

73812-7

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March 9, 2016
Court of Appeals
Division I
State of Washington

NO. 73812-7-I

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

STATE OF WASHINGTON,

Respondent,

v.

LAURA BEEBE,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Helen Halpert, Judge

BRIEF OF APPELLANT

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TABLE OF CONTENTS

	Page
A. <u>ASSIGNMENTS OF ERROR</u>	1
<u>Issues Pertaining to Assignments of Error</u>	1
B. <u>STATEMENT OF THE CASE</u>	3
1. <u>Procedural Facts</u>	3
2. <u>Substantive Facts</u>	3
C. <u>ARGUMENTS</u>	10
1. THE EVIDENCE WAS INSUFFICIENT TO CONVICT BEEBE OF THEFT BECAUSE THERE WAS NO EVIDENCE TO REBUT HER GOOD FAITH CLAIM OF TITLE TO APOLLO.	10
2. INSTRUCTION 6 IS AN UNCONSTITUTIONAL JUDICIAL COMMENT ON THE EVIDENCE THAT DEPRIVED BEEBE OF A FAIR TRIAL.	16
3. APPEAL COSTS SHOULD NOT BE IMPOSED	20
D. <u>CONCLUSION</u>	21

TABLE OF AUTHORITIES

	Page
 <u>WASHINGTON CASES</u>	
<u>Seattle v. Arensmeyer</u> 6 Wn. App. 116, 491 P.2d 1305 (1971).....	16
 <u>Staats v. Brown</u> 139 Wn.2d 757, 991 P.2d 615 (2000).....	 20
 <u>State v. Ager</u> 128 Wn.2d 85, 904 P.2d 715 (1995).....	 11
 <u>State v. Arndt</u> 87 Wn.2d 374, 553 P.2d 1328 (1976).....	 15
 <u>State v. Becker</u> 132 Wn.2d 54, 935 P.2d 1321 (1997).....	 17, 19
 <u>State v. Blazina</u> 182 Wn.2d 827, 344 P.3d 680 (2015).....	 20
 <u>State v. Golladay</u> 78 Wn.2d 121, 470 P.2d 191 (1970).....	 15
 <u>State v. Green</u> 94 Wn.2d 216, 616 P.2d 628 (1980).....	 11
 <u>State v. Harris</u> 14 Wn. App. 414, 542 P.2d 122 (1975).....	 15
 <u>State v. Hickman</u> 135 Wn.2d 97, 954 P.2d 900 (1998).....	 15
 <u>State v. Lampshire</u> 74 Wn.2d 888, 447 P.2d 727 (1968).....	 16, 17
 <u>State v. Levy</u> 156 Wn.2d 709, 132 P.3d 1076 (2006).....	 16, 17

TABLE OF AUTHORITIES (CONT'D)

	Page
<u>State v. Liles</u> 11 Wn. App. 166, 521 P.2d 973 (1974)	15
<u>State v. Miller</u> 60 Wn. App. 767, 807 P.2d 893 (1991)	14
<u>State v. Mora</u> 110 Wn. App. 850, 43 P. 3d 38 (2002)	11, 15
<u>State v. Roggenkamp</u> 153 Wn.2d 614, 106 P.3d 196 (2005)	14

FEDERAL CASES

<u>In re Winship</u> 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970)	11
<u>Jackson v. Virginia</u> 443 U. S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)	11

RULES, STATUTES AND OTHER AUTHORITIES

RAP 14	20
RCW 9.41.010	2
RCW 9A.46.030	2
RCW 9A.56.020	2, 8, 11, 18
RCW 9A.56.030	2
RCW 10.73.160	20
Const. Art. IV, § 16	16, 19
Webster's Third New Int'l Dictionary 1050 (1993)	14

A. ASSIGNMENTS OF ERROR

1. The evidence was insufficient to convict appellant of theft.
2. It was error to instruct the jury that stray, abandon and voluntarily surrendered animals become the property of the City of Seattle after 144 hours and that thereafter the City has authority to adopt out such animals. CP 94 (Instruction 6).
3. Instruction 6 is a judicial comment on the evidence in violation of article 4, § 16 of the Washington Constitution. CP 94.

Issues Pertaining to Assignments of Error

Appellant was charged with first degree theft for taking a dog. Appellant admitted the taking, but claimed she did so under a good faith claim of title, a statutory defense to the charge. Evidence showed the dog was registered to appellant as a service dog, had a microchip identifying her as the owner, and it ended up at the animal shelter only because, unbeknownst to appellant, her mother and step-father left it there falsely claiming it was an abandon animal, when in fact two days prior appellant's mother had agreed to care for the dog for appellant.

1. Where there was no evidence to refute appellant's good faith claim of title defense, did the State necessarily fail to meet its burden to disprove the statutory defense beyond a reasonable doubt as required for a conviction?

2. Was it error to instruct the jury that the City of Seattle had the authority to adopt out stray, abandon and voluntarily surrendered animals 144 hours (7 days) after receiving them, when the dog at issue at trial was not a stray, abandon or voluntarily surrendered animal, the actual ownership of the animal was contested, and where a jury finding that appellant still owned the animal would have resulted in an acquittal because it would negate the 'property of another' element of theft?¹

3. Is Instruction 6 an unconstitutional judicial comment on the evidence because it informed the jury the court had determined the person to whom the animal shelter adopted out the dog to was the owner by virtue of the shelter's authority to adopt out animals after a 144-hour hold?

¹ The State charged Appellant with first degree theft under RCW 9A.56.020(1)(a) and RCW 9A.46.030(1)(b). RCW 9A.56.020(1)(a) defines "Theft" as:

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;

Emphasis added.

RCW 9A.56.030(1)(b) provide that a person is guilty of first degree theft if she commits a theft involving:

Property of any value, other than a firearm as defined in RCW 9.41.010 or a motor vehicle, taken from the person of another;

Emphasis added.

B. STATEMENT OF THE CASE

1. Procedural Facts

On September 30, 2014, the King County Prosecutor charged appellant Laura Beebe with one count of first degree theft. CP 1-2. The prosecutor alleged that on June 26, 2014, Beebe took a dog from the person of Carmella Patterson. Id. The charge was amended to add an allegation that Patterson was "particularly vulnerable," but that allegation was subsequently dismissed. CP 9; 5RP 144.²

A jury convicted Beebe as originally charged following a trial held June 8-11, 2015, before the Honorable Helen L. Halpert. CP 103; 3RP-6RP. The court imposed a 25-day sentence, but converted it to 192 hours of community service. CP 107-112; 7RP 28. Beebe appeals. CP 136-43.

2. Substantive Facts

In late 2008 or early 2009, Beebe acquired "Apollo," a Labrador/Border Collie mix, who had recently been hit by a car, and she nursed him back to health. 5RP 150-51. Beebe eventually had Apollo trained as a "service dog" to help her deal with post-traumatic stress disorder (PTSD), which she had been diagnosed with years before. 5RP

² There are eight volumes of verbatim report of proceedings referenced as follows: **1RP** - 4/6/15; **2RP** - 6/3/15; **3RP** - 6/8/15; **4RP** - 6/9/15; **5RP** - 6/10/15; **6RP** - 6/11/15; **7RP** - 7/10/15; and **8RP** - 7/29/15.

154-55. In October 2010, Beebe had a microchip placed in Apollo and she registered him with 24-Hour PetWatch (hereafter "PetWatch"), which provides "Lost Pet Recovery Services."³ RP 156-58; Exs. 36 & 37.

In October 2013, having fallen on hard times, Beebe, her daughter, their two dogs, Apollo and "Sugar Mama" (a Chihuahua), and their cat "Tinkerbell," all moved into the home of Beebe's mother and step-father, Connie and Anthony ("Tony") Brown in West Seattle.⁴ 4RP 134; 5RP 108, 110, 135, 150, 159. Beebe and Tony did not get along, however, so Beebe, her daughter and Sugar Mama moved out in January or February 2014, leaving Tinkerbell and Apollo behind for Connie to take care of. 5RP 113, 115, 128, 158-59, 163-65; 6RP 25.

Tony claimed he asked Beebe to take Apollo with her when she moved out, but she did not respond. 4RP 137. He also claimed that when he tried to tell her why keeping Apollo was a problem, she ignored him. 4RP 138. According to Tony, the problem was Apollo would routinely "go potty in the . . . dining room." 4RP 138. At trial, Tony never claimed he was forced to get rid of Apollo, admitting instead that his only motivation was Apollo's alleged "lack of potty training." Id.

³ This is a quote from the PetWatch web site, which can be found at <https://www.24petwatch.com/US/>

⁴ For clarity, the Browns will be referred to individually by their first names, "Connie" and "Tony." No disrespect is intended.

According to Connie, however, in March 2014, Tony told her the landlord told him they had to get rid of Apollo, so they had to take him to the Humane Society. 5RP 116-17. Connie recalled the landlord had not had any problems with Apollo's presence in the past. 5RP 117. Connie admitted she never talked directly to the landlord regarding Apollo, relying instead only on what Tony told her. Id.

Connie sent a message to Beebe on March 11, 2014, warning her of Tony's plan to take Apollo to an animal shelter. 5RP 121-24, 166; 6RP 61; Ex. 32. When Beebe protested and asked Connie to care for Apollo a bit longer, Connie agreed, stating, "I TOLD HIM no. I got upset. I [sic] take care of Apollo. He miss [sic] you." 5RP 121-24; Ex. 32.

Despite this agreement, on March 13, 2014, the Browns took Apollo to the Seattle Animal Shelter and left him there, with Tony falsely claiming both that he "owned the animal" and that Beebe had abandoned Apollo at their home five months ago. 4RP 139-40, 149-50, 151; 5RP 71, 85-86, 119; Exs. 7 & 8. They left Beebe's phone number for the shelter to contact her and left. 5RP 65, 116, 133; Ex. 8.

The shelter's records indicated it tried to contact Beebe by telephone after accepting Apollo from the Browns. 5RP 70-71, 87; Ex. 28. According to the shelter's records, however, the phone number they had was incorrect, and this was not discovered until Beebe showed up at

the shelter in June demanding Apollo's return. 5RP 72-74. Beebe denied ever being contacted by the shelter prior to her contacting the shelter herself. 5RP 179. There was also no record of the shelter contacting PetWatch, despite knowing of Apollo's microchip. 4RP 42; 5RP 90.

Beebe's cell phone quit working on March 11, 2014, after her mother assured her Tony would not take Apollo to an animal shelter and that she would watch after Apollo. 5RP 167. Beebe did not get a working cell phone again until April 19, 2014. Id.; Ex. 33. It was only then she learned Apollo had been left at a shelter. 5RP 167.

Beebe immediately called the Seattle Animal Shelter, but got no answer. 5RP 168. Next she called PetWatch to inquire whether Apollo had been reported found, but was told there had been no activity associated with his microchip. 5RP 169. When Beebe finally did get in contact with the shelter, she left her contact information and asked them to track down where Apollo was. 5RP 170.

Beebe posted on Facebook, Craigslist and other on-line forums notices that Apollo was missing and she wanted him returned and expressed her grief and efforts to find and recover him. 5RP 171-77; Exs. 10, 12, 13, 15, 18-21, 39-51.

On June 23, 2015, PetWatch contacted Beebe to inform her that someone was trying to register Apollo's microchip to a new name. 5RP

180-81. PetWatch contacted Carmella Patterson, the woman who adopted Apollo from the shelter, and asked her to contact Beebe, which Patterson did that evening. 4RP 50; 5RP 181. When Beebe told Patterson she wanted Apollo back, Patterson refused to make a decision until after she had a chance to discuss the situation with the shelter. 5RP 182.

Using a "reverse directory," Beebe used the phone number Patterson called her from to look up Patterson address. 5RP 186. She then went to Patterson's home on June 26, 2014, to look for Apollo. 5RP 187. When Patterson pulled up in her car and let Apollo out on a leash, Beebe called Apollo by name, approached them, unhooked Patterson's leash from Apollo's collar and walked away with him. 5RP 187, 189. Patterson did not follow. 5RP 190.

Beebe denied hiding out at Patterson's before taking Apollo, claiming instead she was "simply walking down the street." 5RP 188-89. Beebe recalled at trial that when Patterson asked how she knew the dog, Beebe said, "He's mine." Id. Beebe denied using any trickery to get Apollo back, and when asked why not, she replied:

Because he's my dog. And I felt I had every right to my dog. I never gave up my rights to him. I think we left him with a family member. I didn't know what had transpired up until that point until this case came about.

5RP 189.

The trial court's instructions to the jury included the following definition of "Theft";

Theft means to wrongfully obtain or exert unauthorized control over the property of another, or the value thereof, with intent to deprive that person of such property.

CP 93 (Instruction 5).

The court also instructed the jury that;

It is a defense to the charge of theft that the property was appropriated openly and avowedly under a good faith claim of title, even if the claim is untenable.

The State has the burden of proving beyond a reasonable doubt that the defendant did not appropriate the property openly and avowedly under a good faith claim of title. If you find that the State has not proved the absence of this defense beyond a reasonable doubt, it will be your duty to return a verdict of not guilty.

CP 96 (Instruction 8).⁵

Over defense objection (6RP 9-11⁶), the court also instructed the jury that:

⁵ This instruction reflects the statutory defense to theft found under RCW 9A.56.020(2), which provides:

In any prosecution for theft, it shall be a sufficient defense that:(a) The property or service was appropriated openly and avowedly under a claim of title made in good faith, even though the claim be untenable[.]

⁶ Defense counsel argued the instruction failed to accurately set forth the law.

Stray animals, abandoned animals, and animals voluntarily surrendered to the City of Seattle Animal Shelter shall become the property of the City of Seattle, following a holding period of 144 hours.

The City of Seattle Animal Shelter is authorized to permit the adoption of stray animals, abandoned animals, and animals voluntarily surrendered to the City after the expiration of the 144 hour [sic] holding period.

CP 94 ((Instruction 6)).

In closing argument the prosecution conceded Beebe took Apollo from Patterson "openly and [avowedly]."⁷ 6RP 107. The prosecution nonetheless argued Beebe's defense should fail because she did not have a good faith claim of title to Apollo when she took him. 6RP 107-110. Analogizing to a spouse erroneously donating a cherished keepsake to Goodwill, the prosecution argued that just like it would be wrong for the other spouse to seize the keepsake from the person who subsequently bought it from Goodwill, it was "not good faith" for Beebe to take Apollo from Patterson after Patterson adopted Apollo from the shelter. Id.

⁷ There are numerous transcription errors in the verbatim report of proceedings. See e.g., 1RP 8, ln 20 ("continence" instead of "continuance"); 2RP 6, ln 23 ("Circuit" instead of "Sirkin"); 3RP 35, ln 13 (a random "S"); 4RP 14, ln 6 ("Show" instead of "She"); 6RP 124, ln 25 ("hats" instead of "has"). One repeated error appears to be that of replacing the term "avowedly" with "validly," both in transcribing the court's reading of the instructions to the jury (6RP 92, ln 15) and during both the prosecutor's and defense counsel's closing argument (6RP 107, ln 7; 6RP 116, ln 20).

Defense counsel, in closing, agreed with the prosecution; the issue for the jury was whether Beebe owned Apollo, or at least had a good faith claim of title to him when she took him back from Patterson. 6RP 116-17. Counsel argued that unlike the spouse in the Goodwill scenario, neither Tony nor Connie Brown had authority to relinquish Beebe's ownership of Apollo. 6RP 116-19. Counsel also argued that even if Beebe was wrong about her ownership of Apollo when she took him from Patterson, she was still not guilty of theft because her claim of title need not be correct, rather it needs only to be made in good faith. 6RP 120-25.

C. ARGUMENTS

1. THE EVIDENCE WAS INSUFFICIENT TO CONVICT BEEBE OF THEFT BECAUSE THERE WAS NO EVIDENCE TO REBUT HER GOOD FAITH CLAIM OF TITLE TO APOLLO.

Beebe admitted regaining custody of Apollo by taking him from Patterson. It was not a theft, however, because there was ample evidence to support Beebe's good faith claim of title defense, and no evidence introduced to refute it. Because the prosecution failed to disprove Beebe's good faith claim of title beyond a reasonable doubt, reversal is required.

In every criminal prosecution, due process requires that the State prove every fact necessary to constitute the charged crime beyond a reasonable doubt. In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L.

Ed. 2d 368 (1970). When a defendant challenges the sufficiency of the evidence, the proper inquiry is, viewed in the light most favorable to the prosecution, is there sufficient evidence for a rational trier of fact to find guilt beyond a reasonable doubt? Jackson v. Virginia, 443 U. S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); State v. Green, 94 Wn.2d 216, 220-21, 616 P.2d 628 (1980). Even under this generous standard, the prosecution failed to meet its burden.

Assuming, arguendo, that the prosecution met its burden to prove the elements of the theft, it also had to disprove beyond a reasonable doubt Beebe's defense that she believed in good faith that she owned Apollo when she took him from Patterson. It is a defense to theft that the property was "appropriated openly and avowedly under a claim of title made in good faith, even though the claim be untenable." RCW 9A.56.020(2)(a); see note 5, supra. This defense negates the essential element of intent to steal and, therefore, the prosecution bears the burden of disproving it beyond a reasonable doubt. State v. Mora, 110 Wn. App. 850, 855, 43 P. 3d 38 (2002).

This defense is established when 1) the property is taken openly and avowedly, and 2) there is some legal or factual basis for the claim of entitlement. State v. Ager, 128 Wn.2d 85, 95, 904 P.2d 715, 720 (1995). In Ager, the court explained what that legal or factual basis might look

like. Id. at 97. Ager was an officer of a failing insurance company who paid out assets to himself in the form of unauthorized advances. The court listed evidence that might suffice to show a good faith claim of entitlement: "past practices of the company with respect to advances, acts showing that past advances of this nature were approved or acknowledged by the board of directors, or statements by directors of the company that might have been interpreted by Defendants as authorizing them to take advances." Id.

Here, it was undisputed that Beebe took Apollo from Patterson "openly and avowedly." 6RP 107. And there was ample evidence of a legal and factual basis for Beebe to have a good faith belief she owned Apollo when she took him from Patterson. For example, in 2010 she registered with PetWatch as Apollo's owner. Exs. 36 & 37. The evidence also shows Beebe specifically refused to agree to allow her mother and stepfather to surrender Apollo to an animal shelter, and instead got her mother to agree to continue to look after Apollo. 5RP 121-24; Ex. 32. Moreover, the numerous Facebook posts admitted at trial provide ample evidence that Beebe believed she had a legal right to custody of Apollo, and that she acted on that belief by locating Apollo and taking him back. See e.g., Ex. 10 at 2 (On June 25, 2014, Beebe posts on Facebook, "I've researched the law. I'm about to play the asshole & take him back if this

gets dragged out too long!"); Ex. 13 at 2 (On June 27, 2014, Beebe posts on Facebook, "By law keeping [Apollo] from me is theft because he is my registered service dog for PTSD. So I took him from the lady.").

The State may claim, as the prosecutor did at trial, that Beebe's Facebook posts actually reveal she lacked a good faith claim of title. 6RP 107-08. The State will likely rely on the follow posts to make this argument:

- "The gangsta in me has me planning my first heist." Ex. 12 at 1 (posted on June 24, 2014, at 17:32:40 UTC (11:32 am PST)).

- "Fuck this shit. He's mine. I looked her address up and mapped it. Pretty much I'd have to take her to court if she is unwilling to give him up." Ex. 12 at 2 (posted on June 24, 2014, at 17:37:03 (11:37 am PST)).

- "Shelter is claiming no responsibility or liability. Time to play my trump card." Ex. 18 at 1 (posted June 26, 2014 at 20:44:57 UTC (12:44 pm PST)).

None of these or any of Beebe's other Facebook posts, however, disprove she had a good faith claim of title to Apollo. Rather, at most they reveal Beebe was becoming increasingly frustrated by the lack of progress she was making by trying to come to an agreed resolution. They also reveal, as she testified to at trial, that the "trump card" she planned to "play" was the fortuitous discovery of Patterson's home address. 6RP 37-

40. It was this discovery that allowed her to quit trying to negotiate a settlement and instead regain custody of Apollo immediately.

Even the "planning my first heist" post does not refute Beebe's good faith claim of title. The term "heist" is commonly understood to mean the commission of a theft, or to steal something. Webster's Third New Int'l Dictionary 1050 (1993). It should, however, be viewed in the context in which it was used and in light of all the other related comments made by Beebe, which was that she was frustrated with the lack of success of a negotiated settlement, so she planned to apply what she knew (her "trump card") to get Apollo back through more direct means. It does not, however, prove beyond a reasonable doubt that Beebe lacked a good faith claim of title to Apollo when she took him from Patterson.

And even if this Court concludes Beebe's Facebook post provide at least a scintilla of evidence to refute the defense, that is not enough. More than a mere scintilla of evidence is needed to meet the beyond-a-reasonable-doubt standard; "there must be that quantum of evidence necessary to establish circumstances from which the jury could reasonably infer the fact to be proved." State v. Miller, 60 Wn. App. 767, 772, 807 P.2d 893 (1991), abrogated on other grounds by State v. Roggenkamp, 153 Wn.2d 614, 106 P.3d 196, (2005). Although a conviction may be sustained on circumstantial evidence, the existence of a fact cannot rest on

guess, speculation, or conjecture. State v. Golladay, 78 Wn.2d 121, 130, 470 P.2d 191 (1970), overruled on other grounds by State v. Arndt, 87 Wn.2d 374, 553 P.2d 1328 (1976)). This rule is even more essential in criminal cases where the evidence is entirely circumstantial. Id. In State v. Liles, 11 Wn. App. 166, 521 P.2d 973 (1974), the court explained:

When substantial evidence is present, the drawing of reasonable inferences therefrom and the doing of some conjecturing on the basis of such evidence is permissible and acceptable. If, however, the necessity for conjecture results from the fact that the evidence is merely scintilla evidence, then the necessity for conjecture is fatal.

Id. at 171 (citation omitted); accord, State v. Harris, 14 Wn. App. 414, 417-18, 542 P.2d 122 (1975).

Because the evidence was insufficient to disprove Beebe had a good faith claim of title to Apollo when she took him from Patterson, the prosecution necessarily failed to prove the essential element of "intent to steal," which it needed to do for a valid theft conviction. Mora, 110 Wn. App. at 855. Therefore, reversal and dismissal is required. State v. Hickman, 135 Wn.2d 97, 106, 954 P.2d 900 (1998).

2. INSTRUCTION 6 IS AN UNCONSTITUTIONAL JUDICIAL COMMENT ON THE EVIDENCE THAT DEPRIVED BEEBE OF A FAIR TRIAL.

Instruction 6 told the jury the Seattle Animal Shelter became the owner of Apollo 144 hours after the Browns left him, and therefore had the authority to allow Patterson to become his new owner. This was error because whether the shelter had authority to adopt out Apollo in light of how he came into its custody was contested issue central to Beebe's defense. The instruction constitutes a judicial comment on the evidence in violation of article 4, § 16 of the Washington Constitution. Because the prosecution cannot show this error was harmless beyond a reasonable doubt, reversal is required.

Article 4, § 16 of Washington's constitution provides, "Judges shall not charge juries with respect to matters of fact, nor comment thereon, but shall declare the law." The purpose of this prohibition "is to prevent the jury from being influenced by knowledge conveyed to it by the court as to the court's opinion of the evidence submitted." State v. Lampshire, 74 Wn.2d 888, 892, 447 P.2d 727 (1968).

The prohibition is strictly applied. Seattle v. Arensmeyer, 6 Wn. App. 116, 120, 491 P.2d 1305 (1971). The court's opinion need not be express to violate the prohibition; it can simply be implied. State v. Levy, 156 Wn.2d 709, 721, 132 P.3d 1076 (2006). Moreover, this constitutional

violation may be raised for the first time on appeal. The failure to object or move for mistrial at the trial level is not a bar to appellate review. Levy, 156 Wn.2d at 719-720; State v. Becker, 132 Wn.2d 54, 64, 935 P.2d 1321 (1997); Lampshire, 74 Wn.2d at 893.

A comment on the evidence in violation of article 4, § 16 is presumed prejudicial, and the prosecution bears the burden to show no prejudice resulted. Levy, 156 Wn.2d at 723-25. That jurors were instructed to disregard such comments is not determinative. Lampshire, 74 Wn.2d at 892 (instruction requiring jury to disregard comments of court and counsel incapable of curing prejudice). In deciding whether a comment on the evidence is harmless, the Washington Supreme Court has looked to whether it was directed at an important and disputed issue at trial. See Becker, 132 Wn.2d at 65 (comment addressed important and disputed issue; reversed); Levy, 156 Wn.2d at 726 (subject of comment "never challenged in any way by defendant"; harmless).

Beebe's defense was two-fold; "general denial" and "good faith claim of title". CP 11 (defense trial memorandum). First, she asserted Apollo belonged to her, and therefore she was not guilty of theft because Apollo was not "the property of another." See CP 93 (Instruction 5 defining "theft" as obtaining or exerting "unauthorized control over the property of another"); 6RP 116-20 (defense counsel in closing asks rhetorically whether Beebe's

ownership rights to Apollo were ever extinguished when she had no notice he had been left the shelter). In the alternative, Beebe asserted that even if Apollo did not in fact belong to her, she at least had a good faith claim that he did when she took him from Patterson, even if untenable. See RCW 9A.56.020(2) (setting forth "good faith" defense to theft); 6RP 120-26 (defense counsel argues in closing that jury should accept "good faith claim of title" defense).

By instructing the jury that the Seattle Animal Shelter became Apollo's owner 144 hours after the Browns left him, the court effectively eliminated Beebe's actual ownership defense. If the shelter owned Apollo 144 hours after March 13, 2014 (the day he was left by the Browns), then Beebe could not have owned him on June 26, 2014, when she took him from Patterson. If Beebe was not his actual owner on that date, then the jury could not acquit based on a finding the prosecution failed to prove beyond a reasonable doubt that she wrongfully obtained or exerted "unauthorized control over the property of another," as required to prove a theft. CP 93 (Instruction 5, emphasis added).

Moreover, as noted by defense counsel, the legality of Instruction 6's directive on the issue of ownership is suspect. 5RP 47-52; 6RP 9-11. As noted by counsel, Beebe did not voluntarily surrender Apollo to the shelter, she never abandoned him, and he was not a stray, so whether the shelter had

authority to accept Apollo, much less adopt him out was contested. 6RP 117-18. Counsel also noted in closing the testimony by a shelter staff person that the shelter provides "no [warrantees]"⁸ as to the legality of the adoptions it conducts, presumable as a counter to Instruction 6's ownership directive. 6RP 119 (noting the staffer's testimony at 5RP 92).

Declaring the shelter the owner of Apollo 144 hours after he was left by the Browns was error under the circumstances. The ownership question should have been left to the jury. If it concluded Beebe maintained ownership despite the Browns leaving him at the shelter, then an acquittal would necessarily follow because the prosecution failed to prove she obtained or exerted "unauthorized control over the property of another." CP 93 (Instruction 5). And even if the jury could not determine who owned Apollo as of June 26, 2014, the acquittal would also necessarily follow because the prosecution failed to meet its burden to prove beyond a reasonable doubt that Apollo was the "property of another."

In a case with conflicting evidence on this essential element of the offense, the State cannot prove the error was harmless. The violation of Article 4, § 16 of Washington's constitution requires reversal of Beebe's conviction. Becker, 132 Wn.2d at 65.

⁸ The transcript reads, "no warn tease for its adoption." 6RP 119.

3. APPEAL COSTS SHOULD NOT BE IMPOSED.

The trial court found Beebe to be unable by reason of poverty to pay for any of the expense of appellate review and therefore she was entitled to appointment of appellate counsel and production of an appellate record at public expense. Supp. CP ___ (Sub. No. 63, Order Authorizing Appeal In Forma Pauperis, Appointment of Counsel and Preparation of Record, filed July 31, 2015). If Beebe does not prevail on appeal, she asks that no costs of appeal be authorized under title 14 RAP. RCW 10.73.160(1) states the “court of appeals . . . may require an adult . . . to pay appellate costs.” (Emphasis added.) “[T]he word ‘may’ has a permissive or discretionary meaning.” Staats v. Brown, 139 Wn.2d 757, 789, 991 P.2d 615 (2000). Thus, this Court has ample discretion to deny the State’s request for costs.

Trial courts must make individualized findings of current and future ability to pay before they impose legal financial obligations (LFOs). State v. Blazina, 182 Wn.2d 827, 834, 344 P.3d 680 (2015). Only by conducting such a “case-by-case analysis” may courts “arrive at an LFO order appropriate to the individual defendant’s circumstances.” Id. Accordingly, Bryant's ability to pay must be determined before discretionary costs are imposed. The trial court made no such finding. Instead, the trial court waived all non-mandatory fees, including court costs and fees for a court-appointed attorney. CP 107-112.

Without a basis to determine that Beebe has a present or future ability to pay, this Court should not assess appellate costs against her in the event she does not substantially prevail on appeal.

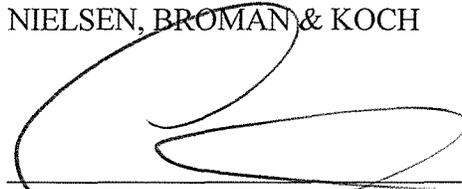
D. CONCLUSION

The evidence was insufficient to convict Beebe of theft because no evidence contradicted her good faith claim of title defense, so reversal and dismissal is required. And even if this Court concludes there was sufficient evidence to convict, the trial court's violation of article 4, § 16 requires reversal and remand for a new trial.

DATED this 9th day of March 2016.

Respectfully submitted,

NIELSEN, BROMAN & KOCH



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WSBA No. 25097
Office ID No. 91051

Attorneys for Appellant

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE**

STATE OF WASHINGTON)	
)	
Respondent,)	
)	
v.)	COA NO. 73812-7-1
)	
LAURA BEEBE,)	
)	
Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 9TH DAY OF MARCH 2016, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] LAURA BEEBE
8606 PACIFIC AVENUE
#A8
TACOMA, WA 98444

SIGNED IN SEATTLE WASHINGTON, THIS 9TH DAY OF MARCH 2016.

X *Patrick Mayovsky*