

COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY

NO. 40892-9-II

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

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STATE OF WASHINGTON,  
Respondent,

v.

MATHEW C. MEACHAM,  
Appellant.

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APPEAL FROM THE SUPERIOR COURT OF THE STATE  
OF WASHINGTON FOR GRAYS HARBOR COUNTY

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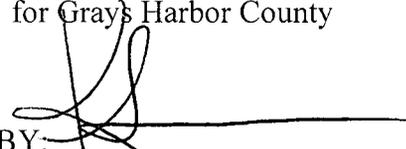
THE HONORABLE GORDON L. GODFREY, JUDGE

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BRIEF OF RESPONDENT

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## STATEMENT OF THE CASE

The defendant was charged by Information filed on February 22, 2008 with two counts of Residential Burglary with Sexual Motivation. This Information was amended for clarification and the case proceeded to trial on the Amended Information, charging the same crimes. CP at 5-6.

After the bench trial on June 2, 2010, the court entered the following Findings of Fact on June 7, 2010:

**1.**

Jami Cowden is a 29 year old female who, during the charged time period, resided alone at 1216 Lincoln Street, Hoquiam, within Grays Harbor County.

**2.**

Miss Cowden's residence has an attached garage where her washer and dryer were located.

**3.**

The defendant lived two houses away at 1208 Lincoln Street, Hoquiam, along with his teenaged son.

**4.**

Between January 18 and January 20, 2008, Miss Cowden's garage was unlawfully entered and clothing was stolen from her dryer. Specifically, bras, panties, socks and shirts.

**5.**

On January 25, 2008, the police set up a VARDA alarm in Miss Cowden's garage to notify police of any unlawful entry and record any such event.

**6.**

The police also placed a "decoy" load of laundry into Miss Cowden's dryer that contained a mixture of clothing, including panties that were marked with Miss Cowden's initials.

**7.**

On February 20, 2008, the VARDA alarm was activated and police responded to 1216 Lincoln Street.

**8.**

While approaching the back of the residence, officers could hear what sounded like objects being moved around inside the garage.

**9.**

As they entered the fenced backyard, officers observed a subject exiting the garage into the fenced backyard of 1216 Lincoln Street.

**10.**

The subject was wearing a dark hooded sweatshirt with the hood pulled up, dark pants, and gloves.

**11.**

The subject was identified as the defendant.

**12.**

The garage area was entered by the police and it was determined the surveillance equipment had been disconnected and the recording unit was missing from the garage.

**13.**

There was fresh grass and moisture on the pressure pad in front of the clothes dryer, this is one of two pressure pads placed in the garage that would activate the VARDA alarm.

**14.**

The officer observed that at least a pair of underwear and a bra were missing from the "decoy" load of laundry.

**15.**

A large black plastic garbage sack of clothing and a small black pen light were found on the back deck.

**16.**

The missing surveillance equipment was found next to the back corner of the fence.

**17.**

Miss Cowden came to the residence and identified the black bag of clothing as coming from her garage. It was clothing her mother had stored there before a garage sale.

**18.**

Miss Cowden also believed that items were again missing from the dryer.

**19.**

The defendant was interviewed by the police and stated the following:

- a. The defendant admitted to entering the garage looking for “female” clothing.
- b. The defendant admitted that the black pen light on the deck belonged to him and that he uses it for work.
- c. The defendant stated that he went straight to the clothes dryer and took some items.
- d. As the defendant was leaving, he noticed the red light of the surveillance camera.
- e. The defendant followed the cords and found the DVR and power units and unplugged the cameras.
- f. The defendant then went home and put the clothing items he took between his bed mattress and box spring.
- g. The defendant had a couple of drinks, thought about the surveillance system and went back to get it.
- h. The defendant entered the garage in the same manner as earlier, disconnected the DVR and power supply units and removed them from the garage, placing them by the fence.
- i. The defendant stated he would probably have destroyed the equipment.
- j. The defendant then went back in for the large black bag and he thought there may be additional surveillance equipment concealed inside of it.
- k. As the defendant exited with this bag onto the deck, he was confronted by police.
- l. The defendant admitted that he had entered the same garage the same way about a month prior to this night.
- m. The defendant stated that the underwear he had taken during the previous incident was in a bottom dresser drawer in his bedroom, and the other clothing was in a bag in his closet.
- n. The defendant stated there were additional pairs of women’s panties in the bottom drawer, but these were from previous relationships he had with women.

**20.**

The defendant agreed to take police to his home and show them the clothing.

**21.**

Woman's underwear, specifically two pairs of panties and a bra, was located between the mattress and box spring in the defendant's bedroom.

**22.**

This underwear was marked with the victim's initials on the tag and matched what Detective Krohn observed being placed into Miss Cowden's dryer on January 25.

**23.**

A bag of clothing, socks, shirts and scrubs, consistent with the clothing described as stolen from Miss Cowden between January 18 and 20 was located in the closet as described by the defendant.

**24.**

The defendant pointed out the dresser drawer, and the officer observed about ten pairs of women's panties.

**25.**

The defendant immediately pointed out the three pairs he had taken from Miss Cowden in January.

**26.**

The video obtained through the surveillance system set up at 1216 Lincoln Street shows on February 20, 2008:

- a. The defendant entering the garage, looking into the clothes washer and then the clothes dryer.
- b. The defendant removing items from the dryer and appearing to put them in his sweatshirt pocket.
- c. The defendant appears to hear something, possibly the fan from the DVR unit, and looks over in the direction of one of the cameras.
- d. The defendant shuts the dryer door, again looks up at the camera, then wipes the dryer door down where he touched it.
- e. The defendant starts to walk over to the camera, stops and pauses, then continues toward it.
- f. The defendant unplugs the cameras and the video goes dark.

**27.**

On February 22, 2008, a search warrant was obtained for the defendant's house to recover the clothing the defendant was wearing on February 20 and the backpack he possessed.

**28.**

Officers recovered the clothing they observed the defendant wearing at the time of the burglary.

**29.**

The defendant stated that the backpack was probably in his bedroom.

**30.**

The door was secured by a hasp and padlock.

**31.**

The defendant admitted that when he removed clothing from the dryer he “wanted something female.”

**32.**

The items taken in January were separated. The panties were placed into a drawer with other panties and the other clothing was stored in a bag in the defendant’s closet.

**33.**

The defendant stated that these other pairs of panties were part of “a collection of woman’s underwear from past relationships.”

**34.**

Defendant was immediately able to identify the specific panties that he taken from Miss Cowden out of approximately ten pairs.

**35.**

The panties taken on February 20 had been placed between the defendant’s mattress and box spring.

**36.**

The defendant eventually admitted that he had thrown the backpack and the remaining women’s panties into the Dumpster at his work.

CP 7-12.

Based on the evidence presented and stipulated to at trial, the court found the defendant guilty as charged. CP 7-12. The defendant was sentenced on June 7, 2010. CP 13-24.

## ARGUMENT

Due process requires that the State bear the burden of proving each and every element of the crime beyond a reasonable doubt. *State v. McCollum*, 98 Wn.2d 484, 488, 656 P.2d 1064 (1983). The applicable standard of review is whether, after reviewing the evidence in the light most favorable to the prosecution, 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, 338, 851 P.2d 654 (1993). Also, a challenge to the sufficiency of the evidence admits the truth of the State's evidence and any reasonable inferences from it. *State v. Barrington*, 52 Wn.App. 478, 484, 761 P.2d 632 (1987) rev. den., 11 Wn.2d 1033 (1988). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted more strongly against the defendant. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

### **Sexual Motivation Can Be Reasonably Inferred from the Evidence Presented**

The defendant relies on *State v. Halstien* to claim that there is insufficient evidence for the trial court to have found sexual motivation in this case. However, the defendant's analysis of *Halstien* is overly restrictive and is not supported by the opinion.

In *State v. Halstien*, Halstien delivered the newspaper to C.B. for a little over a year prior to the burglary. During this time, Halstien acted "overly familiar" and asked C.B. "inappropriate questions" about her

personal property. *State v. Halstien*, 122 Wash.2d 109, 112, 857 P.2d 270 (1993). Eventually, C.B. had her secretary call to cancel her subscription to the paper partly because Halstien “gave [her] the creeps” when he came to collect. *State v. Halstien*, 122 Wash.2d at 112.

Halstien continued to deliver the paper and eventually burglarized C.B.’s home. *Id.* at 113. The only items taken “were a box of condoms and a vibrator.” *Id.* at 113. An investigating officer found a framed photo of the victim and her sister which had a “funny substance” on it that he believed to be “semen or some type of bodily fluid.” *Id.* at 114. The trial court found Halstien guilty of second degree burglary with sexual motivation. *Id.* at 114.

The Court finds that the language of the sexual motivation statute requires “that the finding of sexual motivation be *based on some conduct* forming part of the body of the underlying felony. The statute does not criminalized sexual motivation. Rather, the statute makes sexual motivation *manifested by the defendant’s conduct* in the *course of committing a felony* an aggravating factor at sentencing. *Id.* at 120 (Italics in original) (quoting *State v. Halstien*, 65 Wash.App. 845, 853, 829 P.2d 1145 (1992)). The defendant stops his analysis of the case at this point.

However, the Court goes on state that “the State may focus on [a defendant’s] speech and expressive conduct both during and before the burglary to prove his motive was sexual gratification.” *Id.* at 125. “The statute does not punish a defendant for having sexual thoughts, but rather

punishes the defendant for *acting* on those thoughts in a criminal manner.” *Id.* at 123 (Italics in original).

Division I has also not found the *Halstien* opinion as restrictive as the defendant urges. In *State v. Vars*, Vars was convicted of Indecent Exposure after being seen walking around a residential neighborhood “completely nude” except for shoes. *State v. Vars*, 157 Wash.App. 482, 486, 237 P.3d 378 (2010). The trial court allowed evidence of three prior convictions for Indecent Exposure to prove sexual motivation. *State v. Vars*, 157 Wash.App. at 494.

The common elements of Vars’s offenses were that: “He exposes himself in urban settings and is often apprehended at some distance from his parked car. When he is observed by civilians, he attempts to hid while continuing to watch his victim. But when police arrive, he attempts to flee the scene. And, when apprehended, he claims to be looking for a place to defecate even if suitable restroom facilities are nearby.” *Id.* at 495-96. The court found that “an objective trier of fact could logically infer from this record that Vars’s indecent exposure on this occasion was sexually motivated as well.” *Id.* at 496.

The *Vars* court addressed *Halstien* as follows:

Notably, nothing in *Halstien* prohibits a consideration of prior acts to show that a desire for sexual gratification motivated the current crime. In fact, the court expressly stated that evidence of prior contacts between the defendant and the victim was relevant and admissible under ER 404(b) to prove motive. Our holding here is consistent with *Halstien* as Vars's prior convictions were admitted to prove that his recent exposure fit within a sexually motivated

pattern of behavior.

*Id.* at 497; *See also Halstien* at 126.

*Halstien* and *Vars* clearly do not require an overt sexual act in order for a crime to be “sexually motivated.” Instead, if the defendant’s state of mind is such that he is committing his crime, in part, for his sexual gratification then it is “sexually motivated.”

Under the rationale of *Halstien* and *Vars*, the trial court reasonably inferred that the defendant’s actions in this case were sexually motivated. The trial court is not limited in its assessment by only the conduct during the commission of the actual crime. The statute only requires that the “finding of sexual motivation be *based on some conduct* forming part of the body of the underlying felony.” *Halstien* at 120.

The evidence supports the inference that the defendant targeted his young, single female neighbor and specifically sought to steal her intimate clothing. Panties by their very use are intimate in nature, closely associated with a woman’s private areas. The defendant admitted that he wasn’t just stealing random clothes, he was “looking for something female,” indicating he must have known who lived in the residence, to increase his chances of finding panties.

The panties were not with the defendant’s clothing as if he were intending to wear them. The defendant didn’t give them to anyone, so there is no evidence that he stole them as a gift. The defendant was not stealing random panties from a clothing store, but had targeted a specific

young woman. There is no evidence that the defendant was stealing panties for any other foreseeable reason than for his sexual gratification.

The defendant did not keep all the clothing from the first burglary in one place. The panties were placed in a drawer with his “collection” of panties from previous relationships. The other clothing was discarded in a bag in the defendant’s closet. He was also able to readily identify which panties belonged to the victim versus panties from other women. The fact that he kept the victim’s panties with trophies from his sexual relationships suggests that the panties had a special significance to the defendant. The fact that it was panties he collected from previous relationships indicates an intimate and sexual meaning, rather than saving photographs or letters.

During the second burglary, the defendant only took intimate garments and left the work clothes behind. The panties from the second burglary were found between the mattress and box spring of the defendant’s bed, also an intimate location. All of the panties taken, in both burglaries, were found in the defendant's bedroom which was secured by a padlock.

The courts in other jurisdictions have found that such a burglary is sexually motivated. *State of Kansas v. Patterson*, 25 Kan.App.2d 245, 963 P.2d 436 (1998) (trial court found sexual motivation where defendant stole neighbor’s panties, kept them in a locked cabinet containing pornographic material, and defendant only stole women’s underwear which carried a

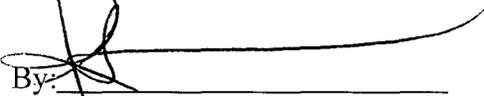
“sexual connotation”).

### CONCLUSION

The evidence, taken in a light most favorable to the State, supports a finding of sexual motivation in this case, and the verdict of the trial court should be upheld.

DATED this 17<sup>th</sup> day of February, 2011.

Respectfully Submitted,

By: 

KATHERINE L. SVOBODA  
Sr. Deputy Prosecuting Attorney  
WSBA # 34097

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DIVISION II

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STATE OF WASHINGTON  
BY DM  
DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
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STATE OF WASHINGTON,

Respondent,

No.: 40892-9-II

v.

**DECLARATION OF MAILING**

MATHEW C. MEACHAM,

Appellant.

**DECLARATION**

I, Barbara Chapman hereby declare as follows:

On the 17<sup>th</sup> day of February, 2011, I mailed a copy of the **Brief of**

**Respondent to:**

Jodi R. Backlund  
Manek R. Mistry  
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Mathew C. Meacham 340914  
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Airway Heights, WA 99001-2049

by depositing the same in the United States Mail, postage prepaid.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge and belief.

DATED this 17<sup>th</sup> day of February, 2011, at Montesano, Washington.

Barbara Chapman