

SUPREME COURT OF WASHINGTON

State v. Coria

146 Wn. 2d 631 (2002) · Decided June 27, 2002

SUMMARY

The Washington Supreme Court held that community property jointly owned and possessed by a defendant and his spouse constitutes "property of another" under Washington's second-degree malicious mischief statute. The court reversed the Court of Appeals and affirmed the defendant's conviction, concluding that the evidence was sufficient to establish more than \$250 in property damage.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Owens, J.; Alexander, C.J.; Smith, J.; Johnson, J.; Ireland, J.; Bridge, J.; Chambers, J.
JURISDICTION	Washington
DECIDED	June 27, 2002
DISPOSITION	reversed
PROCEDURAL POSTURE	The State petitioned for review of a Washington Court of Appeals decision reversing the defendant's second-degree malicious-mischief conviction. The Washington Supreme Court granted review and reversed the Court of Appeals.
STANDARD OF REVIEW	Whether the evidence was sufficient to support the conviction is reviewed by asking whether, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements beyond a reasonable doubt.
PRECEDENTIAL VALUE	Published Washington Supreme Court opinion; precedential
PARTIES	State of Washington v. Angel Coria

TOPICS

- statutory interpretation
- criminal procedure
- domestic violence
- family law

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether community property co-owned and co-posessed by the defendant and his wife constitutes "property of another" under RCW 9A.48.080(1)(a).
2. Whether the evidence was sufficient to establish more than \$250 in property damage for second-degree malicious mischief.

HOLDINGS

1. Community property in which the defendant has an ownership interest is nevertheless "property of another" when another person, including the defendant's spouse, has an interest that the defendant is not privileged to infringe. The defendant's co-ownership and nonexclusive possessory right therefore did not defeat his malicious-mischief conviction.
2. The evidence was sufficient to support the second-degree malicious-mischief conviction because the State's evidence showed at least \$555 in damage, exceeding the statutory \$250 threshold.

KEY QUOTATIONS

"The defendant's right to possess his community property is not a defense here, because his right was not exclusive of his wife's right to possession." (639)

"Its literal meaning is against him, since whether the defendant has an ownership interest in a piece of property is not relevant to the issue of whether another person does." (643)

FACTUAL BACKGROUND

Angel Coria and his wife, Kristen Coria, jointly owned and possessed community property in their home. After a violent domestic altercation, substantial damage was found in the home, including a broken mirror, a toppled television, a damaged microwave, slashed linoleum, and damaged doors and frames. The State presented evidence estimating the property damage at \$620, or \$555 excluding the pet bird, while the defense offered a substantially lower estimate. The jury convicted Coria of second-degree malicious mischief.

PROCEDURAL HISTORY

A jury convicted Angel Coria of second-degree assault and second-degree malicious mischief but did not reach a verdict on the charge of willful killing of a pet. The Court of Appeals affirmed the assault conviction and reversed the malicious-mischief conviction on the ground that the damaged items were community property co-owned by Coria and his wife. The Supreme Court of Washington reversed the Court of Appeals and affirmed the malicious-mischief conviction.

DISPOSITION

reversed

CASES CITED

- In re Personal Restraint of Long, 117 Wn. 2d 292, 302, 815 P.2d 257 (1991)
- State v. Azpitarte, 140 Wn. 2d 138, 141, 995 P.2d 31 (2000) (per curiam)
- People v. Brown, 185 Misc. 2d 326, 333, 711 N.Y.S.2d 707 (N.Y. Crim. Ct. 2000)
- State v. Pike, 118 Wn. 2d 585, 590, 593, 826 P.2d 152 (1992)
- State v. Eberhart, 106 Wash. 222, 225, 179 P. 853 (1919)
- State v. Birch, 36 Wn. App. 405, 410, 675 P.2d 246 (1984)
- State v. Webb, 64 Wn. App. 480, 489-91, 824 P.2d 1257 (1992)
- Lyon v. Lyon, 100 Wn. 2d 409, 413, 670 P.2d 272 (1983)
- In re Personal Restraint of Hopkins, 137 Wn. 2d 897, 901, 976 P.2d 616 (1999)
- In re Personal Restraint of Sietz, 124 Wn. 2d 645, 652, 880 P.2d 34 (1994)
- State v. Superior Court, 188 Ariz. 372, 373, 936 P.2d 558 (Ct. App. 1997)
- People v. Kahanic, 196 Cal. App. 3d 461, 466, 241 Cal. Rptr. 722 (1987)
- State v. Zeien, 505 N.W.2d 498, 499 (Iowa 1993)
- People v. Schneider, 139 Ill. App. 3d 222, 224-25, 487 N.E.2d 379 (1985)
- State v. Mayhood, 308 Minn. 259, 262-63, 241 N.W.2d 803 (1976)
- People v. Person, 239 A.D.2d 612, 613, 658 N.Y.S.2d 372 (1997)
- People v. Kheyfets, 174 Misc. 2d 516, 520-22, 665 N.Y.S.2d 802 (N.Y. Sup. Ct. 1997)
- Haley v. Highland, 142 Wn. 2d 135, 142, 12 P.3d 119 (2000)
- Keene v. Edie, 131 Wn. 2d 822, 935 P.2d 588 (1997)
- State v. Randhawa, 133 Wn. 2d 67, 73, 941 P.2d 661 (1997)
- State v. Newbern, 95 Wn. App. 277, 291, 975 P.2d 1041 (1999)

OPINION

OWENS, J.

Owens, J. — Defendant Angel Coria was convicted of malicious mischief in the second degree for damaging community property owned by him and his wife, Kristen Coria. The defendant contends that because he is co-owner of the property, he did not damage “property of another” within the meaning of the malicious mischief statute.

The Court of Appeals, Division Two, agreed and reversed the conviction. The state seeks review. We reverse the Court of Appeals, holding that the defendant did damage “property of another.”

FACTS On Saturday, December 5, 1998, the defendant and his wife had an argument at a restaurant in Tacoma.

After leaving, they had an altercation in the car, in which Mrs. Coria received a gash on the left side of her face. When they got home, Mrs. Coria ran inside to call 911, and the defendant got into his pickup truck and left. Tacoma Police Officer Wendy Haddow responded to the 911 call,

reaching the Corias at 10:27 p.m. Officer Haddow testified that when she arrived Mrs. Coria was crying, she had blood in her hair, and her face was swollen.

She told Officer Haddow what happened. At the restaurant, the defendant became jealous because the waiters had been giving her too much attention. On the way home, the defendant drove to an empty parking lot. He slammed her face against his knee and the dashboard, punched her 10 times, and said that he would make sure no one would look at her again. She said she lost consciousness for a few minutes.

Officer Haddow called an ambulance for Mrs. Coria. At the hospital, Dr. Paul Hildebrand closed the gash on her face with six stitches. A CT scan revealed swelling on the right side of Mrs. Coria's head. Dr. Hildebrand testified that Mrs. Coria's injuries were consistent with her statements to police, including her reported loss of consciousness. Mrs. Coria's friend Debra Carrillo drove her home from the hospital around midnight. *634The defendant got home later.

Mrs. Coria ran to the neighbor's and called 911 again at 2:58 a.m. Again Officer Haddow responded (this time to the neighbor's) and again Mrs. Coria told her what happened. She said that she heard the defendant return and ran over to the neighbor's when she heard a loud banging noise coming from the garage. She said she went to the neighbor's because her neighbor had a big husband.

She warned Officer Haddow not to try to arrest the defendant without backup because he was in a killing mood. But Officer Haddow was able to arrest the defendant, who was calm. When Officer Haddow and Mrs. Coria returned to the house, it was a mess. A mirror was broken, the television was toppled over, the microwave was torn out of the wall, there were slashes in the kitchen linoleum, the couple's pet cockatiel was dead, and its cage was broken apart.

When Officer Haddow came into the house, the Corias' three-year-old daughter pointed to the shattered mirror and said, "Daddy broke." 2 Report of Proceedings (RP) at 147. The exterior garage door was off its rollers, and the door leading from the garage into the house had been smashed in, its frame and lock broken. Officer Haddow estimated the damage around \$620.

With the defendant in custody, Mrs. Coria obtained a protection order barring contact with her and their children. The defendant had several contacts with them before trial, but was not prosecuted for violating the order. He was charged with second degree assault, second degree malicious mischief, and willful killing of a pet.

The corrected information alleged property damage in the approximate amount of \$355. Clerk's Papers (CP) at 6-7. In January 1999 Mrs. Coria recanted. She told the prosecutor and later testified that she became jealous in the restaurant because of the defendant's flirting. She lunged at him in the car. He pushed her away, and she hit her head on the ceiling and fell backwards, hitting her face on the dash.

She denied being taken to the parking lot and losing consciousness. When they got home, to stop the defendant *635 from leaving, she threatened to call 911 and lie to the police to get the defendant arrested. She broke the mirror in a “jealous rage,” 1 RP at 108, and toppled over the television and the microwave. When the defendant returned they started to fight again, and she ran over to the neighbor’s to force him not to leave, since he would not leave the children home alone.

She said she called 911 from the neighbor’s when she heard him banging on the garage. The defendant testified that he dropped off his wife after fighting at the restaurant and left. He said that the mirror was broken and the television was toppled over when he came back. They started arguing again and Mrs. Coria left. Then he went to see where she had gone, but locked himself out, and so broke in through the garage.

He said the birdcage was knocked over during their fight, and that he accidentally hurt the bird when it got underfoot. The defense also presented Mrs. Coria’s friend Debra Carrillo. She testified that in the car on the way home from the hospital Mrs. Coria told her that she had lied to the police in the first 911 call.

The jury found the defendant guilty of assault and malicious mischief, but could not reach a verdict on the count of willful killing of a pet. The Court of Appeals affirmed the assault conviction, but reversed the conviction for malicious mischief, based on the defendant’s assertion that the items damaged were community property, and therefore not “property of another.” We granted the state’s petition for review.

ISSUE Is community property co-owned and co-possessioned by the defendant and his wife “property of another” for purposes of the crime of malicious mischief, RCW 9A.48.080(l)(a)? ANALYSIS We begin with the statute itself: a person commits malicious mischief in the second degree who knowingly and *636 maliciously “[c]auses physical damage to the property of another in an amount exceeding two hundred fifty dollars.” RCW 9A.48.080(l)(a). “Property of another” is not defined.

The defendant argues that the definition of “property of another” must be understood from common law. This indicates, he says, that “property of another” does not include property in which the defendant has an equal equitable stake. Resp’t’s Suppl. Br. at 2-5.

Thus, the defendant argues, the state’s evidence was insufficient to support a conviction. Clear statutory language must be afforded its plain meaning. In re Pers. Restraint of Long, 117 Wn.2d 292, 302, 815 P.2d 257 (1991). “When a statute is clear and unambiguous, its meaning is to be derived from the language of the statute alone and it is not subject to judicial construction.” State v. Azpitarte, 140 Wn.2d 138, 141, 995 P.2d 31 (2000) (per curiam). “An ambiguity exists if the language at issue is susceptible to more than one reasonable¹ interpretation.” Id. At least one court

has observed that property owned jointly by defendant and victim is “property of another” as a “strictly literal” matter.

People v. Brown, 711 N.Y.S.2d 707, 185 Misc. 2d 326, 333 (N.Y. Crim. Ct. 2000). It is beyond dispute that the items the defendant damaged were property, and that they belonged to Mrs. Coria, another person. Thus the defendant’s conduct is squarely within the literal reach of the statute notwithstanding his interest in the property. Even the defendant does not argue that such a result is so absurd as to defeat literal enforcement of the law.

If there is any doubt about the meaning of “property of another,” it is resolved by chapter 10.99 RCW, part of the legislature’s official response to domestic violence. There we find explicit evidence of what conduct the legislature understands to be reached by the crime of malicious mischief. RCW 10.99.020(3)(m) specifically includes malicious mischief in the definition of “domestic violence” when committed by one family member against another.

RCW *63710.99.010 states that “it is the intent of the legislature that criminal laws be enforced without regard to whether the persons involved are or were married, cohabiting, or involved in a relationship.” We are especially wary of permitting any domestic relationship to become a defense in criminal prosecutions. Nevertheless, the defendant urges us to interpret “property of another” in the context of its meaning at common law, which supplements Washington penal statutes.

RCW 9A.04.060. The defendant’s argument is based on common law larceny. The general rule at common law was that one co-owner could not steal from another, since each co-owner is legally entitled to possession. See 2 Wayne R. LaFare & Austin W. Scott, Jr., *Substantive Criminal Law* § 8.4, at 355 (1986).

The Court of Appeals’ view was that this rule determined the meaning of “property of another” absent legislative modification. One such modification is RCW 9A.56.010(9), defining “owner” for purposes of theft as “a person, other than the actor, who has possession of or any other interest in the property or services involved, and without whose consent the actor has no authority to exert control over the property or services.” Thus the court held in *State v. Pike*, 118 Wn.2d 585, 590, 826 P.2d 152 (1992), that a person with legal title to property could nevertheless steal it from a person with a superior possessory interest.

In *Pike*, the defendant had taken his car from a mechanic. His conviction for theft was reversed, however, because the mechanic had not perfected his lien. *Id.* at 593. Washington courts required legislative action to change the common law rule that a partner could not steal partnership property. *State v. Eberhart*, 106 Wash. 222, 225, 179 P. 853 (1919).

The larceny statute at issue in *Eberhart* is substantially the same as RCW 9A.56.010(19)(b), defining “wrongfully obtains” as: Having any property or services in one’s possession, custody or control as bailee, factor, lessee, pledgee, renter, servant, *638attorney, agent, employee,... to

secrete, withhold, or appropriate the same.... Eberhart held that a partner's appropriation of partnership property was not a crime, since "partner" is not on the list, and since a prior statute repealed by the criminal code of 1909 had made it a crime.

Eberhart, 106 Wash. at 225. This decision was reaffirmed by *State v. Birch*, 36 Wn. App. 405, 410, 675 P.2d 246 (1984). In response the legislature made it a crime for a partner to steal partnership property. Laws of 1986, Reg. Sess., ch. 257, § 2; RCW 9A.56.010(19)(c).

The Court of Appeals concluded from *Pike* and *Eberhart* that "property of another"—for property crimes in general—does not include property in which the defendant has an ownership interest without legislative modification.

The court said that by not including spouses on the list of persons who may commit theft, the legislature intended "that spouses who co-possess community property are not subject to crimes dealing with the property of another." *State v. Coria*, 105 Wn. App. 51, 59, 17 P.3d 1278 (2001).

We do not believe that our decisions relating to theft require the same result in malicious mischief cases. Division One of the Court of Appeals dealt with the same argument made here in *State v. Webb*, 64 Wn. App. 480, 489-91, 824 P.2d 1257 (1992).

In *Webb* the defendant and his wife had separated and divided up their property; he was convicted of malicious mischief for breaking into her apartment and vandalizing her property. The court held that the defendant's community property was "property of another" under the malicious mischief statute.

The court relied on *Pike*'s holding that theft lies where the defendant may not exert control over property without the permission of another person. The court said that because the couple had separated, *Webb*'s wife had a superior possessory interest in the property.

Although *Webb* can be distinguished on this basis, the *Webb* court noted an important distinction between theft and malicious mischief: possession can be redeemed when property is stolen, but not when it is damaged or destroyed. *Id.* at 490. *639 This distinction is important because damaging co-owned personal property is effectively like an ouster of other co-owners.

The defendant's right to possess his community property is not a defense here, because his right was not exclusive of his wife's right to possession. Both spouses have undivided half interests in community property. *Lyon v. Lyon*, 100 Wn.2d 409, 413, 670 P.2d 272 (1983).

The defendant's rights in their community property, as co-owner, do not include the right to infringe *Mrs. Coria's*. The Model Penal Code also recognizes that a defendant's property interest may not include the right to infringe others' rights. It defines "property of another" as "property 'in which any person other than the actor has an interest which the actor is not privileged to infringe,

regardless of the fact that the actor also has an interest in the property.’ ” Model Penal Code § 220.3 cmt.

3, at 45 (1980). The dissent criticizes our reliance on chapter 10.99 RCW, and accepting the ambiguity hijacked from the common law of theft, would have us apply the rule of lenity. But RCW 10.99.020(3)(m) specifically references malicious mischief, which should be enough “persuasive authority” to apply it here. That statute does not refer to theft, undermining the dissent’s view that one rule applies to all property crimes.

Moreover, the rule of lenity does not preclude ordinary statutory construction. In *re Pers. Restraint of Hopkins*, 137 Wn.2d 897, 901, 976 P.2d 616 (1999) (applying rule of lenity after statutory construction); In *re Pers. Restraint of Sietz*, 124 Wn.2d 645, 652, 880 P.2d 34 (1994) (rule of lenity applies absent legislative intent to the contrary). Most courts that have considered the issue agree with our decision.

In *State v. Superior Court*, 188 Ariz. 372, 373, 936 P.2d 558 (Ct. App. 1997), the court held that property in which the defendant held a joint tenancy with his wife was “property of another” for purposes of Arizona’s criminal damage statute.

The defendant had broken down the door to his and his wife’s home and assaulted her. The court affirmed the conviction despite the couple’s cohabitation and co-possession of the property. *640 This issue comes up more often in separation or dissolution cases, as in *Webb*.

In *People v. Kahanic*, 196 Cal. App. 3d 461, 241 Cal. Rptr. 722 (1987), the defendant, upon discovering her husband’s Mercedes parked at another woman’s house near the end of dissolution proceedings, threw a beer bottle through the rear window of the car.

The court affirmed her vandalism conviction, saying: It is of no consequence defendant wife may have had a community property right to share possession of the Mercedes.... The essence of the crime is in the physical acts against the ownership interest of another, even though that ownership is less than exclusive. *Id.* at 466. This court thus felt that the defendant’s own rights with respect to the property were irrelevant, since the gravamen of the crime is infringing another person’s rights.

Under *Kahanic*, malicious mischief lies in spite of the defendant’s community property interest. Iowa, Illinois and Minnesota have also held that co-owned property can serve as the basis for prosecution for property damage. *State v. Zeien*, 505 N.W.2d 498, 499 (Iowa 1993); *People v. Schneider*, 139 Ill. App. 3d 222, 224-25, 487 N.E.2d 379 (1985); *State v. Mayhood*, 308 Minn. 259, 262-63, 241 N.W.2d 803 (1976).

A contrary result was reached in *People v. Person*, 239 A.D.2d 612, 613, 658 N.Y.S.2d 372 (1997), but that decision has failed to persuade even lower courts in New York. *People v. Kheyfets*, 174 Misc. 2d 516, 520-22, 665 N.Y.S.2d 802 (N.Y. Sup. Ct. 1997) followed *Person* with a serious

grudge and a call for legislative reversal. Brown, 185 Misc. 2d at 333-34, distinguished Person, stating outright that it was decided wrongly.

Because we hold that community property is “property of another” within the meaning of RCW 9A.48.080(1)(a), the evidence was sufficient to support the defendant’s conviction. The evidence is sufficient “if, after it is viewed in a 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. Randhawa, 133 Wn.2d 67, 73, *641941 P.2d 661 (1997) (internal quotation marks omitted).

The state was required to prove that the defendant caused physical damage in an amount exceeding \$250. RCW 9A.48.080(1)(a). The state presented Officer Haddow’s testimony on the dollar value of the property damage and photographs of the damage. Officer Haddow estimated the total amount of damage at \$620. Excluding the cost of the pet bird, since the jury did not reach a verdict on willful killing of a pet, the total amount of damage proved by the state is \$555.

The defendant relied on Mrs. Coria’s testimony that the total repair cost of the damage was \$67. On appeal, the defendant contends that no foundation was laid for Officer Haddow’s expertise, nor for how she arrived at her figures. Appellant’s Br. at 19.

However, the defendant did not object to this evidence at trial. The objection is therefore waived. State v. Newbern, 95 Wn. App. 277, 291, 975 P.2d 1041 (1999). Viewed most favorably to the prosecution, this evidence is sufficient to convince the jury beyond a reasonable doubt that the defendant did more than \$250 worth of damage.

The concurrence invites us to address whether half or all the damage done to community property counts toward the degree of the offense. This issue was not raised by the parties. Contrary to what the concurrence claims, the defendant’s challenge to the sufficiency of the evidence does not require us to resolve this question.

The state’s proof supports finding \$555 worth of damage. Half of that is \$277.50, which is still sufficient to support the conviction for second degree malicious mischief. It therefore makes no difference to the disposition of this case whether half or all the damage counts. More importantly, resolution of this case does not require discussion of whether a community property interest is divisible.

The recent community property cases on which the concurrence relies were based on a “landmark decision” that “signified a major departure” from prior authority. Haley v. Highland, 142 Wn.2d 135, 142, 12 P.3d 119 (2000); *642see Keene v. Edie, 131 Wn.2d 822, 935 P.2d 588 (1997). Haley and Keene were also based on careful analysis of policy considerations which had as much to do with principles of tort recovery as with domestic relations.

Those cases demonstrate that we should not delve into unrelated aspects of community property law here, where we do not have the benefit of briefing by parties interested in the outcome. We accordingly decline to do so. CONCLUSION We conclude that the defendant's community property was "property of another" within the meaning of the crime of malicious mischief.

We will not reconsider whether criminal prosecution is an appropriate response to domestic violence. A crime is not any the less because it is against a family member. This is not a case of one spouse cleaning the other's "junk" out of the garage, nor of venting anger on the nearest breakable furniture.

The jury found that the defendant acted with malice. This element brings the defendant's violent conduct within reach of the criminal law. Our decision affects not only the prosecutor's power to bring a defendant to trial, but also the police department's power to come to a victim's aid. Mrs. Coria certainly sought help from the police that night, and we would be wary of a decision preventing them from giving it.

The law does not require such a decision. The defendant does not advance a construction of the meaning of "property of another" that would support reversal of his conviction. Its literal meaning is against him, since whether the defendant has an ownership interest in a piece of property is not relevant to the issue of whether another person does.

Here another person did. Instead, the defendant argues that "property of another" is a term of art, drawn from the common law and retaining its common law meaning. The defendant's position is well argued, but unconvincing.

First, chapter 10.99 RCW refutes the argument that the crime of malicious mischief is intended to refer to the common law. *643Second, the common law on which the defendant relies, the crime of larceny, is inapposite. This case deals with property damage. Malice for others has no place at home.

The Court of Appeals is reversed. The conviction for malicious mischief is affirmed. Alexander, C.J., and Smith, Johnson, Ireland, Bridge, and Chambers, JJ., concur.