

FILED  
November 4, 2013  
Court of Appeals  
Division III  
State of Washington

No. 31891-5-III

COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON

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State of Washington, Appellant

v.

Chantell M. Graham, Respondent

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APPEAL FROM THE SUPERIOR COURT  
OF GRANT COUNTY  
THE HONORABLE EVAN SPERLINE

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BRIEF OF APPELLANT

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GRANT COUNTY PROSECUTOR'S OFFICE  
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## **I. ASSIGNMENTS OF ERROR**

- A. The court erred when it dismissed the charge of Trafficking in Stolen Property in the Second Degree for insufficient evidence.

## **II. ISSUES RELATED TO ASSIGNMENTS OF ERROR**

- A. Pursuant to RCW 9A.82.055, was there sufficient evidence for the crime of Trafficking in Stolen Property in the Second Degree when the Defendant (1) entered Wal-Mart, (2) selected one of the store's TV wall mounts, and (3) without ever paying for the wall mount, took it to the return counter and returned it without a receipt for a gift card of equal value.

## **III. STATEMENT OF THE CASE**

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

On December 8, 2012, the Defendant entered the Ephrata Wal-Mart store with an empty shopping cart and placed a television wall mount bracket and power-toy battery in her cart. CP 38-39. Without ever paying for these items, the Defendant then went to customer service and asked to return the bracket and battery, claiming to have previously purchased them. CP 38. Because she did not have a receipt, the Defendant was issued a Wal-Mart gift card for the value of the returned items. CP 38. The Defendant then used this gift card to purchase a more expensive television

bracket, which she returned to the store the next day in exchange for approximately \$100.00 in cash. CP 38.

B. Procedural History

On December 10, 2012, the State charged the Defendant with one count of Trafficking in Stolen Property in the Second Degree. CP 1. On July 15, 2013, the Defendant filed a motion to dismiss the charge, pursuant to CrR 8.3(c), for insufficient evidence. CP 13. The State filed a response to the motion. CP 22. On July 23, 2013, the court heard oral argument on the motion and subsequently granted the Defendant's motion and dismissed the case without prejudice. CP 25-31, 38-40. In concluding there was insufficient evidence for the crime of Trafficking in Stolen Property, the court reasoned that there was no predicate theft of the initial items "because they never effectively left the possession of Wal-Mart, and the items were returned to the possession of Wal-Mart to the same extent as if the defendant had changed her mind and returned the items to their original shelves." CP 39; *see also* CP 30.

#### IV. ARGUMENT

There was sufficient evidence for the crime of Trafficking in Stolen Property in the Second Degree.

The court shall only grant a motion to dismiss for insufficient evidence if the undisputed facts do not establish a prima facie case of guilt. CrR 8.3(c)(3). In determining the Defendant's motion, "the court shall view all evidence in the light most favorable to the [State] and the court shall make all reasonable inferences in the light most favorable to the [State]." CrR 8.3(c)(3). A trial court's dismissal of a criminal charge under CrR 8.3(c) is reviewed de novo. *State v. Montano*, 169 Wn.2d 872, 875, 239 P.3d 360 (2010) (citing *State v. Conte*, 159 Wn.2d 797, 803, 154 P.3d 194 (2007)).

The elements of Trafficking in Stolen Property in the Second Degree are that (1) the Defendant recklessly trafficked in stolen property (2) in Washington. RCW 9A.82.055. 'Traffic' means "to sell, transfer, distribute, dispense, or otherwise dispose of stolen property to another person, or to buy, receive, possess, or obtain control of stolen property, with intent to sell, transfer distribute, dispense, or otherwise dispose of the property to another person." RCW 9A.82.010(19). The term 'stolen property' includes property obtained by theft. RCW 9A.82.010(16).

Based on these elements, the sufficiency issue can be broken down into two separate questions: (1) was property obtained by theft; and (2) did

the Defendant subsequently recklessly<sup>1</sup> traffic that stolen property. There is no question that all relevant events occurred in the State of Washington. See CP 38.

1. The Defendant stole items from Wal-Mart.

'Theft' means "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." RCW 9A.56.020(1)(a). "Wrongfully obtains or exerts unauthorized control" is further defined to include theft by taking. RCW 9A.56.010(22).

In addition to the standard definition of theft, 'theft' also means obtaining control over property by color or aid of deception. RCW 9A.56.020(1)(b). "By color or aid of deception" means that the deception operated to bring about the obtaining of the property or services. RCW 9A.56.010(4). Deception occurs when the actor knowingly creates or confirms another's false impression which the actor knows to be false. RCW 9A.56.010(5).

A theft may be completed despite the fact that the suspect has not left the store nor passed all points of sale. *State v. Britten*, 46 Wn. App. 571, 731 P.2d 508 (1986). In *Britten*, the defendant entered the dressing room

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<sup>1</sup> Although 'recklessness' is the required mental state for the crime of Trafficking in Stolen Property in the Second Degree, the evidence clearly supports the higher mental state of 'knowingly.' Establishing that the Defendant had knowledge the property was stolen also establishes the lower mental state of recklessness. RCW 9A.08.010(1)(c), (2).

of a department store with several pairs of pants, removed the tags on those pants, put on five of those pairs of pants, and concealed them under his own pants. *Id.* at 572. An employee of the store observed the defendant in the dressing room and detained him. *Id.*

In holding that there was sufficient evidence for the theft, the court in *Britten* reasoned that the acts of removing the tags from the pants as well as concealing them under his own clothing were sufficient evidence to support the conclusion that the defendant assumed ownership of the jeans, i.e., that he took them. *Id.* at 574. Specifically, the court reasoned that removing the tags and concealing the pants were acts that were inconsistent with the store's ownership of the jeans. *Id.*

Similarly to the defendant in *Britten*, the Defendant in the present case acted inconsistently with Wal-Mart's ownership of the television wall mount and battery. First, she took actual possession of these items and took them to the return counter. Second, and most importantly, the Defendant proceeded to return these items for a gift card. Through the act of taking the items to the return counter and asking to return them (for some type of refund), **the Defendant asserted her ownership over the items**, an ownership that was inconsistent with Wal-Mart's ownership over the items. By bringing items to the return counter and asking to

return them, the Defendant falsely asserted (either expressly or impliedly) that she had previously paid for them.

It is at the point that the Defendant presented the items as her own lawfully purchased property that she completed the theft by both (1) demonstrating an intent to deprive Wal-Mart of its property, and (2) wrongfully obtaining control over the property by color or aid of deception. This conclusion is only strengthened when keeping in mind the applicable standard of review: to view all evidence and reasonable inferences in the light most favorable to the State. From the point the theft is completed, the television wall mount and battery become items of stolen property.

2. The Defendant trafficked the stolen items to Wal-Mart.

Once the theft of the wall mount and battery was complete, the Defendant proceeded to traffic the stolen property by returning it to Wal-Mart in exchange for a gift card. Under RCW 9A.82.010(19), the return of this property constituted a transfer, sale, or disposal of the property back to Wal-Mart.

In dicta, the trial court raised the issue of whether the statute required that the stolen property be transferred to a third party (as opposed to transferring it back to the victim). CP 27. However the definition of trafficking only requires that the property be transferred “to another

person.” RCW 9A.82.010(19). The phrase “to another person” can logically only be read to mean “to another person (other than the defendant).” Reading the phrase to mean “to another person (other than the victim)” is illogical and inconsistent with the purpose of the statute. The interpretation of the phrase to mean “a person other than the defendant” is consistent with the interpretation in analogous contexts. *See e.g. State v. Graham*, 153 Wn.2d 400, 413, 103 P.3d 1238 (2005) (“In context, therefore, the reference to ‘another person’ in RCW 9A.36.050(1) means the risk is created to one other than the actor engaging in the conduct (who is the first person identified in the statutory definition of the crime)”).

It should also be noted that the crime of trafficking in stolen property can be completed regardless of whether the thief and the trafficker are the same person and regardless of whether the trafficker sells the property to a fence or an unsuspecting purchaser. *State v. Michielli*, 132 Wn.2d 229, 937 P.2d 587 (1997).

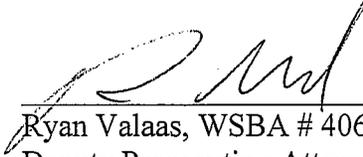
Once it is established that the wall mount and battery are items of stolen property, the return or transfer of this property by the Defendant to Wal-Mart (an unwitting victim) unambiguously constitutes trafficking.

## V. CONCLUSION

Based on the foregoing analysis, there was sufficient evidence for the crime of Trafficking in Stolen Property in the Second Degree. As such, the trial court erred in dismissing the case. Because there was sufficient evidence for the charge, (1) the case should be remanded to the trial court and (2) the State permitted to refile charge(s).

DATED: October 31, 2013

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,	)	
	)	
Appellant,	)	No. 31891-5-III
	)	
vs.	)	
	)	
CHANTELL MARIE GRAHAM,	)	DECLARATION OF SERVICE
	)	
Respondent.	)	
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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 Appellant in this matter by e-mail on Kristina Nichols, Attorney for Respondent, receipt confirmed, pursuant to the parties' agreement:

Kristina Nichols  
wa.appeals@gmail.com

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

Chantell Marie Graham  
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Moses Lake WA 98837

Dated: November 4, 2013.

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