
YEAR 2006 CASE SUMMARIES

By
The Honorable Pat Garza

Associate Judge
386th District Court
San Antonio, Texas

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Evidence was legally sufficient to support the trial court's finding that appellant committed the theft.[In the Matter of C.L.W.](06-1-19A)

On February 13, 2006, the Dallas Court of Appeals concluded that a theft was complete once the actor had exercised control over the property and that there is no requirement that the property actually be removed from the premises or kept for a specific length of time.

¶ 06-1-19A. **In the Matter of C.L.W.**, MEMORANDUM, No. 05-05-00754-CV, No. 05-05-00776-CV, No. 05-05-00777-CV, No. 05-05-00778-CV, No. 05-05-00779-CV, 2006 Tex.App.Lexis 1152 (Tex.App.— Dallas, 2/13/06).

Facts: At trial, Montey Seabolt and Lee Culley, Wal Mart loss prevention employees, testified they observed appellant stealing numerous DVDs. Appellant entered their McKinney store at about 11:15 p.m., placed a pillow in a shopping cart, and went to the electronics department located at the back of the store. Culley left the loss prevention office and went to the sales floor to observe appellant. Culley saw appellant put several DVDs underneath the pillow, then go to the garden center's outside patio area. Both Seabolt and Culley went to the garden area on the outside of the building. In the meantime, appellant put the DVDs into a lawnmower grass-catching bag he had taken from the garden center. Appellant tossed the bag over a three-foot fence on the outside of the patio area and walked back into the main store. Appellant then paid for several items before leaving the store. Culley, who had been standing on the outside of the patio fence when appellant threw the bag, retrieved the bag and took it to the front of the store where several police officers were waiting. Five minutes later, appellant exited the store and was arrested by the police. The officers found thirteen DVD collections inside the grass-catching bag. The value of the DVDs and the bag totaled \$ 887. A videotape made from surveillance cameras located inside and outside the store was played to the court, corroborating Seabolt's and Culley's testimony.

Held: Affirmed as modified in part, Reversed and Remanded in part

Memorandum Opinion: The State was required to prove that appellant, without the owner's effective consent and with intent to deprive the owner of the property, unlawfully appropriated property valued at \$ 500 or more but less than \$ 1500. *See TEX. PEN. CODE ANN. § 31.03(a), (e)(3)* (Vernon Supp. 2005). "Appropriate" means to acquire or otherwise exercise control over the property, other than real property. *See id.* § 31.01(4)(B).

A theft is complete once the actor has exercised control over the property. *See Masters v. State*, 437 S.W.2d 868, 869 (Tex. Crim. App. 1969). There is no requirement that the property actually be removed from the premises or kept for a specific length of time. *See Baker v. State*, 511 S.W.2d 272, 272-73 (Tex. Crim. App. 1974). We conclude the evidence is legally sufficient to support the trial court's finding that

appellant committed the theft. *See In Matter of A.S., 954 S.W.2d at 858.* We overrule appellant's first point of error.

Conclusion: Cause modified on other grounds and affirmed.

LAST MODIFIED: FEBRUARY 15, 2006 08:39 AM

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