

FILED: July 13, 2011

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

ROSEDIA V. LASSITER, aka Rosadia Lassitor,
aka Rosadia Best, aka Rosedia V. Lassitor,
Defendant-Appellant.

Multnomah County Circuit Court
091052496

A145173

Richard C. Baldwin, Judge.

Submitted on June 03, 2011.

Peter Gartlan, Chief Defender, and Alice Newlin-Cushing, Deputy Public Defender,
Office of Public Defense Services, filed the brief for appellant.

John R. Kroger, Attorney General, Mary H. Williams, Solicitor General, and Pamela J.
Walsh, Assistant Attorney General, filed the brief for respondent.

Before Haselton, Presiding Judge, and Armstrong, Judge, and Duncan, Judge.

PER CURIAM

Reversed and remanded with instructions to enter a judgment of conviction for one count
of second-degree theft reflecting that defendant was found guilty on both theories.

1 PER CURIAM

2 Defendant appeals a judgment of conviction for attempted first-degree
3 theft, ORS 164.055,¹ for attempting to return to the victim, a department store,
4 unpurchased items for a refund and second-degree theft, ORS 164.045, for taking the
5 property from the victim's store. A recitation of the facts would not benefit the bench, the
6 bar, or the public. On appeal, defendant contends that the trial court erred in failing to
7 merge those convictions. In response, relying on [State v. Cox](#), 336 Or 284, 82 P3d 619
8 (2003), the state concedes that the trial court erred in that regard. We agree with the state
9 and accept its concession.

10 Reversed and remanded with instructions to enter a judgment of conviction
11 for one count of second-degree theft reflecting that defendant was found guilty on both
12 theories.

¹ Both ORS 164.055 and ORS 164.045 require that a defendant commit theft as defined in ORS 164.015 by means other than extortion. ORS 164.015 provides, in part:

"A person commits theft when, with intent to deprive another of property or to appropriate property to the person or to a third person, the person:

"(1) Takes, appropriates, obtains or withholds such property from an owner thereof;

"* * * * *

"(5) Commits theft by receiving as provided in ORS 164.095."

In turn, ORS 164.095(1) provides that "[a] person commits theft by receiving if the person receives, retains, conceals or disposes of property of another knowing or having good reason to know that the property was the subject of theft."