IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. JERRY KEITH TROTTER, Appellant.	No. 40016-2-II UNPUBLISHED OPINION

Armstrong, P.J.—Jerry Keith Trotter appeals his Cowlitz County conviction of possession of a controlled substance in violation of the Uniform Controlled Substances Act, chapter 69.50 RCW. He argues that his prior conviction of third degree defrauding a public utility is not a crime of dishonesty, and the trial court therefore improperly admitted it as impeachment evidence. We affirm.

FACTS

On January 12, 2008, a police officer discovered Trotter in possession of a cocaine smoking pipe and a Blistex lip balm container. The Blistex container held a white powder that contained a small amount of cocaine.

Before trial, the defense moved to prohibit admission of the defrauding conviction. The court determined that the statutes relating to defrauding a public utility were problematic in some ways, and Trotter's prior plea statement did not make clear what his conduct had been. However, the court found that the crime defined by the third degree statute was clearly a crime of dishonesty.

When Trotter took the witness stand his attorney asked him about his prior conviction.

He answered that he had pleaded guilty roughly a year earlier because he in fact had been guilty. He reiterated that testimony on cross-examination. The jury returned a guilty verdict, and this appeal followed.

ANALYSIS

Evidence of prior convictions may be admissible for the purpose of attacking the credibility of a witness, including a defendant in a criminal case, under ER 609. *State v. Rivers*, 129 Wn.2d 697, 704, 921 P.2d 495 (1996). We review ER 609 rulings under an abuse of discretion standard. *Rivers*, 129 Wn.2d at 704-05. A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds. *State v. Perrett*, 86 Wn. App. 313, 319, 936 P.2d 426 (1997).

Crimes involving dishonesty are per se admissible for impeachment purposes under ER 609(a)(2). *State v. Ray*, 116 Wn.2d 531, 545-46, 806 P.2d 1220 (1991). "The term 'dishonest' implies the act or practice of telling a lie, or of cheating, deceiving, and stealing" and thus theft is "clearly encompassed within the term dishonest." *Ray*, 116 Wn.2d at 545-46; *State v. Brown*, 113 Wn.2d 520, 551-52, 782 P.2d 1013 (1989). Although "defrauding a public utility" strongly suggests a crime of dishonesty, Trotter argues that RCW 9A.61.020, which defines the crime generally, includes at least one alternative means of committing the crime that does not necessarily describe dishonest conduct. He points to subsection four, which provides that the crime is committed by tampering with property owned or used by the utility to provide utility services. RCW 9A.61.020(4).

The trial court considered this issue and acknowledged the problem but found that the

alternative means of committing third degree defrauding a public utility, of which Trotter was convicted, clearly did involve dishonesty. Under that statute, RCW 9A.61.050(1)(a)-(b), a person commits the crime if "(a) [t]he utility service diverted or used is [$500] or less in value; or (b) [a] connection or reconnection has occurred without authorization or consent of the utility." Thus, both alternatives for committing third degree defrauding a utility require some form of taking utility company property or services. The trial court did not abuse its discretion in admitting Trotter's prior crime.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Armstrong, P.J.

We concur:

Quinn-Brintnall, J.

Van Deren, J.