

No. 31380-8-III

FILED  
DEC 18, 2013  
Court of Appeals  
Division III  
State of Washington

COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON, Respondent,

v.

LYNN MARIE ARNHOLD, Appellant.

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BRIEF OF APPELLANT

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## I. ASSIGNMENT OF ERROR

The evidence was insufficient to support the conviction for second degree theft.

### *Issue Pertaining to Assignment of Error*

Was the State's evidence insufficient to support the conviction for second degree theft because the intent to deprive and value were not proved beyond a reasonable doubt?

## II. STATEMENT OF THE CASE

Lynn Marie Arnhold was charged by information with first degree theft in count 1, obstructing a law enforcement officer in count 2, and resisting arrest in count 3. (CP 232). The case went to jury trial.

Jose Dominguez was a dishwasher at the Duck Brand Restaurant in Winthrop. (12/11/12 RP 259-60). His uncle, Teo Dominguez, a cook and waiter at the Duck Brand, also did construction. (*Id.* at 260-61). He kept his tools in a black trailer, which was usually parked at the restaurant. (*Id.*). Jose saw a lady hook up Teo's trailer to her vehicle, a green Ford Explorer, and drive away. (*Id.* at 262). He took a picture of the license plate and

saw a little kid in the Explorer. (*Id.* at 263). The trailer contained hand drills, hand saws, construction tools, and air compression tanks. (*Id.* at 264).

Albertano Dominguez, Teo's brother, also worked at the Duck Brand. (12/11/12 RP 267). He said Teo, who had the trailer for about two years, carried tools in it. (*Id.* at 268). The trailer was 9'x4' and made of black galvanized metal. (*Id.*). He had helped Teo earlier that day when they used a double saw, two skil saws, a chopper saw, and two electric planers. (*Id.* at 269).

Twisp Police Officer Ty Sheehan was on duty May 26, 2012, when he had contact with Ms. Arnhold. On radio traffic, he learned that a trailer had been stolen from the Duck Brand and the suspect had a green Ford Explorer. (12/11/12 RP 273). He knew Ms. Arnhold drove a similar car. (*Id.* at 274). The officer went to her house and saw the Explorer parked with a black and silver small utility trailer hooked up to it. (*Id.*). The trailer matched the description given over the radio. (*Id.*).

The front door of Ms. Arnhold's residence was open. (12/11/12 RP 275). It was about 8:30 p.m. (*Id.*). Officer Sheehan called dispatch and advised he was at Ms. Arnhold's address with

the trailer and vehicle matching the description. (*Id.*). He spoke with her and asked where she got the trailer, whereupon she shrugged her shoulders and shook her head. (*Id.* at 276). Ms. Arnhold said she hooked up the trailer because she was supposed to. (*Id.* at 277). She was detained and subsequently arrested after a scuffle with Officer Sheehan and several other officers who had arrived at her residence. (*Id.* at 277-82). Teo arrived and identified the trailer as his. (*Id.* at 282). The trailer VIN came back with Teo as the owner. (*Id.* at 295). The State rested.

The defense's motion for directed verdict on count 2, obstructing a law enforcement officer, was granted. (12/11/12 RP 320). An order was filed dismissing that count. (CP 47). The court also lowered the first degree theft count to second degree theft and an order so amending the charge was entered. (*Id.*; CP 46).

Ms. Arnhold testified in her own behalf. She acknowledged being in Winthrop on May 26, 2012, and taking a trailer. (12/11/12 RP 322). She was moving it for a friend who was out of town. (*Id.*). The plan was for him, his brother, and her to live and work in the South Dakota oil fields. (*Id.* at 323). Ms. Arnhold had received an "email text message" asking her to move the trailer. (*Id.* at 329).

She followed the directions in the text to the trailer, spotted it after her seven-year-old son saw it first, and hooked up the trailer because she thought she was supposed to. (*Id.* at 341).

No exceptions were taken to the court's instructions. (12/12/12/ RP 353). The defense did not contest the resisting charge. (*Id.* at 374-75). Ms. Arnhold was convicted of second degree theft and resisting arrest. (*Id.* at 330; CP 20-21). This appeal follows. (CP 4).

### III. ARGUMENT

A. The State's evidence was insufficient to support the conviction for second degree theft because the intent to deprive and value were not proved beyond a reasonable doubt.

In a challenge to the sufficiency of the evidence, the test is whether, viewing it in a light most favorable to the State, any rational trier of fact could find the essential elements of the crime beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 220-21, 616 P.2d 628 (1980). A claim of insufficient evidence admits the truth of the State's evidence and all reasonable inferences from it. *State v. Drum*, 168 Wn.2d 23, 35, 225 P.3d 237 (2010).

The State admitted it offered no proof as to the value of the

trailer or its contents:

Now, you'll also notice that there's a value number greater than seven hundred and fifty dollars. And the State admits there's no specific value in the testimony or the evidence presented that would indicate the value of that trailer or its contents. (12/12/12 RP 368).

The State had to prove the essential element of second degree theft that the value of items over which Ms. Arnhold purportedly exerted unauthorized control had a value of more than \$750. RCW 9A.56.040(1)(a). "Value" for purposes of theft means the market value of the property at the time and in the approximate area of the theft. RCW 9A.56.010(21). Market value is the price a well-informed buyer would pay to a well-informed seller. *State v. Longshore*, 141 Wn.2d 414, 429, 5 P.3d 1256 (2000).

Value may be proved by evidence of retail price alone and evidence of the price paid for an item carries great weight. *Longshore*, 141 Wn.2d at 430; *State v. Hermann*, 138 Wn. App. 596, 602, 158 P.3d 96 (2007). Also, value need not be proved by direct evidence as the jury may draw reasonable inferences from the evidence. *State v. Melrose*, 2 Wn. App. 824, 831, 470 P.2d 552 (1970).

But here, the State acknowledged that it presented no evidence of value so there was no evidence from which the jury could even draw any inference, reasonable or otherwise. *State v. Ehrhardt*, 167 Wn. App. 934, 944-46, 276 P.3d 332 (2012). In these circumstances, the evidence was insufficient to show that the property had a market value of greater than \$750 as required by RCW 9A.56.040(1)(a) and RCW 9A.56.010(21). On this ground alone, the conviction for second degree theft must be reversed and the charge dismissed with prejudice. 167 Wn. App. at 946.

Furthermore, the State failed to prove beyond a reasonable doubt that Ms. Arnhold had the intent to deprive Teo Dominguez of his property. RCW 9A.56.020(1); RCW 9A.56.040(1)(a). The intent to deprive the victim of property is an essential element of second degree theft. *State v. Vargas*, 37 Wn. App. 780, 782, 683 P.2d 234 (1984).

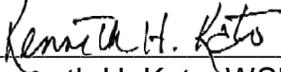
Ms. Arnhold believed she had permission to take the trailer as she had been directed by her friend as to its location and to have her move it. (12/11/12 RP 322-23, 341). She did not try to hide the trailer. (*Id.* at 325). Although questions of credibility are determined by the trier of fact, the existence of facts cannot be

based on guess, speculation, or conjecture. *State v. Hutton*, 7 Wn. App. 726, 728, 502 P.2d 1037 (1972). Ms. Arnhold's actions after taking the trailer were consistent with her belief that she had permission to take the trailer. Even viewed in a light most favorable to the State, the evidence was still insufficient to show she had the intent to deprive beyond a reasonable doubt. *Cf. State v. Ager*, 128 Wn.2d 85, 904 P.2d 715 (1995) (good faith claim of title). The conviction should be reversed on this ground as well.

#### IV. CONCLUSION

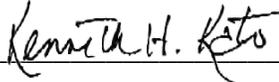
Based on the foregoing facts and authorities, Ms. Arnhold respectfully urges this court to reverse the conviction for second degree theft and dismiss the charge.

DATED this 18<sup>th</sup> day of December, 2013.

  
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#### CERTIFICATE OF SERVICE

I certify that on December 18, 2013, I served a copy of the brief of appellant by email, as agreed, on Joe Caldwell at [jcaldwell@co.okanogan.wa.us](mailto:jcaldwell@co.okanogan.wa.us), and by mail on Lynn Arnhold, PO Box 1272, Brewster, WA 98812.

  
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