IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**No. 27689-9-III**
Respondent,	)	
	)	**Division Three**
v.	)	
	)	
DAVID W. MEADOWS,	)	**UNPUBLISHED OPINION**
	)	
Appellant.	)	
	)	

Kulik, A.C.J.—David W. Meadows appeals his convictions for trafficking in stolen property and first degree theft. We hold (1) his counsel was not ineffective, (2) the State presented sufficient evidence to support the convictions, and (3) his multiple convictions did not violate double jeopardy. Thus, we affirm the convictions.

FACTS

Brothers Michael and Brian Lashaw, and their father, Melvin Lashaw, all live on East Rockford-Idaho Road in Rockford, Washington. Brian's[1] house is west of Melvin's house. On the evening of April 6, 2008, Michael was taking care of some calves at the

[1] We use first names for clarity.

intersection of Dunkle Road and Hoxie Road. Around dusk, Michael saw a Chevrolet Blazer that he did not recognize drive north on Dunkle Road, and turn west onto East Rockford-Idaho Road, toward his father's and brother's houses. Michael stated that it was unusual to see an unknown vehicle on East Rockford-Idaho Road because a snow drift was still blocking one end of the road. Michael believed that the vehicle turned off its headlights as it drove on Dunkle Road, because he could hear the vehicle, but could not see its lights, even though the lights should have been in view when the vehicle turned onto East Rockford-Idaho Road. Michael called his daughter, who was at Brian's house, to ask if she had seen the Blazer drive by; she had not. Michael then drove by his father's house, but did not see a vehicle. If a vehicle had been parked behind the house, Michael would not have been able to see it.

The next day, Michael and Brian discovered that someone had broken into their father's house. Melvin was staying at a nursing home, but his belongings were still in the house. The door to the house had been kicked in and several items were missing, including a television, a sewing machine, a boat motor, a set of silverware, binoculars, and a keyboard. Melvin's files were found in an alley, and tire tracks were visible through the garden.

Later, Brian found Melvin's sewing machine, boat motor, and keyboard listed for

sale on the internet website, craigslist. Deputies contacted Anthony Saso, the individual who posted the craigslist ads, at his home. Mr. Saso lived with David Meadows, Robert Palomino, and Jerry Schrock. On April 9, the police called Michael and Brian to Mr. Saso's home where they identified the craigslist items, as well as a television, as items taken from their father's house. Mr. Meadows owns a Chevrolet Blazer, which Michael noticed parked outside the home. Michael described in detail how the tires on Mr. Meadow's Blazer matched the tracks in the garden at Melvin's house.

The police arrested Mr. Saso, Mr. Meadows, and Mr. Palomino. Mr. Meadows was charged with three counts of trafficking in stolen property, first degree theft, and residential burglary.

At trial, Mr. Saso testified that on the morning of April 7, he saw Mr. Meadows and Mr. Palomino unloading items from the Blazer. Mr. Saso stated that Mr. Meadows and Mr. Palomino told him that the items were taken from an abandoned house. Mr. Saso testified that Mr. Meadows asked him to post the ads on craigslist for the sewing machine, boat motor, and keyboard.

The jury convicted Mr. Meadows of three counts of trafficking in stolen property and one count of first degree theft. The jury acquitted Mr. Meadows of residential burglary.

ANALYSIS

Ineffective Assistance of Counsel. The federal and state constitutions guarantee effective assistance of counsel. *See* U.S. Const. amend. VI; Const. art. I, § 22. To establish ineffective assistance of counsel, the appellant must show (1) that counsel's performance fell below an objective standard of performance, and (2) that the ineffective performance prejudiced the appellant. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). In examining the first prong of the test, the court looks to "an objective standard of reasonableness based on consideration of all of the circumstances." *State v. Thomas*, 109 Wn.2d 222, 226, 743 P.2d 816 (1987). There is a strong presumption that counsel's performance was reasonable. *State v. Bowerman*, 115 Wn.2d 794, 808, 802 P.2d 116 (1990). To prevail on the second prong, the defendant must show that, "but for the ineffective assistance, there is a reasonable probability that the outcome would have been different." *Id.* "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. The two prongs are independent and a defendant must show both to prevail. *Id.* at 687.

Mr. Meadows asserts his counsel was ineffective because he did not request a

cautionary instruction on accomplice testimony when the State's case was based primarily on testimony by Mr. Saso. The Washington Supreme Court has been clear on the need for a cautionary instruction when dealing with accomplice/codefendant testimony:

> We hold: (1) it is always the better practice for a trial court to give the cautionary instruction whenever accomplice testimony is introduced; (2) failure to give this instruction is always reversible error when the prosecution relies *solely* on accomplice testimony; and (3) whether failure to give this instruction constitutes reversible error when the accomplice testimony is corroborated by independent evidence depends upon the extent of corroboration. If the accomplice testimony was substantially corroborated by testimonial, documentary or circumstantial evidence, the trial court did not commit reversible error by failing to give the instruction.

State v. Harris, 102 Wn.2d 148, 155, 685 P.2d 584 (1984), *overruled on other grounds by State v. Brown*, 111 Wn.2d 124, 761 P.2d 588 (1988).

This court has followed the same reasoning: "A cautionary instruction regarding the testimony of an accomplice is not required when such testimony is corroborated by other evidence." *State v. Jennings*, 35 Wn. App. 216, 221, 666 P.2d 381 (1983).

Here, Mr. Saso's testimony was corroborated by the testimony of Michael, Brian, Mr. Schrock, and Detective Dean Meyer. Michael testified that he saw a Blazer driving toward his father's house on the evening before the theft was discovered, and Mr. Meadows owns a Blazer. Michael described how the tire tracks he noticed in his father's

garden matched the tires on Mr. Meadows's Blazer. The police found stolen items in Mr. Meadows's house and garage, including the sewing machine, boat motor, keyboard, and television. The Lashaws identified the items as those stolen from their father's house. Even without Mr. Saso's testimony, the State's evidence showed Mr. Meadows was involved in criminal activity. Mr. Saso's testimony provided a more complete picture of Mr. Meadows's involvement with the stolen property. However, as noted above, a cautionary instruction is not needed when corroborating evidence supports an accomplice's testimony. Mr. Meadows cannot show prejudice from counsel's failure to ask for an unnecessary instruction.

Furthermore, if trial counsel's conduct "can be characterized as legitimate trial strategy or tactics, it cannot serve as the basis for a claim that a defendant received ineffective assistance of counsel." *State v. Adams*, 91 Wn.2d 86, 90, 586 P.2d 1168 (1978). "[T]he court must make every effort to eliminate the distorting effects of hindsight and must strongly presume that counsel's conduct constituted sound trial strategy." *In re Pers. Restraint of Rice*, 118 Wn.2d 876, 888-89, 828 P.2d 1086 (1992). Mr. Saso's testimony regarding Mr. Meadows's request to place the stolen items for sale on craigslist was not corroborated by other evidence. However, Mr. Saso openly admitted his guilt to the jury and he had already agreed to plead guilty for posting the

craigslist ads. Thus, Mr. Saso would have little reason to lie to incriminate the defendant, and defense counsel could tactically decide that a cautionary accomplice instruction would be futile.

Because Mr. Meadows cannot show that he was prejudiced by his counsel's failure to request a cautionary accomplice jury instruction, we find that Mr. Meadows received effective assistance of counsel.

Sufficiency of the Evidence. Evidence is sufficient if, when viewed in the light most favorable to the State, "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Joy*, 121 Wn.2d 333, 339, 851 P.2d 654 (1993). A challenge to the sufficiency of the evidence admits the truth of the State's evidence and all inferences that can be reasonably drawn therefrom. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). All reasonable inferences must be drawn in favor of the State and most strongly against the defendant. *Id.* A reviewing court gives deference to the trier of fact on the issues of conflicting testimony, credibility of the witnesses, and the persuasiveness of the evidence. *State v. Lubers*, 81 Wn. App. 614, 619, 915 P.2d 1157 (1996).

Mr. Meadows asserts that no rational trier of fact could find him guilty of trafficking in stolen property based on Mr. Saso's testimony. At trial, the prosecutor

asked Mr. Saso if Mr. Meadows asked him to do something with the stolen property. Mr. Saso stated: "They asked me if I would put something on Craigslist." Report of Proceedings (RP) at 105. The prosecutor then stated: "Mr. Meadows asked you to do that?" RP at 105. Mr. Saso answered, "I believe it was him." RP at 105. Later, the prosecutor asked, "And those are the three things that you posted at the request of Mr. Meadows?" RP at 107. Mr. Saso responded: "Right." RP at 107.

Viewing this testimony in the light most favorable to the State, and giving deference to the trier of fact on witness credibility, a rational trier of fact could find Mr. Meadows guilty of trafficking in stolen property. The trial court did not err.

Double Jeopardy. The double jeopardy clause of the United States Constitution provides that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb." U.S. Const. amend. V. The Washington Constitution provides that "[n]o person shall be . . . twice put in jeopardy for the same offense." Const. art. I, § 9. The two clauses provide the same protection. *In re Pers. Restraint of Davis*, 142 Wn.2d 165, 171, 12 P.3d 603 (2000). "Double jeopardy principles protect a defendant from being convicted more than once under the same statute if the defendant commits only one unit of the crime." *State v. Westling*, 145 Wn.2d 607, 610, 40 P.3d 669 (2002).

Beyond these constitutional constraints, "the legislative branch has the power to

define criminal conduct and assign punishment for such conduct." *State v. Calle*, 125 Wn.2d 769, 776, 888 P.2d 155 (1995). When a double jeopardy challenge relates to multiple convictions under the same statute, the proper inquiry is what "unit of prosecution" the legislature intended as the punishable act when enacting the criminal statute. *State v. Adel*, 136 Wn.2d 629, 634, 965 P.2d 1072 (1998).

Mr. Meadows asserts that multiple convictions for trafficking in stolen property violate the double jeopardy clause based on the unit of prosecution determined in *State v. McReynolds*, 117 Wn. App. 309, 71 P.3d 663 (2003).

In *McReynolds*, the defendants were convicted of multiple counts of possessing stolen property based on their possession of various items of stolen property from different owners over a period of 15 days. We held that these multiple convictions violated double jeopardy, explaining that when a crime is defined as a course of conduct over a period of time, it constitutes a continuous offense and prosecution for the remainder is barred. *Id.* at 339-40. Ultimately, we held that the simultaneous possession of articles stolen at different times and from different persons constitutes one offense. *Id.*

The case here is distinguishable from *McReynolds* because the elements of possession of stolen property are different from the elements of trafficking. Here, each trafficking count charged a different trafficked item. Therefore, each of the three

trafficking charges involved a separate unit of prosecution. Specifically, the jury could not convict the defendant for trafficking a sewing machine if one of the elements was trafficking a boat motor. Each item of property was placed for sale on craigslist separately and could have been sold at different times, to different buyers, by different means.

Therefore, Mr. Meadows's three convictions for trafficking in stolen property did not violate double jeopardy.

We conclude that the trial court did not err and accordingly affirm Mr. Meadows's convictions for trafficking in stolen property and first degree theft.

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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Kulik, A.C.J.

WE CONCUR:

_____ _____
Sweeney, J. Korsmo, J.