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COURT OF APPEALS  
DIVISION II

NO. 38902-9-II

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COURT OF APPEALS, DIVISION II

STATE OF WASHINGTON

BY

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STATE OF WASHINGTON,

Respondent

vs.

JASON L. WOODS,

Appellant

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APPEAL FROM THE SUPERIOR COURT  
FOR THURSTON COUNTY  
The Honorable Gary R. Tabor , Judge  
Cause No. 08-1-02094-4

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REPLY BRIEF

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A. ASSIGNMENT OF ERROR

The trial court erred in failing to dismiss count I, robbery in the first degree while armed with a firearm, for insufficient evidence.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Whether there was sufficient evidence to support Woods's criminal conviction for robbery in the first degree while armed with a firearm where the person with the ownership interest in the property taken was without knowledge of the taking that was not prevented by force or fear?

C. STATEMENT OF THE CASE

Appellant Jason L. Woods (Woods) incorporates and adopts by reference the statement of the case and law set forth in his opening brief filed herein on August 25, 2009. On or about December 9, the State filed its respondent's brief. For purposes of this reply brief, Woods limits his argument to the following.

D. ARGUMENT IN REPLY TO STATE'S RESPONSE

THERE WAS INSUFFICIENT EVIDENCE TO UPHOLD WOODS'S CRIMINAL CONVICTION FOR ROBBERY IN THE FIRST DEGREE WHERE THE PERSON WITH THE OWNERSHIP INTEREST IN THE PROPERTY TAKEN WAS WITHOUT KNOWLEDGE OF THE TAKING THAT WAS NOT PREVENTED BY FORCE OR FEAR.

Under RCW 9A.56.190, when, as here, a robbery is based on the taking of property without the knowledge of the person from whose presence the property is taken, it is the State's burden to prove that this person had an ownership interest in the property taken and that the lack of his or her knowledge of the taking was the direct result of the use of force or fear. State v. Tvedt, 153 Wn.2d 705, 714, 107 P.3d 728 (2005). In this case, that person is Cory Swofford, the owner of the stolen CD player.<sup>1</sup> It is Woods's contention that the State failed to prove that Swofford's lack of knowledge of the taking of her CD player was the result of the use of force or fear. Not to put to fine a point on it, Woods maintains the State failed to prove a robbery.

Citing State v. Stearns, 61 Wn. App. 224, 228, 810 P.2d 41 (1991), the argument made by the State in response is that a robbery can occur if the lack of the awareness of the taking is the result of the use of force or fear and that the rationale expressed in Stearns is applicable to Woods. The first half of this statement is clearly right. It is codified in RCW 9A.56.190. But the second half of the statement is critically wrong. In Stearns, the defendant dragged his victim for approximately one and one-half blocks before she escaped and he then returned to the site of the

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<sup>1</sup> As no evidence was presented that Russel Molnar had any ownership, representative or possessory interest in Swofford's CD player, his knowledge or the cause of the lack thereof, is of no consequence.

original confrontation and took the victim's dropped property. Stearns, 61 Wn. App. at 226. With little question, Division I of this court found sufficient evidence to support the defendant's first-degree robbery conviction, reasoning that under such unique facts a rational trier of fact could have found that by the use of such force Stearns had caused his victim "to abandon her property and to leave the vicinity of her abandoned property." Stearns, 61 Wn. App. at 229.

What happened in Stearns is exactly what did not happen in this case. This does not require a mind-numbing legal analysis. It is disarmingly simple. The evidence did not explicitly or implicitly prove the use of force in connection with an intent to take or retain the CD player or that any alleged force or threat prevented Swofford from being aware that her CD player was taken from the Ford Explorer. This was not a robbery.

E. CONCLUSION

Based on the above, Woods respectfully requests this court to reverse and dismiss his conviction for robbery in the first degree.

DATED this 8<sup>th</sup> day of January 2010.

Respectfully submitted,

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CERTIFICATE

I certify that I mailed a copy of the above reply brief by depositing it in the United States Mail, first class postage pre-paid, to the following people at the addresses indicated:

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DATED this 8<sup>th</sup> day of January 2010.

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