

**FILED**  
JUN 27, 2014  
Court of Appeals  
Division III  
State of Washington

No. 31889-3-III

COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON

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State of Washington, Respondent

v.

William Michael Lobie, Appellant

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BRIEF OF RESPONDENT

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GRANT COUNTY PROSECUTOR'S OFFICE  
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## **I. STATEMENT OF THE ISSUE**

- A. Was there sufficient evidence for the crime of Theft in the Third Degree where Mr. Lobie (1) was observed taking Wal-Mart property and attempting to leave the store without paying for it, and (2) subsequently admitted to the theft?

## **II. STATEMENT OF THE CASE**

### **A. Statement of Facts:**

On February 2, 2013, at around 9:30 p.m., Moses Lake Wal-Mart Loss Prevention Officer Eric Paulson was on duty when he began to monitor Mr. Lobie inside the store. 1RP 7<sup>1</sup>. Officer Paulson observed Mr. Lobie conceal an ink cartridge in his jacket and place a clearance sticker on a binder. 1RP 17-18. Eventually, Mr. Lobie did pay for some of the items but not all of them. 2RP 29. As Mr. Lobie was exiting the store through the vestibule, Officer Paulson confronted Mr. Lobie and detained him, Mr. Lobie said he was sorry and that he was just trying to save money. 1RP 18. The items that were eventually determined to have been stolen included two cartridges of ink, a ball cap, and some putty. 1RP 20. These items were found on Mr. Lobie's person and recovered by police. 1RP 20.

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<sup>1</sup> 1RP refers to the July 17, 2014, report of proceedings, and 2RP refers to the July 18, 2013, report of proceedings.

After being detained by Wal-Mart loss prevention, Officer Juan Rodriguez of the Moses Lake Police Department contacted Mr. Lobie. 1RP 40. Mr. Lobie admitted to Officer Rodriguez that he had taken items from Wal-Mart without paying for them. 1RP 40-41.

Mr. Lobie testified at trial and admitted to concealing items in his jacket and switching the price tag on the binder. 2RP 28-29. When asked why he switched the price tag, Mr. Lobie admitted he wanted a better deal on it and that it was a stupid mistake. 2RP 29.

B. Procedural History:

On February 4, 2013, the State charged Mr. Lobie with three crimes: Possession of a Controlled Substance, Possession of Stolen Property in the Second Degree, and Theft in the Third Degree. CP 1. On July 17, 2013, the case went to trial, and on July 18, 2013, the jury found Mr. Lobie guilty on all three counts. 2RP 83-84. This appeal followed. CP 46.

**III. ARGUMENT**

A. There was sufficient evidence to convict Mr. Lobie of Theft in the Third Degree.

Evidence is sufficient to support a conviction if, viewed in the 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. Thomas*, 150 Wn.2d 821, 874 P.3d 970 (2004).

A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom . . . Credibility determinations are for the trier of fact and are not subject to review. [The appellate] court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence.

*Thomas* at 874-75.

To convict Mr. Lobie of the crime of Theft in the Third Degree, the State only needed to prove that Mr. Lobie committed theft of property in Washington. RCW 9A.56.050. 'Theft' includes wrongfully obtaining or exerting unauthorized control over the property of another, with the intent to deprive him or her of such property. RCW 9A.56.020(1).

In the present case, there was not only sufficient evidence to convict Mr. Lobie of Theft in the Third Degree, but overwhelming evidence. First, Mr. Lobie was observed by loss prevention in the store concealing an ink cartridge in his jacket and placing a clearance sticker on a binder. Not only did Officer Paulson observe these actions, but they were also recorded by Wal-Mart's video surveillance system and admitted into evidence. This alone constituted sufficient evidence for the crime of theft. *See State v. Britten*, 46 Wn. App. 571, 731 P.2d 508 (1986) (holding that removing clothing tags in the dressing room of a department store and concealing the items was sufficient to support a theft conviction even

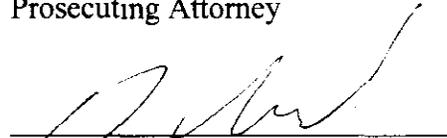
though the defendant did not leave the store or even the dressing room).  
Second, after concealing the items, Mr. Lobie proceeded further with the theft by not paying for all the items and attempting to leave the store with them. And finally, Mr. Lobie was not only caught with the items on his person, but he admitted to Officer Rodriguez as well as testified at trial that he did not pay for some of the items.

#### **IV. CONCLUSION**

Based on the foregoing analysis, there is overwhelming evidence to support the conviction for Theft in the Third Degree, far in excess of what is required under a sufficiency analysis. Mr. Lobie was witnessed selecting Wal-Mart property, concealing it, and attempting to leave the store without paying for it. As such, the conviction should be affirmed.

DATED: June 26, 2014

Respectfully submitted:  
D. ANGUS LEE,  
Prosecuting Attorney

  
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Deputy Prosecuting Attorney

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION III

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	No. 31889-3-III
	)	
vs.	)	
	)	
WILLIAM MICHAEL LOBIE,	)	DECLARATION OF SERVICE
	)	
Appellant.	)	
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Under penalty of perjury of the laws of the State of Washington, the undersigned declares:

That on this day I served a copy of the Brief of Respondent in this matter by e-mail on the following party, receipt confirmed, pursuant to the parties' agreement:

Susan Marie Gasch  
[gaschlaw@msn.com](mailto:gaschlaw@msn.com)

That on this day I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to Appellant containing a copy of the Brief of Respondent in the above-entitled matter.

William Michael Lobie  
4208 Lincoln Drive NE  
Moses Lake WA 98837

Dated: June 27, 2014.

  
\_\_\_\_\_  
Kaye Burns