 in damages to the trailer.

Evidence of Altered Rental Agreement and Rental Receipts. "A trial court's admission of evidence is reviewed for abuse of discretion." *State v. Magers*, 164 Wn.2d 174, 181, 189 P.3d 126 (2008). The trial court abuses its discretion when the decision "is manifestly unreasonable or based upon untenable grounds or reasons." *State v. Stenson*, 132 Wn.2d 668, 701, 940 P.2d 1239 (1997). "[I]n doubtful cases the scale should be tipped in favor of the defendant and exclusion of the evidence.'" *State v. Smith*, 106 Wn.2d 772, 776, 725 P.2d 951 (1986) (quoting *State v. Bennett*, 36 Wn. App. 176, 180,

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672 P.2d 772 (1983)).

“Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith.” ER 404(b). However, such character evidence is “admissible for other purposes, such as proof of *motive*, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” ER 404(b) (emphasis added). “It is generally held to be proper for the prosecution to offer evidence of motive for the commission of crime, even when the evidence of motive may reveal the commission of another crime by the defendant.” *State v. Terrovona*, 105 Wn.2d 632, 650, 716 P.2d 295 (1986).

To ensure that the trial court admits evidence of prior wrongs for valid reasons, the court must: “(1) find by a preponderance of the evidence that the misconduct occurred, (2) identify the purpose for which the evidence is sought to be introduced, (3) determine whether the evidence is relevant to prove an element of the crime charged, and (4) weigh the probative value against the prejudicial effect.” *State v. Thang*, 145 Wn.2d 630, 642, 41 P.3d 1159 (2002).

Here, the trial court applied the *Thang* factors and admitted the evidence. The court found that the misconduct of altering the rental agreements and receipts occurred by a preponderance of the evidence. The court identified the purpose of the evidence as

establishing motive for the crime. Then, the court found the evidence relevant to establish the State's theory of the case that the contested eviction was the motive for the committed malicious mischief. Finally, the court found that the evidence was not more prejudicial than probative. The trial court stated that the probative value of the evidence was high because the altered rental receipts and agreement showed that the eviction was hotly contested. While the court admitted that the evidence showed some prejudice, the court also found that evidence was not unfairly prejudicial. The trial court's ruling was not manifestly unreasonable and was not an abuse of discretion.

We affirm the convictions for second degree malicious mischief.

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.

Kulik, J.

WE CONCUR:

Korsmo, C.J.

Siddoway, J.