

67151-1

67151-1

NO. 67151-1-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

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STATE OF WASHINGTON,

Respondent,

v.

SINDY T.  
(D.O.B. 3/10/1994),

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR KING CO., JUVENILE DIVISION

The Honorable Helen Halpert

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APPELLANT'S OPENING BRIEF

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TABLE OF CONTENTS

A. ASSIGNMENTS OF ERROR..... 1

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR..... 2

C. STATEMENT OF THE CASE ..... 3

D. ARGUMENT ..... 7

    1. THE STATE FAILED TO PROVE THAT SINDY  
       COMMITTED ROBBERY IN THE FIRST DEGREE ..... 7

        a. The court’s findings must establish that the state  
           proved every element of a crime beyond a  
           reasonable doubt ..... 7

        b. Robbery requires actual taking of property ..... 9

        c. Under Washington law, robbery requires using  
           force to obtain or retain possession of the property  
           of another, or to prevent or overcome resistance  
           to the taking..... 12

          i. There is no evidence of resistance to the taking  
             of the Zune ..... 12

          ii. There is no evidence that Cindy T. obtained  
             property through force ..... 13

          iii. There is no evidence that Cindy T. retained  
             either actual or constructive possession of  
             property through force ..... 14

        d. There was insufficient evidence to support an  
           adjudication of guilt for robbery in the first degree  
           ..... 17

2. THE STATE FAILED TO PROVE THAT SINDY T. WAS AN ACCOMPLICE TO ROBBERY IN THE SECOND DEGREE..... 17

- a. The touchstone of accomplice liability is mens rea for the specific crime committed by the principal 18
- b. There is no evidence on the record indicating that Sindy T. intended to commit robbery..... 19
- c. There is no evidence that Sindy T. knowingly aided in the robbery of Jason..... 20
- d. There was insufficient evidence to support an adjudication of guilt for robbery in the second degree ..... 22
- e. The proper remedy is reversal and dismissal of both charges..... 22

E. CONCLUSION..... 23

## TABLE OF AUTHORITIES

### **Washington Supreme Court Decisions**

<u>In re Wilson</u> , 91 Wn.2d 487, 588 P.2d 1161 (1979) .....	20
<u>State v. Allen</u> , 159 Wn.2d 1, 147 P.3d 581 (2006) .....	9
<u>State v. Armenta</u> , 134 Wn.2d 1, 948 P.2d 1280 (1997) .....	8
<u>State v. Baeza</u> , 100 Wn.2d 487, 670 P.2d 646 (1983) .....	7
<u>State v. Callahan</u> , 77 Wn.2d 27, 459 P.2d 400 (1969) .....	15
<u>State v. Green</u> , 94 Wn.2d 216, 616 P.2d 628 (1980) .....	22
<u>State v. Handburgh</u> , 119 Wn.2d 284, 830 P.2d 641 (1992) .....	14
<u>State v. Head</u> , 136 Wn.2d 619, 964 P.2d 1187 (1998) .....	7
<u>State v. Hornaday</u> , 105 Wn.2d 120, 713 P.2d 71 (1976) .....	16
<u>State v. Jacobs</u> , 154 Wn.2d 596, 115 P.3d 281 (2005) .....	9
<u>State v. Johnson</u> , 155 Wn.2d 609, 121 P.3d 91 (2005) ....	14, 15, 17
<u>State v. Roberts</u> , 142 Wn.2d 471, 14 P.3d 713 (2001) .....	18
<u>State v. Stein</u> , 144 Wn.2d 235, 27 P.3d 184 (2001) .....	18

### **Washington Court of Appeals Decisions**

<u>State v. Asaeli</u> , 150 Wn.App. 543, 208 P.3d 1136 (2009) .....	18
<u>State v. Cote</u> , 123 Wn.App. 546, 96 P.3d 410 (2004) .....	16
<u>State v. Enlow</u> , 143 Wn.App. 463, 178 P.3d 366 (2008) .....	8, 15
<u>State v. Hutchins</u> , 73 Wn.App. 211, 868 P.2d 196 (1994) .....	22

<u>State v. O’Connell</u> , 137 Wn.App. 81, 152 P.3d 349 (2007) .....	22
<u>State v. Robinson</u> , 73 Wn.App. 851, 872 P.2d 43 (1994) .....	20
<u>State v. Spruell</u> , 57 Wn.App. 383, 788 P.2d 21 (1990) .....	16, 22
<u>State v. Summers</u> , 107 Wn.App. 373, 28 P.3d 780 (2001) .....	15
<u>State v. Trout</u> , 125 Wn.App. 403, 105 P.3d 69 (2005) .....	18
<u>State v. Zillyette</u> , ___ Wn.App. ___, 256 P.3d 1288 (2011) .....	11

**United States Supreme Court Decisions**

<u>In re Winship</u> , 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970) .....	7
--	---

**United States Constitution**

Fourteenth Amendment .....	1, 7
----------------------------	------

**Washington Constitution**

Article I, § 3 .....	1, 7
----------------------	------

**Statutes**

RCW 9A.08.020 .....	18, 20
RCW 9A.56.030 .....	22
RCW 9A.56.190 .....	9, 12, 15, 22

**Court Rules**

JuCR 7.11 .....	2, 7
-----------------	------

A. ASSIGNMENTS OF ERROR.

1. The trial court erred when it concluded that **Sindy T.**<sup>1</sup> used force or fear to obtain or retain possession of the property of another or to prevent or overcome resistance to the taking.

2. There was insufficient evidence to convict **Sindy T.** of robbery in the first degree of a Zune MP3 player.

3. There was insufficient evidence to convict **Sindy T.** of robbery in the first degree of a pair of headphones.

4. The trial court erred when it failed to find that **Sindy T.** acted with intent to commit robbery in the second degree.

5. Absent specific intent, there was insufficient evidence to convict **Sindy T.** of robbery in the second degree under the theory of accomplice liability.

6. The State's failure to prove each element of the crimes of conviction violated **Sindy T.**'s due process rights under Article I, § 3 of the Washington Constitution and the Fourteenth Amendment to the Constitution of the United States.

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<sup>1</sup> The individuals in this case are consistently referred to in the record by their first names. For the sake of clarity, this brief also uses first names.

7. The trial court erred when it failed to state facts that support the elements of both a) robbery and b) accomplice liability, in violation of JuCR 7.11(d).

8. The court erred by entering Finding of Fact 11,<sup>2</sup> which states that Sindy began going through Jessica's pockets, because the finding is not supported by substantial evidence.

**B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.**

1. To establish the offense of robbery, the State must prove that a defendant used force to obtain or retain possession of another's property. In this case, Sindy took a Zune MP3 player without speaking, and without using any physical force. She handed the device to another young woman two seconds later. Must a conviction be reversed where there is insufficient evidence that a defendant used force either to obtain or to retain possession of property?

2. To sustain accomplice liability, the state must prove that a defendant intended the specific crime that the principal committed. Here, Sindy passively stood while another young woman took cigarettes out of the victim's pockets. Must a

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<sup>2</sup> The court's findings of fact and conclusions of law are attached as Exhibit A.

conviction be reversed where there is neither evidence of a defendant's intention to commit robbery nor evidence of a defendant's knowingly aiding in the commission of the offense?

C. STATEMENT OF THE CASE.

Sindy T. was charged with two counts of robbery in the first degree. CP 17–18.

The charges arose out of several incidents that took place on a King County Metro Bus over the course of four minutes on November 19, 2010. 1RP 25, 29;<sup>3</sup> Ex. 3 at 18:44:00-18:44:13.<sup>4</sup> Jessica Redmon-Beckstead and Jason Decoste sat in the rear right-hand side of the bus, sharing a bench seat. 1RP 25–26, 67; Ex. 3 at 18:44:00. They listened to a Zune MP3 player, using one set of headphones between them. 1RP 27; Ex. 3 at 18:44:27. A group of people entered the bus through the rear right-hand doors,

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<sup>3</sup> The verbatim report of proceedings consists of two volumes, which are referred to herein as follows:

03/11/2010	-	1RP
03/24/2010; 03/28/2010; 04/13/2010	-	2RP

2RP is consecutively paginated over the three days of proceedings.

<sup>4</sup> The video from the King County Metro Bus is contained in Exhibit 3. This brief refers to the timestamps on camera angle four.

and Cindy T. boarded in the back of the group. 1RP at 33–34; Ex. 3 at 18:44:00-18:44:25.

Sindy began moving toward the back of the bus. Ex. 3 at 18:44:25–32. As she passed Jason and Jessica, she grabbed the Zune. 2RP 35; Ex. 3 at 18:44:34. Sindy did not speak. Ex. 3 at 18:44:32-18:44:36. She did not hit or kick Jessica or Jason as she took the device. Id. She did not touch the couple in any way; she quickly lifted the device out of Jason’s hand and continued moving to the back of the bus. Id.; see 2RP 10–11. Within two seconds, she handed the device to another young woman in the back of the bus. 2RP 10–11; Ex. 3 at 18:44:35-18:44:36.

Jessica stood up and walked to the back of the bus, stating, “Hey, that’s mine.” Ex. 3 at 18:44:37-40. Sindy then moved to take a seat in the rear left-hand side of the bus. Ex. 3 at 18:44:40-18:44:47. Jessica continued to talk to the young woman at the back of the bus for several seconds, and Sindy remained seated, not engaged in the conversation.

While Jessica was out of her seat, a young woman named Decontee Wea took Jessica’s seat to the right of Jason. Ex. 3 at 18:44:42. Another young woman, Sha’raun Hill, sat on Jason’s lap. Ex. 3 at 18:44:49. Decontee took hold of Jason’s headphones and

began to pull them. 1RP 37; Ex. 3 at 18:45:02. Jessica began to return to her seat. 1RP 37; Ex. 3 at 18:44:40-18:45:02. Seeing Deontee and Jason struggling, Jessica also grabbed hold of the headphones. 1RP 37; Ex. 3 at 18:45:02. A few seconds later, Deontee made a throwing motion. Ex. 3 at 18:45:07.

Sindy and Deontee began to physically struggle with Jessica. Ex. 3 at 18:45:07-18:45:12. The altercation only lasted a few seconds, and Jason got up from his seat to intervene. Ex. 3 at 18:45:12. At this point in the surveillance video, white headphones are visible in Jason's left hand. Ex. 3 at 18:45:12; 2RP 74; see 1RP 65–66. A few seconds later, Jason rested his left hand on a seatback, more fully revealing the headphones. Ex. 3 at 18:45:31-18:45:32.

Nearly a minute passed. Jason stood at the back of the bus. Deontee continued to sit on the rear-right bench. She then reached into Jason's right pocket and pulled out a pack of cigarettes. 1RP 74; Ex. 3 at 18:45:58. During this time, Sindy stood behind Jason, not touching him. Ex. 3 at 18:45:58. She did not speak with Deontee. Ex. 3 at 18:45:30-18:46:09. Several seconds after Deontee grabbed the cigarettes, Sindy reached into Jason's left pocket. Ex. 3 at 18:46:05. She did not pull out anything. Ex. 3 at

18:45:05-18:45:09. She sat back in her seat in the rear-left corner of the bus. Ex. 3 at 18:45:09.

More than a minute passed. Decontee began a new physical altercation, hitting Jason in the head. Ex. 3 at 18:46:17. Nearly another minute passes before a new altercation begins, with Decontee and Sindy attempting to hit and punch Jessica, Jessica returning blows, and Jason attempting to break up the fight. Ex. 3 at 18:47:07-18:47:21. Jessica and Jason began moving toward the center doors, and were fully off the bus one minute later. Ex. 3 at 18:48:13.

Sindy was initially charged with one count of robbery in the second degree for taking the Zune. CP 1. The information was amended to charge Sindy with two counts of robbery in the first degree: one for taking the Zune and headphones from Jessica, and the second for the taking of cigarettes from Jason. CP 17–18. The trial court found Sindy guilty of robbery in the first degree on the first count. CP 19. Finding that there was insufficient evidence to sustain a second count of robbery in the first degree, the judge found Sindy guilty of robbery in the second degree for the taking of the cigarettes. Id.; CP 38.

Sindy appeals. CP 44.

D. ARGUMENT.

1. THE STATE FAILED TO PROVE THAT SINDY COMMITTED ROBBERY IN THE FIRST DEGREE.

- a. The court's findings must establish that the state proved every element of a crime beyond a reasonable doubt. The due process guarantees of Article I, § 3 of the Washington Constitution and the Fourteenth Amendment to the United States Constitution require that every element of a charged crime be proved beyond a reasonable doubt. State v. Baeza, 100 Wn.2d 487, 488, 670 P.2d 646 (1983); In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970).

In Washington juvenile adjudications, the trial judge must file written findings of fact and conclusions of law. JuCR 7.11(d). The rule requires the findings to “state the ultimate facts as to each element of the crime and the evidence upon which the court relied in reaching its decision.” Id.; see State v. Head, 136 Wn.2d 619, 622, 964 P.2d 1187 (1998) (explaining that written findings of fact and law are mandated in order to facilitate appellate review of bench trials). If a fact is missing from the trial court’s findings, the reviewing court must presume that the fact went unproven by the

burdened party. State v. Armenta, 134 Wn.2d 1, 14, 948 P.2d 1280 (1997).

After a bench trial, the appellate court first reviews the evidence to determine whether it supports the findings of fact. Next, the court determines whether the findings of fact support the conclusions of law. Finally, the court decides whether the conclusions of law sustain the judgment entered. State v. Enlow, 143 Wn.App. 463, 467, 178 P.3d 366 (2008). Evidence is sufficient when, viewed in the light most favorable to the state, a rational factfinder could find all of the elements of an offense beyond a reasonable doubt. Id. The state's evidence and all resulting inferences are presumed to be true. Id.

In this case, the insufficiency rests at the second level: the trial court's findings of fact do not support the conclusions of law that comprise the elements of robbery in the first degree. Cindy was charged with the taking of Jessica's Zune and headphones. CP 17. On this count, there is no allegation or charge of accomplice liability. See id. Likewise, the court did not conclude that Cindy acted as an accomplice with respect to the Zune or the headphones. See CP 37; 2RP 133–34. Thus, the question is whether the evidence was sufficient for Cindy to be convicted as a

principal in the theft of the Zune or the headphones. The trial court concluded that Sindy “unlawfully took personal property from the person or in the presence of Jessica Redmon-Beckstead,” (Conclusion 1) and that “force or fear was used by the respondent to obtain or retain possession of the property or to prevent or overcome resistance to the taking” (Conclusion 4). CP 37.

b. Robbery requires actual taking of property.

Washington’s robbery statute prohibits the “unlawful[ ] tak[ing] of personal property from the person of another or in his presence against his will by the use or threatened use of immediate force . . . .” RCW 9A.56.190. Unlawful taking is an element of robbery. Id.; see State v. Allen, 159 Wn.2d 1, 9, 147 P.3d 581 (2006). The statute does not define “taking,” but when the meaning of a statute is plain on its face, the plain meaning controls. State v. Jacobs, 154 Wn.2d 596, 600, 115 P.3d 281 (2005).

There is no evidence in the record that Sindy ever took the headphones—indeed, there is insufficient evidence in the record to support a finding that Sindy even touched the headphones. During the trial, Jessica testified that Deontee was trying to take the headphones out of Jason’s hands, and that she (Jessica) was trying to take them back. 1RP 37. Jessica never states that Sindy

took, touched, or attempted to take the headphones. Id. During the direct examination of Jason, the following exchange occurred:

- Q: What's—what happened with the headphones after the Zune was taken?  
A: I had them . . . I remember someone taking them out of my hand or Jessica's hand, and Jessica tried to get—grab them back, and they were saying that they were going to break them.  
Q: And was this the person that was sitting on your right at that point?  
A: Yes  
Q: And so its that the person we see with the cornrows [Decontee] . . . ?  
A: Yeah.  
. . .  
Q: Who got the headphones, between Jessica and the girl with the cornrows?  
A: I don't know.

1RP 73–74. During this discussion of the headphones, there is no mention of Sindy's name. See id. This account is consistent with the surveillance video, which shows Sindy sitting on the rear-left bench during the time that the struggle over the headphones occurred. Ex. 3 at 18:45:02-18:45:07.

Thus, there is neither video nor testimonial evidence of Sindy's taking the headphones. Jessica testified that she believed that Decontee threw the headphones to Sindy after taking them.

1RP 37–38. The video does show Decontee making a throwing motion at 18:45:07. But we do not see Sindy respond to the throw

or catch the headphones. Ex. 3 at 18:45:07-18:45:08. Instead, the video shows a pair of white headphones in Jason's left hand. Ex. 3 at 18:45:12; 2RP 74. On re-cross, Jessica admitted that she "thought" she had seen Decontee throw the headphones to Sindy, but could not see on the video where the headphones were. See 1RP 65–66. If Jason did retain the headphones, there is not corpus delicti, as there was no actual loss suffered. See State v. Zillyette, \_\_\_ Wn.App. \_\_\_, 256 P.3d 1288, 1290 (2011) (stating that corpus delicti requires that the State prove a criminal act and an actual injury or loss).

Indeed, the trial court made no finding that Sindy took the headphones from the person or in the presence of Jessica. The court found, "Observing that Wea was trying to take Jessica's headphones from Jason, Jessica took the headphones from Jason and struggled with Wea over them. Wea pulled the headphones away from Jessica . . . ." CP 36 ¶¶ 6–7. There is no further mention of the headphones.

There is insufficient evidence, both in the record and in the court's findings of fact, to support the conclusion that Sindy took the headphones. Thus, a conviction for robbery of headphones cannot be sustained.

c. Under Washington law, robbery requires using force to obtain or retain possession of the property of another, or to prevent or overcome resistance to the taking. In addition to the requirement of actual taking, the Washington robbery statute requires that force or fear “be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking.” RCW 9A.56.190. In the taking of the Zune, the evidence is insufficient to establish that Sindy used force to either a) obtain, b) retain possession of, or c) prevent or overcome resistance to the taking.

i. There is no evidence of resistance to the taking of the Zune.

There is no evidence that Jessica or Jason resisted the taking. Neither one of them testifies to resisting the taking of the Zune. See 1RP 35, 68 (Jason: “I was holding the Zune, and then the Zune was out of my hand.”). Michael Baughn, a witness on the bus, did not testify to any resistance to the taking. See 2RP 9–12. The surveillance video shows no resistance to the taking. See Ex. 3 at 18:44:34-18:44:35. Finally, the trial court did not find that there was any resistance when Sindy took the Zune. The court wrote, “[Sindy T.] walked past Jessica and Jason on her way towards Hill, and as

she walked past she reached out, grabbed the Zune from Jason's lap (detaching it from the headphones), and passed it off to Wea. Jessica immediately stood up and confronted the girls, saying that the Zune was hers and she wanted it back, but they did not give it back." CP 36. Absent a finding of actual resistance to the taking and the use of force or fear to overcome resistance, the court's findings do not support the conclusion that the use of force element of robbery was met.

ii. There is no evidence that Sindy T. obtained property through force.

The same testimony and video that shows that Sindy did not overcome any resistance through force indicates that she used no force in obtaining the Zune. The transaction was momentary: after two seconds, she had taken the Zune from Jason's hand and passed it to Deontee. Ex. 3 at 18:44:34-18:44:36. The video does not show any use of force in her obtaining the property. See id. Neither Jason, nor Jessica, nor Michael Baughn testified that force or fear was used in the initial taking of the Zune. See 1RP 35, 68; 2RP 9–12. The court did not find that Sindy used any physical force or threats when taking the Zune out of Jason's hand. See CP 36,

¶15. Thus, there is insufficient evidence to support the conclusion that Cindy used force to obtain the property of another.

iii. There is no evidence that Cindy T. retained either actual or constructive possession of property through force.

A robbery conviction may be sustained where no force or fear was used in the initial taking of an object, but where force was used later to retain possession the stolen property. State v. Handburgh, 119 Wn.2d 284, 293, 830 P.2d 641 (1992). But in order to retain property through force, an individual must have actual or constructive possession of the property. See State v. Johnson, 155 Wn.2d 609, 611, 121 P.3d 91 (2005). Cindy gave up possession of the Zune within two seconds of taking it, and so could not have used force to have retained possession of property.

In Johnson, the defendant put a TV-VCR into a shopping cart at Wal-Mart and then walked out the front door without paying. 155 Wn.2d at 610. Two security guards followed him. When they confronted him, Johnson left the shopping cart and began to run away. Id. He turned back, and when one of the guards grabbed his arm, Johnson punched him in the nose. Id. The court reversed Johnson's conviction for robbery, explaining that the force had not been used to retain possession of the property, but rather was

used in an effort to escape. Id. at 611. When Johnson ran away from the shopping cart, he no longer had possession of the property, but had abandoned it. See Johnson, 155 Wn.2d at 611.

This view is consistent with the plain meaning of “retain possession.” See RCW 9A.56.190. In Washington, possession is strictly construed. While it may be either actual or constructive, constructive possession must fit within the narrow parameters set out by the Washington courts. See State v. Callahan, 77 Wn.2d 27, 29, 459 P.2d 400 (1969). Constructive possession means a person has dominion and control over the item. Id. at 29. Dominion and control is determined by the totality of the circumstances. State v. Summers, 107 Wn.App. 373, 384–85, 28 P.3d 780 (2001).

The totality of the circumstances standard is not a fixed test, but includes factors such as whether a person owned the premises where the item was found, and the proximity of the person to the item. Enlow, 143 Wn.App. at 469. Washington courts have consistently held that passing or temporary control is not enough to establish constructive possession. See Callahan, 77 Wn.2d at 29 (handling drugs earlier in the day insufficient to establish actual control); Enlow, 143 Wn.App. at 468–70 (temporarily hiding in a truck not sufficient to establish constructive possession of truck or

items therein); State v. Cote, 123 Wn.App. 546, 550, 96 P.3d 410 (2004) (temporary proximity and handling of jar containing contraband not enough to establish constructive possession); State v. Spruell, 57 Wn.App. 383, 384, 788 P.2d 21 (1990) (fingerprint not enough to show constructive possession of plate where drug residue was found).

For constructive possession, an individual must also have control over the item, and the item must be immediately accessible. State v. Hornaday, 105 Wn.2d 120, 125, 713 P.2d 71 (1976). In Hornaday, the court held that the defendant, who had consumed alcohol, did not “possess” the alcohol. 105 Wn.2d at 126. The court explained that the defendant could no longer control, possess, use, or dispose of the alcohol once it was in his system. Id. Thus, the “essential element of control [was] absent.” Id.

In this case, there is no evidence that Sindy used force to “retain possession” of the Zune. She had relinquished control of the Zune by passing it to Decontee. Like the defendant in Johnson, she abandoned the property. See Ex. 3 at 18:44:36. There was no force used in the two seconds that Sindy held the Zune. Ex. 3 at 18:44:34-18:44:36. See 1RP 35, 68; 2RP 9–12. Any subsequent force could not have been used to “retain possession” of the

abandoned property. See Johnson, 155 Wn.2d at 611. Once she gave the property to another person, Sindy no longer had constructive possession over the property; she no longer had the necessary dominion and control over the Zune according to the high standards established by Washington courts. The trial court did not find that Sindy used force while she held the Zune, instead stating that “as she walked past she reached out, grabbed the Zune from Jason’s lap (detaching it from the headphones), and passed it off to Wea.” CP 36 ¶5.

d. There was insufficient evidence to support an adjudication of guilt for robbery in the first degree. The trial court concluded that Sindy used force or fear “to obtain or retain possession of the property or to prevent or overcome resistance to the taking.” CP 37, Conclusion 4. This conclusion, an essential element of the offense of robbery, is not supported by the court’s findings of fact. The conviction for robbery in the first degree must be reversed.

2. THE STATE FAILED TO PROVE THAT  
SINDY T. WAS AN ACCOMPLICE TO  
ROBBERY IN THE SECOND DEGREE

Sindy was convicted under an accomplice theory for the robbery of Jason’s cigarettes. CP 38. There is insufficient evidence

in the court's findings to establish that Sindy was an accomplice to the robbery.

a. The touchstone of accomplice liability is mens rea for the specific crime committed by the principal. In Washington, a person is an accomplice in the commission of a crime if "(a) With knowledge that it will promote or facilitate the commission of the crime, he (i) solicits, commands, encourages, or requests such other person to commit it; or (ii) aids or agrees to aid such other person in planning or committing it." RCW 9A.08.020. At trial, the state must prove the following elements: that the defendant 1) knew his actions would promote or facilitate this crime 2) was present and ready to assist in some manner, and 3) was not merely present at the scene with some knowledge of potential criminal activity. State v. Asaeli, 150 Wn.App. 543, 568, 208 P.3d 1136 (2009).

Mens rea is an essential element of accomplice liability. State v. Trout, 125 Wn.App. 403, 410, 105 P.3d 69 (2005). A defendant must have knowledge of the specific crime charged, not merely knowledge of general criminal activity. State v. Roberts, 142 Wn.2d 471, 512, 14 P.3d 713 (2001). As the court explained in Trout, "the culpability of an accomplice cannot extend beyond the crimes of which the accomplice actually had knowledge." 125

Wn.App. at 410. Thus, it is insufficient that a crime committed by an accomplice is merely foreseeable: the accomplice must act with knowledge that it will aid the singular crime that is contemplated by the principal. State v. Stein, 144 Wn.2d 235, 246, 27 P.3d 184 (2001).

b. There is no evidence on the record indicating that Sindy T. intended to commit robbery. In Asaeli, one defendant, Vaielua, drove several group members to a park to look for a man named Fola, who was eventually killed. 150 Wn.App. at 568. There was evidence on the record indicating that Vaielua had conversations with the shooter soon before the shooting. Id. Furthermore, there was evidence indicating that Vaielua had asked where Fola was. Id. Still the court explained that there was not enough evidence that Vaielua had knowledge that the group members he was with intended to kill Fola. Id. The court pointed out that the content of the conversations with the other individuals was not on the record, contributing to the finding of insufficient evidence. 150 Wn.App. at 569. The court went on to state that even evidence showing that Vaielua had acted together and may have been in a gang together was not enough to prove he was an accomplice to

murder: it still did not show that Vaielua was aware of a plan to kill.  
Id. at 569 n.31.

The case at bar is similar. While we have an indication that  
Sindy and Deontee know each other from Sindy's passing the  
Zune to her, there is no evidence that Sindy had knowledge of  
Deontee's plan to rob Jason. When Deontee took Jason's  
cigarettes out of his right pocket, Sindy is standing behind Jason.  
Ex. 3 at 18:45:58. She is not moving or speaking to Deontee. See  
id. There is no evidence on the record of earlier conversations  
between Sindy and Deontee of a plan to rob Jason. Absent  
evidence of specific intent, a conviction cannot be sustained under  
a theory of accomplice liability.

c. There is no evidence that Sindy T. knowingly aided  
in the robbery of Jason. For accomplice liability to attach, a  
defendant must aid or agree to aid the principal in planning or  
committing the crime. RCW 9A.08.020. The "aid" must be more  
than mere presence. In re Wilson, 91 Wn.2d 487, 492, 588 P.2d  
1161 (1979). While the presence of a defendant might encourage  
the principal in his actions, the defendant's passive accompaniment  
does not render him an accomplice. Id. at 492.

In State v. Robinson, 73 Wn.App. 851, 872 P.2d 43 (1994), the defendant was driving a car when his passenger jumped out and took a purse from a girl on the sidewalk. Id. at 852. The passenger got back into the car, and the defendant drove away. Id. at 852–53. The court explained that the defendant could not be convicted as an accomplice to robbery, since he did not knowingly aid in the robbery itself. Id. at 857–58. Rather—though he was present during the entire robbery—he had not actually participated in the robbery itself, and his action of driving away was more properly characterized as rendering criminal assistance. Id.

In this case, Cindy did not touch Jason until after Deontee had already completed her robbery of Jason’s cigarettes. Ex. 3 at 18:45:58-18:46:05. When Cindy reaches into Jason’s pockets, Deontee already has full possession of the cigarettes and is seated on the rear-right bench of the bus. Id. There is no evidence in video or testimony that Cindy ever reached into Jessica’s pockets. Cindy’s mere presence during the actual taking of the cigarettes is not enough to qualify as aiding. Because there is no evidence that she had knowledge that Deontee would rob Jason, Cindy could not have been “present and ready to assist.” Rather,

she was merely passively standing behind Jason when Decontee carried out her action alone.

d. There was insufficient evidence to support an adjudication of guilt for robbery in the second degree. The court found, “As Hill continued to engage Jessica and Jason about her phone, [Sindy], Wea, and Reath began going through Jason’s pockets. Jason tried to brush their hands away, but Wea removed a pack of cigarettes.” CP 36 ¶9. The video shows that Sindy did not reach into Jason’s pocket until Decontee (Wea) had already taken the cigarettes. Ex. 3 at 18:45:58-18:46:05. There is nothing in the findings of fact that establishes that Sindy had knowledge or intent for Decontee to steal Jason’s cigarettes, or that she knowingly aided Decontee in stealing them. The conclusion that Sindy “intended to commit theft of the [cigarettes]” is not supported by substantial evidence. CP 38, Conclusion 2. The conclusion that Sindy was an accomplice is not supported by substantial evidence. CP 38, Conclusion 1. A conviction for robbery in the second degree under an accomplice theory cannot be sustained.

e. The proper remedy is reversal and dismissal of both charges. The State failed to prove every element of the offenses against Sindy T. The remedy for insufficiency of the

evidence is reversal and dismissal with prejudice. See State v. Green, 94 Wn.2d 216, 235, 616 P.2d 628 (1980); Spruell, 57 Wn.App. at 388–89.

When appropriate, this Court may also reverse and remand for sentencing on a lesser-included offense. State v. Hutchins, 73 Wn.App. 211, 218, 868 P.2d 196 (1994). Where the factual and legal requirements are met, theft in the first degree is a lesser-included of robbery in the first degree. See RCW 9A.56.030; RCW 9A.56.190; State v. O'Connell, 137 Wn.App. 81, 95–96, 152 P.3d 349 (2007).

E. CONCLUSION.

Sindy T. respectfully requests that, due to the insufficiency of evidence necessary to sustain the convictions, this court reverse her adjudications of guilt for robbery in the first degree and robbery in the second degree.

DATED this 21<sup>st</sup> day of September 2011.

Respectfully submitted,

  
LINDSAY CALKINS (Rule 9 No. 9117856)  
NANCY P. COLLINS (WSBA 28806)  
Washington Appellate Project (91052)  
Attorneys for Appellant

# APPENDIX A

**FILED**  
KING COUNTY, WASHINGTON

APR 22 2011

SUPERIOR COURT CLERK  
BY HEIDI L. STEWART  
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY  
JUVENILE DEPARTMENT

STATE OF WASHINGTON,

Plaintiff,

vs

SINDY J TRUONG,  
D O B 03/10/94,

Respondent

No 10-8-04332-4

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW  
PURSUANT TO CrR 6 1(d)

THE ABOVE-ENTITLED CAUSE having come on for trial on March 11<sup>th</sup>, 24<sup>th</sup> and 28<sup>th</sup>, 2011, before the undersigned judge in the above-entitled court, the State of Washington having been represented by Deputy Assistant Prosecuting Attorney Stephanie Finn Guthrie, the respondent appearing in person and having been represented by her attorney, Craig S McDonald, the court having heard sworn testimony and arguments of counsel, having received exhibits, and having reviewed its trial notes, the videotape, and the trial briefs and supplemental case law submitted by counsel, now makes and enters the following findings of fact and conclusions of law

FINDINGS OF FACT

I

The following events took place within King County, Washington

- 1 Around 6 45pm on November 19, 2010, seventeen-year-old Jessica Redmon and nineteen-year-old Jason Decoste were riding a northbound King County Metro #358 bus through downtown Seattle The young couple was returning home from a doctor's appointment for Jessica, who was three months pregnant

FINDINGS OF FACT AND CONCLUSIONS OF LAW  
PURSUANT TO CrR 6 1(d) - 1

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ORIGINAL  
966135

1 2 Jessica and Jason sat at the rear of the bus, on seats running along the windows on the right  
2 side of the bus They were sharing ear-bud headphones and listening to music on Jessica's  
3 Zune (MP3 player), which Jason was holding in his hand Across from them on the seats  
4 along the left side of the bus was passenger Michael Baughn

5 3 At one of the downtown stops, a group of five young women boarded the bus, among other  
6 passengers The first to board the bus was Sha'raun Hill, followed by Decontee Wea,  
7 Nyajouk Reath, respondent Sindy Truong, and a fifth unidentified female Jessica had never  
8 seen any of the girls before, and Jason had seen only Hill before, about a year earlier when  
9 they were at the same party

10 4 As Hill boarded the bus, she walked past Jessica and Jason and sat down in the row of seats  
11 along the very back of the bus Soon afterwards, she began shouting "hey, you took my  
12 phone" repeatedly towards Jason

13 5 As Hill continued shouting this, Truong walked past Jessica and Jason on her way towards  
14 Hill, and as she walked past she reached out, grabbed the Zune from Jason's lap (detaching  
15 it from the headphones), and passed it off to Wea Jessica immediately stood up and  
16 confronted the girls, saying that the Zune was hers and she wanted it back, but they did not  
17 give it back Wea then moved to take Jessica's place next to Jason, while Hill moved to sit  
18 on Jason's lap

19 6 Hill continued saying that Jason owed her a phone Jessica moved back to stand facing  
20 Jason, Hill, and Wea Observing that Wea was trying to take Jessica's headphones from  
21 Jason, Jessica took the headphones from Jason and struggled with Wea over them

22 7 Wea pulled the headphones away from Jessica, and then threw a punch at Jessica, at which  
23 point Truong immediately started punching Jessica as well Jason jumped up in an attempt  
24 to protect Jessica, and Hill and Wea then proceeded to punch Jason, with Hill punching him  
twice in the back of the head with a closed fist

8 Afterwards Hill worked her way around to stand in front of Jason, and continued to accuse  
him of taking her phone and demanding that he give her a phone As Hill continued  
demanding that Jason give her a phone, Wea grabbed the overhead bar and kicked Jason  
several times in the head before sitting back down

9 As Hill continued to engage Jessica and Jason about her phone, Truong, Wea, and Reath  
began going through Jason's pockets Jason tried to brush their hands away, but Wea  
removed a pack of cigarettes from Jason's right pocket As Wea removed the cigarettes, Hill  
looked down, saw the cigarettes Wea had just taken, looked back up at Jason, and continued  
without interruption in her argument about her phone

10 As Hill continued verbally engaging Jessica and Jason Truong, Wea and the adult again  
began to punch Jessica and Jason By the end of that series of assaults, Jessica was bleeding  
from a cut above her left eye inflicted by the fifth woman Jason repeatedly told the girls that  
Jessica was pregnant, and one of them commented, "Nobody hit her in the stomach "

1 11 As Jason and other passengers yelled for the bus driver to stop, Truong and Wea again  
2 began going through Jessica's pockets Wea then again grabbed the overhead bar, and  
3 proceeded to kick Jessica several times in the head When Jason interposed himself between  
4 Jessica and Wea, he also got kicked

5 12 At this point, Hill had moved towards the back of the bus and was talking to passenger  
6 Michael Baughn, who was one of the people who had been shouting for the bus to stop Hill  
7 stated to Baughn that there was no need for the bus to stop

8 13 Finally, the bus stopped and the rear door opened, allowing Jessica and Jason to get off The  
9 five girls remained on the bus, and shouted for the driver to start moving again When the  
10 bus didn't start moving again, the five exited the bus and left the area Baughn also exited  
11 the bus and began administering first aid to Jessica

12 14 The Court finds the testimony of Michael Baughn to be credible

13 15 Shortly thereafter, Sergeant D B Gates of the King County Sheriff's Office arrived on the  
14 scene She contacted Jessica, and observed that Jessica's face was bleeding from a cut above  
15 her left eye Medical responders arrived, and Jessica was taken to the hospital by ambulance,  
16 where she received six stitches

17 16 The Court finds the testimony of Jessica Redmon-Beckstead, Jason Decoste, and Sgt Gates  
18 to be credible

19 And having made those Findings of Fact, the Court also now enters the following

### 20 CONCLUSIONS OF LAW

#### 21 I

22 The above-entitled court has jurisdiction of the subject matter and of the respondent,  
23 Sindy Truong, who was born March 10, 1994, in the above-entitled cause

#### 24 II

The following elements of Count One, Robbery in the First Degree, have been proven by  
the State beyond a reasonable doubt

1 That on or about November 19, 2010, the respondent unlawfully took personal property  
from the person or in the presence of Jessica Redmon-Beckstead,

2 That the respondent intended to commit theft of the property,

3 That the taking was against the Jessica Redmon-Beckstead's will by the respondent's use  
or threatened use of immediate force, violence, or fear of injury to Jessica Redmon-  
Beckstead or her property, or to the person or property of another,

4 That force or fear was used by the respondent to obtain or retain possession of the  
property or to prevent or overcome resistance to the taking,

1 5 That in the commission of these acts or in the immediate flight therefrom the respondent  
2 or an accomplice inflicted bodily injury, and

3 6 That any of these acts occurred in the State of Washington

4 The State has not proven the elements of Count Two, Robbery in the First Degree,  
5 beyond a reasonable doubt, but the State has proven the following elements of the lesser degree  
6 charge of Robbery in the Second Degree beyond a reasonable doubt

7 1 That on or about November 19, 2010, the respondent or an accomplice unlawfully took  
8 personal property from the person or in the presence of Jason Decoste,

9 2 That the respondent or the accomplice intended to commit theft of the property,

10 3 That the taking was against the Jason Decoste's will by the respondent's use or threatened  
11 use of immediate force, violence, or fear of injury to Jason Decoste or his property, or to  
12 the person or property of another,

13 4 That force or fear was used by the respondent to obtain or retain possession of the  
14 property or to prevent or overcome resistance to the taking,

15 5 That any of these acts occurred in the State of Washington

16 III

17 The respondent is guilty of Count One, Robbery in the First Degree, as charged in the  
18 First Amended Information

19 The respondent is not guilty of Count Two, Robbery in the First Degree, as charged in the  
20 First Amended Information, but is guilty of the lesser degree charge of Robbery in the Second  
21 Degree

22 IV

23 Judgment should be entered in accordance with Conclusion of Law III. In addition to  
24 these written findings and conclusions, the Court hereby incorporates its oral findings and  
conclusions as reflected in the record

DONE IN OPEN COURT this 22 day of April, 2011

  
\_\_\_\_\_  
THE HONORABLE HELEN HALPERT

Presented by

FINDINGS OF FACT AND CONCLUSIONS OF LAW  
PURSUANT TO CrR 6 1(d) - 4

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*[Handwritten signature]*

Stephanie Finn Guthrie, WSBA #43033  
Deputy Assistant Prosecuting Attorney

*Approved A's to For [illegible]*  
*[Handwritten signature]*

Craig McDonald, WSBA #9338  
Attorney for Respondent

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FINDINGS OF FACT AND CONCLUSIONS OF LAW  
PURSUANT TO CrR 6 1(d) - 5

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

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STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	
v.	)	NO. 67151-1-I
	)	
S.J.T.,	)	
	)	
Juvenile Appellant.	)	

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 21<sup>ST</sup> DAY OF SEPTEMBER, 2011, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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STATE OF WASHINGTON  
DIVISION ONE

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| [X] KING COUNTY PROSECUTING ATTORNEY<br>APPELLATE UNIT<br>KING COUNTY COURTHOUSE<br>516 THIRD AVENUE, W-554<br>SEATTLE, WA 98104 | (X)<br>( )<br>( ) | U.S. MAIL<br>HAND DELIVERY<br>_____ |
| [X] S.J.T.<br>ECHO GLENN CHILDREN'S CENTER<br>33010 SE 99 <sup>TH</sup> ST<br>SNOQUALMIE, WA 98065                               | (X)<br>( )<br>( ) | U.S. MAIL<br>HAND DELIVERY<br>_____ |

**SIGNED** IN SEATTLE, WASHINGTON THIS 21<sup>ST</sup> DAY OF SEPTEMBER, 2011.

X \_\_\_\_\_  
*[Handwritten Signature]*

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