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29092-1-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

JOSHUA T. BODEY, APPELLANT

---

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

---

BRIEF OF RESPONDENT

---

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**INDEX**

APPELLANT’S ASSIGNMENT OF ERROR.....1  
ISSUE PRESENTED.....1  
STATEMENT OF THE CASE.....1  
ARGUMENT .....2  
CONCLUSION.....5

## TABLE OF AUTHORITIES

### WASHINGTON CASES

STATE V. BONISISIO, 92 Wn. App. 783, 964 P.2d 1222 (1998), <i>review denied</i> , 137 Wn.2d 1024 (1999).....	2
STATE V. BRIGHT, 129 Wn.2d 257, 916 P.2d 922 (1996).....	2
STATE V. DELMARTER, 94 Wn.2d 634, 618 P.2d 99 (1980).....	3
STATE V. GREEN, 94 Wn.2d 216, 616 P.2d 628 (1980).....	3
STATE V. MEWES, 84 Wn. App. 620, 929 P.2d 505 (1997).....	3
STATE V. MYLES, 127 Wn.2d 807, 903 P.2d 979 (1995).....	3
STATE V. RANDECKER, 79 Wn.2d 512, 487 P.2d 1295 (1971).....	3
STATE V. SALINAS, 119 Wn.2d 192, 829 P.2d 1068 (1992).....	2
STATE V. SMITH, 106 Wn.2d 772, 725 P.2d 951 (1988).....	3

### STATUTES

RCW 9A.56.200(1)(A) .....	3
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I.

APPELLANT'S ASSIGNMENT OF ERROR

1. Insufficient evidence to support the conviction.

II.

ISSUE PRESENTED

1. Did sufficient evidence exist to support a conviction for the crime of first degree robbery?

III.

STATEMENT OF THE CASE

The State accepts the Appellant's statement of the case with the following additions for purposes of this appeal only. The robbery occurred on February 4, 2008, when Ms. Lincoln, the victim, was able to observe defendant's face from as close as two feet away. RP 51. Ms. Lincoln assured the deputies who responded to the 911 call that she was positive that she would be able to identify the perpetrator again. RP 59-60. On April 28, 2008, the victim did not hesitate in her identification of the defendant from the two separate photomontages provided by Detective Ricketts. RP 60-62. Ms. Lincoln advised Detective Ricketts that she was positive that defendant had robbed her on February 4, 2008. RP 60-62,

69-70, 77-81, 83-86, 129-130. Ms. Lincoln did not hesitate indentifying the defendant as the perpetrator of the robbery of the card shop at trial. RP 47, 48, 55, 60-62, 69-81, 83-86, 129-130. Finally, the record before the jury included the photomontage that Ms. Lincoln viewed to identify defendant as the robber. RP 60, 173.

#### IV.

#### ARGUMENT

When analyzing a sufficiency of the evidence claim, the reviewing court will defer to the Trier of fact on the credibility of witnesses and the weight of the evidence. *State v. Bonisisio*, 92 Wn. App. 783, 794, 964 P.2d 1222 (1998), *review denied*, 137 Wn.2d 1024 (1999).

“There is sufficient proof of an element of a crime to support a jury’s verdict when, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found that element beyond a reasonable doubt.” *State v. Bright*, 129 Wn.2d 257, 266 n.30, 916 P.2d 922 (1996). “A claim of insufficiency admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom.” *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). The relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have

found the essential elements of the crime beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 616 P.2d 628 (1980); *State v. Smith*, 106 Wn.2d 772, 725 P.2d 951 (1988); *State v. Myles*, 127 Wn.2d 807, 816, 903 P.2d 979 (1995). Circumstantial evidence and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

An appellate court also does not retry factual issues, *State v. Mewes*, 84 Wn. App. 620, 622, 929 P.2d 505 (1997), nor does it weigh the facts. “The fact that a trial or appellate court may conclude the evidence is not convincing, or may find the evidence hard to reconcile in some of its aspects, or may think some evidence appears to refute or negate guilt, or to cast doubt thereon, does not justify the court’s setting aside the jury’s verdict.” *State v. Randecker*, 79 Wn.2d 512, 517-18, 487 P.2d 1295 (1971).

In this case, defendant was charged with first degree robbery pursuant to RCW 9A.56.200(1)(A) as follows:

. . . that on or about February 4, 2008, the defendant, . . . , with the intent to commit theft, did unlawfully take and retain personal property, that the defendant did not own, from the person and in the presence of KELSEY J. LINCOLN, against such person’s will, by use or threatened use of immediate force, violence or fear of injury to said person or the property of said person or the person or property of another, and in the commission of and

immediate flight therefrom, the defendant was armed with a deadly weapon,

(CP 91)

The trier of fact was presented with more than sufficient evidence to support the verdict rendered.

The evidence before the jury was uncontroverted as follows. Kelsey Lincoln was working at the 50% Off Card Shop in Spokane County, Washington, on February 4, 2008. RP 45. The defendant entered shortly before the store was scheduled to close. RP 46. The defendant approached Ms. Lincoln ostensibly to purchase some merchandize. RP 49. The defendant hesitated, indicated that he did not have enough money to purchase all the items, so he was not intending to purchase an item. RP 49. Again, defendant offered some money to Ms. Lincoln, hesitated, and indicated that he did not have enough money. RP 49. Ms. Lincoln was able to view defendant's face from only two feet away during the robbery at the point of a knife. RP 51. Ms. Lincoln immediately identified the defendant when she saw his photograph in the montage presented by Detective Ricketts. RP 60-61, 77-78. Ms. Lincoln did not hesitate in identifying the defendant as the perpetrator of the robbery to the jury. RP 47, 60-61. Finally, it is uncontroverted that the photograph of the defendant that was identified by Ms. Lincoln from the photo montage as

being the robber was the same individual that sat before the jury during the trial of this matter. RP 47, 60-61. It was uncontroverted that the record provides proof beyond a reasonable doubt that defendant was the perpetrator and is guilty of the first degree robbery of Ms. Lincoln on February 4, 2008. Accordingly, the State respectfully requests that this Court affirm the jury's verdict, the conviction and dismiss the defendant's appeal.

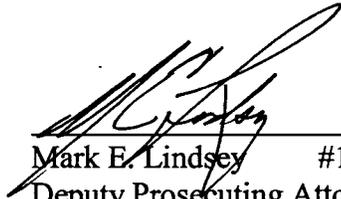
V.

#### CONCLUSION

For the reasons stated, the conviction of the defendant should be affirmed.

Dated this 9<sup>th</sup> day of March, 2011.

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