

No. 04-93384-A

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**IN THE COURT OF APPEALS OF THE STATE OF KANSAS**

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**STATE OF KANSAS**  
**Plaintiff-Appellee**

**vs.**

**JEREMY LANE HERMRECK**  
**Defendant-Appellant**

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**Brief of Appellee**

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Appeal from the District Court of Anderson County,  
Honorable James J. Smith, Judge,  
District Court Case No. 03-CR-131

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### Statement of the Issues

- Issue I:**     **The evidence was sufficient to show that the property taken by the defendant belonged to Xenia Corporation.**
- Issue II:**    **The evidence was sufficient to show that the property taken by the defendant was worth more than \$500.**
- Issue III:**   **The trial court made a record of its consideration of the defendant's financial resources, or the nature of the burden that such payment would impose on the defendant or his immediate family.**

### Statement of the Facts

The appellee agrees with the appellant's statement of the facts with the following exceptions and/or additions:

Carl Hermreck is the appellant's uncle, not father, and co-defendant. (R. 4 at 22, 180.) The appellant was unemployed. (R. 4 at 181.) The photographs of the property at Wes' Recycling Center show only a part of the property taken from the Ewing Lease because most of it had already been resold by Ungeheuer at the time the theft was discovered. (R. 4 at 154; R. 6 at State's Exhibits 1-16.)

The "Xenia Corporation" (aka "Christian Integrity" or "Christian Operating") was a company involved in oil and gas production. (R. 4 at 80.) The "Ewing Lease" was one of Xenia's oil and gas production facilities in Anderson County, Kansas. (R. 4 at 80.)

Randy Teter managed the leases as an employee of the Xenia Corporation. (R. 4 at 80, 150.) Teter has 17 years of experience in the oil field industry with 15 of those years spent working for Xenia. (R. 3 at 34-35.) Hulen Lemon was the owner of the Xenia Corporation. (R. 4 at 80.) Buddy Demaranville was an employee of Christian Operating (formerly Xenia Corp.) (R. 4 at 118.) Brian Antrim was an employee of Wes Ungeheuer.

Wes Ungeheuer is a scrap metal dealer with eleven years of experience and the owner of Wes' Recycling, Inc., a scrap yard. (R. 4 at 149-150.) Vernon Valentine was a detective with the Anderson County Sheriff's Office. (R. 4 at 20.) Jim Hermreck is Carl Hermreck's brother and the defendant's father. (R. 4 at 170.) Vernon Hermreck is the brother of both Carl and Jim Hermreck and the defendant's uncle. (R. 4 at 203.)

Teter and Lemon were the only persons who could authorize the removal of property from the Ewing Lease. (R. 4 at 95-96.) And, since the Lease is located on private property, only the landowner or their operators were even allowed on the land surrounding the Lease. (R. 4 at 102.)

Over a 10-12 year period, as oil wells were plugged, Teter would salvage the wire from the overhead electrical lines. (R. 4 at 88, 99.) For each well, there could be three or four wires of a quarter to a half mile in length and it was Teter's job to "take them up." (R. 4 at 91, 99.) Teter used a special "pipe trailer" to roll up the wire. (R. 4 at 91; R. 6 at State's #7.) The pipe trailer did not roll the wire into a standard sized coil, it was built by Teter and Peter Fisher several years earlier to suit Teter's requirements for a trailer to "fit several different sizes of diameter of [poly pipe]" that he was working with at the time. (R. 4 at 91.) Teter was familiar with the coils of wire that were formed by his custom trailer. (R. 4 at 92.) To use the trailer, Teter would wrap one end of the wire around one of the upright arms and then drive along the length of the electrical line, rolling the wire on the trailer until the roller was full. (R. 4 at 91-92.) When the roll got full, the coil of wire would be taken off the roller, thrown in the front of the trailer, and hauled to the place on the Ewing Lease for storage. (R. 4 at 91.) Teter estimated that the aluminum wire stored on the Ewing Lease

would make four to six pickup loads. (R. 4 at 111.)

Also stored on the Ewing Lease were more than a semi-load of pulleys. (R. 4 at 104.) The pulleys (or “sheaves”) were big, 3 or 4-belt pulleys to drive injection pumps, power pumping units, gasoline motors, etc. (R. 4 at 87-88.) The sheaves on the Ewing Lease were unusual and bigger than any others in the area. (R. 4 at 151, 157, 229.)

There was a lot of pipe stored there on the Ewing Lease in piles. (R. 4 at 68.)

There was a building on the Lease that had several old water meters stored in it. (R. 4 at 104.) One building on the Ewing Lease also had more motors stored in it than most people have “laying around.” (R. 4 at 153.) Some of the motors stored on the Lease were from Colorado and were bigger than those commonly used by Teter, others were “regular size motors for this area.” (R. 4 at 89.)

The Ewing Lease has Churchill, Cook, Jensen, National and Bethlehem pumping units. (R. 4 at 114.) Counterweights are necessary to make the pumps pull uniformly and to adjust them for different depth wells. (R. 4 at 87.) In addition to the counterweights on the pumps, extra counterweights were stored on the Lease. (R. 4 at 87.)

Around October of 2002, Teter along with Ungeheuer, Lemon and one of Ungeheuer’s employees marked scrap metal to be sold to Ungeheuer. (R. 4 at 84-85.) The items to be sold for scrap were marked with cheap fluorescent orange paint. (R. 4 at 89-90, 153.) Ungeheuer himself painted the marks on the scrap. (R. 4 at 157.) Salvaged wire stored on the Ewing Lease was not to be removed by Ungeheuer and was not marked. (R. 4 at 40.) The wire was too valuable to sell for scrap because it could be reused or sold to individuals for more than it would bring from a recycling center and Teter valued the wire at two to three

thousand dollars. (R. 4 at 88.)

Some of the motors were marked, others were not marked and were to be kept. (R. 4 at 89.) Counterweights were not marked for removal. (R. 4 at 109.) Pump jack counterweights were too valuable to be sold for scrap and were kept for future use. (R. 4 at 87, 90.) A large “wooden spool” from Miller Ace Hardware had not been marked for removal. (R. 4 at 108.)

A brass barrel or pipe that Demaranville used to center pump jacks over the holes was not marked for removal. (R. 4 at 122, 126.) A transfer pump that Demaranville had disassembled for parts was not to be removed. (R. 4 at 119, 124.)

Ungeheuer was to notify Teter when the scrap was going to be taken so Teter could be present. (R. 4 at 85.) Teter recalled seeing the marked scrap still on the lease sometime in early June, 2003. (R. 4 at 86.) Approximately July 1, 2003, the Ewing Lease was shut down due to low oil prices. (R. 4 at 101.) Because the Lease remained closed for six or seven months and little maintenance or supervision was required during that time, Teter did not visit the site regularly. (R. 4 at 102, 113.) Teter recalled seeing piles of electrical wire still on the lease around the first part of August, 2003. (R. 4 at 86.)

Over time, the orange paint faded but it could still be seen. (R. 4 at 90, 134, 151; R. 6 at State’s #'s 1 and 2.)

Around Labor Day, 2003, Teter entered the Ewing Lease to pick up a replacement electric pole and he noticed that some electric wire was missing. (R. 4 at 85.) Since the missing wire was not to have been taken by Ungeheuer, Teter called Ungeheuer to make sure that there had not been a misunderstanding. (R. 4 at 85.)

Ungeheuer told Teter that he did not pick up the wire but he remembered it and recognized it when it was brought to his recycling center by Jeremy and Carl Hermreck. (R. 4 at 85-86, 130, 154, 156.) Ungeheuer recognized the items that the defendant was selling to him as having come from the Ewing Lease. The first items from the Ewing Lease that Ungeheuer remembers the defendant bringing to his recycling center were “big sheaves, the big pulleys that nobody has in the country around here but Lemon.” (R. 4 at 151.) (R. 4 at 152.) Ungeheuer has been in the scrap business for eleven years, he has looked at scrap for all those years, his business is to buy and sell scrap. (R. 4 at 149, 156.) Ungeheuer also recognized the paint marks that had been put on some of the items for him to take. (R. 4 at 151.) Ungeheuer thought “it’s been a year since [he had marked the scrap] and thought maybe [Teter] was tired of waiting on me to clean it up and had [the defendant] do it.” (R. 4 at 154.)

Teter started looking around and discovered several tons of missing property. (R. 4 at 86, 88.) Churchill brand pump jack counterweights were missing from nine of the wells along with the extras that had been piled around. (R. 4 at 86-87.) Some large sheaves were missing and only a few were left. (R. 4 at 87-88, 104.) Some water meters were missing and the building where they had been stored “was pretty well cleaned out.” (R. 4 at 87, 104.) Some motors of various sizes were missing. (R. 4 at 89.) A few “big monster motors that you have to have some sort of equipment to load” were all that were left on the Lease. (R. 4 at 111.) Other common oil-field items were missing. (R. 4 at 87.)

Teter notified the Sheriff’s department. (R. 4 at 86.)

Teter went to Ungeheuer’s recycling center and viewed the rolls of wire that had been

sold by the defendant and his uncle, recognizing them as some that had been produced by his custom pipe trailer and which he personally had rolled and tied. (R. 4 at 36, 90-92.) Pump jack counterweights, including a Churchill, Cook, Backer and Jensen types, all of which would have fit on pumps on the Ewing Lease, were in a pile that the defendant and his uncle brought to the recycling center. (R. 4 at 55-56, 114-115; R. 6 at State's Exhibit 8.)

Demaranville could identify the "sheaves and motors that had orange paint on them for sure" as having come from the Ewing Lease. (R. 4 at 123.) The panels that Demaranville took out of the transfer pump. remained at the Ewing Lease while the pump housing that Demaranville had taken them out of was located at the recycling center in the pile dumped by the defendant. (R. 4 at 121; R. 6 at State's #'s 8 and 16.) Demaranville also recognized the brass pipe that he used to center wells as the same one that was located at the recycling center. (R. 4 at 122; R. 6 at State's Exhibit 5.) Demaranville and Teter recognized one of Xenia's injection meters at the recycling center by the damage, the broken glass and the settings on it. (R. 4 at 53; R. 6 at State's #4.)

As they looked closer, Det. Valentine located "spots in the grass on the Ewing Lease where the wire had been laying and removed recently." (R. 4 at 46, 65; R. 6 at State's #9, and 10.) Teter noticed grass tangled in the bales of wire at the recycling center that he was sure would have matched perfectly with spots on the Ewing Lease where grass had been torn from the ground. (R. 4 at 92.) At the recycling center, Teter also recognized the wooden spool from Ace Hardware and stated that he could still see the "perfect indentation" it had left in the grass at the Lease. (R. 4 at 108.)

Some of the marked motors from the Ewing Lease were found at Wes'. (R. 4 at 112.)

Ungeheuer stated that the electric motors the defendant sold were “uncommon” and that “most people don’t have that many motors laying around.” (R. 4 at 153.)

The entire pile of aluminum wire was sold to the recycling center by the defendant. (R. 4 at 145; R. 6 at State’s Exhibit 3.)

Through June, July and August, the defendant and his uncle sold a large amount of oil field equipment to Wes’ Recycling. (R. 4 at 130.) Most people who sold to the recycling center did not sell oil field equipment. (R. 4 at 133.) Normally, the only scrap from oil fields that people sell to the recycling center is pipe. (R. 4 at 163.) The defendant and his uncle were the only ones to bring in oil field equipment to sell to the recycling center during those months. (R. 4 at 155.) The big things that the defendant was bringing in to sell were unusual and the only oil lease they could have come from was the Ewing Lease. (R. 4 at 155.)

When they brought it in, the defendant and his uncle seemed to be surprised at the amount of money they could get. (R. 4 at 131.) They would often arrive at the recycling center at 6:30 in the morning, even though the center did not open until 7:30 or 8:00, and would be sitting at the gate when it opened. (R. 4 at 131, 152.) The defendant made up to three trips on one day to the recycling center. (R. 4 at 132, 155.)

Most people sort the scrap before bringing it in. (R. 4 at 153-154.) The defendant did not bring in any junk automobiles although some of the iron oil field pipe that they sold may have been marked as “automobiles” because the defendant did not prepare and sort the scrap to get the best price and the category for automobiles is in between “tin” and “prepared number two.” (R. 4 at 135, 143.) The defendant brought in “dirty brass,” while most people would take the brass meters apart and separate the brass from the other material before

selling them to the recycling center because they would get more money, but the defendant did not do that. (R. 4 at 139, 153.)

The defendant brought in five or six pickup loads of aluminum wire to the recycling center. (R. 4 at 142.) In fact, on August 22 alone, the defendant and his uncle sold more than a ton (2,440 pounds) of aluminum wire to Wes' Recycling Center. (R. 6 at Def. Exhibits 35 and 36.) Antrim could state with confidence that the entire pile of aluminum wire shown in State's Exhibit #3, (which was all that was left at the time of the photograph), was sold to the recycling center by the defendant. (R. 4 at 145, 154; R. 6 at State's Exhibit 3.) Because of its value, "not very many people at all" brought aluminum wire to the recycling center. (R. 4 at 145.) In fact, it was uncommon for anyone to sell this type of wire to a salvage company. (R. 4 at 141.) In fact, it was so unusual that Antrim called his boss, Ungeheuer, to verify a price for the wire when the defendant brought in his first pickup load. (R. 4 at 145.)

Ungeheuer knew that the items the defendant was bringing in were from the Ewing Lease and he watched the direction the defendant went. (R. 4 at 155.) It only takes 15 or 20 minutes to drive from the Ewing Lease to Wes' Recycling Center. (R. 4 at 152.) Ungeheuer also was alerted by the defendant selling him weights. (R. 4 at 151.) Ungeheuer stated: "Nobody scraps weights." (R. 4 at 151.) From July 2003 through August 2003, the defendant and his uncle were paid almost \$5,000 for scrap by Wes' Recycling Center. (R. 6 at Def. Exhibits 1-41.)

The defendant was familiar with oil lease operations. (R. 4 at 74.) Prior to losing his job, the defendant "was on a pulling unit." (R. 4 at 181.) The fact that the Ewing Lease

was shut down for a while was “pretty much the scuttlebutt of eastern Kansas” and was known by most oil field workers. (R. 4 at 113.)

The defendant did not have permission to take the property from the Lease. (R. 4 at 86, 158.)

Det. Valentine was familiar with the defendant’s 70’s or 80’s model, brown Ford pickup truck. (R. 4 at 23.) The defendant’s brownish beige old Ford pickup was used to haul the scrap to Wes’. (R. 4 at 132.) The defendant originally denied taking anything from the Ewing Lease. (R. 4 at 23.) When confronted with the evidence that some of the items had been marked and recognized, the defendant stated that he “wasn’t going down for six thousand dollars worth of scrap.” (R. 4 at 24.) The defendant admitted to taking “a couple loads” from the Ewing Lease. (R. 4 at 25, 59.) The defendant stated that “Josh [Hermreck] in no way had anything to do with it.” (R. 4 at 75.)

At sentencing, the court made a record of its consideration of the defendant’s ability to pay. (R. 5 at 7.)

### Arguments and Authorities

**Issue I: The evidence was sufficient to show that the property taken by the defendant belonged to Xenia Corporation.**

#### Standard of Appellate Review

“When the sufficiency of the evidence is challenged in a criminal case, the standard of review is whether, after review of all the evidence, viewed in the light most favorable to the prosecution, the appellate court is convinced that a rational factfinder could have found the defendant guilty beyond a reasonable doubt.” *State v. Calvin*, \_\_\_ Kan. \_\_\_, Syl. ¶ 1,

105 P.3d 710 (2005).

### Gift

The defendant asserts that the property stolen by the defendant was gifted to Ungeheuer and that “Xenia Corporation gave the items marked with an ‘x’ for no consideration.” First of all, in doing so, the defendant limits his argument to only those items marked with an “x.” The evidence shows that the majority of the items stolen from Xenia by the defendant were not marked. (R. 4 at 40, 88-89, 108-109, 119, 122, 126, 124.)

Second, the evidence shows that not all of the items marked with an “x” were stolen by the defendant. (R. 4 at 36-37; R. 6 at State’s #1.)

For there to have been a gift, certain conditions must have been met and the defendant has the burden to prove them. “To establish a gift inter vivos there must be (a) an intention to make a gift; (b) a delivery by the donor to the donee; and (c) an acceptance by the donee. The gift must be absolute and irrevocable.” *Heiman v. Parrish*, 262 Kan. 926, 942 P.2d 631 (1997). “The burden of proving that a gift was made, including the existence of all the elements necessary to its validity, is upon the party asserting the gift.” *Estate of Button, Matter of*, 17 Kan.App.2d 11, Syl. ¶ 2, 830 P.2d 1216 (1992). “If the judicial mind is left in doubt or uncertainty as to exactly what the status of the transaction was, the donee must be deemed to have failed in the discharge of his burden and the claim of gift must be rejected.” *Estate of Button, Matter of*, 17 Kan.App.2d 11, 830 P.2d 1216 (1992) (quoting: 38 Am.Jur.2d, Gifts § 106).

The defendant has failed to prove that a gift was made and, in fact, at trial, the defendant’s attorney characterized the transaction as a contract. (R. 4 at 159.)

### Intent

First, there must be an intention to make a gift. *Heiman*. The evidence presented at trial shows that there was an intent to perform a conditional sale or a contract, not a gift. “A conditional sale is one in which vesting of the title in the purchaser is subject to a condition precedent, or in which its reversioning in the seller is subject to a failure of the buyer to comply with a condition subsequent.” *American States Ins. Co. v. Farmers Alliance Mut. Ins. Co.*, 28 Kan.App.2d 754, 20 P.3d 743 (2001). Teter stated that Xenia Corporation was to receive consideration for the items marked for removal by Ungeheuer. (R. 4 at 89.) The amount of consideration to be received was contingent on the market price of steel at the time of its removal. The sale was conditioned on Ungeheuer picking up the property and transporting it away for salvage. (R. 4 at 162-163.) Additionally, Teter was to be present when Ungeheuer actually removed the property from the Lease. (R. 4 at 85.)

There is no evidence of an intent to make a gift.

### Delivery

The defendant asserts that there was constructive delivery. To support this theory, the defendant relies on *Winsor v. Powell*, 209 Kan. 292, 497 P.2d 292 (1972).

*Winsor* was a case involving a decedent who had his stock certificates made out with himself and his son-in-law as joint tenants while the remainder of his property was made out with himself and his daughter as joint tenants with the right of survivorship. Additionally, the certificates were kept in a deposit box containing the son-in-law’s securities and to which both the decedent and the son-in-law’s wife had keys.

Therein, the Court found that such an arrangement constituted constructive delivery

to the son-in-law. There is no similarity with the defendant's case. Ungeheuer had no other property stored on the Lease. Ungeheuer had no right to be on the lease other than that granted by the landowner or Xenia Corporation. There is no indication that Ungeheuer was a joint tenant with Xenia in the marked property.

The defendant has not met his burden to show that there was delivery of a gift.

#### Acceptance

There was no acceptance of the property by Ungeheuer and the defendant does not present any argument to support such acceptance.

On the contrary, Ungeheuer recognized the property that he had marked and paid the defendant for it. Had Ungeheuer been the owner of the property, he would simply have accepted it from the defendant without offering to pay for it.

#### Absolute and Irrevocable

The "gift" from Xenia to Ungeheuer was revocable and therefore, not a gift at all.

Ungeheuer agreed that, after he had marked oil field property, the property owner could contract with someone else to haul it away. (R. 4 at 159.) If the property that Ungeheuer marked on oil fields was given to him, no one else could legally contract with the former owner to take it away without Ungeheuer's permission. Unless, of course, the gift was revoked in which case it was not a gift at all.

Ungeheuer also thought that the defendant had permission to take the property from the Ewing Lease when the defendant sold it to him. (R. 4 at 156.) Had Ungeheuer been the owner, he could not have thought that someone else had the authority to let the defendant take it.

Ungeheuer thought that Teter was “tired of waiting on me to clean it up and had them do it.” (R. 4 at 154.) If the property belonged to Ungeheuer, Teter could not have had the defendant do it.

The evidence shows that the property, both marked and unmarked, belonged to Xenia Corporation and was located on Xenia’s Ewing Lease under the supervision and control of Randy Teter.

**Issue II: The evidence was sufficient to show that the property taken by the defendant was worth more than \$500.**

Standard of Appellate Review

“When the sufficiency of the evidence is challenged in a criminal case, the standard of review is whether, after review of all the evidence, viewed in the light most favorable to the prosecution, the appellate court is convinced that a rational factfinder could have found the defendant guilty beyond a reasonable doubt.” *State v. Calvin*, \_\_\_ Kan. \_\_\_, Syl. ¶ 1, 105 P.3d 710 (2005).

Argument and Authorities

The defendant asserts that the “state simply entered all receipts paid out to the Hermrecks from other sources.” In fact, the record shows that **defense counsel** actually entered the receipts from Wes’ Recycling Center. (R. 4 at 10; R. 6 at Def’s #1-41.)

And, in fact, value greater than \$500 was established by the testimony of Randy Teter. Teter stated that the wire could be reused or sold to individuals for more than it would bring from a recycling center and he valued the wire stolen by the defendant at two to three thousand dollars. (R. 4 at 88.)

Aside from the wire, from July 2003 through August 2003, the defendant and his uncle were paid almost \$5,000 for scrap by Wes' Recycling Center. (R. 6 at Def. Exhibits 1-41.)

“If the essential elements of the charges are supported by any competent evidence, the convictions must stand.” *State v. Dean*, 273 Kan. 929, 933, 46 P.3d 1130, 1133 (2002). The evidences shows that the defendant stole at least \$2000 worth of wire from the Xenia Corporation which is more than the \$500 required to meet the element the defendant claims was not proven. (And please note that the wire was **not** marked by Mr. Ungeheuer and is therefore excluded from the defendant's argument in Issue I.)

The payment by Wes' Recycling to the defendant and his uncle of almost \$5000 is additional, circumstantial, evidence to support the conviction. “A conviction of even the gravest offense may be sustained by circumstantial evidence.” *Id.*

**Issue III: The trial court made a record of its consideration of the defendant's financial resources, or the nature of the burden that such payment would impose on the defendant or his immediate family.**

#### Standard of Review

It is unclear to me what the appropriate standard of review is as to whether the court has made sufficient record of it's consideration. Whether or not the court has made a record appears to be a question of fact while the interpretation of the statute and the sufficiency of the record made appear to be questions of law over which the Court would have unlimited review.

#### Argument and Authorities

“In determining the amount and method of payment of such sum, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of such sum will impose.” K.S.A. 22-4513(b).

At sentencing, the court heard from defense counsel on the matter of the defendant’s financial resources as follows:

“Mr. Jeremy Hermreck is self-employed as a construction contractor and has done quite well since he’s stopped the oil field salvage business. And, uh, so he’s quite busy with that work and according to Mr. Hermreck—Jeremy Hermreck, he has not had a lot of contact with his Uncle Carl in the last few months. Primarily because he is working quite a bit independently of Mr. Carl Hermreck.” (R. 5 at 7.)

Following this, the court asked the defendant if he had anything to add. *Id.* The defendant did not. It appears that the defendant was satisfied with the statement that financially he was doing “quite well.” He also seems to have agreed with the statement that he was working so much that he did not have time to have a lot of contact with his uncle, the co-defendant, Carl Hermreck.

According to this Court, in order to comply with the provisions of K.S.A. 22-4513(b), the trial court must “make a record of its consideration of [the defendant’s] financial resources, or the nature of the burden that such payment would impose on him or his immediate family.” *State v. Ellis*, \_\_\_ Kan.App. \_\_\_, 90 P.3d 970 (2004). The trial court did so.

It appears that the defendant would have the Court require the verbatim repetition of a set of “magic words” prior to the imposition of BIDS attorney’s fees in every case. *State v. Heide*, \_\_\_ Kan. \_\_\_, 101 P.3d 1270 (2004). As in the question of whether the court

has entered a judgment of guilt, the failure of the court to orally articulate its consideration of what has been recorded should not invalidate the sentence. *State v. Heffelman*, 256 Kan. 384, Syl. ¶ 5, 886 P.2d 823 (1994).

It is also possible, and I would approve the idea, that the defendant wishes to have every convicted criminal defendant file a statement of personal and family assets with the court prior to sentencing so that the sentencing court would have a more accurate basis for its consideration of the defendant's finances. Although it seems somewhat intrusive, it would provide the sentencing court with a more accurate measure of the defendant's ability to pay and would provide a permanent record of such.

A record of the trial court's consideration of the issue was made. Whether that record is adequate to meet the requirements of the law is a question that the Court must answer.

### **Conclusion**

The evidence that the property taken by the defendant belonged to Xenia Corporation was sufficient to support the defendant's conviction. The evidence that the property taken by the defendant was of a value greater than \$500 was sufficient to support the defendant's conviction. The trial court made a sufficient record that it took account of the financial resources of the defendant and the nature of the burden that payment of such sum will impose to safeguard the defendant's constitutional rights. The defendant's appeal should be denied and the conviction and sentence affirmed.

Respectfully submitted,

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### CERTIFICATE OF SERVICE

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, I mailed a five (5) copies of the above and foregoing Brief of Appellee, by placing the same in the U.S. Mail, postage prepaid to:

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