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**Division III**  
**State of Washington**  
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COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON, RESPONDENT

v.

SHANE MALOTTE, APPELLANT

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APPEAL FROM THE SUPERIOR COURT  
OF THE STATE OF WASHINGTON FOR FERRY COUNTY

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**BRIEF OF RESPONDENT**

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## **I. APPELLANT’S ASSIGNMENTS OF ERROR**

1. The State failed to present substantial evidence supporting at least one of the alternative means of committing theft of a firearm set forth in the “to convict” instruction.

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

1. Whether theft of a firearm is an alternative means crime?
2. Whether the State presented substantial evidence that the Defendant obtained a firearm by color or aid of deception?
3. Whether the State presented substantial evidence that the Defendant misappropriated a lost or misdelivered firearm?

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

### Summary

On May 8, 2019, Mr. Malotte was convicted of assault in the second degree, theft of a firearm, possession of stolen property in the third degree, unlawful possession of a firearm in the second degree, and possession of methamphetamine. These convictions stem from a prolonged incident involving his neighbor, Todd “TJ” Griffith, as well as Mr. Malotte’s girlfriend, Destany Boyer, and her mother and brother.

During this incident on November 20, 2018, Mr. Malotte brutally assaulted Mr. Griffith about the face and stomach, resulting in multiple injuries, including fractures to Mr. Griffith’s face and head. Mr. Malotte

then ran off as police arrived and was not found for several days. During the interim, Mr. Malotte had taken Mr. Griffith's SKS firearm for his own. During a subsequent search warrant, Mr. Griffith's SKS firearm was located in Mr. Malotte's sleeping quarters, and several other items that had gone missing from Mr. Griffith's truck were located elsewhere in the residence. When Mr. Malotte was arrested in conjunction with the above crimes, he had methamphetamine in his belongings.

Procedural Facts

On December 4, 2018, Mr. Malotte was charged with the above-listed offenses by way of Information filed in Ferry County Superior Court. CP 1-4.

A jury instruction conference was held on May 8, 2019. RP 476. The Court used a to-convict instruction for theft of a firearm that included all three means of committing theft: wrongfully obtain, by color or aid of deception, and appropriate lost or mislaid property. RP 483. Neither party objected to this instruction. Id. This version was given to the jury and used at trial. CP 132. Neither party proposed, nor did the Court give a unanimity instruction for the theft of a firearm charge.

After a three day trial, Mr. Malotte was convicted of the above-referenced offenses. The jury acquitted Mr. Malotte on Count 1 which was charged as assault in the first degree, but convicted on the lesser

included offense of assault in the second degree. The parties agreed on Mr. Malotte's offender score which included prior convictions for receiving stolen vehicle, theft, false personation, possession of a controlled substance, and two convictions for battery. CP 216; RP 640. On May 20, 2019, Mr. Malotte was sentenced to 17.5 months on the assault in the second degree, 30 months on the theft of the firearm, 364 days on the third degree possession of stolen property, 11 months on the second degree unlawful possession of a firearm, and 12+ months on the VUCSA. CP 214-225; RP 649-50. The sentences for the theft of the firearm and the UPF 2 were ordered to run consecutively pursuant to statute for a total of 41 months of confinement. Id.

*Facts Presented at Trial*

At trial, the State presented testimony from eight witnesses. RP 36; 218; 505. The Defense declined to call any witnesses. Id. Witnesses called by the State were the victim, Todd "TJ" Griffith (RP 68-162), the investigating officer, Deputy Matthew Kersten (RP 163-261; 310-317), responding officer Sergeant Talon Venturo (RP 262-277), second responding officer Deputy Christine Clark (RP 279-309), Washington State Patrol Forensic Analyst Jayne Aunan (RP 322-339), witness Preston Hamilton (RP 340-465), Doctor Richard Garcia (RP 510-528), and

Washington State Patrol Latent Print Analyst Jodie Dewey (RP 529-540).

The facts presented are as follows.

In November of 2018, Todd “TJ” Griffith, aged 31, lived with his grandmother Patty Griffith at 269 Lambert Lane in rural Ferry County, Washington. RP 69-70. His neighbor, Vera Hamilton, lived about a mile away with her 14-year-old son, Preston Hamilton. RP 72; 340-41. Also residing at Vera’s residence at that time were Vera’s 17-year-old daughter, Destany Boyer, and Destany’s boyfriend, Defendant Shane Malotte. RP 73; 341-42.

Prior to November of 2018, Mr. Griffith had met Ms. Boyer and Mr. Malotte one other time, when he was introduced by Vera and purchased cigarettes for them at a local smoke-shop. RP 74-76. Mr. Griffith had visited Vera and Preston Hamilton on a few other occasions. RP 135-37. Griffith had to pass the Hamilton residence to get to his home and would often see the Hamiltons if he was picking up Vera to take her to town or if his Grandma was taking Vera to work. RP 72.

On the date of November 20, 2018, Mr. Griffith went to visit Vera and her family, driving his “mountain truck” equipped with woodcutting tools and “mountain gun”, in case of coyotes. RP 77; 79; 83. Present at the Hamilton residence on that date were Vera and Preston Hamilton, Vera’s daughter Ms. Boyer, and Defendant Mr. Malotte. RP 78; 375. Mr.

Griffith was drinking Jim Beam and shared that with Mr. Malotte. RP 81. Preston testified that he believes his sister Destany was also drinking as she was “acting a little different” “like she was a little buzzed” or “drunk”. RP 419-20. They discussed that “the daughter” [Ms. Boyer] had never shot a gun before, which led to Mr. Malotte retrieving Mr. Griffith’s gun out of his truck for the purpose of letting her shoot it. RP 82; 105.

At some point after target shooting, Mr. Griffith testified that “it kind of went dark” and when he awakened, he was being kicked in the face and hit with his firearm in the head and face. RP 91-92; 98-99; 101. Ms. Boyer was telling Mr. Griffith to “lay on the ground” and Mr. Malotte was telling Mr. Griffith to “say you’re a bitch”. RP 97-99. Mr. Griffith had no choice but to stay on the ground as he “had a gun on him”. RP 101.

Preston Hamilton testified that prior to the assault, Mr. Griffith had made some crude comments to him, but then said he was joking and walked off. RP 460. Preston was initially upset by this, but soon cooled off. RP 437. Likewise, Mr. Malotte and Ms. Boyer were initially upset, but then “shook hands on it and said it’s fine” and “it’s cool”. RP 421. Mr. Griffith and Mr. Malotte then agreed to a consensual fighting game called “body shots” which led to another disagreement. RP 384; 421. Mr. Malotte complained that Mr. Griffith was taking head shots, so he began

to punch Mr. Griffith harder. RP 422. However, neither party was injured in this interaction and Mr. Malotte shook hands with Mr. Griffith and forgave him. RP 421. Preston does not know what precipitated the assault, but he heard a loud “poof” from outside and looked outside to see a white cloud. RP 385-86. When he went outside, he saw Mr. Griffith on the ground being beaten, and observed a propane canister with the torch broken off laying nearby which he believed caused the “poof”. RP 387-88.

During the prolonged beating, Preston came out of the house around three times to make sure “no one died”, and during those trips outside he observed Mr. Malotte repeatedly punching Mr. Griffith, as well as kicking him in the face and stomach with steel-toed boots. RP 389; 393-96. At one point, Preston, scared for Griffith’s safety, grabbed Mr. Malotte’s arm to stop him. RP 394. Mr. Malotte ordered Preston to “back off”, so he did. RP 394.

At some point, Vera and Ms. Boyer called the police. RP 101; 439. Deputy Kersten responded, and as he drove up to the scene, Mr. Malotte told Preston to tell the police that he doesn’t know who he is or what his name is. RP 440-41. Preston Hamilton then observed his sister, Ms. Boyer, hand the firearm to Mr. Malotte and Mr. Malotte run away from the scene. RP 400-01; 440-43. Upon arrival, Deputy Kersten exited

his vehicle and gave chase to Mr. Malotte as he fled. RP 168-69. Mr. Malotte was some distance away when the Deputy initially saw him and by the time the Deputy got out of his vehicle to give chase, Mr. Malotte was 20-30 yards away. RP 168-70. The terrain in the area of the chase includes a ravine for a seasonal creek, with a lot of trees, sagebrush, and heavier brush. RP 228. Deputy Kersten did not observe the firearm on Mr. Malotte as he was running away. RP 238; 260-61.

Deputy Kersten was unable to continue pursuit of Mr. Malotte as the others were yelling at him that Mr. Griffith was trying to break into or steal his patrol vehicle and Ms. Boyer was chasing him. RP 170-71; 404. Deputy Kersten returned to the scene and secured the badly beaten Mr. Griffith to get control of the scene and to ensure his safety. RP 173-74. Deputy Kersten then asked Mr. Griffith where the firearm was, but he did not know. RP 174.

Deputy Kersten and his fellow officers Venturo and Clark processed the scene for evidence. RP 179; 269. Despite conducting a spiral-pattern search and searching up the road a quarter of a mile, the officers were not able to locate the firearm in the rugged terrain. RP 269-71. Despite the officers' repeated attempts to learn the identity person who had fled with the firearm, Vera, Preston, and Ms. Boyer persisted in claiming that they did not know who the individual was. RP 175; 272.

Later that night, or early the next morning, Mr. Malotte returned to the house with Mr. Griffith's firearm. RP 364; 416. From that point forward, Mr. Malotte kept the firearm either where he slept or in his hands, carrying it all over the house. RP 410; 413-14. Mr. Malotte obtained ammo for the firearm. RP 41; 208. Despite it being obvious that the firearm was the same one belonging to Mr. Griffith, Mr. Malotte never mentioned returning it. RP 416; 423.

The firearm was recovered on November 29, 2018 during a search warrant of the Hamilton residence. RP 199-201; 285-86. It was located in the loft area where Mr. Malotte and Destany Boyer had been staying. Id.; 417-18.

During this time between when it went missing on November 20 and when it was recovered on November 29, writing was also placed on the firearm that had not been there before. RP 88-89; 213. The writing on the firearm (Exhibit 126) was consistent in appearance with the writing on the journal from Mr. Malotte's backpack (Exhibit 91) and distinct from Ms. Boyer's writing on exhibit 68.

#### **IV. ARGUMENT**

Where there is sufficient evidence to support each alternative means, Washington defendants do not enjoy a right to express unanimity. State v. Woodlyn, 188 Wn.2d 157, 164, 392 P.3d 1062 (2017). A general

verdict in an alternative means prosecution satisfies due process so long as each alternative means is supported by sufficient evidence. Id. at 165. The purpose of this requirement is to ensure that when a verdict might be based on more than one alternative, the verdict is adequately supported. Id. at 164. If the reviewing court can rule out the possibility that the jury relied on a charge unsupported by sufficient evidence, then the court may uphold the jury's verdict. Id.

Evidence is sufficient if, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Owens, 180 Wn.2d 90, 99, 323 P.3d 1030 (2014); see also State v. Armstrong, 188 Wn. 2d 333, 341 394 P.3d 373 (2017) (“The standard sufficiency of the evidence analysis governs our review: we ask whether the evidence, viewed in the light most favorable to the State, could justify a rational juror finding guilt beyond a reasonable doubt as to each alternate means”). Review of a challenge to the sufficiency of the evidence is “highly deferential” to the factfinder’s decision. State v. Pillon, 2020 Wash.App. LEXIS 166; 2020 WL 418858, Division One No. 78599-1-I (order granting motion to publish February 28, 2020), citing State v. Davis, 182 Wn.2d 222, 227, 349 P.3d 820 (2014). A challenge to the sufficiency of the evidence admits the truth of the State’s evidence and all

inferences that reasonably can be drawn therefrom. Id., citing State v. Witherspoon, 180 Wn.2d 875, 883, 329 P.3d 888 (2014); see also State v. Thomas, 150 Wn.2d 821, 874, 83 P.3d 970 (2004). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. Id., citing State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). In determining sufficiency, circumstantial evidence is not less reliable than direct evidence. Id., citing State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980); see also State v. Thomas, 150 Wn.2d at 874. A reviewing court defers to the trier of fact on issues of witness credibility. Id., citing State v. Witherspoon, 180 Wn.2d at 883; see also State v. Thomas, Id. at 874-75.

1. **A RATIONAL JUROR COULD FIND THAT THE DEFENDANT OBTAINED THE FIREARM BY COLOR OR AID OF DECEPTION.**

While the evidence is clear that Mr. Malotte ended up with Mr. Griffith's firearm, the evidence presented as to how that occurred is mixed. Preston Hamilton testified that he thought that he saw his sister hand the firearm to Mr. Malotte before Mr. Malotte ran away as the police were arriving.

Q: And where did he get the gun from?

A: I think my sister handed it to him.

RP 401.

This was also right around the time that Mr. Malotte admonished Preston not to tell the police who he was. However, Deputy Kersten, who observed Mr. Malotte as he was running further up the road, did not observe Mr. Malotte with a firearm. Therefore, reasonable minds could differ as to whether Mr. Malotte had the firearm during his entire pursuit or whether he was able to stow the firearm in the brushy terrain some time during the pursuit and come back for it later. What is relevant is that when the police arrived and asked Mr. Griffith where his SKS was, neither Mr. Griffith nor the police knew where it was and nor could they find it that night. RP 108; 269-71.

“By color or aid of deception” means that the deception operated to bring about the obtaining of the property or services; it is not necessary that the deception be the *sole* means of obtaining the property or services. RCW 9A.56.010(4); see also State v. Zorich, 72 Wn.2d 31, 34, 431 P.2d 584 (1967) (The deception need not be the sole means of inducing the victim to part with his or her property). “Deception” occurs when, among other things, an actor knowingly: creates or confirms another’s false impression which the actor knows to be false; or fails to correct another’s impression which the actor previously created or confirmed; or prevents

another from acquiring information material to the disposition of the property involved. RCW 9A.56.010(5). “Deception” includes a broad spectrum of conduct, including not only representations about past or existing facts, but also representations about future facts, inducements achieved by means other than conduct or words, and inducement by creating a false impression even though particular statements or acts might not be false.” State v. Briejer, 172 Wn. App. 209, 218, 289 P.3d 698 (2012). The plain language of the [theft by color or aid of deception] statute does not require an express misrepresentation; rather it focuses on the false impression created rather than the falsity of any particular statement. Id.

There are multiple means by which a jury could reasonably conclude that the Defendant obtained the firearm by color or aid of deception. First, the testimony elicited was that Mr. Malotte obtained permission to get Mr. Griffith’s firearm from Mr. Griffith’s vehicle for the purpose of target shooting – specifically so that Ms. Boyer could shoot a gun for the first time. Mr. Griffith specifically stated that at no time did he indicate that he was giving the firearm to anyone. RP 123. Despite the fact that the express purpose of allowing Mr. Malotte to take possession of the firearm was for target shooting, the State’s evidence showed that Mr. Malotte then used the firearm to assault Mr. Griffith and either left with,

or secreted the firearm so that it could not be recovered that evening. Testimony was also presented that Mr. Malotte was a convicted felon and therefore unable to purchase or possess firearms. RP 197. A jury could easily infer that Mr. Malotte deceived Mr. Griffith in order to obtain his firearm because he was not otherwise able to obtain one.

Although not controlling, it is somewhat persuasive that Division Three of the Washington Appellate Court has also previously found theft by deception in a case where a defendant initially obtained property by legal means, but then subsequently failed to return the property and claimed it as his own. State v. Williams, 2018 Wash. App. LEXIS 1050; 218 WL 2069499, Division Three, No. 34172-1-III.<sup>1</sup> In Williams, defendant rented a motor vehicle from Budget Rental Car but did not return the vehicle a week later when the vehicle was due, nor did he request an extension. Id. at 2. Budget reported the vehicle stolen five weeks later. Id. Williams later faxed Budget a financing statement in which he claimed to be the lienholder of the vehicle. Id. at 2-3. At trial, the jury was instructed on theft by taking (wrongfully obtaining or exerting unauthorized control) as well as theft by deception and defendant

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<sup>1</sup> Unpublished opinions of the Court of Appeals have no precedential value and are not binding on any court. However, unpublished opinions of the Court of Appeals file on or after March 1, 2013, may be cited as nonbinding authorities, if identified as such by the citing party, and may be accorded such persuasive value as the court deems appropriate. GR 14.1.

was convicted of theft of a motor vehicle. Id. at 7-8. On appeal, defendant claimed that there was insufficient evidence to support the jury's verdict of theft of a motor vehicle by taking *or* by deception. Id. at 7. The appellate court found that the State presented the following evidence: that the title of the vehicle belonged to someone else; that the defendant's rights to the vehicle were for a week-long term by agreement; that defendant never returned the vehicle or took steps to get permission for an extension; and that defendant intended to take ownership as evidenced by his filing of the financing statement. Id. at 8. The Court held that the above evidence was sufficient evidence by which a jury could find both theft by taking *and* theft by deception. Id.

Similarly here, the firearm belonged to someone else; Mr. Malotte's "rights" to the firearm, such as they were, were for the purpose of target-shooting; Mr. Malotte never returned the firearm or sought permission from Mr. Griffith to retain it for a longer period of time; and Mr. Malotte clearly intended to take ownership of the firearm by placing his markings on it, carrying it around, storing it in his sleeping area, and buying ammo for it. Thus, as above, the State believes that it has presented sufficient evidence by which the jury could find theft by deception.

However, the theft by deception statute is quite broad and there are multiple additional ways theft by deception may be accomplished. For example, creating false impressions or preventing another from obtaining information material to the disposition of the property are further means by which a person can perpetuate a deception. RCW 9A.56.010(5). In this case, Mr. Malotte, after being handed the firearm by Ms. Boyer, was clearly aware that the police were looking for him, as demonstrated by his admonishment to Preston Hamilton not to reveal his identity as well as by his act of running from the officer. As a matter of common sense, a jury could infer that if Mr. Malotte had been caught, the officer would have taken the firearm from him. Furthermore, a jury could reasonably draw the inference that by inducing others to perpetuate the lie that they did not know his identity, Mr. Malotte created a false impression, knowing that it was false, which allowed him to obtain the firearm which would have otherwise been returned to Mr. Griffith or taken into evidence had the officers been able to locate Mr. Malotte. The testimony was clear that the officers were searching for a firearm, having been notified that one was involved. By inducing the others to perpetuate the lie that they did not know who he was or where he was living (when indeed, he was living with them) Mr. Malotte prevented another from acquiring information material to the disposition of the property involved, which is an express

definition of “deception” under RCW 9A.56.010(5). Thus, the evidence easily supports a finding that Mr. Malotte obtained the firearm by color or aid of deception. By obfuscating his identity, Mr. Malotte prevented the police from acquiring information that they needed in order to recover Mr. Griffith’s firearm. The officers relied upon this information and Mr. Malotte was thus able to obtain control over the firearm and appropriate it to his own use.

Previous courts have similarly found that obscuring identifying information to obtain property or services constitutes theft by deception. State v. Monk, 42 Wn. App. 320, 322-23, 711 P.2d 365 (1985). In Monk, a defendant who failed to pay her utility bill used her knowledge as a utility clerk to transfer her account to inactive status and thus prevent the City from acquiring information about her delinquency. Because the City relied on the transfer, defendant was able to receive utilities at a new residence when she would otherwise have been prohibited. The Court held that the State proved theft by deception because the evidence showed that defendant effectively obtained control over the City’s right to payment by “hiding” her account. In the present case, had the officers known Mr. Malotte’s identity and where he was residing (the very location of the theft and assault), they could more readily have recovered the

firearm. However, due to Mr. Malotte's actions, the officers could not recover the firearm and return it to its rightful owner.

**2. A RATIONAL JUROR COULD FIND THAT THE DEFENDANT APPROPRIATED LOST OR MISDELIVERED PROPERTY.**

Appellant claims that there was no indication that the firearm was lost and therefore there was insufficient evidence by which a jury could find that Defendant appropriated lost or misdelivered property. For the following reasons, the State respectfully disagrees.

“Appropriate lost or misdelivered property” means obtaining or exerting control over the property or services of another which the actor knows to have been lost or mislaid. RCW 9A.56.010. Property is lost when the owner has parted possession unwittingly and no longer knows its location. State v. Kealey, 80 Wn. App. 162, 171, 907 P.2d 319 (1995), *citing* 1 Am. Jur. 2d Abandoned, Lost, and Unclaimed Property §§ 11-13 (Rev. ed. 1994).

As detailed above, reasonable minds could differ on whether Mr. Malotte ran off with the firearm or disposed of it somehow prior to running off. After a rigorous cross examination of Preston Hamilton as to his biases in favor of his mother and sister, and against Mr. Malotte, Defense counsel argued that Preston Hamilton himself secreted or hid the firearm before the police arrived. RP 608-09.

Regardless of what was done with the firearm immediately after the assault and before the police arrived, what is clear is that the owner of the firearm, Mr. Griffith, had no idea where it was, and thus the firearm was lost. RP 108. It is also clear that Mr. Malotte had the firearm with him when he returned to the residence either that night or early the next morning, and that after that point, he treated the firearm as his own. Under the relevant statute, theft by appropriation of lost property requires only that the property be the “property of another”, that the defendant appropriates the lost property, and that the defendant intended to deprive the person of the property. There was sufficient evidence by which the jury could find that the firearm was lost as Mr. Griffith had parted with it unwittingly and did not know where it was. There was sufficient evidence by which a jury could find that if Mr. Malotte did not directly take the firearm himself, as was argued by defense, that he found it at some point and appropriated it. Finally, there is sufficient evidence that he intended to deprive the other person of it where he took no action to return the firearm, treated it as his own around the residence, bought ammo for it, and placed his permanent markings on it.

Defendant’s argument regarding insufficient evidence of appropriating lost or mislaid property contradicts Defendant’s own

argument at trial. At trial, Defense counsel's arguments strongly implied that Defendant had merely taken possession of lost or mislaid property:

"I was not raised in a wealthy home and so I have these ideas as a child. One of them is that if I find it, it's mine. If it's useful to me, I will keep it. I found a ten speed bike. I walk out after school one day and a bike is laying in the street. I say to my mom, I found a bike. She said take it up to the SP shop – take it up to the SPS. So I take it to the SP. You got to put it here. Thirty days and it's yours. Yes. Somebody claimed it.

A couple years later my sister and my mom are walking down the street and they find a roll of money behind a car. Yes! Well, I wasn't there. Again, I'm hearing the story. My sister tells it best. Yeah, I find this roll of money and mom is like take the money to the police station. You know what the policeman says? Thirty days nobody claims it, it's yours. Still waiting for that call...

...It is a mindset, it is a mindset that I personally experienced as a person who doesn't have great needs. You can rationalize why it's okay to take something like this. You can rationalize that someone who I'm going to characterize as a bully because I'm going to tell you right now, if I show up at your house stinking drunk at 3:30 in the afternoon with an assault rifle, with a seven inch knife, with a pair of...knuckles...He grabs my friend's child and does this and is told to leave...He's doing what he thinks is right.

RP 605-07. A reasonable juror could agree with Defendant's contention about keeping lost property, and thus find that the Defendant committed theft by appropriation of lost property if they also agreed that the Defendant knew the property belonged to another and intended to deprive that person of the property. Again, as detailed above, ample evidence was

presented that Mr. Malotte was fully aware of who the firearm belonged to, and yet chose to keep it.

## V. CONCLUSION

The State respectfully requests that the Court deny Appellant's motions to reverse his conviction for theft of a firearm and remand for further proceedings.

The record below reflects that ample evidence was presented by which a reasonable juror could find that the defendant committed the crime of theft of a firearm by any of the alternative means of taking, deception, and appropriation of lost property.<sup>2</sup> The facts presented at trial, when construed in the light most favorable to the State, present sufficient direct and circumstantial evidence by which reasonable jurors could find that the Defendant committed theft by deception by inducing Mr. Griffith to grant permission to use the firearm for the purpose of target shooting and then subsequently stealing and running off with the firearm. A reasonable juror could likewise find that the Defendant committed theft by deception by inducing the other witnesses to lie about his identity, thus preventing law enforcement from recovering the firearm to return to its rightful owner, and thus allowing the Defendant to gain possession of it.

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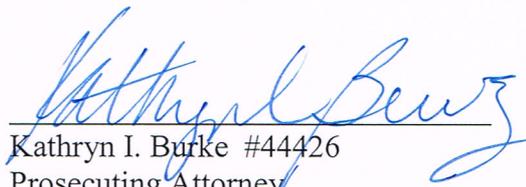
<sup>2</sup> As Appellant does not present any argument regarding theft by taking, the State assumes that Appellant concedes that sufficient evidence supported theft of the firearm by taking and therefore does not address that issue in this brief.

Finally, the facts presented at trial present sufficient evidence by which a rational juror could find theft by appropriation of lost property where it is undisputed that Mr. Griffith unwittingly parted with the firearm and did not know where it had gone, and where there was circumstantial evidence presented that Mr. Malotte may not have been the person to hide the firearm, but later took possession of it knowing that it belonged to Mr. Griffith, and did not intend to return it to Mr. Griffith.

Therefore, the State respectfully requests that this Court enter an order denying Appellant's motions and affirming Defendant's convictions and sentence.

Dated this 3 day of March, 2020.

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CERTIFICATE OF SERVICE

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