

1979

State of Utah v. Joan Marie Gorlick : Brief of Respondent

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc2



Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

Stanley S. Adams; Attorney for Appellant;

Robert B. Hansen; Attorney General;

Recommended Citation

Brief of Respondent, *State v. Gorlick*, No. 16420 (Utah Supreme Court, 1979).

https://digitalcommons.law.byu.edu/uofu_sc2/1732

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

IN THE SUPREME COURT OF THE
STATE OF UTAH

STATE OF UTAH, :
Plaintiff-Respondent, :
-vs- : Case No. 16420
JOAN MARIE GORLICK, :
Defendant-Appellant. :

BRIEF OF RESPONDENT

APPEAL FROM THE JUDGMENT ENTERED IN THE THIRD
JUDICIAL DISTRICT COURT, IN AND FOR SALT LAKE
COUNTY, STATE OF UTAH, THE HONORABLE DAVID B.
DEE, JUDGE.

ROBERT B. HANSEN
Attorney General

WILLIAM W. BARRETT
Assistant Attorney General

236 State Capitol
Salt Lake City, Utah 84114

Attorneys for Respondent

STANLEY S. ADAMS

Suite 1004 Boston Building
9 Exchange Place
Salt Lake City, Utah 84111

Attorney for Appellant

FILED

AUG 31 1979

TABLE OF CONTENTS

	PAGE
STATEMENT OF THE NATURE OF THE CASE -----	1
DISPOSITION IN THE LOWER COURT -----	1
RELIEF SOUGHT ON APPEAL -----	2
STATEMENT OF THE FACTS -----	2
ARGUMENT	
POINT I: APPELLANT HAS FAILED TO SHOW THAT THE JURY'S UNANIMOUS VERDICT IN FINDING DEFENDANT GUILTY OF THEFT IS UNSUPPORTED BY SUBSTANTIAL EVIDENCE WHICH COULD CONVINCE REASONABLE MINDS THAT SHE IS GUILTY BEYOND A REASONABLE DOUBT -----	6
POINT II: APPELLANT'S CONDUCT PRESENTED THE JURY WITH SUBSTANTIAL EVIDENCE FROM WHICH IT COULD INFER THAT SHE OBTAINED THE VICTIM'S RING WITH THE PURPOSE TO DEPRIVE HIM THEREOF -----	10
POINT III: MARKET VALUE IS THE PROPER TEST FOR VALUING STOLEN PROPERTY IN ORDER TO DETERMINE THE DEGREE OF THE THEFT; AND THE JURY WAS GIVEN SUBSTANTIAL AND UNCONTRADICTED EVIDENCE THAT THE VALUE OF THE RING EXCEEDED \$1,000 AT THE TIME AND PLACE WHERE THE THEFT OCCURRED -----	15
CONCLUSION -----	17

TABLE OF CONTENTS
(Continued)

PAGE

CASES CITED

Jewell v. State, 216 Md. 110, 139 A.2d 707 (1958) -----	16
People v. Lizarraga, 122 Cal. App.2d 436, 264 P.2d 953 (1954) -----	16,17
People v. Tillman, 59 Mich. App. 768, 229 N.W.2d 922 (1975) -----	16
State v. Armstrong, 361 S.W. 2d 811 (Mo., 1962) -----	16
State v. Daniels, 584 P.2d 880, 883 (Utah, 1978) -----	8,9
State v. Helm, 563 P.2d 794 (Utah, 1977) -----	11
State v. Hopkins, 11 Utah 2d 486, 359 P.2d 486 (1961) --	11
State v. Jones, 554 P.2d 1321 (Utah, 1976) -----	6
State v. Logan, 563 P.2d 811 (Utah, 1977) -----	15,16
State v. Middlestadt, 579 P.2d 908, 911 (Utah, 1978) --	8
State v. Mills, 530 P.2d 1272 (Utah, 1975) -----	7,8
State v. Romero, 554 P.2d 216 (Utah, 1976) -----	6,11
State v. Schoenfield, 545 P.2d 183, 195 (Utah, 1976) --	9
State v. Sullivan, 6 Utah 2d 110, 307 P.2d 212 (1957), cert. den. 355 U.S. 848 (1957) -----	7,10
State v. Taylor, 570 P.2d 697 (Utah, 1977) -----	13
State v. Wilson, 565 P.2d 66, 68 (Utah, 1977) -----	9

STATUTES CITED

Utah Code Ann., § 76-6-44 (1953, as amended) -----	1
Utah Code Ann., § 76-6-401 (1953, as amended) -----	12,14
Utah Code Ann., § 76-6-403 (1953, as amended) -----	12
Utah Code Ann., § 76-6-404 (1953, as amended) -----	11

IN THE SUPREME COURT OF THE
STATE OF UTAH

STATE OF UTAH, :
Plaintiff-Respondent, :
-vs- : Case No. 16420
JOAN MARIE GORLICK, :
Defendant-Appellant. :

BRIEF OF RESPONDENT

STATEMENT OF THE NATURE OF THE CASE

The state charged appellant with obtaining or exercising unauthorized control of another's ring, with a value exceeding \$1,000, in violation of Utah Code Ann. § 76-6-44.

DISPOSITION IN THE LOWER COURT

The state tried appellant before a jury on January 8 and 9, 1979, with The Honorable, David B. Dee presiding. On January 9, 1979, the jury found appellant guilty of theft, a second-degree felony (R. 298). On March 23, 1979, Judge Dee sentenced appellant to imprisonment at the Utah State Prison for a term of one to fifteen years. Judge Dee

stayed execution of the term of imprisonment, contingent upon appellant successfully completing a two-year probationary period, obtaining gainful employment during that period, and paying a \$1,000 fine (R. 305-06).

RELIEF SOUGHT ON APPEAL

Respondent seeks affirmance of the verdict and judgment of the district court.

STATEMENT OF THE FACTS

On the afternoon of July 31, 1978, the victim, David Delgado, was sitting in the lounge at the Room at Top in the Hilton Hotel (R. 84). During that same afternoon, appellant, Joan Marie Gorlick, accompanied by Paul Tolman and Calvin Smith, entered the lounge and sat at another table (R. 84-85). Mr. Delgado subsequently joined appellant and her companions at their table (R. 85). They stayed at the Hilton until about 10:30 p.m., each consuming several drinks (R. 86).

During the course of the evening, Mr. Delgado and appellant negotiated over the purchase of appellant's gold necklace and Mr. Delgado's diamond ring (R. 87, 98-104). Appellant and Mr. Delgado could not agree on the value of the latter's ring. Their estimates ranged from \$300 to \$700 (R. 100). In fact, Mr. Milton Peterson, a diamond salesman and appraiser affiliated with a local diamond emporium, estimated the value of the ring as \$1,250 to \$1,400 on

August 1, 1978, the day of the theft (R. 127-29).

Appellant wished to have the ring appraised. Mr. Delgado gave her possession of the ring to appraise while they were sitting at the table; he refused to let her take the ring home for appraisal (R. 104).

About 10:30 p.m., Mr. Delgado wished to leave the Hilton and go to the Sun Tavern, which was located several blocks away. Appellant and her companions agreed to drive him there (R. 86). Mr. Delgado took possession of his ring from appellant (R. 114). At the Sun Tavern, each consumed several more drinks (R. 87).

The negotiations over the jewelry continued at the Sun Tavern. Miss Jacquelyn JoKunst, a cocktail waitress at the Sun Tavern, observed Mr. Delgado displaying his diamond ring, while on his finger, to the appellant (R. 136, 137-38).

While Mr. Delgado was handing the ring across the table to appellant, he dropped it into a glass on the table (R. 114-15). Appellant then drank the contents of the glass and allegedly swallowed the ring (R. 88, 115-16). Appellant refused to return the ring, claiming she had swallowed it (Id.). Mr. Delgado then called over Miss Kunst and told her that appellant had swallowed his ring and had refused to return it (R. 88). When Miss Kunst asked appellant if she had swallowed the ring, appellant, keeping her lips pursed, nodded affirmatively (R. 132).

Mr. Delgado left the table, called the Salt Lake City Police Department, and wrote down the make and model and license plate number of appellant's automobile (R. 89). Mr. Delgado informed appellant that he had notified the police (Id.). She and her companions left and Mr. Delgado awaited the arrival of the police (Id.).

Salt Lake City Police Officer George Kearns arrived at the Sun Tavern in response to Mr. Delgado's complaint (R. 145). Subsequently, he located appellant and Mr. Calvin Smith sitting in her Lincoln Continental, which was parked in front of the Hilton Hotel, and which matched the description given to him by Mr. Delgado (R. 146-47, 149). Officer Kearns asked appellant for some identification. Her vehicle and her driver's license indicated that she was the person whom Mr. Delgado had complained had stolen his ring (R. 147). Officer Kearns advised appellant of her Miranda rights and then proceeded to interview her about Mr. Delgado's complaint (R. 147-48).

At first, appellant denied being at the Sun Tavern that evening and knowing of Mr. Delgado (R. 148, 228, 236, 240-43). Mr. Smith also denied knowing Mr. Delgado or being at the Sun Tavern that evening (R. 254). Officer Kearns then arrested appellant and placed her in the front seat of a police vehicle (R. 149). She then informed Officer Kearns that she wished to talk about the incident. She

admitted being at the Sun Tavern with Mr. Delgado (R. 149). She then falsely told the officer that she had purchased the ring from Mr. Delgado for \$300, and that it was in her purse (R. 150, 236-38). Officer Pat Smith, who had arrived to assist Officer Kearns, also interviewed the appellant. Appellant recited a third version about what occurred at the Sun Tavern. She told Officer Smith that she had pretended that she had swallowed the ring and that it was in her purse on the seat of her vehicle (R. 264, 265, 266). Officer Smith retrieved the purse and gave it to Officer Kearns (R. 264).

Officer Kearns had also arrested Mr. Calvin Smith in connection with the theft of a second ring, which Mr. Delgado had falsely reported to the officer as belonging to him (R. 152, 166). Subsequently, Mr. Delgado notified Detective Gillies that the second ring belonged to Mr. Smith (R. 161). On August 31, 1978, the court dismissed the complaint against Mr. Smith (R. 3).

On October 19, 1978, Judge Uno ordered appellant bound over to the district court for arraignment (R. 3).

She was found guilty of second-degree theft by a jury on January 9, 1979 (R. 298). She appeals the verdict and sentence of the district court.

ARGUMENT

POINT I.

APPELLANT HAS FAILED TO SHOW THAT THE JURY'S UNANIMOUS VERDICT IN FINDING DEFENDANT GUILTY OF THEFT IS UNSUPPORTED BY SUBSTANTIAL EVIDENCE WHICH COULD CONVINCE REASONABLE MINDS THAT SHE IS GUILTY BEYOND A REASONABLE DOUBT.

Appellant contends that her conviction is unsupported by sufficient evidence. Her contention is founded upon the allegations that the victim's testimony is unworthy of belief, that his testimony is uncorroborated, and that her multiple witnesses prove her innocence (Br. 9, 10, 12). Viewing the evidence in the light most favorable to the verdict, State v. Jones, 554 P.2d 1321 (Utah, 1976), none of these contentions have merit.

In State v. Romero, 554 P.2d 216 (Utah, 1976), the defendant appealed his conviction for burglary and theft, claiming there was insufficient evidence to uphold his conviction. He based his claim upon the fact that the witnesses could not identify all the co-defendants and gave conflicting testimony about the circumstances of the crime. This Court rejected his appeal and held:

This court has long upheld the standard that on an appeal from conviction the court cannot weigh the evidence nor say what quantum is necessary to establish a fact beyond a reasonable doubt so long as the evidence given is substantial. Further, this court has maintained that its function is not to determine guilt or

innocence, the weight to give conflicting evidence, the credibility of witnesses, or the weight to be given defendant's testimony.

Id. at 218 (citations omitted).

This Court continued:

This court has set the standard for determining sufficiency of evidence to require that it be so inconclusive or so inherently improbable that reasonable minds could not reasonably believe defendant committed a crime. Unless there is a clear showing of lack of evidence, the jury verdict will be upheld.

Id. at 219 (citations omitted). Accord; State v. Mills, 530 P.2d 1272 (Utah, 1975).

As this Court outlined in State v. Sullivan, 6 Utah 2d 110, 307 P.2d 212 (1957), cert. den. 355 U.S. 848 (1957):

. . . But it is not sufficient merely that reasonable minds may have entertained such doubt (reasonable doubt). Before a verdict may be properly set aside, it must appear that the evidence was so inconclusive or unsatisfactory that reasonable minds acting fairly upon it must have entertained reasonable doubt that defendants committed the crime. Unless the evidence compels the conclusion as a matter of law, the verdict must stand.

307 P.2d at 215 (emphasis in original).

The victim, Mr. Delgado, testified that he did not give appellant permission to take the ring with her (R. 104). He testified that appellant allegedly swallowed his ring and refused to return it (R. 87, 89). Although appellant

and her companions gave testimony contrary to Mr. Delgado's, "the weight and credibility of the testimony of the victim was a matter for the jury." State v. Daniels, 584 P.2d 880, 883 (Utah, 1978). See also: State v. Mills, supra, at 1273.

Appellant's contention that Mr. Delgado's testimony was unworthy of belief because it is uncorroborated is frivolous. First, the fact that the victim's testimony is uncorroborated and conflicting in some respects does not render such testimony insubstantial. State v. Middlestadt, 579 P.2d 908, 911 (Utah, 1978). Second, Mr. Delgado's testimony is corroborated by other witnesses and appellant's admissions. Miss Kunst, the waitress at the Sun Tavern, asked appellant if she had swallowed the ring. Appellant, keeping her mouth clenched, nodded affirmatively in response (R. 132). After her arrest, appellant admitted to Officer Smith that she had pretended that she had swallowed the ring and that it was in her purse (R. 265).

Appellant's contention that her "multiple witnesses (Br. 12), she and her companions, undercut the prosecution's case is also meritless. The number of witnesses for or against a particular proposition is irrelevant. Moreover, appellant's testimony is subject to serious doubt. When she was arrested, she lied to the arresting officer. She stated that she did not know Mr. Delgado and that she had not been

to the Sun Tavern that evening (R. 149, 157, 160). She subsequently changed her story and told the officer she had purchased the ring for \$300 (R. 141, 255). In open court, she admitted that she had lied to the arresting officer (R. 129, 236-243). After she was placed in a police vehicle, she recited a third story that she had pretended to swallow the ring (R. 265). Her companion, Calvin Smith, who was simultaneously arrested with her, similarly denied his presence at the Sun Tavern that evening and the circumstances surrounding the ring (R. 256).

The jury is justified in discounting her evidence and accepting the prosecution's. As this Court stated in State v. Schoenfield, 545 P.2d 193, 195 (Utah, 1976):

In regard to defendant's contention that the evidence is not sufficient to justify his conviction, these observations are pertinent: the jury were not obligated to accept as true defendant's own version of the evidence nor his self-exculpating statements as to his intentions and his conduct. They were entitled to use their own judgment as to what evidence they would believe and to draw any reasonable inferences therefrom.

In the instant case, appellant has failed to carry her burden in showing that the evidence is so insubstantial that reasonable minds could not believe her guilty beyond a reasonable doubt. State v. Daniels, supra, at 883; State v. Wilson, 565 P.2d 66, 68 (Utah, 1977). The jury experienced

little difficulty in finding appellant guilty because it returned a unanimous verdict within several hours after beginning its deliberations (R. 298-300). Appellant has failed to demonstrate that reasonable minds must have entertained reasonable doubt about defendant's guilt. State v. Sullivan, supra.

POINT II.

APPELLANT'S CONDUCT PRESENTED THE JURY WITH SUBSTANTIAL EVIDENCE FROM WHICH IT COULD INFER THAT SHE OBTAINED THE VICTIM'S RING WITH THE PURPOSE TO DEPRIVE HIM THEREOF.

Appellant's contention that the state failed to prove her criminal intent in taking the victim's ring is meritless. As this Court warned in State v. Canfield, 18 Utah 2d 292, 422 P.2d 196 (1967):

Defendant's case is presented in the all-too-common manner of defense counsel: arguing from his own theory of the evidence that it does not show the necessary intent to justify the verdict. But this is at variance with the correct pattern of procedure on appeal and paints quite a different picture of this case than we are obliged to see. It is our duty to respect the prerogative of the jury as the exclusive judges of the credibility of the witnesses and as the determiners of the facts. Consequently, we assume that they believed the state's evidence, and we survey it, together with all fair inferences that the jury could reasonably draw therefrom, in the light most favorable to their verdict.

Viewing the evidence presented at trial in the light most favorable to the verdict, including any reasonable inferences drawn therefrom, State v. Helm, 563 P.2d 794 (Utah, 1977); State v. Canfield, supra, clearly the record contains substantial evidence from which the jury could infer appellant took the ring with the requisite criminal intent. Appellant's conduct provides the clue to her intent. In State v. Hopkins, 11 Utah 2d 486, 359 P.2d 486, this Court rejected the defendant's contention that the prosecution had not proven his intent to burglarize an apartment. The Court held:

It is to be remembered that intent, being a state of mind, is rarely susceptible of direct proof. But it can be inferred from conduct and attendant circumstances in the light of human experience . . .

359 P.2d at 487. Accord: State v. Romero, supra at 218 ("The intent to steal or unlawfully deprive the rightful owners of their property can be inferred by defendant's conduct and the attendant circumstances testified to by the witnesses,"); State v. Canfield, supra at 198 (" . . . [W]e are aware of no better nor persuasive way to do it (prove what a man intended) than by showing both what he did and what he said . . .").

The jury convicted appellant upon an information charging her with theft, in violation of Utah Code Ann. 76-6-404 (1953), in that she "did obtain or exercise

unauthorized control over the property of David Delgado with the purpose to deprive the owner thereof . . ." (R. 13) Utah Code Ann. § 76-6-401 (1953), defines the critical terms:

* * *

(2) "Obtain" means, in relation to property, to bring about a transfer of possession or of some other legally recognized interest in property, whether to the obtainor or another . . .

(3) "Purpose to deprive" means to have the conscious objective:

(a) To withhold property permanently or for so extended a period or to use under such circumstances that a substantial portion of its economic value, or of the use and benefit thereof, would be lost. . . .

(c) To dispose of the property under circumstances that make it unlikely that the owner will recover it.

(4) "Obtain or exercise unauthorized control" means, but is not necessarily limited to, conduct heretofore defined or known as common-law larceny by trespassory taking, larceny by conversion, larceny by bailee, and embezzlement.

* * *

The present theft statutes consolidate the common law crimes against property into a single offense--theft. Utah Code Ann. § 76-6-403 (1953). This statute further provides:

. . . An accusation of theft may be supported by evidence that it was committed in any manner specified in sections 76-6-404 through 76-6-410 . . .

Under this section, any evidence establishing one of the comprised offenses supports a guilty verdict. State v. Taylor, 570 P.2d 697 (Utah, 1977).

The jury could reasonably believed that appellant's conduct demonstrated her intent to bring about a transfer of possession of the ring with the purpose to withhold it permanently or to dispose of it under circumstances that make it unlikely that Mr. Delgado could recover it. Mr. Delgado only gave her possession of the ring to appraise at the table (R. 90, 104). She "pretended" that she swallowed the ring and refused to return it to the victim (R. 87, 106, 115-16, 132), and then left the victim at the Sun Tavern after he informed her that he had called the police (R. 106). When the police subsequently confronted her at the Hilton, she at first told them she did not know Mr. Delgado and knew nothing about any ring (R. 148, 157, 160). Then she said she knew Mr. Delgado, but had purchased the ring for \$300 (R. 149, 255). Her companion also denied acquaintance with Mr. Delgado, being at the Sun Tavern, and familiarity with the ring (R. 256). After the police arrested her, she finally told the truth that she had pretended that she had swallowed the ring (R. 265). She admitted these stories

during trial (R. 229, 236, 240-43). There was no close relationship between appellant and Mr. Delgado. They had met only briefly several times over the course of approximately six months (R. 93-94, 216-19). The victim was uneasy about letting her keep the ring on the table, let alone letting her keep it over night (R. 113-14). The victim mistrusted the appellant because of prior dealings regarding a job she had offered him (R. 96).

The jury could properly convict her whether she formed the intent before she took possession of the ring or after, because to "obtain or exercise unauthorized control" comprehends common law larceny, embezzlement and the other offenses against property. Utah Code Ann. § 76-6-401(4) (1953). This Court recognized in State v. Bender, 581 P.2d 1019, 1021 (1978), ". . . [W]hen one has the intent to steal the theft is completed at the time of asportation . . .". The jury received substantial evidence to infer that appellant had the intent to steal at the time she took the ring with her when she left the Sun Tavern. When appellant left the Sun Tavern with the ring, the victim was left only with the mere possibility that he might recover from a casual acquaintance his valuable ring, a readily disposable item. Cf. State v. Bender, supra at 883 (" . . . even if defendant's story that he only wanted the vehicle for transportation to California were to be believed, it would have been only a

possibility that Midvalley Auto would have recovered its stolen automobile in California").

POINT III.

MARKET VALUE IS THE PROPER TEST
FOR VALUING STOLEN PROPERTY IN ORDER
TO DETERMINE THE DEGREE OF THE THEFT;
AND THE JURY WAS GIVEN SUBSTANTIAL
AND UNCONTRADICTED EVIDENCE THAT
THE VALUE OF THE RING EXCEEDED \$1,000
AT THE TIME AND PLACE WHERE THE THEFT
OCCURRED.

In State v. Logan, 563 P.2d 811 (Utah, 1977),
this Court set forth the standard for valuing property in
theft cases. In Logan, the defendant contended that
replacement cost, not market value, was the proper test.
This Court rejected his contentions and approved the trial
court's instruction of value:

. . . That value is the highest
price, estimated in terms of money,
for which the property would have sold
in the open market at the time and in
that locality if the owner was desirous
of selling, but under no urgent necessity
of doing so, and if the buyer was
desirous of buying but under no urgent
necessity of so doing, and if seller
had a reasonable time within which to
find a purchaser, and the buyer had
knowledge of the character of the
property and of the uses to which it
might be put.

Id. at 812-813.

By this definition, the values discussed between the victim
and the appellant are immaterial, for it is not the value of
the item to a particular person, but the value commanded in

the open market. People v. Tillman, 59 Mich. App. 768, 229 N.W.2d 922 (1975); State v. Armstrong, 361 S.W. 2d 811 (Mo. 1962); People v. Lizarraaga, 122 Cal.App.2d 436, 264 P.2d 953 (1954); Jewell v. State, 216 Md. 110, 139 A.2d 707 (1958).

In the instant case, the prosecution produced Mr. Milton Petersen, a local diamond salesman and appraiser, qualified to give his expert opinion about the value of diamonds (R. 124-25). He valued the ring on the day of the theft between \$1,250 and \$1,400 for a willing buyer and willing seller, without either operating under any duress (R. 127-29). He also gave the Keystone value of the ring as being \$500 to \$600. This value only attaches in situations where the buyer has very great buying power (R. 128), or the seller is in need of "quick cash," (R. 129). However, this Keystone value is not the proper standard for valuation, since it does not reflect the price between a willing buyer and a willing seller where neither is negotiating under duress, as required under Logan, supra.

The jury properly inferred that Mr. Petersen's testimony related to the value of the ring in Salt Lake County. The call of the question related to the date of the offense (R. 127). Mr. Petersen was called as an expert familiar with the local market (R. 125). He referred to the price increases in the local diamond trade, based on the

fluctuations in the international money market (R. 127-28). The court's instructions directed the jury to find that the theft of the ring occurred in Salt Lake County (R. 32), and that its value on the date of the theft and at the situs of the theft occurred in Salt Lake County (R. 40). The appellant presented no evidence of a lower market value. "It is sufficient if the fair market value is established by expert testimony." People v. Lizarraga, supra, 264 P.2d at 954. Therefore, the jury could only infer that the value of the ring exceeded \$1,000 on the date and at the place of the theft.

CONCLUSION

Appellant has failed to show that the jury's unanimous verdict is based on such insubstantial evidence that reasonable minds could not believe her guilty beyond a reasonable doubt. The weight and credibility of the witnesses were matters left solely to the jury as the triers of fact. The prosecution presented substantial evidence from which the jury could infer that appellant took the victim's ring with the intent to deprive him thereof. The prosecution also presented expert testimony which placed the fair market value of the ring on the date of the offense as exceeding \$1,000. She has not established the legal insufficiency of the jury's verdict; rather she

has presented her theory of the case, which the jury disbelieved.

Therefore, the verdict and sentence must be affirmed.

Respectfully submitted,

ROBERT B. HANSEN
Attorney General

WILLIAM W. BARRETT
Assistant Attorney General

Attorneys for Respondent