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STATEMENT OF THE CASE

On August 26, 2005, an Information was filed in Grays Harbor County Superior Court charging the defendant with the crime of Attempted Theft in the First Degree. (CP 1). On October 19, 2005, the case was brought to trial. (RP 1).

At trial, Shelly Thompson testified that during the month of August she had scared a potential thief out of her friend's Jeep Cherokee. (RP 51). She was able to describe the person that she saw in the vehicle by what he was wearing. (RP 52). She saw the suspect run down the street away from her residence. (RP 52). She explained that she lost sight of the man, but when officers arrived, they pulled the suspect out of the bushes behind her house. (RP 52). She stated that it was the same person she saw in the Jeep. She confirmed that she was sure that it was the same person that she saw in the Jeep. (RP 53).

Later, Jade Adams testified that she was the owner of the Jeep. (RP 71). She went on to explain that prior to the incident, the ignition on the steering column of her vehicle had not been damaged. (RP 71). A photo was handed to her that was taken the night in question, and she was

able to describe damage to the vehicle that was not previously there. She confirmed that whoever was run off was trying to steal her Jeep. (RP 71).

Officer Gary Sexton of the Aberdeen Police Department testified that on August 16, 2005, he responded to a report of a possible crime in South Aberdeen, Washington. (RP 35). He explained to the jury that after he came on scene, he explored the area on foot. The search revealed the defendant, Jeff A. Strickland, hiding in bushes behind the residence of Ms. Thompson. (RP 36). The officer explained that the defendant was found crouched down in the bushes. (RP 37). The officer ordered the defendant to lie down on the ground so that the defendant could be taken into custody. (RP 37). While the officer had the defendant on the ground, he saw Ms. Thompson approach his position. Ms. Thompson positively identified the defendant as the person she saw in the vehicle. (RP 37). The officer went on to explain that he had confiscated, as evidence, two screwdrivers that were either near the defendant or on his person. (RP 39). Photos of the screwdrivers were admitted into evidence. (RP 40).

A local car dealer, Don Loffler, testified that the vehicle had a value of \$3,175. (RP 30).

At the close of testimony, the jury was instructed by the court. (RP 91). A copy of these instructions has been provided to this court. (CP 15-19).

On October 31, 2005, a sentencing hearing was held. (RP 120). Prior to this hearing, a Statement of Prosecuting Attorney was provided to

the court. A copy of this statement has been provided to this court. (CP 20-23). In this document was the State's recitation of the defendant's criminal history.

During the sentencing hearing, the State made a brief explanation of the pertinent sentencing information. (RP 120). The State explained that the defendant had an extensive criminal history; much of which was in Juvenile Court. (RP 120). The State calculated the offender score to be 7, and explained that the sentencing range for a anticipatory crime is 75 percent that of the standard range of the underlying offense. The standard range in the defendant's case was 16.5 to 21.75 months. (RP 120). The State argued that mid of the standard range was appropriate and recommended the defendant be sentenced to 19 months. At no time during this hearing did the defendant contest the statement of his criminal history. The exact same criminal history was listed on the Judgment and Sentence. (CP 3-10).

ARGUMENT

1. RCW 9A.28.020 does not violate the separation of powers doctrine.

The defendant states accurately the current *juris prudence* on general separation of powers doctrine. The defendant argument fails not on the law but on its application.

The Supreme Court of Washington clearly stated in *State v. Workman*, 90 Wn.2d 443, 584 P.2d 382 (1978) that the element of attempt

is a “substantial step” towards the commission of a crime. *Id.* at 449. The court explained that what constitutes a “substantial step” under the particular facts of any given case is clearly for the trier of fact. The precise meaning of the legal term “substantial step” is one for the jury to determine.

In the case at bar, the court went defined “substantial step” for the purposes of clarifying its meaning to the jury. Such a definition does not establish an element of the crime. Division I of the Court of Appeals has ruled that definitional terms are meant merely to clarify meanings and are not essential and material elements of the crime charged. *State v. T.E.H.*, 91 Wn.App. 908, 960 P.2d 441 (1998).

State v. T.E.H., the defendant was a juvenile charged with the crime of Child Molestation. *Id.* at 912. The court found him guilty and made pertinent findings. *Id.* The defendant appealed claiming that no finding was made that he committed his crime for the purposes of sexual gratification. *Id.* at 915.

The court concluded that conduct for the purposes of sexual gratification was merely a definition of “sexual contact.” *Id.*

In the case at bar, the essential element of the crime of criminal attempt was defined by the legislature that is a “substantial step.” Any further definitions by the court are merely meant to clarify the pertinent law for the jury. It has been always been the court’s duty to properly instruct the jury. By offering some clarification, as was decided in *State v.*

Workman, this court was performing its basic function, that is to preside over the jury trial and instruct the jury. This was not a violation of the separation of powers doctrine.

2. All remaining objections to the improper instruction are unfounded.

The defendant's argument in each of the numbered errors 2 through 5 rely on the basic assumption that the definition of "substantial step" is an essential element of the crime. Clearly, the case law does not support the position that the definition of this legal term is an element of the crime. *supra*.

The defendant does not argue that the definition is improper, but merely states that it has not been defined by the legislature. A similar instruction was litigated by the Supreme Court of Washington in *State v. Workman*, and found to be proper.

3. The court properly determined the defendant's offender score.

As the defendant has pointed out, RCW 9.94A.500(1) requires the court to a conduct sentencing hearing and specify the convictions it has found to exist. All of this information must be part of the record.

In the case at bar, there was sentencing hearing at which the State presented a brief description of the defendant's criminal history. This description of the criminal history was adopted without objection into the

Judgment and Sentence. The Judgment and Sentence was reviewed by the court prior to being signed. The information as to the defendant's prior convictions were apparent to the court. By signing this document, the court adopted the State's assertion of the defendant's criminal history. The Judgment and Sentence is a record of the adoption. Oral findings are not required, but written findings are. Therefore, the requirements of RCW 9.94A.500 have been met.

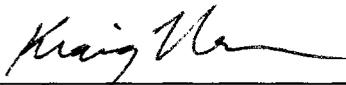
4. A jury finding as to prior convictions was not required in this case.

The defendant concedes that the holding in *Blakely v. Washington*, 542 U.S. 296, 124 S.Ct. 2531 (2004) does not require a jury finding as to prior convictions.

CONCLUSION

For the reasons stated above the state asks the Court to deny the defendant's claim of error and affirm the conviction against the defendant.

Respectfully Submitted,

By: 
KRAIG C. NEWMAN
Deputy Prosecuting Attorney
WSBA #33270

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DIVISION II

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STATE OF WASHINGTON

BY JM
DEPUTY

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

STATE OF WASHINGTON,

Respondent,

No.: 34043-7-II

v.

DECLARATION OF MAILING

JEFFREY A. STRICKLAND,

Appellant.

DECLARATION

I, Jim Beery hereby declare as follows:

On the 10 day of August, 2006, I mailed a copy of the Respondent's Brief to Jodi R. Backlund and Manek R. Mistry, Attorneys as Law; 203 Fourth Avenue East, Suite 401; Olympia, WA 98501-1189, and Jeffrey A. Strickland 788803; 1313 North 13th Avenue; Walla Walla, WA 99362, by depositing the same in the United States Mail, postage prepaid.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge and belief.

 Jim Beery

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STATE OF WASHINGTON

BY _____
DEPUTY

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

STATE OF WASHINGTON,

Respondent,

No.: 34043-7-II

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