Supreme Court No. _____
Court of Appeals No. 30778-6-III

89589-9

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Plaintiff/Respondent,

vs.

ORRY LEE ADAMS,
Defendant/Petitioner.

APPEAL FROM THE SPOKANE COUNTY SUPERIOR COURT
Honorable Tari Eitzen, Judge

PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER.

Petitioner, Orry Lee Adams, the defendant/appellant below, asks this Court to accept review of the following Court of Appeals' decision terminating review.

II. COURT OF APPEALS DECISION.

Petitioner seeks review of the Court of Appeals, Div. III, Commissioner's Ruling filed July 9, 2013, which affirmed his conviction. A copy of the ruling is attached hereto as **Appendix A**. A copy of the Order Denying Motion to Modify the Commissioner's Ruling filed October 22, 2013, is attached as **Appendix B.** This petition for review is timely.

III. ISSUE PRESENTED FOR REVIEW.

As a matter of first impression, is theft by deception excluded from prosecution for first-degree theft from the person of another pursuant to RCW 9A.56.030(1)(b), where there is no proof of an actual taking?

IV. STATEMENT OF THE CASE.

On November 6, 2011, 17-year old defendant[1], Orry Adams, Cindy Phillips and her 15-year old son[2], Jacob Woodbury, were all present at Ms. Phillips' residence. It was Jacob's birthday and there was some general discussion about attempting to obtain drugs for him. At some point, Orry

[1] Orry Adam's date of birth is October 15, 1994. CP 7.

indicated to Jacob and Ms. Phillips that he could get the drugs, and the three left the residence to walk to the house where the drugs were supposed to be. Orry did not intend to actually purchase drugs for Ms. Phillips and her son, and he led the group to a random house and pretended they had arrived at the residence of a drug dealer. Orry stopped a few feet before the house he chose at random and told Ms. Phillips he would need her money before he went to the door to complete the fictitious transaction. Finding of Fact 10 at CP 29.

Ms. Phillips voluntarily counted out $70 in Orry's presence. Orry then took or accepted the money from Ms. Phillips, went to the house, pretended to knock on the door, and then ran away with the money. Finding of Fact 11 at CP 30.

Orry deceived Ms. Phillips into believing that he was going to use her money to purchase drugs and Ms. Phillips gave Orry her $70 to complete that purchase as a result and by color of this deception. Part of the $70 was intended to be a fee to Orry in exchange for his assistance in purchasing the drugs. Finding of Fact 12 at CP 30.

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[2] Jacob testified he was 15 years old at the time of trial in February 2012, and the November 6, 2011 date of the incident was his birthday. 2/13/12 RP 87, 90–91.

The State charged Orry with first degree robbery. CP 7. Due to automatic decline premised on the charge[3], Orry waived jury and proceeded to a bench trial before Superior Court Judge Tari Eitzen. CP 11; *see generally* 2/13/12 RP 1–141; 2/14/12 RP 146–160. The charge of first degree robbery was dismissed after the State's case-in-chief due to insufficient proof that a weapon or what appeared to be a weapon was used in the commission of the offense. Findings of Fact 5, 6 at CP 29.

The court, over defense objection, then proceeded with trial on the lesser included offenses of second degree robbery and first degree theft. After discussion concerning jurisdiction and agreement of the parties, the trial judge sat as a juvenile court judge for the remainder of the case. Finding of Fact 7 at CP 29; 2/14/12 RP 151–167.

Defense counsel argued that Orry was guilty only of third degree theft. 2/14/12 RP 232–34/ The court determined Orry was not guilty of the lesser included offense of second degree robbery. However, the court found Orry had used deception to obtain money from Ms. Phillips, and adjudicated Orry guilty of the offense of first degree theft. Conclusions of Law 4, 5 at CP 30.

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[3] RCW 13.04.030(1)(e)(v)(C).

Defense counsel filed a motion for reconsideration, contending there was no evidence of property being taken from Ms. Phillips' "person" as required to sustain a conviction for theft in the first degree. As the property taken in her presence by color and aid of deception did not exceed $750 in value, only the elements of third degree theft had been satisfied. CP 15–20. The court denied the motion for reconsideration. CP 50.

The court imposed a standard range disposition of 52 to 65 weeks in the custody of the Department of Social and Health Services, Juvenile Rehabilitation Administration. CP 66.

On appeal, the Commissioner determined that "obtain[ing] control over" another's property by means of deception not only proves that a taking has occurred but also equates to the "taking of the property *from the person of another*", and granted the Court's motion on the merits to affirm the conviction for first degree theft. *Slip opinion, 2–3* (emphasis added).

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

Petitioner believes that this court should accept review of this issue because, as a matter of apparent first impression, the decision of the Court of Appeals involves significant questions of law under the Constitution of the United States and state constitution (RAP 13.4(b)(3)), and/or involves

issues of substantial public interest and statutory construction that should be determined by the Supreme Court (RAP 13.4(b)(4)).

Theft by deception is excluded from prosecution for first-degree theft from the person of another pursuant to RCW 9A.56.030(1)(b), where there is no proof of an actual taking.

1. The Legislature expressly distinguishes theft by taking from theft by deception as alternative means. "Theft" is defined at RCW 9A.56.020(1) as meaning, in relevant part:

> (a) To wrongfully obtain or exert unauthorized control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services; or
>
> (b) By color or aid of deception to obtain control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services . . .

This Court has noted that "[s]ubsection (a) is known as theft by taking while subsection (b) is known as theft by deception." State v. Smith, 115 Wn.2d 434, 438, 798 P.2d 1146 (1990) (citing State v. Southard, 49 Wn. App. 59, 741 P.2d 78 (1987)).

The term "by color or aid of deception" is further defined as, "to obtain control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services." RCW 9A.56.010(4). "Deception" occurs when an actor knowingly:

> (a) Creates or confirms another's false impression which the actor knows to be false; or
>
> (b) Fails to correct another's impression which the actor previously has created or confirmed; or
>
> (c) Prevents another from acquiring information material to the disposition of the property involved; or
>
> (e) Promises performance which the actor does not intend to perform or knows will not be performed[.]

RCW 9A.56.010(5).

In State v. Casey, 81 Wn. App. 524, 915 P.2d 587 (1996), the court analyzed the evolution of the crime of "theft by deception" from the offense of "larceny." 81 Wn. App. 528. The court noted that the Legislature's intent was to "broaden the scope of the statute to include more kinds of devious behavior." Id. The court explained:

> deception appears ... designed to encompass not only representations about past or existing facts, but also representations about future facts, inducement achieved by means other than conduct or words, and inducement achieved by creating a false impression even though particular statements or acts might not be false.

Id. By establishing it as an alternative means, it is evident the Legislature intended to distinguish theft by deception from theft by taking.

2. Under Washington law, theft in the first degree from the person of another requires proof of physical taking from the victim's person.

RCW 9A.56.030(1) provides as follows:

> A person is guilty of theft in the first degree if he or she commits theft of ... (a) property ... which exceed(s) five thousand dollars in value ...; (b) property of any value ... taken **from the person of another** ...
>
> .

(Emphasis added). A prosecution for "theft in the first degree", where not predicated on the value of the property, involves "theft by taking" and requires proof that property is physically taken from the person of another. RCW 9A.56.030(1)(b); *see* State v. Tvedt, 153 Wn.2d 705, 723 n. 2, 107 P.3d 728 (2005) (describing theft in the first degree as "the mere taking of property from the person of another, e.g., pick-pocketing").

The term, "taken from the person of another," is not defined in the statute. The only apparent Washington case addressing this definition is State v. Chamroeum Nam, 136 Wn. App. 698, 705, 150 P.3d 617 (2007), where the court was considering the statutory language for robbery that uses the same terminology. The court reasoned, in part:

> The literal interpretation of taking something from another's person would be to take something on the person's body or directly attached to someone's physical body or clothing. That is consistent with one legal scholar's definition. 3 Wayne R. LaFave, Substantial Criminal Law § 20.3(c) at 179 (2d ed. 2003) ("Property is on the victim's person if it is in [her] hand, the pocket of the clothing [she] wears, or is otherwise attached to [her] body or [her] clothing.").

Id. (alterations in original). Nam went on to hold that a purse situated next to the victim on the passenger seat of her car was not taken from her person. Id. at 707.

The Ninth Circuit Court of Appeals applied Nam's holding to the question whether a Washington conviction for theft in the first degree would be a violent felony under the federal Armed Career Criminal Act (ACCA). United States v. Jennings, 515 F.3d 980, 989 (9th Cir. 2008). The Court concluded that "theft from the person of another under Washington law means theft of 'something on or attached to a person's body or clothing'" creating a "serious potential risk of physical injury to another" as required for the offense to qualify under ACCA. Id. at 989-90.

Courts in other jurisdictions have similarly construed comparable out-of-state statutes. For example, in California, the crime of "grand theft" from a person is proved when a person snatches a purse, or steals someone's wallet from his pocket. *Compare* People v. Huggins, 51 Cal. App. 4th 1654, 60 Cal. Rptr. 2d 177 (1997) (elements of "grand theft" established where purse was snatched from under victim's foot; "the victim's purpose in placing the purse against her foot was to retain dominion and control over the purse") with People v. Williams, 9 Cal.App.4th 1465, 12 Cal. Rptr. 2d 253 (1992) (evidence insufficient to establish "grand theft" where purse taken from passenger seat next to victim); *see also* People v. Morales, 49 Cal. App. 3d 134, 122 Cal. Rptr. 157 (1975) (equivocal evidence regarding use of force during purse-

snatching supported issuance of grand theft lesser included offense instruction in felony murder prosecution predicated on robbery); People v. Herrin, 82 Cal.App.2d 795, 796, 187 P.2d 26 (1947) (wallet stolen from victim while he was unconscious).

In Illinois, evaluating the question whether a taking must literally be from a victim's person or whether the crime is established where the property was in his presence and immediate control, the Supreme Court noted that the sole distinction between a common-law larceny and robbery "lies in the force or intimation used." People v. Pierce, 226 Il1.2d 4:70, 478-80, 877 N.E.2d 408 (2007).

New Jersey likewise requires that for a "theft from the person" the property must be taken from the victim's possession and while in his immediate presence, creating a danger of confrontation between the thief and victim and an invasion of the victim's person and privacy. State v. Blow, 132 N.J. Super. 487, 491, 334 A.2d (1975) (citing cases from other jurisdictions); *accord* State v. Link, 197 N.J. Super. 615, 619, 485 A.2d 1069 (1984).

As the discussions in Jennings, Blow and Pierce demonstrate, statutes ascribing a high seriousness level to the taking of property from the person of another do so because such taking creates a danger of

confrontation between thief and victim and involve an invasion of the victim's privacy. *See* Jennings, 515 F.3d at 689; Blow, 132 N.J. Super. at 491; Pierce, 226 III. 2d at 478-80.

3. Because it does not involve a physical taking from the person of another, a theft by deception is not a theft in the first degree. As noted, almost universally at common law a larceny from a person is defined by the physical act of taking property from another's person, in part because of the risk of confrontation and danger such a theft creates. By definition, a theft by deception means that the victim was somehow tricked into relinquishing his property voluntary "under color or aid of deception." The persuasive authorities discussed above support a distinction between "theft by taking" which, if done from the person of another, is a first-degree theft and "theft by deception," which is not.

A Washington decision interpreting the "theft by deception" statute is also instructive. In State v. Mermis, 105 Wn. App. 738, 20 P.3d 1044 (2001), Mermis fraudulently obtained Terry Johnson's valuable Dodge Viper automobile and subsequently persuaded him to execute a title and bill of sale. Id. at 741-42. Johnson, believing Mermis to be a man of substantial means, agreed to a sale for $55,000 and told his wife "to give the keys to Mermis because Mermis 'wanted to drive it.'" Id. at 742.

Mermis never paid for the car and refused Johnson's demands that it be returned. The State ultimately filed an information alleging that Mermis,

> on or about September 26, 1995, with intent to deprive another of property, to-wit: a Dodge Viper having a value in excess of $1,500, did obtain control over such property belonging to Terry Johnson by color and aid of deception, and, did exert unauthorized control over such property[.]

Id. at 742 n. 5.

The issue on appeal was whether the prosecution was barred by the statute of limitations or whether Mermis' actions in obtaining the title and bill of sale constituted a continuing criminal impulse, enabling prosecution within the limitations period. Id. at 743-45. In analyzing the question, the court noted that "[t]he UCC makes a distinction between theft by deception and theft by taking, such that one who commits theft by deception acquires voidable title, while one who commits theft by taking acquires no title at all." Id. at 748 n. 5 (citation omitted). The court observed that while Washington has not adopted the UCC provision that embodies that distinction, "Our cases nonetheless embrace it, generally recognizing a difference between 'outright theft' (theft by trespass) and theft by deception." Id. (citing cases).

The evidence in Mermis established that Johnson's wife was instructed to hand Mermis the keys to the car under the mistaken belief that

Mermis intended to pay for it. 105 Wn. App. at 742. This was not a theft from Johnson's wife's person as no "taking" occurred; it was a theft by deception.

Several hypotheticals help to illustrate this principle. Imagine, for example, a traveler at an airport. He hands his luggage to a person who claims to be a taxi driver. That person takes the luggage and drives away. This scenario describes a theft by deception, not a theft by taking, and thus would not support a conviction for theft in the first degree.

A woman in a shop intends to steal a valuable dress. A shop assistant hands the dress to the woman to try on, and in the dressing room the woman removes the tags from the dress, puts on her coat, and wears the dress out of the store. According to the State's theory in this case, the woman would have committed a theft in the first degree. But as in this case, the shop assistant willingly surrendered control over the dress to the woman, believing she intended to pay for it. The dress was not "taken" from her; rather, she was deceived into relinquishing control over it.

This Court should conclude that a prosecution for first degree theft from the person of another pursuant to RCW 9A.56.030(1)(b) necessarily requires proof of an actual taking, and excludes theft by deception.

4. Principles of statutory construction support petitioner's position.

The commissioner incorrectly reasons that the "obtain[ing] control over"[4]— more specifically defined as "to bring about a transfer of"[5]— another's property not only proves that a taking has occurred but also equates to the "taking of the property *from the person of another*". *Slip opinion, 2–3* (emphasis added).

> The question then is whether the State's proof of the conduct of Mr. Adams, who indisputably 'obtain[ed] control' of the mother's money, also proved that he took the money 'from [her] person,' for the purpose of first degree theft. as defined in RCW 9A.56.030(1)(b). The answer is 'yes.' The plain and ordinary meaning of 'take' in the first degree theft context clearly includes ' "to gain or receive into possession." ' *See* State v. Britten, 46 Wn. App. 571, 574, 731 P.2d 508 (1987) (quoting Black's Law Dictionary 1303 (5th ed. 1979)). Here, Mr. Adams received the mother's money into his possession. He also received it directly from her. Thus, Mr. Adams took money from the mother's person, and his conduct meets the statutory requisites of first degree theft.

Slip opinion, 3.

The commissioner's reliance on State v. Britten is misplaced. There, the issue was whether for purposes of a third degree theft conviction, Mr. Britten wrongfully "took" jeans from a store. He argued that cutting off price tags and concealing the pants on himself while in a dressing room did not establish a "taking" because he didn't leave the

[4] RCW 9A.56.020(1)(b).

dressing room or the store. The court disagreed, reasoning that under a plain and ordinary meaning of "take", Mr. Britten had clearly "assumed ownership" of the jeans, and therefore had "taken" them for purposes of the third degree theft statute. Britten, 46 Wn. App. 571, 573-74. In Britten, the issue was whether property was "taken". Unlike here, there was no further issue of whether the jeans were taken *from the person of another.*

More importantly, the commissioner's reasoning ignores the plain language of the first degree theft statute. "The purpose of statutory construction is to give content and force to the language used by the Legislature. When interpreting a criminal statute, a literal and strict interpretation must be given. Plain language does not require construction." (citations omitted).

Theft by definition means some sort of "taking" of property from another. To accept the commissioner's extrapolation that proof of "obtaining control over" (i.e. "taking") is at the same time proof that property was taken *from the person of another* disregards that the plain language "from the person of another" is used by the legislature to define

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[5] RCW 9A.56.010(10).

one alternative means of first degree theft as well as to distinguish it from other degrees of theft:

> A person is guilty of theft in the first degree if he or she commits theft of ... (a) property ... which exceed(s) five thousand dollars in value ...; (b) property of any value ... taken **from the person of another** ... .

RCW 9A.56.030(1) (emphasis added).

> A person is guilty of theft in the second degree if he or she commits theft of: (a) property ... which exceed(s) seven hundred fifty dollars in value but does not exceed five thousand dollars in value ... .

RCW 9A.56.040(1).

> A person is guilty of theft in the third degree if he or she commits theft of property which (a) does not exceed seven hundred fifty dollars in value. ...

RCW 9A.56.050(1).

Each word of a statute must be accorded meaning. State ex rel. Schillberg v. Barnett, 79 Wn.2d 578, 584, 488 P.2d 255 (1971). "[T]he drafters of legislation ... are presumed to have used no superfluous words and we must accord meaning, if possible, to every word in a statute. " State v. Roggenkamp, 153 Wn. 2d 614, 624, 106 P.3d 196 (2005) (citation omitted). Thus a prosecution for "theft in the first degree", where not

predicated on the value of the property, involves "theft by taking" and requires proof that property is physically taken from the person of another. RCW 9A.56.030(1)(b). This requirement of "theft by taking" reflects the Courts' and Legislature's acknowledgment that such a taking creates a risk of confrontation between the victim and the defendant and constitutes a serious invasion of the victim's privacy. Here, the facts established a "theft by deception": the victim voluntarily surrendered the property, only later realizing that she had been tricked into relinquishing it. However, the State failed to prove that it was a "theft by taking," as required to sustain a conviction for theft in the first degree. The conviction must be vacated and dismissed.

5. The evidence viewed in the light most favorable to the State showed only that a theft by deception occurred. The judge convicted Orry of theft in the first degree. Because the evidence did not establish a taking from Ms. Phillips' person, but only a theft by deception, the theft in the first degree conviction must be vacated and dismissed, and this matter remanded for entry of a conviction on the lesser included offense of theft in the third degree and resentencing.

When the sufficiency of the evidence is challenged, the court must view the evidence in the light most favorable to the prosecution and decide

whether any rational trier of fact could have found the elements of the crime beyond a reasonable doubt. State v Green, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980). A claim of insufficiency admits the truth of the State's evidence and all inferences that can reasonably be drawn therefrom. State v. Salinas, 119 Wn.2d 192,201,829 P.2d 1068 (1992).

The judge dismissed the charged crime of robbery in the first degree and acquitted Orry of the lesser included offense of robbery in the second degree. CP 29–30. The judge thus necessarily rejected the State's theory that a gun or even a threat of force was involved in the crime.

Thus, the question that remains is whether Orry physically wrested the money from Ms. Phillips or whether he tricked her into giving it to him. Jason said Orry "snatched" the money when his mother pulled it out of her pocket. 2/13/12 RP 92. Ms. Phillips said Orry reached and grabbed her money as she was counting it out from one hand to the other. 2/13/12 RP 118–19. However the trial court clearly based its finding of guilt on Orry's deception.

In making its ruling, the trial court first noted that "[i]n this case, everybody had significant credibility issues" and "when you have a case like this where nobody seems all that believable, you can nevertheless sort of get a sense of whose story makes more sense, even though it's perhaps not

a story that you want to believe." 2/14/12 RP 235–36. The court specifically disbelieved Ms. Phillips' and her son's story that the incident occurred while they were just going to the store to get Ms. Phillips some cigarettes, and that the $70 was intended to purchase an ice cream cake for her son's birthday celebration the following day: "I don't find their testimony believable that – about this ice cream cake and going to the store." 2/14/12 RP 236; *see generally* 2/13/12 RP 91–92, 96, 115–17, 121–22.

Instead, "what makes more sense to [the Court] is the version that [Orry] tells, ... that this was sort of a joint venture and he decided to fool them." 2/14/12 RP 236. Having determined whose testimony was credible, the trier of fact continued: "I believe based on the testimony and your testimony that [Ms. Phillips] thought she was giving you money so you could buy drugs for her and you decided to be clever and pretend that you were knocking on somebody's door and run away with her money." 2/14/12 RP 237. The court concluded that [Orry] took Ms. Phillips' $70 with the intent to deceive her by color, aid of deception, to keep her money for himself ... " and found that "absent the intentional deception by [Orry], Ms. Phillips would not have given [Orry] the $70." 2/14/12 RP 237; Finding of Fact 13 at CP 30.

The finding of guilt herein was based on Orry's deception in securing the voluntary relinquishment of money from Ms. Phillips. This does not constitute a physical taking from the person, but does constitute a theft in Ms. Phillips' presence. "By color or aid of deception" Orry "obtain[ed] control over the property ... with intent to deprive [Ms. Phillips of such property." RCW 9A.56.020. The State did not prove a theft in the first degree.

6. The remedy is vacation and dismissal of the theft in the first degree conviction and entry of a conviction for the lesser included offense of theft in the third degree. "The Double Jeopardy Clause forbids a second trial for the purpose of affording the prosecution another opportunity to supply evidence which it failed to muster in the first proceeding." Burks v. United States, 437 U.S. 1, 11, 98 S.Ct. 2141,57 L.Ed.2d 1 (1978). Orry's conviction for theft in the first degree must therefore be reversed and dismissed. Upon dismissal and vacation of the theft in the first degree conviction, remand for entry of a conviction on the lesser included offense of theft in the third degree[6] is proper. *See* State v. Gilbert, 68 Wn. App. 379, 384-88, 842 P.2d 1029 (1993) ("This court may remand for entry of a conviction on a lesser offense even when a lesser was never submitted to

the jury, so long as the jury necessarily found all the elements of the lesser offense.").

VI. CONCLUSION.

For the reasons stated, Orry's conviction for theft in the first degree must be reversed.

Respectfully submitted on November 21, 2013.

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[6] RCW 9A.56.050 provides in relevant part that "(1) A person is guilty of theft in the third degree if he or she commits theft of property or services which (a) does not exceed seven hundred fifty dollars in value. . . . RCW 9A.56.050(1)(a).

PROOF OF SERVICE (RAP 18.5(b))

I, Susan Marie Gasch, do hereby certify under penalty of perjury that on November 21, 2013, I mailed to the following, by U.S. Postal Service first class mail, postage prepaid, or provided e-mail service by prior agreement (as indicated), a true and correct copy of Mr. Adams' petition for review and Appendix A and Appendix B:

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July 9, 2013

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CASE # 307786
State of Washington v. Orry L. Adams
SPOKANE COUNTY SUPERIOR COURT No. 128001509
Consolidated with:
CASE # 307794
State of Washington v. Orry L. Adams
SPOKANE COUNTY SUPERIOR COURT No. 111035353

Counsel:

Enclosed is your copy of the Commissioner's Ruling, which was filed by this Court today.

If objections to the ruling are to be considered (RAP 17.7), they must be made by way of a Motion to Modify filed in this Court within 30 days from the date of this ruling (**August 8, 2013**). Please file the original with one copy; serve a copy upon the opposing attorney and file proof of such service with this office.

If a motion to modify is not timely filed, appellate review is terminated.

Sincerely,

Renee S Townsley

Renee S. Townsley
Clerk/Administrator

RST:jcs
Encl.

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The Court of Appeals

of the

State of Washington

Division III

FILED

JUL -9 2013

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. ORRY L. ADAMS, Appellant.	)	No. 30778-6-III consol'd/w no 30779-4-III
	)	COMMISSIONER'S RULING

Orry L. Adams appeals the Spokane County Superior Court's April 13, 2012 disposition order that the court's juvenile division entered after it found him guilty of first degree theft.[1] He contends that even when viewed in a light most favorable to the State, the evidence was insufficient to convince a rational trier of fact beyond a reasonable

[1] Mr. Adams also filed appeal no. 30779-4-III from the superior court's Order on Reconsideration. This Court consolidated the matters on appeal.

doubt that he committed all the elements of that offense. *See State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). Specifically, he argues that theft by deception cannot be first degree theft because the latter offense requires proof of a physical taking from the person.

The Court has placed Mr. Adams' appeal on its motion on the merits docket.

The pertinent facts are briefly stated as follows: Mr. Adams attended a birthday party for a 15-year-old on November 6, 2011. Mr. Adams told the 15-year-old's mother that he knew where they could procure drugs. He, the mother, and her son left the residence, and Mr. Adams led them to a house that he pretended was that of a drug dealer. He told the mother he needed $70 for the purchase, which she gave to him. He left the two on the sidewalk while he went up to the door. He knocked, but instead of waiting for an answer, he ran away with the money. The court concluded that "Mr. Orry Adams used deception to obtain money from the person of [the mother]." CP at 30.

RCW 9A.56.020(1) defines "theft" to include conduct in which a person "(b) *[b]y color or aid of deception . . . obtain[s] control* over the property . . . of another . . ., with intent to deprive him or her of such property . . .." (Emphasis added.) Under RCW 9A.56.010(10), "[o]btain control over" . . . means: (a) In relation to property, *to bring about a transfer* or purported transfer to the obtainer or another of a legally recognized interest in the property." A person commits first degree theft if he commits theft of "(b) [p]roperty of any value . . . *taken from the person* of another." (Emphasis added.) RCW

9A.56.030(1)(b).

The question then is whether the State's proof of the conduct of Mr. Adams, who indisputably "obtain[ed] control" of the mother's money, also proved that he took the money "from [her] person," for the purpose of first degree theft, as defined in RCW 9A.56.030(1)(b). The answer is "yes." The plain and ordinary meaning of "take" in the first degree theft context clearly includes "'to gain or receive into possession.'" *See State v. Britten*, 46 Wn. App. 571, 574, 731 P.2d 508 (1987) (quoting Black's Law Dictionary 1303 (5th ed. 1979)). Here, Mr. Adams received the mother's money into his possession. He also received it directly from her. Thus, Mr. Adams took money from the mother's person, and his conduct meets the statutory requisites of first degree theft.

Mr. Adams bases his arguments to the contrary on caselaw that he believes is analogous, although admittedly not directly on point. In the face of unambiguous statutory language, such caselaw is not available to interpret what the legislature has already clearly stated. *See State v. Cooper,* 176 Wn.2d 678, 683, 294 P.3d 704 (2013) ("If the plain language is unambiguous, we need go no further. But if the language may be reasonably interpreted in more than one way, it is ambiguous, and we may rely on the standard aids to statutory construction."). Indeed, Mr. Adams' arguments would require the court to exclude theft by deception from first degree theft, unless the value was over $5,000. The legislature has not done so. Accordingly,

IT IS ORDERED, the Court's motion on the merits is granted, and Mr. Adams'

conviction is affirmed.

July 9, 2013

Monica Wasson
Commissioner

Renee S. Townsley
Clerk/Administrator

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The Court of Appeals
of the
State of Washington
Division III

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October 22, 2013

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CASE # 307786
State of Washington v. Orry L. Adams
SPOKANE COUNTY SUPERIOR COURT No. 128001509
Consolidated with 307794
State of Washington v. Orry L. Adams
SPOKANE COUNTY SUPERIOR COURT No. 111035353

Dear Counsel:

Enclosed is a copy of the Order Denying Motion to Modify the Commissioner's Ruling of July 9, 2013.

A party may seek discretionary review by the Supreme Court of the Court of Appeals' decision. RAP 13.4(a). A party seeking discretionary review must file a Petition for Review in the Court of Appeals within 30 days after this Court's Order Denying Motion to Modify (may be filed by electronic facsimile transmission). Please serve a copy upon the opposing party and provide proof of such service.

Sincerely,

Renee S Townsley

Renee S. Townsley
Clerk/Administrator

RST:sh
Enclosure

c: Orry L Adams
#844249
c/o Spokane County Jail
1100 West Mallon Avenue
Spokane, WA 99260-0320

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

STATE OF WASHINGTON,	)	
	)	No. 30778-6-III consolidated with
Respondent,	)	30779-4-III
	)	
v.	)	
	)	ORDER DENYING
ORRY L. ADAMS,	)	MOTION TO MODIFY
	)	COMMISSIONER'S RULING
Appellant.	)	

Having considered appellant's motion to modify the commissioner's ruling of July 9, 2013, and the record and file herein;

IT IS ORDERED the motion to modify the commissioner's ruling is denied.

PANEL: Judges Korsmo, Kulik, Fearing

DATED: October 22, 2013

FOR THE COURT:

KEVIN M. KORSMO
Chief Judge