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66824-2

NO. 66824-2-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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STATE OF WASHINGTON,

Respondent,

v.

USANGA RICHARD,

Appellant.

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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE CHRIS WASHINGTON

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**BRIEF OF RESPONDENT**

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FILED  
COURT OF APPEALS DIV I  
STATE OF WASHINGTON  
2011 OCT 25 PM 1:45

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**A. ISSUES PRESENTED**

1. To commit theft in the third degree, a defendant must intentionally and wrongfully deprive another of property.

Substantial evidence was presented that Richard, who was admittedly present at the time of the theft, committed the theft. Is there sufficient evidence from which a reasonable fact-finder could conclude that Richard was the person who stole the tip money?

**B. STATEMENT OF THE CASE**

1. PROCEDURAL FACTS.

Juvenile respondent Usanga Richard was charged by information with Theft in the Third Degree ("theft"); specifically, the State alleged that on or about July 8, 2010, Richard stole money from a tip jar at the Pink Spot cafe. CP 1. For trial, the case was joined with a Robbery in the First Degree ("robbery") case in which the respondent was alleged to have committed an armed robbery in the same area on the same date approximately one hour after the theft. Supp. CP 54. Trial occurred in March of 2011. 1RP & 2RP.<sup>1</sup> The Honorable Chris Washington found Richard guilty as charged

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<sup>1</sup> The two volumes of verbatim report of proceedings are referenced as follows: 1RP - January 24 & 25, 2011; and 2RP - February 1 & 3, 2011 & March 11, 2011.

on both counts. CP 23-32; 2RP 128-29. The court imposed a standard range sentence on the robbery and no further sanctions on the theft. CP 17-22; 2RP 168-69, 172. As appellant, Richard now challenges the sufficiency of the evidence to convict him of theft.

## 2. SUBSTANTIVE FACTS.

On July 8, 2010, at approximately 10:48 a.m., Katie Ociadacz was working as a barista at the Pink Spot cafe on Pacific Highway South in Federal Way, Washington. 2RP 4. Ociadacz was attending to a customer when she heard a noise behind her near the drive-through window. 2RP 6. Ociadacz looked toward the drive-through window and saw a teenage black male wearing a red shirt reaching through the window and stealing money from the cafe's tip jar, an estimated \$80 in small bills. 2RP 8-9, 11. Standing just behind the male was another teenage black male in a white shirt. 2RP 9. When Ociadacz yelled at the males, they turned and fled with the money. 2RP 9. Ociadacz jumped through the window and began chasing the two males. The male in the white shirt momentarily stopped and looked back at Ociadacz. 2RP 11. The male in the red shirt then yelled to the male in the

white shirt, "Come on!" The two males ran off together. 2RP 29. Ociadacz could not catch them, so she called 911. 2RP 13. Police responded to the scene, but were initially unable to find the suspects. 1RP 12.

Less than two hours later, at approximately 12:19 p.m., officers received a tip about the suspects' whereabouts. 1RP 13. Officers arrived at the reported location to find the two suspects walking along Pacific Highway South, approximately four blocks from the Pink Spot. 1RP 14. The suspects matched the general description provided by Ociadacz. 1RP 46-51. The suspects were detained and Ociadacz was transported to the scene for an identification procedure. 1RP 14.

Even before the patrol car had stopped, Ociadacz positively identified the suspects as the males involved in the theft. 2RP 14-15. Once she was given a better opportunity to look at them, Ociadacz again confirmed with certainty that the suspects being detained were the same males. 2RP 16. Ociadacz exclaimed that the suspects were still wearing the same clothes that they had been wearing during the theft. 2RP 15. Ociadacz identified the white-shirted suspect as the male who stood by during the theft and momentarily stopped when Ociadacz gave chase. 2RP 16. The

white-shirted suspect was named Isaiah Woods. 1RP 26.

Ociadacz identified the red-shirted suspect as "the one who stole the money" and the one who told the other male to "come on."

2RP 16, 29, 33. The red-shirted suspect was the respondent,

Usanga Richard. 1RP 26, 145.

Upon his arrest, Richard initially provided police with a false name. 1RP 18. In a search incident to arrest, officers found a wad of approximately \$70 in small bills in Woods' possession. 1RP 17.

Richard agreed to give a statement to police about the theft incident. 1RP 161. Richard admitted to being with Woods near the Pink Spot at the time of the theft. 1RP 161. Richard claimed that he saw Woods approach the coffee shop, he heard Ociadacz yelling that her money had been stolen, he saw Woods return from the coffee shop, and he left the area with Woods after that. 1RP 161.

Richard and Woods were also identified by a robbery victim, Nicholas Wetherbee, as being together during the commission of an armed robbery on Pacific Highway South at about noon on the same day. 1RP 71. The robbery location was approximately one block from the Pink Spot. 1RP 75; 2RP 14. During the robbery, Richard was wearing a "red hoody" and Woods was wearing a light

gray shirt. 1RP 79. Also during the robbery, Woods was seen displaying a wad of money. 1RP 88.

**C. ARGUMENT**

1. SUBSTANTIAL EVIDENCE SUPPORTS RICHARD'S CONVICTION FOR THEFT IN THE THIRD DEGREE.

Richard asserts that the State did not prove that he committed theft. This argument should be rejected because there was sufficient evidence from which a rational fact-finder could find that Richard was the male who stole money from the tip jar.

The State must prove each element of the charged crime beyond a reasonable doubt. State v. Alvarez, 128 Wn.2d 1, 13, 904 P.2d 754 (1995). Evidence is sufficient to support a conviction if, viewed in a light most favorable to the State, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. State v. Goodman, 150 Wn.2d 774, 781, 83 P.3d 410 (2004).

A claim of insufficiency admits the truth of the State's evidence and all reasonable inferences that can be drawn therefrom. Id. Circumstantial and direct evidence carry equal weight when reviewed by an appellate court. Id. A reviewing court

must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. State v. Fiser, 99 Wn. App. 714, 719, 995 P.2d 107, review denied, 141 Wn.2d 1023 (2000). The reviewing court need not be convinced of the defendant's guilt beyond a reasonable doubt, but only that there is substantial evidence in the record to support the conviction. Id. at 718.

There is substantial evidence in this case to support the conclusion that Richard was the male who stole the tip money. The victim witnessed the theft. 2RP 6-13. The victim provided a description of the theft suspect. 1RP 12. Richard matched the general description of the theft suspect. 1RP 46-51. Richard was found near the scene soon after the theft and was detained for an identification procedure. 1RP 14. The victim immediately and positively identified Richard as the person who committed the theft. 2RP 14-16. The victim further specified that Richard was still wearing the clothes he had worn during the theft. 2RP 15. Officers confirmed that the victim identified Richard. 1RP 26, 145. Richard's accomplice was found with a wad of cash consistent with the money stolen from the tip jar. 1RP 17. Richard provided a

statement in which he admitted to being present at the scene of the theft with the accomplice. 1RP 161.

Contrary to Richard's argument, the basis for the finding of guilt against Richard was not based on "mere proximity." In addition to evidence of temporal and spatial proximity, the Court heard the victim's observations, saw pictures confirming that Richard matched the suspect description, heard the victim's certitude in her identification of the suspect, heard officer testimony that Richard was the person identified by the victim, heard evidence that Richard's accomplice was found with a wad of small bills, and heard evidence that Richard admitted to being present at the scene during the theft. There was sufficient evidence from which a fact-finder could find that Richard committed the theft.

Additionally, in finding that Richard was the person who committed the theft, the Court did not err in finding that Richard was the person who committed the acts described in findings of fact 4-7, or the person identified by the victim in findings of fact 28-29.

D. CONCLUSION

For all of the foregoing reasons, the State respectfully asks this Court to affirm Richard's theft conviction.

DATED this 24 day of October, 2011.

Respectfully submitted,

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