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Court of Appeals  
Division I  
State of Washington

NO. 73812-7-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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STATE OF WASHINGTON,

Respondent,

v.

LAURA MARIE BEEBE,

Appellant.

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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE HELEN L. HALPERT

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**BRIEF OF RESPONDENT**

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**A. ISSUES PRESENTED**

1. Where the defendant knew that her dog had been surrendered to a shelter and adopted by the victim months earlier, and knew that she would need to take the victim to court in order to attempt to get the dog back, and where the defendant's actions and statements supported the inference that she knew that she was not legally entitled to simply remove the dog from the victim's custody, but she did so anyway, was the evidence sufficient to prove that the defendant did not take the dog under a good faith claim of title?

2. Where a jury instruction stated the conditions under which an animal that has been "voluntarily surrendered" to an animal shelter may be put up for adoption, but did not address whether the dog in this case had been "voluntarily surrendered," and where the defendant was not contesting the lawfulness of the dog's adoption, should this Court reject the defendant's claim that the challenged instruction constituted a judicial comment on the evidence?

3. Where there is no evidence in the record indicating that the defendant lacks the likely future ability to pay financial obligations, should this Court reject the defendant's request to preemptively prohibit the award of appellate costs to the State?

**B. STATEMENT OF THE CASE**

**1. PROCEDURAL FACTS.**

The State charged the defendant, Laura Marie Beebe, with one count of theft in the first degree for wrongfully taking property from the person of another.<sup>1</sup> CP 9. A jury found her guilty as charged. CP 103. The trial court imposed a standard range sentence of 25 days in confinement, converted entirely to community service. CP 108, 110. Beebe timely appealed. CP 136.

**2. SUBSTANTIVE FACTS.**

In October 2013, Beebe began staying at the home of her mother, Connie Brown, and her mother's husband, Anthony "Tony" Brown.<sup>2</sup> 4RP 134-35. Beebe brought her daughter, a cat, a Chihuahua, and a Labrador named Apollo into the home, which already contained the Browns' two dogs and three cats. 4RP 136; 5RP 109. In late December or early January, Beebe and her daughter moved out of the home at the landlord's insistence, taking

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<sup>1</sup> The State also alleged an aggravating factor that the victim was particularly vulnerable. CP 9. However, the aggravating factor was dismissed at the close of the State's case. 5RP 143-44.

<sup>2</sup> To avoid confusion, this brief will refer to Connie and Tony Brown by their first names. No disrespect is intended.

their Chihuahua with them, but leaving Apollo and the cat behind.<sup>3</sup> 5RP 111, 128, 131. Beebe had asked Connie to take care of Apollo while she looked for a new place to live, because Beebe was unable to care for him during that time, and Connie had agreed. 5RP 111-13. However, on the day Beebe and her daughter moved out, Tony asked Beebe to take Apollo with her; Beebe ignored him and did not respond. 4RP 137.

After Beebe moved out, she was able to reach Connie easily through Facebook and by cell phone, and stopped by the house a few times. 5RP 114-15. Although Beebe had taken care of Apollo and paid for his food while she was living there, after she moved out all responsibility for Apollo's needs and expenses fell to Connie and Tony. 5RP 129-30.

In March 2014, Tony reported to Connie that their landlord had indicated that they could no longer keep Apollo at their apartment due to the number of pets in the home. 5RP 116, 121. Tony was also concerned about the fact Apollo was not housebroken and both urinated and defecated in the dining room. 4RP 138.

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<sup>3</sup> At the time of trial, Beebe had yet to reclaim the cat. Although Connie testified that in her mind the cat still belonged to Beebe, Beebe testified that the cat now belonged to Connie; however, she was unable to say at what point she felt the change in ownership had occurred. 5RP 129; 6RP 32-33.

On March 11, 2014, Connie sent Beebe a Facebook message alerting her that Tony planned to take Apollo to an animal shelter two days later. 5RP 121; Ex. 32. Beebe asked for “a little more time,” and promised that “it w[ould]n’t be much longer” before she could take Apollo back. Ex. 32. Connie responded, “Ok. Good night.” Ex. 32. On March 13<sup>th</sup>, Tony and Connie brought Apollo to the Seattle Humane Society’s animal shelter; they were unable to drop him off with Beebe instead because they did not know where in Sumner, Washington, Beebe was living. 5RP 116-18, 135.

Connie informed the shelter that they had been taking care of Apollo for Beebe, but could no longer do so, and needed to surrender him to the shelter. 5RP 118-19. She provided Beebe’s phone number, and asked the shelter to call Beebe to come get her dog. 5RP 119. Connie also texted Beebe to inform her that Apollo had been taken to the shelter, but she received no response. 5RP 133-34.

Because the shelter had no address for Beebe, it was unable to send her a certified letter as it normally would under such circumstances; instead, a staff person left a message on Beebe’s

cell phone.<sup>4</sup> 5RP 59, 72. Although the shelter may put animals surrendered to the shelter up for adoption immediately under the Seattle Municipal Code, due to the fact that Apollo had been surrendered by someone other than his owner the shelter treated him as if he were a stray with identification and held him for more than six days before making him eligible for adoption. 5RP 59-60, 71, 79.

On March 27, 2014, Carmella Patterson adopted Apollo from the shelter and renamed him Bodie. 4RP 28, 34, 45; 5RP 82. Everything went exactly as it had in her prior pet adoptions—she filled out the required paperwork, purchased a pet license, and took him home. 4RP 34-36. Patterson purchased the special food required for Bodie's grain intolerance, and immediately enrolled him in a training program in preparation for getting him certified as an post-traumatic stress disorder Emotional Support Animal (“ESA”) to meet her own support needs. 4RP 29, 36-37.

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<sup>4</sup> Although the handwritten surrender form Tony filled out contained Beebe's correct cell phone number, the number was entered incorrectly into the shelter's electronic records; shelter records did not specify at which phone number the message had been left. 5RP 71-72, 74. However, a manager at the shelter testified that the message would normally have been left at the number provided on the surrender form. 5RP 72.

The shelter had given Patterson the number associated with Bodie's existing microchip, and she had promptly contacted the microchip company, 24-Hour PetWatch ("PetWatch"), to start the process for registering herself as Bodie's new owner. 4RP 42, 50. However, because the process required mailing in forms downloaded from the internet and Patterson's computer was broken for several months, she was unable to complete the process until June 2014. 4RP 43, 65-66. In the months leading up to late June 2014, Patterson took Bodie with her nearly everywhere she went, including on visits to the nearby nursing home where her husband lived. 4RP 25, 39-40, 44.

Meanwhile, Connie did not hear from Beebe at all in the month following the text she had sent alerting Beebe that Apollo had been taken to the shelter. 5RP 133-34; 6RP 62. Finally, in late April 2014, Beebe sent Connie a Facebook message asking where Apollo was. 4RP 126. Connie called her back, and provided the address and phone number of the Humane Society shelter. 4RP 126; 5RP 168. Beebe, not believing that the dog had actually been taken to the shelter rather than abandoned by Tony, began looking for her "lost" dog through postings on Facebook and lost pet websites. 6RP 48; Ex. 39, 43, 44.

On June 23, 2014, Patterson contacted PetWatch about the information she was sending them regarding Bodie's new registration. 4RP 66. PetWatch notified Beebe that the dog's "new owner" had contacted them, and, at Beebe's request, asked Patterson to call Beebe to discuss the situation. 4RP 50; 5RP 181. Patterson immediately did so. 4RP 50.

Beebe told Patterson that the dog had been brought to the shelter without her permission and she wanted the dog back. 4RP 50-56. Patterson told Beebe that she wasn't sure what to say, but made it clear that she wanted to keep Bodie. 4RP 55-56. As the conversation progressed, Beebe became increasingly agitated, and began screaming that Apollo was her dog and she wanted him back until Patterson ended the conversation after they agreed that they would both contact the shelter. 4RP 83-84; 5RP 182.

Over the next few days, Beebe made numerous Facebook posts about the dispute over the dog. E.g., Ex. 18. On June 24th, she reported that PetWatch told her the shelter would need to resolve the dispute over the dog's ownership, and that she thought that process was "unsatisfactory." Ex. 18 at 2. Other posts over the next two days contained repeated expressions of frustration with the wait to hear back from shelter management, as well as

statements that if the wait grew too long she would simply “play the asshole & take him back.” Ex. 10; Ex. 18 at 1. After speaking with a coworker who went through a similar situation, Beebe learned that if Patterson was not willing to give Bodie up, Beebe would need to take her to court in order to attempt to regain custody of the dog. Ex. 12 at 2; 6RP 42. She then posted, “The gansta in me has been planning my final heist.” Ex. 12.

On June 26, 2014, unsatisfied with the responses she’d gotten from the shelter over the phone, Beebe visited the shelter in person in an attempt to get Apollo back. 5RP 72; Ex. 18 at 1. The shelter manager confirmed that Apollo had been adopted out to a new owner in March, and told Beebe that the shelter could not force Patterson to give the dog back. 5RP 72-74, 186. The shelter does not rescind adoptions due to ownership disputes—rescission occurs only if an animal is not being cared for properly. 5RP 90.

Frustrated, Beebe posted on Facebook that it was “[t]ime to play my trump card.” Ex. 18 at 1. When Patterson had called her several days earlier, she had done so from her home’s land line; Beebe had then looked that phone number up online to determine Patterson’s address. 5RP 186; 6RP 70. After leaving the shelter, Patterson and her daughter drove to Patterson’s home, but

intentionally parked down the street rather than right in front of the house. 6RP 51-52.

At some point thereafter, Patterson and Bodie returned home after visiting Patterson's husband at the nursing home. 4RP 44. Patterson got Bodie out of the car and had his leash wrapped around her hand when Beebe and her daughter ran up calling, "Apollo!" 4RP 45. Not immediately understanding who Beebe was, Patterson asked how they knew her dog. 4RP 58. Beebe unhooked the leash from Bodie's harness, grabbed him by the harness, and towed him away, screaming that he was her dog. 4RP 45-46, 60. In shock, and knowing that she had no chance of outrunning or overpowering the much younger Beebe, Patterson did not attempt to chase after her, but instead went inside and called both the shelter and the police.<sup>5</sup> 4RP 46-48, 62.

After leaving Patterson's house, Beebe posted on Facebook that she had taken the dog from Patterson, saying things like, "Family is FUREVER bitchezzz!!! Sorry about your luck but I don't take no for an answer," and stating that she was "not going to beat [her]self up" for taking him back. Ex. 18 at 1; 5RP 20.

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<sup>5</sup> Beebe was in her 30s, while Patterson was in her mid-60s and frail—by the time of trial a year later, Patterson was using a walker to get around. 4RP 25, 46, 71.

The officer who responded to Patterson's 911 call was unable to locate Beebe. 4RP 91-93. Seattle Police Detective David Simmons was assigned to follow up, and left several voicemail messages on Beebe's cell phone in an attempt to speak with her. 4RP 168-69. In the voicemails, he identified himself, provided his contact information, and explained why he was calling and that he wanted to hear Beebe's side of the story. 4RP 173. Finally, Simmons called again in mid-July and Beebe answered the phone. 4RP 171. However, when Simmons asked to speak to Laura Beebe, Beebe denied that there was anyone by that name associated with the phone. 4RP 173. When Simmons told her that Laura Beebe had placed a 911 call from that number in February, the speaker then admitted that she was Laura Beebe. 4RP 173.

Simmons attempted to tell her that he was conducting an investigation regarding the taking of the dog, but was interrupted by Beebe, who began screaming at him so loudly that he had to pull the phone away from his ear. 4RP 173-74. Simmons' attempts to get Beebe to calm down were unsuccessful, and she eventually hung up on him, though she answered when he called again a few minutes later. 4RP 174. Throughout the two conversations, Beebe refused to let Simmons finish a sentence as he attempted to tell her

that the dispute needed to be handled in a civil court of law, that she needed to return the dog to Patterson and then use a civil court proceeding to try to get him back, and that Patterson had no desire to press charges so long as the dog was returned to her. 5RP 39.

Beebe continued to talk over Simmons as he explained what his investigation had shown so far. 4RP 174-75. Beebe then told him to "prove it," and ended the conversation again. 4RP 175. Despite his subsequent attempts to physically locate Beebe or the dog, Simmons was never able to find Bodie. 4RP 175.

At trial, Patterson, Tony, Connie, Simmons, and the shelter manager testified to the facts above. Beebe testified in her own defense, and admitted taking the dog from Patterson, but claimed that she did so under a good faith belief that her actions were lawful because the dog still belonged to her. 5RP 187, 191; 6RP 77, 120.

Beebe admitted that her cell phone was functioning properly in March of 2014, but denied ever receiving notice from her mother or the Humane Society that Apollo had been taken to the shelter prior to her Facebook conversation with her mother in April 2014.<sup>6</sup> 5RP 167-68. Beebe admitted that she knew Patterson had

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<sup>6</sup> This claim was contradicted by the fact that Beebe's first Facebook message to her mother in April 2014 began by asking where Apollo was, suggesting that Beebe was already aware the dog was no longer in her mother's care. Ex. 33.

adopted the dog and had been caring for and bonding with him for several months, but claimed that she had done legal research on Google that supported her belief that she was entitled to take the dog back. 6RP 34-35, 48-49. However, on cross-examination she was unable to remember what her “research” had revealed, stating that she only knew that she had looked up information about service dogs.<sup>7</sup> 6RP 35. She also conceded that she had no legal training, had not consulted a lawyer or the police before taking the dog back, and had no idea whether the things she claimed she had read on the internet were true. 6RP 37. When asked why she would post on Facebook that she was “about to play the asshole and take him back” if she believed she had the legal right to take him back, Beebe did not dispute that she had written the post, and stated that she was unable to explain why she would say that. 6RP 36.

Beebe testified on direct examination that she had gone to Patterson’s house without any specific plan to take the dog back, and had “just reacted” when she saw him. 5RP 187-88. However, she admitted on cross-examination that she had posted two days earlier about a plan to take him back, and could not explain why

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<sup>7</sup> Beebe testified that she considered Apollo her service dog for her post-traumatic stress disorder. 5RP 155.

she had parked down the street rather than right in front of Patterson's house. 6RP 52-53; Ex. 12 at 1. Beebe also denied that she had yelled at Patterson or run when leaving with the dog, and claimed that she had been around long enough to see Patterson walk back into her house. 5RP 190. However, Facebook posts showed that when a friend had asked whether Patterson had cried when Beebe took the dog from her, Beebe responded, "Didn't stick around to find out." Ex. 13 at 2. Beebe further denied yelling at Detective Simmons over the phone, and claimed that she did not recall ever denying who she was when Simmons called her. 6RP 18, 20.

The jury took only an hour to reach a unanimous verdict of guilty as charged. Supp. CP \_\_ (sub 38A at 12).

**C. ARGUMENT**

1. THE EVIDENCE WAS SUFFICIENT TO SUPPORT THE JURY'S FINDING THAT THE STATE HAD DISPROVED BEEBE'S ASSERTED DEFENSE OF GOOD FAITH CLAIM OF TITLE.

Beebe contends that the evidence was insufficient to support her conviction because there was no evidence to rebut her assertion that she took the dog under a good faith claim of title. This claim should be rejected. There was ample evidence on which

a reasonable jury could conclude beyond a reasonable doubt, as this jury did, that Beebe did not act under a good faith claim of title.

The Due Process Clause of the Fourteenth Amendment to the United States Constitution requires the State to prove every element of a 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 an appellant claims that there was insufficient evidence to support his conviction, the reviewing court views the evidence and all inferences that can reasonably be drawn from it in the light most favorable to the State. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Viewing the evidence in that light, if any rational trier of fact could have found each element of the crime proven beyond a reasonable doubt, then the evidence is sufficient to support the conviction. State v. Green, 94 Wn.2d 216, 221-22, 616 P.2d 628 (1980).

In a prosecution for theft, it is a defense that “[t]he property or service 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). The good faith claim of title defense negates the element of intent to steal, and thus must be disproved

by the State beyond a reasonable doubt. State v. Ager, 128 Wn.2d 85, 92, 904 P.2d 715 (1995); CP 96. Even where a defendant holds a subjective “belief” that he or she has a lawful claim of title to property, such a belief is not held in good faith where the circumstances indicate that the defendant is aware of contrary facts which render the belief unreasonable. People v. Vineberg, 125 Cal. App. 3d 127, 137, 177 Cal. Rptr. 819 (Cal. Ct. App. 1981) (cited with approval in Ager, 128 Wn.2d at 93).

A jury is free to believe or disbelieve any witness, as credibility determinations are solely for the trier of fact and cannot be reviewed on appeal. Morse v. Antonellis, 149 Wn.2d 572, 574, 70 P.3d 125 (2003). A defendant’s specific criminal intent may be inferred from her conduct and the surrounding circumstances where it is plainly indicated as a matter of logical probability. State v. Davis, 73 Wn.2d 271, 289, 438 P.2d 185 (1968), overruled on other grounds by State v. Abdulle, 174 Wn.2d 411, 275 P.3d 1113 (2012).

In this case, after viewing the evidence and all inferences that can reasonably be drawn from it in the light most favorable to the State, there is a wealth of evidence that Beebe did not have a good faith belief that she was legally entitled to take the dog from

Patterson. First and foremost, the jury was free to disregard Beebe's testimony that she believed she had a legal right to take the dog back as not credible. This was a particularly reasonable conclusion in light of the many ways in which Beebe's testimony was contradicted by other evidence and the many instances when Beebe was unable to provide explanations for her actions and statements that were consistent with her assertion of a good faith claim of title.

Additionally, both the shelter and PetWatch had informed Beebe that Patterson was the dog's new owner, and the shelter had informed her that they could not force Patterson to give the dog back. 5RP 73, 181, 186. Beebe's own testimony and Facebook posts confirmed that she knew the dog had been adopted by Patterson and knew that she would have to take Patterson to court to get the dog back legally. 6RP 34, 42.

Moreover, many of Beebe's other actions and statements strongly supported the inference that Beebe knew that she was not legally entitled to simply take the dog back, such as describing herself as a "gansta" who was planning a "heist," describing herself as an "asshole" for taking the dog back but stating that she was "not going to beat [her]self up" for doing it, surreptitiously parking

down the street from Patterson's house rather than right in front of it, running away with the dog after taking him from Patterson, and lying about her identity when contacted by Detective Simmons. Ex. 10 at 2; Ex 12 at 1; Ex. 50; 4RP 46, 173; 5RP 20; 6RP 51-52.

When the above evidence and all inferences that can reasonably be drawn from it are viewed in the light most favorable to the State, there was more than enough evidence for the jury to conclude beyond a reasonable doubt that Beebe did not take the dog under a good faith claim of title.

2. INSTRUCTION SIX DID NOT CONSTITUTE A JUDICIAL COMMENT ON THE EVIDENCE.

Beebe contends that her conviction must be reversed because Instruction Six, which recited the law regarding the adoption of animals in the custody of the Seattle Animal Shelter, constituted an unconstitutional judicial comment on the evidence. This claim should be rejected. Because the instruction did not convey the judge's personal opinion of the credibility, weight, or sufficiency of the evidence presented at trial, it was not a comment on the evidence; furthermore, any error was harmless.

a. Relevant Facts.

Under the Seattle Municipal Code, "Strays and abandoned animals, following the holding period, and animals voluntarily

surrendered to the Director [of Finance and Administrative Services of The City of Seattle or his/her authorized representative] shall become the property of The City of Seattle.” SMC 9.25.091(A); SMC 9.25.020(H). The “holding period” is “seventy-two (72) hours commencing at the close of regular business on the day of detainment of any unlicensed or unidentified cat or dog, and one hundred forty-four (144) hours for any licensed or identified animal, excluding days the City Animal Shelter is not open to the public.” SMC 9.25.021(C). “Any animal detained or surrendered to the Department, and not redeemed, shall be disposed of in a humane manner or, at the discretion of the Director, may be held for a longer period to allow for adoption.” SMC 9.25.091(B).

Early in the trial, the State proposed an instruction based on the above statutory provisions that stated:

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 72 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 72 hour holding period.

CP 161. Beebe objected to the proposed instruction on three grounds. 6RP 9-11. First, she argued that the shelter manager

had testified that Apollo was treated as an identified stray because his owner could not be located, and both the shelter manager and the municipal code indicated that the holding period for an identified stray animal is 144 hours. 6RP 9. Second, Beebe argued that the instruction was incomplete because some of the statutory language was omitted. 6RP 10. Third, Beebe argued that the instruction was unnecessary because she was not disputing the legality of Patterson's adoption of the dog, but was merely arguing that she had a subjective good faith claim of title. 6RP 10-11. At no point did Beebe object on the basis that the instruction was a judicial comment on the evidence. 6RP 9-11.

The State agreed with Beebe's first objection, and conceded that in light of the testimony at trial, the instruction should be modified to say 144 hours rather than 72. 5RP 101. The trial court gave the State's proposed instruction to the jury with that modification as Instruction Six. CP 94. In closing argument, the State referred to that instruction only briefly in the course of arguing that the shelter was not obligated to call Beebe before putting Apollo up for adoption, and therefore it was immaterial whether the shelter had used the correct phone number when attempting to reach her. 6RP 105. Beebe's closing argument also only briefly

referenced that instruction, and did so in the context of arguing that she did not voluntarily surrender her dog as contemplated by the instruction, and therefore maintained a good faith belief that she still owned him. 6RP 118-20.

b. This Issue May Not Be Raised For The First Time On Appeal.

Appellate courts generally will not consider an issue that is raised for the first time on appeal. State v. Kirkman, 159 Wn.2d 918, 926, 155 P.3d 125 (2007). An objection in the trial court on different grounds than those argued on appeal is not sufficient to preserve the alleged error. Trueax v. Ernst Home Ctr., Inc., 124 Wn.2d 334, 339, 878 P.2d 1208 (1994). Here, Beebe objected to the challenged instruction on several grounds, but none of them involved concern that the instruction constituted a judicial comment on the evidence. 6RP 9-11.

Because Beebe did not object to the alleged judicial comment on the evidence at trial, in order to have the claim reviewed on appeal she must demonstrate that the error is (1) manifest, and (2) of constitutional dimension. State v. O'Hara, 167 Wn.2d 91, 98, 217 P.3d 756 (2009); RAP 2.5. A claim of judicial comment on the evidence indisputably alleges an error of

constitutional dimension. WASH. CONST. art. IV, § 16 (“Judges shall not charge juries with respect to matters of fact, nor comment thereon, but shall declare the law.”). However, not every alleged constitutional error is a manifest constitutional error. State v. Lynn, 67 Wn. App. 339, 342-46, 835 P.2d 251 (1992) (“[I]t is important that ‘manifest’ be a meaningful and operational screening device if we are to preserve the integrity of the trial and reduce unnecessary appeals.”). This Court should decline to review Beebe’s claim because the alleged error is not manifest.

A manifest error is “an error that is ‘unmistakable, evident or indisputable,’” and that has “practical and identifiable consequences in the trial of the case.” State v. Hayes, 165 Wn. App. 507, 514-15, 265 P.3d 982 (2011) (quoting State v. Burke, 163 Wn.2d 204, 224, 181 P.3d 1 (2008)). The mere possibility of prejudice is insufficient—the defendant must show that the alleged error actually affected her rights at trial. Kirkman, 159 Wn.2d at 926-27.

Here, Beebe does not, and cannot, show that the challenged instruction actually affected the trial. As discussed below, the wording of the instruction did not communicate to the jury the judge’s opinion of the evidence or imply that an element of the

crime had been established as a matter of law, let alone do so to such a degree that the error is obvious and unmistakable. Beebe also conceded that she was not challenging the legality of Patterson's adoption of the dog, meaning that the alleged comment had no practical effect on the trial. As such, Beebe fails to raise a manifest constitutional error that may be reviewed for the first time on appeal. Even if this Court chooses to reach the merits of Beebe's claim, her convictions should be affirmed for the reasons stated below.

- c. The Challenged Instruction Did Not Convey To The Jury The Judge's Personal Opinion Of The Credibility, Weight, Or Sufficiency Of The Evidence.

Article IV, section 16 of the Washington State Constitution prohibits a judge from making a comment that conveys to the jury the judge's personal opinion of the credibility, weight, or sufficiency of evidence introduced during a trial. State v. Jacobsen, 78 Wn.2d 491, 495, 477 P.2d 1 (1970). Accordingly, a court may not instruct the jury that matters of fact have been established as a matter of law. State v. Hartzell, 156 Wn. App. 918, 938, 237 P.3d 928 (2010). A jury instruction challenged as a judicial comment on the

evidence is reviewed de novo, in the context of the instructions as a whole. State v. Levy, 156 Wn.2d 709, 721, 132 P.3d 1076 (2006).

In evaluating whether a trial court's words or actions amount to a comment on the evidence, the appellate courts look at the facts and circumstances of the particular case. Jacobsen, 78 Wn.2d at 495. The fact that a jury instruction could have been worded differently to more clearly avoid any issue of comment on the evidence does not necessarily mean that the wording used was improper. Hartzell, 156 Wn. App. at 939-40.

Here, Instruction Six did not convey to the jury the judge's personal opinion regarding the credibility, weight, or sufficiency of the evidence presented at trial, nor did it instruct the jury that Patterson's ownership of the dog had been established as a matter of law. It simply stated the law in a manner entirely divorced from the facts of the case, describing the rules that apply to animals "voluntarily surrendered" to the shelter without attempting to resolve the issue of whether Apollo had been voluntarily surrendered. Beebe emphasized that fact in her closing argument when she reminded the jury that the instruction did not address whether Apollo had been "voluntarily surrendered." 6RP 118. As such,

Instruction Six did not constitute a judicial comment on the evidence.

d. Any Error Was Harmless.

When a trial court comments on the evidence, the error is presumed to be prejudicial, and reversal is required “unless the State shows that the defendant was not prejudiced or the record affirmatively shows that no prejudice could have resulted.” Hartzell, 156 Wn. App. at 937. In this case, even if this Court were to find that the Instruction Six constituted a judicial comment on the evidence, Beebe’s convictions should be affirmed because the record affirmatively shows that no prejudice could have resulted from the error.

The trial court instructed the jury to disregard any potential comments on the evidence, and jurors are presumed to follow the court’s instructions. CP 88; Kirkman, 159 Wn.2d at 937. Additionally, defense counsel made it clear in closing argument that Instruction Six did not mean that Beebe’s dog had been voluntarily surrendered in this case, and the State did not suggest otherwise. 6RP 105, 118.

Moreover, defense counsel plainly stated that whether the shelter lawfully put the dog up for adoption was not relevant to Beebe's defense; Beebe's closing argument focused not on challenging the legality of the adoption or Patterson's ownership of the dog, but on arguing that because Beebe had not given permission for the surrender, she retained a good faith belief that she owned the dog. 6RP 10-11, 116-24. Therefore, even if this Court were to decide that the instruction did constitute a comment on the evidence regarding the lawfulness of Patterson's adoption of the dog, the record affirmatively shows that no prejudice could have resulted. Any error was therefore harmless.

3. THE IMPOSITION OF APPELLATE COSTS IS APPROPRIATE IF THE STATE PREVAILS IN THIS APPEAL.

Beebe asks this Court to rule that, should the State prevail on appeal, Beebe should not be required to repay appellate costs, on the grounds that she is currently indigent. This claim should be rejected. It is a defendant's future ability to pay costs, rather than her present ability, that is most relevant in determining whether it would be unconstitutional to require her to pay appellate costs. Because the record contains no information from which this Court

could reasonably conclude that Beebe has no likely future ability to pay, this Court should not forbid the imposition of appellate costs.

The State respectfully disagrees with this Court's approach to costs on appeal set forth in State v. Sinclair, 192 Wn. App. 380, 367 P.3d 612 (2016). A decision on the State's petition for review of Sinclair is expected on June 30, 2016.

As in most cases, Beebe's ability to pay was not litigated in the trial court because it was not relevant to the issues at trial. As such, the record does not contain much information about Beebe's financial status and the State did not have the right to obtain information about Beebe's financial situation.

Several weeks after sentencing, Beebe obtained an ex-parte Order Authorizing Appeal In Forma Pauperis after presenting a declaration regarding her current financial circumstances. CP 144-45; supp. CP \_\_ (sub 60). The declaration contained no information about Beebe's employment history, potential for future employment, or likely future income, nor did the trial court make any findings regarding Beebe's likely future ability to pay financial obligations. CP 144-45; supp. CP \_\_ (sub 60).

It is a defendant's future ability to pay, rather than simply her current ability, that is most relevant in determining whether the imposition of financial obligations is appropriate. See State v. Blank, 131 Wn.2d 230, 241, 930 P.2d 1213 (1997) (indigence is a constitutional bar to the collection of monetary assessments only if the defendant is unable to pay at the time the government seeks to enforce collection of the assessments). The record is devoid of any information that would support a finding that the defendant is unlikely to have any future ability to pay appellate costs.

In contrast, the record contains evidence suggesting that Beebe is unlikely to remain indigent for the rest of her life. Beebe is in her 30s and received a sentence that involved no incarceration. 4RP 46; CP 110. She thus has the vast majority of her working years ahead of her. Beebe also possessed sufficient financial resources to obtain a \$5,000 bond so that she could remain out of custody while awaiting trial. Supp. CP \_\_ (sub 4).

Because the record in this case contains no evidence from which this Court could reasonably conclude that the defendant has no future ability to pay appellate costs, any exercise of discretion by this Court to prohibit an award of appellate costs in this case would be unreasonable and arbitrary.

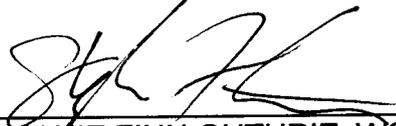
D. CONCLUSION

For all of the foregoing reasons, the State respectfully asks this Court to affirm Beebe's conviction.

DATED this 21<sup>st</sup> day of June, 2016.

Respectfully submitted,

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

By:   
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Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to Christopher Gibson, the attorney for the appellant, at Gibsonc@nwattorney.net, containing a copy of the BRIEF OF RESPONDENT, in State v. Laura Marie Beebe, Cause No. 73812-7, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 22<sup>nd</sup> day of June, 2016.

U Brame

Name:

Done in Seattle, Washington