

NO. 45613-3-II

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

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STATE OF WASHINGTON, Respondent

v.

ADAM PHILIP THOMAS, Appellant

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FROM THE SUPERIOR COURT FOR CLARK COUNTY  
CLARK COUNTY SUPERIOR COURT CAUSE NO.13-1-01540-4

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BRIEF OF RESPONDENT

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A. **ANSWERS TO ASSIGNMENTS OF ERROR**

I. The State presented sufficient evidence of the crime of Robbery in the First Degree.

B. **STATEMENT OF THE CASE**

I. Procedural History

On August 20, 2013 the Clark County Prosecuting Attorney filed an information charging Adam Thomas with Robbery in the First Degree for an incident that occurred on August 18, 2013. CP 1.<sup>1</sup> The case proceeded to a jury trial before The Honorable Daniel Stanhke, which commenced on October 21, 2013 and concluded on October 22, 2013. RP 1A 2-92; RP 1B 93-264.

The jury found Mr. Thomas guilty as charged, which included a deadly weapon enhancement, and the trial court sentenced him to a standard range sentence of 81 months. RP 1B 260-61, 267; CP 3-5, 8. On the same day he was sentenced, Mr. Thomas filed a timely notice of appeal. RP 1B 268; CP 20-21.

II. Statement of Facts

On August 18, 2013 at about 8 p.m., Jorge Estrada was working at the restaurant he owned, El Presidente, which is located in downtown

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<sup>1</sup> RCW 9A.56.190; 9A.56.200; 9A.56.200(1)(a)(i)/9A.56.200(1)(a)(ii)

Vancouver, Washington. RP 1A 59-60. Adam Thomas entered the restaurant, sat down, and ordered food and an alcoholic beverage. RP 1A 60. When Mr. Thomas made his order he knew he did not have the money to pay for the meal. RP 1A 80-81. The total of the items ordered was \$21.29 with tax included. RP 1A 62. Almost immediately after placing his order, Mr. Thomas went outside to smoke and did so another two times, which caught the attention of Mr. Estrada. RP 1A 60. Mr. Estrada began paying special attention to Mr. Thomas because people in the past had ordered food, gone outside to smoke, and then not come back. RP 1A 61.

By the last time that Mr. Thomas exited the restaurant, he had consumed half of the meal, and he took with him his backpack. RP 1A 63, 66. At this point, Mr. Estrada believed that Mr. Thomas was attempting to leave without paying for his meal so Mr. Estrada asked Mr. Thomas for a form of payment. RP 1A 63. A few seconds after Mr. Estrada's request for payment and identification, Mr. Thomas handed over a credit card and his Washington ID card. RP 1A 63. This entire interaction took place outside the restaurant. RP 1A 63-64.

Mr. Estrada went inside and ran Mr. Thomas's credit card, but it came back declined. RP 1A 63. As a result, Mr. Estrada went back outside, told Mr. Thomas his card had been declined, and asked him if he

had another source of payment. RP 1A 67. Mr. Thomas said, "I sure do" as he reached into his pocket, unfolded a pocketknife with a three to four inch blade, and looked at Mr. Estrada. RP 1A 67, 69-70. The two men were only three to four feet apart at the time that Mr. Thomas pulled out the knife. RP 1A 73. Fearing Mr. Thomas might stab him, Mr. Estrada retreated inside the restaurant to call 911, while Mr. Thomas took off running. RP 1A 67-71. Mr. Estrada specifically testified that Mr. Thomas pulling out the knife prevented him from securing payment for the meal, frustrating Mr. Estrada's purpose in going outside to contact Mr. Thomas. RP 1A 68-69.

Mr. Estrada was able to give the officers a description of Mr. Thomas to include what he was wearing. RP 1A 66, 72. The police soon detained Mr. Thomas and brought Mr. Estrada to the scene where he was able to identify Mr. Thomas as the person who had pulled the knife on him. RP 1A 73. In Mr. Thomas's backpack, officers recovered the clothes that Mr. Estrada said Mr. Thomas was wearing at the time of the incident. Mr. Thomas admitted changing clothes in the hope he would not be apprehended. RP 1A 80-81; RP 1B 97, 101. And while Mr. Thomas confessed to going to El Presidente without money, ordering and eating food, and leaving without paying, he denied a confrontation with Mr. Estrada. RP 1A 80-81, 91; RP 1B 101-03.

C. ARGUMENT

- I. The State's evidence was sufficient to prove that Mr. Thomas used force or fear to obtain or retain possession of property or to prevent or overcome resistance to the taking.

Evidence is sufficient to support a conviction if, when viewed in a light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). “A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom.” *Salinas*, 119 Wn.2d at 201. Circumstantial and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). The reviewing court defers to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990); *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992). In order to determine whether the necessary quantum of proof exists, the reviewing court “need not be convinced of the defendant’s guilt beyond a reasonable doubt but only that substantial evidence

supports the State's case." *State v. Gallagher*, 112 Wn.App. 601, 613, 51 P.3d 100 (2002) (citations omitted).

Robbery in the First Degree, as charged in this case, required the State to prove that in the commission of a robbery or of immediate flight therefrom, Mr. Thomas was armed with a deadly weapon or displayed what appeared to be a firearm or other deadly weapon. RCW 9A.56.200(1)(a)(i); RCW 9A.56.200(1)(a)(ii). A person commits a robbery "when he or she unlawfully takes personal property from the person of another or in his or her presence against his or her will by the use or threatened use of immediate force, violence, or fear of injury to that person or his or her property or the person or property of anyone. Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking. . . ." RCW 9A.56.190.

Washington has adopted a transactional "analysis of robbery, whereby the force or threat of force need not precisely coincide with the taking. *State v. Troung*, 168 Wn.App 529, 535, 277 P.3d 74 (2012) (citing *State v. Manchester*, 57 Wn.App. 765, 770, 790 P.2d 217 (1990)). This means that the "taking is ongoing until the assailant has effected an escape" and that, as a result, robbery "includes violence

during flight immediately following the taking.” *Id.* at 536 (citations omitted). Simply put, under Washington’s robbery statute, provided there is evidence force was used to “retain possession of the property, resist apprehension, or facilitate escape” then there is sufficient evidence to sustain a robbery conviction. *State v. Handburgh*, 119 Wn.2d 284, 292, 830 P.2d 641 (1992).<sup>2</sup>

Additional statutory definitions, which include the definitions of property, theft, services, and to wrongfully obtain, elucidate the scope of the robbery statute and were provided to the jury. Supplemental Designation of Clerk’s Papers, Court’s Instructions to the Jury (sub nom. 21), Instructions 8, 9, 10, 11. Thus, the jury was instructed that; property “means anything of value, whether tangible or intangible,” theft “means to wrongfully obtain or exert unauthorized control over the property or services of another, or the value thereof, with intent to deprive that person of such property or services,” wrongfully obtains “means to take wrongfully the property or services of another,” and services “includes, but is not limited to, restaurant services.” RCW 9A.04.110(22) (defining property); RCW 9A.56.020(1)(a) (defining

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<sup>2</sup> *Handburgh* also noted that “a 1975 amendment to the robbery statute deleted language that said, force or fear used ‘merely as a means of escape . . . does not constitute robbery.’” 119 Wn.2d at 291 (citations omitted).

theft); RCW 9A.56.010(22) (defining wrongfully obtains); RCW 9A.56.010(15) (defining services); RP 1B 187-189.

Here, there was sufficient evidence that Mr. Thomas used the threat of force to take property, as statutorily defined, retain possession of the property, and/or to prevent or overcome resistance to the taking. The unlawful taking of the property, the food itself, as well as the value of meal, to include the services used to prepare and provide it, occurred when Mr. Thomas pulled the knife on Mr. Estrada at the time that Mr. Estrada was attempting to secure payment for his property. To the extent that the unlawful taking happened before Mr. Thomas pulled the knife on Mr. Estrada, either when he left the restaurant the last time with his backpack and no intention to pay or when he presented a card that he know could not cover the value of what he had taken, then the force he used was to resist apprehension and/or facilitate his escape without paying for value of the property. In other words, Mr. Estrada was resisting Mr. Thomas's taking by going outside and demanding payment from Mr. Thomas, and Mr. Thomas successfully overcame that resistance by pulling a knife out and then escaping without having paid for the property he took.

Mr. Thomas's reliance on *State v. Johnson* and *State v. Hornaday* is misplaced. 155 Wn.2d 609, 121 P.3d 91 (2005); 105 Wn.2d 120, 713 P.2d 71 (1986). *Hornaday* related to the illegal consumption of alcohol and whether alcohol is still possessed once assimilated in the body, but "possession is not an essential element of robbery," and, as a result, *Hornaday* is not persuasive as to whether a Mr. Thomas committed a robbery. *Truong*, 168 Wn.App at 537. In *Johnson*, the trial court that found the defendant guilty made specific findings that the defendant peacefully took the property, then abandoned it (a TV/VCR in a shopping cart), before attempting to escape, and only then using force. *Johnson*, 155 Wn.2d at 610-11. Consequently, in reversing his conviction, our Supreme Court held that force used in an attempt to escape after abandoning property does not constitute robbery. *Id.* at 611. This leads to Mr. Thomas's novel abandonment by assimilation argument. Br. of App. at 8. The transactional nature of robbery, however, combined with the legal principle that possession is not an essential element of the offense, and the facts of this case wherein Mr. Estrada is attempting to secure payment for the taken property at the time that Mr. Thomas pulls out his knife in order to escape or overcome Mr. Estrada's resistance, dictate that when the evidence is taken in the light most favorable to the State that sufficient

evidence exists to sustain Mr. Thomas's Robbery in the First Degree conviction.

**D. CONCLUSION**

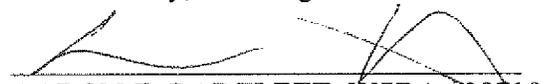
For the reasons argued above, Mr. Thomas's conviction should be affirmed.

DATED this 21 day of July, 2014.

Respectfully submitted:

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# CLARK COUNTY PROSECUTOR

**July 21, 2014 - 10:39 AM**

## Transmittal Letter

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