Supreme Court No. 99534-6
(COA No. 80217-8-I)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

DANIEL JOHN WALTER DOUGAL,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SNOHOMISH COUNTY

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER AND COURT OF APPEALS DECISION

Daniel Dougal, petitioner here and appellant below, asks this Court to accept review of a Court of Appeals decision, issued on January 25, 2021, finding that his convictions for possession of stolen property in the second degree and trafficking in the stolen property in the first degree do not violate the prohibition against double jeopardy. Mr. Dougal has attached a copy of this opinion to this petition.

B. ISSUE PRESENTED FOR REVIEW

Both the state and federal constitutions prohibit the government from imposing multiple punishments for the same offense, as this violates the prohibition against double jeopardy. Multiple convictions violate double jeopardy if the degree of one offense is elevated by conduct constituting a separate offense. A jury convicted Mr. Dougal of possession of stolen property in the second degree and trafficking in stolen property in the first degree. But possession of stolen property in the second degree elevates the crime of trafficking in stolen property in the second degree to trafficking in stolen property in the first degree. Should this Court accept review because Mr. Dougal's convictions for both crimes violate double jeopardy? RAP 13.4(b)(1), (2), (3).

C. STATEMENT OF THE CASE

After two dehumidifiers went missing from an apartment complex, police discovered what appeared to be the missing dehumidifiers in an online posting. 3/19/19RP 163, 183, 192, 254. The anticrime unit of the police department conducted an undercover operation in order to retrieve the dehumidifiers. 3/19/19RP 189-90. Officers arranged to meet in-person with the person who posted the dehumidifiers for sale, Donald Foster, to arrange a "sale." 3/19/19RP 274, 292.

The undercover officers originally met only with Mr. Foster; however, Daniel Dougal arrived later at a different location with two dehumidifiers in his truck. 3/19/19RP 256-58, 271, 275, 288. After plain clothes officers briefly negotiated with Mr. Dougal on the price of the dehumidifiers, police officers in full uniform emerged and yelled, "police." 3/19/19RP 258, 287-88, 298. Mr. Dougal ran about 15 feet before he stopped, and he later spoke to the police. 3/19/19RP 258.

Mr. Dougal told the police he received the dehumidifiers from a man named Keith who owed him a thousand dollars. 3/19/19RP 266. Mr. Dougal described Keith as a thief, and Mr. Dougal said he knew Keith was a thief because Keith stole from him in the past. 3/19/19RP 267-69. When

the police retrieved the dehumidifiers, the serial numbers on the dehumidifiers were missing. 3/19/19RP 180-81.

The State charged Mr. Dougal with possession of stolen property in the second degree and trafficking in stolen property in the first degree. CP 139. The jury convicted him as charged. CP 100-01.

D. ARGUMENT

This Court should accept review because the court violated Mr. Dougal's right to be free from double jeopardy when it convicted him of trafficking in stolen property in the first degree and possession of stolen property in the second degree.

a. The government violates a person's right to be free from double jeopardy when it imposes multiple punishments for the same offense.

The Fifth and Fourteenth Amendments of the United States Constitution and article I, section 9 of the Washington Constitution prohibit the government from imposing multiple punishments for the same offense, as this violates the prohibition against double jeopardy. U.S. CONST. amends. V, XIV; Const. art. I, § 9; *In re Pers. Restraint of Orange*, 152 Wn.2d 795, 815, 100 P.3d 291 (2004).

Subject to the limitations set forth in the federal and state constitutions, the legislature has the power to define what constitutes a crime and to set the crime's punishment. *State v. Kier*, 164 Wn.2d 798, 803, 194 P.3d 212 (2008). *State v. Freeman*, 153 Wn.2d 765, 771, 108

P.3d 753 (2005). Consequently, to assess whether a defendant's multiple convictions violate double jeopardy, this Court examines whether the legislature intended to punish the defendant's actions as only one offense or as multiple offenses. *Freeman*, 153 Wn.2d at 771; *see Orange*, 152 Wn.2d at 815 ("If a defendant's act supports charges under two criminal statutes, a court weighing a double jeopardy challenge must determine whether, in light of legislative intent, the charged crimes constitute the same offense.")

This Court conducts a three-part test to determine whether the legislature authorized only a singular punishment for the defendant's conduct. *Kier*, 164 Wn.2d at 804. First, this Court considers "express or implicit legislative intent based on the criminal statutes involved." *Id*. If the legislative intent is unclear, this Court may turn to the *Blockburger* test to discern the legislature's intent.[1] *Id*. Third, if applicable, the merger doctrine can also help determine the legislature's intent. *Id*.

The merger doctrine provides that "where the degree of one offense is elevated by conduct constituting a separate offense," the court

[1] 284 U.S. 299, 52 S. Ct. 180, 76 L. Ed. 306 (1932). This test asks "if the crimes are the same in law and in fact." *Kier*, 164 Wn.2d at 804. Because Mr. Dougal is only arguing that his convictions violate double jeopardy under the merger doctrine, Mr. Dougal will not further discuss this test in his brief.

can only punish the defendant's conduct for the greater crime, i.e., the crime that carries the greater sentence. *Freeman*, 153 Wn.2d at 772-73. Under the merger doctrine, it is immaterial that the crimes have formally different elements. *Id*. at 772. But even if the crimes merge, the court can still punish the defendant twice for his conduct if each crime has a "separate injury to the person or property of the victim of or others, which is separate and distinct from but not merely incidental to the crime of which it forms an element." *Id*. at 778-79 (internal quotations omitted).

Additionally, this Court's determination of whether the defendant's two convictions violate double jeopardy does not turn on a mere examination of the crimes on an abstract level. *In the Matter of the Pers. Restraint of Francis*, 170 Wn.2d 517, 524, 242 P.3d 866 (2010). Instead, to determine whether the legislature only authorized a singular punishment for the defendant's conduct, this Court takes a "hard look" at how the State actually presented its case to the trier of fact. *Freeman*, 153 Wn.2d at 774.

This Court reviews whether a court violated the prohibition against double jeopardy de novo, and a defendant may raise a double jeopardy claim for the first time on appeal. *Freeman*, 153 Wn.2d at 770; *State v. Adel*, 136 Wn.2d 629, 632-33, 965 P.2d 1072 (1998); RAP 2.5. If any doubt exists regarding the legislature's intent, principles of lenity require

an interpretation that favors the defendant. *Whalen v. U.S.*, 445 U.S. 684, 694, 100 S. Ct. 1432, 63 L. Ed. 2d 715 (1980).

b. Mr. Dougal's convictions violate the prohibition against double jeopardy because the crime of possession of stolen property in the second degree elevates the crime of trafficking in stolen property in the second degree to trafficking in stolen property in the first degree.

Mr. Dougal's convictions violate the prohibition against double jeopardy under the merger doctrine. As explained below, this is because the crime of possession of stolen property in the second degree elevates the crime of trafficking in stolen property in the second degree to trafficking in stolen property in the first degree.

A simple examination of the statutes does not expressly reveal whether the legislature intended to inflict multiple punishments for Mr. Dougal's conduct. The jury convicted Mr. Dougal of the crime of possession of stolen property in the second degree and trafficking in stolen property in the first degree. CP 100-01; RCW 9A.56.160; RCW 9A.82.050. Unlike the legislature's express declaration to punish individuals for acts arising from a single burglary, neither the possession of stolen property statute nor the trafficking in stolen property statute expressly reveal the legislature's intent. *Compare* RCW 9A.52.050 *with* RCW 9A.56.160, RCW 9A.82.050.

Because the legislative intent is unclear, this Court may employ the merger doctrine to examine whether Mr. Dougal's convictions violate double jeopardy. Here, application of the merger doctrine reveals the legislature did not intend to punish Mr. Dougal twice for the act he purportedly committed on June 23, 2016.

Freeman is instructive. In *Freeman*, the defendant in the accompanying *Zumwalt* case offered to sell drugs to a woman. *Freeman*, 165 Wn.2d at 770. Once the defendant met the woman in person, instead of selling the woman drugs, the defendant punched her in the face and took $300 from her person. *Id*. The State charged the defendant with second degree assault and first degree robbery, and the court convicted him as charged. *Id*.

The defendant argued his convictions for both second degree assault and first degree robbery violated double jeopardy because his assaultive conduct elevated his crime from robbery in the second degree to robbery in the first degree. *Id*. at 770-71. This was because the crime of robbery in the second degree does not require proof that the defendant inflicted bodily injury; however, as charged, the crime of robbery in the first degree (which carriers a higher penalty) required the State to prove he inflicted bodily injury on the victim. *Compare* RCW 9A.56.210; RCW 9A.56.190 *with* RCW 9A.56.200(1)(a)(iii); *see also* RCW

9A.36.021(1)(a). Accordingly, our Supreme Court found the merger doctrine precluded the imposition of a separate punishment for his underlying assaultive conduct. *Freeman*, 153 Wn.2d at 777-78. *accord Francis*, 170 Wn.2d at 521; *Kier*, 164 Wn.2d at 802; *see also State v. Davis*, 177 Wn. App. 454, 311 P.3d 1278 (2013) (holding defendant's multiple convictions for assault in the second degree and kidnapping in the first degree merged because the defendant's assault elevated the kidnapping charge to kidnapping in the first degree).

Here, as in *Freeman*, Mr. Dougal's convictions for both possession of stolen property in the second degree and trafficking in stolen property in the first degree merge because the fact that Mr. Dougal knowingly possessed the stolen property elevated his trafficking in stolen property crime to trafficking in stolen property in the first degree. As charged and instructed to the jury, to prove Mr. Dougal was guilty of the crime of possession of stolen property in the second degree, the State bore the burden of proving, in part, that he (1) knowingly; (2) possessed stolen property. RCW 9A.56.140(1); RCW 9A.56.160(1)(a); CP 112. A person "knowingly" possesses stolen property when he is aware the property is stolen or if he has information that would lead a reasonable person to conclude the property is stolen. RCW 9A.08.010(1)(b)(i), (ii). CP 113.

Possession of stolen property in the second degree is a Class C felony with a seriousness level of I. RCW 9A.56.160(2); RCW 9.94A.515.

A person traffics in stolen property in the second degree if he "recklessly traffics in stolen property." RCW 9A.82.055(1); *see* RCW 9A.08.010(1)(c). A person recklessly traffics in stolen property when he knows of and disregards a substantial risk that the property is stolen and his disregard is a gross deviation from conduct a reasonable person would exercise in the same situation. RCW 9A.08.010(1)(c); *State v. Hansen*, No. 45961-2-II, 2015 WL 4093505, *7 (Wash. Ct. App. July 7, 2015).[2] Knowingly committing a crime rather than recklessly committing a crime imposes a higher degree of culpability upon the defendant. *State v. Allen*, 101 Wn.2d 355, 359, 678 P.2d 798 (1984). Trafficking in stolen property in the second degree, like the crime of possession of stolen property in the second degree, is a Class C felony, but has a seriousness level of II. RCW 9A.82.055(2); RCW 9.94A.515.

However, to prove that Mr. Dougal was guilty of trafficking in stolen property in the first degree, which is a Class B felony with a seriousness level of IV, the State had to prove Mr. Dougal knew the property was stolen. RCW 9A.82.050; RCW 9.94A.515. Consequently, as

[2] This unpublished case is cited to pursuant to GR 14.1.

charged, instructed, and argued to the jury, for the jury to find Mr. Dougal guilty of trafficking in stolen property in the first degree, the State had to prove Mr. Dougal (1) knowingly; (2) possessed stolen property; (3) with the intent to sell or transfer the property to another person. CP 119-120; RCW 9A.82.050(1). Thus, by proof of the single fact that Mr. Dougal knew the property was stolen, the State obtained a conviction for both possession of stolen property in the second degree and trafficking in stolen property in the first degree.

Indeed, during its closing arguments, the State emphasized that Mr. Dougal told the police he received the dehumidifiers from a man named Keith whom he knew was a thief because Keith previously stole from him. 3/20/19RP 324. The State also pointed to Mr. Dougal's decision to run when he saw the police as evidence that he knew the dehumidifiers were stolen. 3/20/19RP 330-31. It also emphasized that a reasonable person would know the dehumidifiers were stolen because the serial numbers were removed, and it argued Mr. Dougal knew the dehumidifiers were stolen based on the manner in which the buy was arranged. 3/20/19RP 328-30. Moreover, when the State argued the knowledge element for trafficking in stolen property in the first degree, it stated, "I'm not going to go over that against because that's exactly the same element as in the first crime charged." 3/20/19RP 333.

Because proof of knowing possession established both the possession count and elevated the trafficking count, these crimes merged for purposes of double jeopardy. And the crime of possession of stolen property in the second degree and trafficking in stolen property in the first degree does not inflict an injury that is "separate and distinct." *Freeman*, 153 Wn.2d at 778. Here, the purpose of possessing the stolen dehumidifiers was to sell them and make a profit. The motive in possessing it was merely to actualize the motive in attempting to profit from them.

However, the Court of Appeals affirmed, stating that because second degree possession of stolen property also requires proof that the value of the property exceeded $750, the crimes do not merge. Op. at 7. But under the merger doctrine, it is immaterial that two crimes have formally different elements. *Freeman*, 153 Wn.2d at 772-73. The focus is whether one crime "is accompanied by an act that the legislature defined as a crime elsewhere in the criminal statutes." *State v. Parmelee*, 108 Wn. App. 702, 710, 32 P.3d 1029 (2001). Here, the legislature has defined the crime of possession of stolen property as the *knowing* possession of stolen property. *See* RCW 9A.56.140. It has only differentiated the crime of possession of stolen property based on the value or classification of the

stolen property. *See, e.g.,* RCW 9A.56.150, RCW 9A.56.160, RCW 9A.56.170.

And the legislature defined the crime of trafficking in stolen property in the first degree as the trafficking of stolen property, regardless of the value, *knowing* that the property is stolen. RCW 9A.82.050. The crime of trafficking in the first degree is thereby "accompanied by an act that the legislature defined as a crime elsewhere in the criminal statutes." *Parmelee*, 108 Wn. App. at 710. The Court of Appeals erred in concluding these crimes do not merge.

This Court should accept review. RAP 13.4(b)(1), (2), (3).

E. CONCLUSION

Based on the foregoing, Mr. Dougal respectfully requests that this Court accept review.

DATED this 24th day of February, 2021.

Respectfully submitted,

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON, Respondent, v. DOUGAL, DANIEL JOHN WALTER, DOB: 08/02/1961, Appellant.	No. 80217-8-I UNPUBLISHED OPINION

BOWMAN, J. — Daniel John Walter Dougal appeals from the judgment entered on the jury's verdicts finding him guilty of possessing stolen property in the second degree and trafficking in stolen property in the first degree. He contends that his convictions violate the prohibition against double jeopardy. Finding no error, we affirm.

FACTS

In April 2016, Jeremy Wlazlak worked for SERVPRO of North Everett/Lake Stevens/Monroe, "a mold, water and fire damage restoration company." On April 27, while working on a job at an apartment complex in Everett, Wlazlak discovered three commercial-grade dehumidifiers and some other equipment missing from the jobsite. He reported the theft to the police, and Everett Police Department Officer Kerby Duncan responded to the call. Wlazlak said the dehumidifiers were a unique "Servpro green color" and had an estimated

market value of $1,200 to $1,700 per unit. To complete the apartment complex job, SERVPRO had to bring in and place new equipment, categorize where it needed to go, and inventory it.

On June 23, 2016, property crimes Detective Danny Rabelos learned of "some stolen property [that] was being sold on the [I]nternet." Detective Rabelos contacted the seller, later identified as Donald Edward Foster, and discussed the purchase of two large, commercial-grade dehumidifiers. The detective then handed the investigation over to members of the police department's "Anticrime Team."

Members of the Anticrime Team continued to contact Foster as part of an "undercover operation." They arranged an in-person meeting with Foster to look at "and try to assess whether they were the stolen [SERVPRO] dehumidifiers." Officer Duane Wantland's role was to "act as a customer to look at the dehumidifiers." After driving a "plain car" to the initial meeting location, a rest area on Interstate 5 in south Everett, Officer Wantland spoke to Foster. Foster introduced himself as "Eddie." Wantland asked if "they were going to be solid on the price that I knew that they were listed for" and told Foster that "once I saw the machines, then I could negotiate with him further." Foster told Officer Wantland to "follow him to another location" and they drove their separate cars to a gas station in Mountlake Terrace.

Once at the gas station, Officer Wantland asked Foster about the location of the dehumidifiers. Foster then drove away and returned less than an hour later in his car, accompanied by a white truck with two "large green dehumidifiers

that were sticking up from the bed of the pickup." Dougal was driving the truck. Both Foster and Officer Wantland approached Dougal, who had stepped out of the truck. Officer Wantland asked Dougal if "the asking price of $2,000 . . . was going to be the price." Dougal responded that "that price wasn't going to work and that he wanted more money for the dehumidifiers."

At that point, Officer Oleg Kravchun and Officer Anatoliy Kravchun, who had driven an unmarked police surveillance van to the gas station, got out of the van and approached Dougal. They wore their police uniforms and identified themselves by saying "police." Dougal tried to run away and "evade the scene" but officers quickly caught him.

Officer Anatoliy[1] then advised Dougal of his Miranda[2] rights and detained him in handcuffs. Dougal told Officer Anatoliy that he understood his rights. Dougal then told Officer Anatoliy that he got the dehumidifiers from "Keith," who "owed him a thousand dollars and had given those to him instead." Dougal admitted that "Keith was a thief" because "Keith had stolen from him before." Dougal also told Officer Anatoliy that he told Foster not to post the dehumidifiers for sale, "but he did anyways." Then Foster told Dougal that he "already had a buyer."

On June 28, 2016, SERVPRO project manager David Carroll identified the two dehumidifiers recovered by the Anticrime Team as those discovered stolen from the Everett jobsite on April 27, 2016.

[1] We refer to Officer Oleg Kravchun and Officer Anatoliy Kravchun by their first names for clarity and intend no disrespect.

[2] Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

The State charged Dougal with one count of possession of stolen property in the second degree in violation of RCW 9A.56.160(1)(a) and one count of trafficking in stolen property in the first degree in violation of RCW 9A.82.050(1). Wlazlak, Officer Duncan, Detective Rabelos, Officer Wantland, Officer Anatoliy, Officer Oleg, and Carroll all testified at trial. Dougal did not testify or call any witnesses. A jury found Dougal guilty of both counts. Dougal appeals.

ANALYSIS

Dougal argues that his convictions violate the prohibition against double jeopardy under the merger doctrine. He contends that the crime of possession of stolen property in the second degree elevates the crime of trafficking in stolen property in the second degree to trafficking in stolen property in the first degree. We disagree.

We review a claim of double jeopardy de novo. State v. Mutch, 171 Wn.2d 646, 661-62, 254 P.3d 803 (2011). The federal and state constitutions protect against multiple punishments for the same offense. U.S. CONST. amend. V; WASH. CONST. art. I, § 9. The Fifth Amendment to the United States Constitution provides that "[n]o person shall . . . be subject for the same offense to be twice put in jeopardy of life or limb." Similarly, article I, section 9 of the Washington Constitution mandates that "[n]o person shall be . . . twice put in jeopardy for the same offense."

When the State charges and a jury finds a defendant guilty of multiple counts for a single incident, the convictions do not violate double jeopardy if the legislature intended to impose cumulative punishments for the crimes. In re

Pers. Restraint of Borrero, 161 Wn.2d 532, 536, 167 P.3d 1106 (2007). We apply a four-part test to determine whether the legislature intended multiple punishments for a single incident. State v. Freeman, 153 Wn.2d 765, 771-73, 108 P.3d 753 (2005).

First, we consider any express or implicit legislative intent based on the criminal statutes involved. Freeman, 153 Wn.2d at 771-72. Here, neither the possession of stolen property in the second degree statute nor the trafficking in stolen property in the first degree statute explicitly address legislative intent about separate punishments. See RCW 9A.56.160; RCW 9A.82.050. Nor do the parties present other evidence of legislative intent.

Second, if the legislature's intent is unclear, we normally use the "same evidence" or "same elements" test set forth in Blockburger v. United States, 284 U.S. 299, 304, 52 S. Ct. 180, 76 L. Ed. 306 (1932), to assess if the two offenses are the same in both fact and law.[3] Freeman, 153 Wn.2d at 772; State v. Martin, 149 Wn. App. 689, 698-99, 205 P.3d 931 (2009). Here, Dougal does not argue that his convictions are the same in fact and law. Instead, Dougal focuses his appeal on applying the third step in determining legislative intent, the merger doctrine.

The merger doctrine is a tool of statutory interpretation "used to determine whether the Legislature intended to impose multiple punishments for a single act

[3] "Offenses are the same in fact when they arise from the same act or transaction. They are the same in law when proof of one offense would also prove the other." Martin, 149 Wn. App. at 699 (citing State v. Calle, 125 Wn.2d 769, 777-78, 888 P.2d 155 (1995)) (footnote omitted). If each offense contains an element that the other does not, we presume that the crimes are not the same offense for double jeopardy purposes. Calle, 125 Wn.2d at 777. We consider the elements of the relevant statutory provisions "as charged and proved" and not in the abstract. Freeman, 153 Wn.2d at 777.

which violates several statutory provisions," even when two crimes have formally different elements. State v. Vladovic, 99 Wn.2d 413, 419 n.2, 662 P.2d 853 (1983); Freeman, 153 Wn.2d at 772. Under the merger doctrine, we presume the legislature intended to punish both offenses through a greater sentence for the greater crime. Freeman, 153 Wn.2d at 772-73.

The merger doctrine applies "when the degree of one offense is raised by conduct separately criminalized by the legislature." Freeman, 153 Wn.2d at 772-73. For example, in State v. Johnson, 92 Wn.2d 671, 672, 600 P.2d 1249 (1979), a jury convicted the defendant of two counts each of first degree rape, first degree kidnapping, and first degree assault. The applicable first degree rape statute required the State to show conduct constituting at least one crime other than rape to prove first degree rape. Johnson, 92 Wn.2d at 674 (citing former RCW 9.79.170(1) (1975)). Because proof of the assaults and kidnappings were necessary elements to prove first degree rape, they merged into the first degree rape conviction. Johnson, 92 Wn.2d at 680-81. Referencing Johnson, the Supreme Court in Vladovic explained that the merger doctrine applies only

> where the Legislature has clearly indicated that in order to prove a particular degree of crime (e.g., first degree rape) the State must prove not only that a defendant committed that crime (e.g., rape) but that the crime was accompanied by an act which is defined as a crime elsewhere in the criminal statutes (e.g., assault or kidnapping).

Vladovic, 99 Wn.2d at 420-21.

Here, a jury convicted Dougal of possession of stolen property in the second degree and first degree trafficking in stolen property. The court instructed the jury that to convict Dougal of trafficking in stolen property in the

first degree, the State had to prove that Dougal "knowingly" "possess[ed] or obtain[ed] control of stolen property, with intent to sell or transfer the property to another person." See RCW 9A.82.050(1), .010(19).[4] The court also instructed the jury that to convict Dougal of possession of stolen property in the second degree, the State had to prove that he "knowingly possessed stolen property," valued in excess of $750. See RCW 9A.56.160(1)(a).

Dougal contends that his second degree possession of stolen property conviction elevated his trafficking conviction to first degree because "to prove that Mr. Dougal was guilty of trafficking in stolen property in the first degree," the State had to "prove Mr. Dougal knew the property was stolen." According to Dougal, "by proof of the single fact that Mr. Dougal knew the property was stolen, the State obtained a conviction for both possession of stolen property in the second degree and trafficking in stolen property in the first degree."

Dougal overlooks the element of second degree possession of stolen property requiring proof that the stolen property is valued in excess of $750. RCW 9A.56.160(1)(a). The State need not prove the value of stolen property to elevate a trafficking charge from second to first degree. RCW 9A.82.055, .050. Indeed, the jury here could have acquitted Dougal of possessing stolen property in the second degree if the State was unable to prove that the value of the dehumidifiers exceeded $750, yet convicted him of trafficking in stolen property

[4] Although the court's instruction narrowly defines "traffic," the legislature defines it more broadly as "to sell, transfer, distribute, dispense, or otherwise dispose of stolen property to another person, or to buy, receive, possess, or obtain control of stolen property, with intent to sell, transfer, distribute, dispense, or otherwise dispose of the property to another person." RCW 9A.82.010(19). A person is guilty of trafficking in stolen property in the second degree if the person "recklessly" engaged in such conduct. RCW 9A.82.055(1).

in the first degree because the value of the dehumidifiers is not an element of the crime the State must prove. Dougal's convictions do not merge because the completed possession of stolen property in the second degree offense was unnecessary to elevate the completed trafficking conviction to first degree.[5] See State v. Kier, 164 Wn.2d 798, 807, 194 P.3d 212 (2008).

Dougal's convictions for second degree possession of stolen property and first degree trafficking in stolen property do not violate double jeopardy. We affirm.

WE CONCUR:

[5] Given our conclusion that the merger doctrine is inapplicable here, we need not reach the fourth step of the legislative intent test, which allows for an exception to the merger doctrine, and requires us to determine whether the statutes under which the jury convicted Dougal have "an independent purpose or effect to each." Freeman, 153 Wn.2d at 773.

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/ attached, was filed in the **Court of Appeals** under **Case No. 80217-8-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

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