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**DISTRICT II**

July 17, 2019

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Reinhard R. Gellert  
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You are hereby notified that the Court has entered the following opinion and order:

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2017AP1188-CR                      State of Wisconsin v. Reinhard R. Gellert (L.C. #2013CF1258)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Reinhard R. Gellert, pro se, appeals from a judgment convicting him of felony theft of movable property and misdemeanor criminal damage to property and an order setting restitution in the amount of \$72,066.03. Based upon our review of the briefs and record, we conclude at

conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2017-18).<sup>1</sup> We affirm.

W.B., a grain farmer, owned property containing agricultural structures, including a corn storage bin. Gellert obtained W.B.'s permission to look at the property in anticipation of a possible purchase. Without W.B.'s knowledge or permission, Gellert cut a hole in and removed truckloads of corn from the bin. Gellert stored the corn offsite and arranged to sell it for over \$30,000. The operation was discovered by W.B. when he arrived to check on his property and observed his corn being transferred by vacuum system onto multiple trucks. At trial, Gellert claimed he believed he had W.B.'s permission to take and sell the corn and "figured everything would ultimately be dealt with down the road." The jury was instructed on the defense of mistake but found Gellert guilty as charged.

Gellert argues that the trial evidence was insufficient. On appeal, we will sustain a conviction "unless the evidence, viewed most favorably to the state and the conviction, is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." *State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990).

To prove felony theft, the State needed to establish that (1) Gellert intentionally transferred W.B.'s movable property, (2) W.B. did not consent, (3) Gellert knew W.B. did not consent, (4) Gellert intended to permanently deprive W.B. of the possession of the property, and

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

(5) the value of the property stolen exceeded \$10,000. *See* WIS. STAT. § 943.20(1)(a), (3)(c); WIS JI—CRIMINAL 1441.

Ample evidence supports the jury’s guilty verdict. Gellert admitted the first and fifth elements at trial, and they are not reasonably disputed on appeal. With regard to the second element, W.B. testified unequivocally that he did not consent to the taking and carrying away of his corn and that he had disabled the mechanism normally used to offload corn from the bin. W.B. had already contracted with another buyer to sell the corn for over \$75,000. The jury could reasonably conclude that W.B. never gave consent.

A reasonable juror could also infer that Gellert knew W.B. did not consent. W.B. testified:

The only permission I gave [Gellert], he could go out and look at the property, and if he had a person or engineer or contractors to come out and take a look at the structure of the barn ... not to remove anything or displace anything or do any damage to the property ....

W.B. and Gellert never discussed the bin or its contents, and Gellert arranged for the corn to be removed at a time he believed W.B. would be out of town. When law enforcement arrived, Gellert said he had the owner’s permission to remove agricultural waste from the bin so he could check its condition. When asked if he had W.B.’s permission to remove corn from the property, Gellert told law enforcement “we never actually got to that part of the conversation” and tried to persuade the responding officer that the corn had no value.

These facts also support Gellert’s intent to permanently deprive W.B. of the corn’s possession. Additional supporting facts include: without W.B.’s permission or approval, Gellert arranged to sell the corn for over \$30,000 and received a \$15,750 advance payment; Gellert

spent the advance on personal expenses and failed to pay anything to W.B.; Gellert never made a formal offer to buy W.B.'s property; and, according to Gellert, "money was very tight" at the time he sold W.B.'s corn.

Likewise, the evidence supports the jury's guilty verdict on the charge of criminal damage to property. Here, the State needed to establish that (1) Gellert caused damage to physical property, (2) he intentionally caused the damage, (3) the property belonged to W.B., (4) Gellert caused the damage without W.B.'s consent, and (5) Gellert knew the property belonged to W.B. and knew W.B. did not consent to the damage. *See* WIS. STAT. § 943.01; WIS JI—CRIMINAL 1400.

The first, second, and third elements are not reasonably disputed. With regard to the fourth and fifth elements, W.B. testified that he never gave Gellert consent to damage the door to his corn bin and, in fact, specifically told him "not to remove anything or displace anything or do any damage to the property." From this, a reasonable juror could infer that W.B. did not consent to Gellert's damaging the corn bin and that Gellert knew he was acting without W.B.'s consent.

Gellert points to evidence he considers exculpatory and highlights what he believes are "discrepancies" in W.B.'s testimony. Gellert's arguments fail to account for this court's deferential standard of review. It is the jury's function to decide the credibility of witnesses and reconcile any inconsistencies in the testimony. *State v. Toy*, 125 Wis. 2d 216, 222, 371 N.W.2d 386 (Ct. App. 1985).

Gellert also challenges the circuit court's restitution determination as an erroneous exercise of discretion. *See State v. Haase*, 2006 WI App 86, ¶5, 293 Wis. 2d 322, 716 N.W.2d 526. We are not persuaded. The court ordered Gellert to reimburse W.B.'s insurer the amount

of \$54,565, which represented the settlement paid to W.B. minus the \$22,000 recouped as subrogation. The award was supported by the testimony of W.B.'s insurer and multiple documentary exhibits. The circuit court also awarded \$17,501.03 to W.B. Here, W.B. testified and presented documentary evidence concerning losses beyond the settlement, including the reduced value of certain corn, damage to the bin door, further cleanup, and travel and lodging expenses. The circuit court's conclusions are consistent with the evidence presented at the restitution hearing and represent a proper exercise of discretion.

Upon the foregoing reasons,

IT IS ORDERED that the judgment and order of the circuit court are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*