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## **RESPONDENT’S COUNTER STATEMENT OF THE CASE**

Prior to March 18, 2010, defendant John Campbell and Dana Colten, who Campbell was dating at the time, drove to a residence at 37 Dekay Road in Grays Harbor County. RP (March 2, 2011), 25, 41. The defendant and Colten were looking for a rental house, and the house at 37 Dekay Road was empty. *Id.* Campbell was also there “[t]o scrap stuff that was on the property,” but did not ask permission to take property from there. RP 26. The owner of the 37 Dekay Road property is David Williams. RP 30. Williams received no inquiries from either Campbell or Ms. Colten about renting his property at 37 Dekay Road. RP 33. Campbell later told Colten “he was going to go out to this place and get a load of stuff . . . ” RP 27.

On March 18, 2010, Campbell returned to the Dekay Road property and took several items of property. RP 41-44. Later that morning Ms. Colten saw Campbell in Hoquiam driving his truck, which was completely full of property she recognized as coming from Mr. Williams’ house at 37 Dekay Road. RP 26. The property taken and found in Campbell’s truck included a hot water heater, Craftsman riding lawn mower, and a freezer. RP 10, 26-27. Upon seeing the defendant with those items in his truck, Colten called the police. RP 10, 47. Mr. Williams, the owner of the Dekay Road house and property did not know Campbell and never gave him permission to take anything from the Dekay Road property. RP 30-32.

In response to Colten’s report, Grays Harbor County Sheriff’s Deputy Randy Gibson contacted Campbell at Butcher’s Scrap Metal in Hoquiam on

the morning of March 18, 2010. RP 9-10. Campbell had sold the property taken from the Dekay Road property to Butcher's for scrap. RP 10-11, 13-14, 20-21, 44. Deputy Gibson confirmed that the reported stolen property was in Campbell's truck at that time. RP 11. When contacted by Deputy Gibson, Campbell admitted the property came from 37 Dekay Road and told Deputy Gibson a person the defendant identified as Tom Wells, Jr., gave him permission to take the property. RP 12, 45-46. Campbell did not mention anyone else as having given him permission to take property from 37 Dekay Road. RP 12. But Campbell had never contacted Tom Wells, Jr. RP 57. Campbell was unable to provide Deputy Gibson with Wells' address or telephone number except to say that he thought Wells lived somewhere in Aberdeen. RP 12. Deputy Gibson asked Campbell for his contact information for future follow-up and the defendant verbally gave him an address of 1721 Pacific Avenue, Aberdeen. RP 13. On April 13, 2010, Deputy Gibson went to that address to contact Campbell, but was told that he did not live there. RP 14. Further efforts by Deputy Gibson to contact Campbell were unsuccessful. RP 14-15.

Tom Wells, a log truck and horse rental business owner, had never met Campbell before testifying at trial on March 2, 2011, and never gave him permission to take any property from 37 Dekay Road. RP 36-37. The Dekay Road property owner David Williams had not given Wells any authority to act on his behalf with respect to this property, and had no connection with it.

*Id.*

John Campbell was charged by Information on September 20, 2010 with Trafficking in Stolen Property in the First Degree, RCW 9A.82.050. CP 1-2. The matter was tried to a jury on March 2, 2011. At trial, Campbell testified that he and another individual he identified as “Adrian” went to the 37 Dekay Road property so he could get an address off the mailbox to find out if it was in foreclosure or who owned the property. RP 42. Campbell claimed to have met a person introducing himself as “John Butts” at the property, along with a woman he doesn’t identify. *Id.* According to Campbell, Butts tells him he’s “not sure exactly who owns the property.” RP 43. Campbell testifies that Butts told him he can “take some of this junk out of here” for helping him load some car parts onto a trailer. RP 43-44. Campbell states he attempted to contact the property owner Williams by letter and other means after learning that the property he took was stolen. RP 52. Campbell admits he never spoke with Tom Wells or had any contact information for Butts. RP 57. Campbell testified that he thought Butts had authority to remove property because Butts and a woman was already there and had several things in the trailer already loaded. RP 58.

At trial the Court instructed jurors that to convict the defendant of Trafficking in Stolen Property in the First Degree, they must find proof beyond a reasonable doubt that “. . . Mr. Campbell did knowingly traffic in stolen property . . .” CP 6 (Instruction No. 8). The Court instructed the jury that the word “traffic” means “to sell, transfer, distribute, dispense or otherwise dispose of stolen property to another person . . .” CP 5

(Instruction No. 5). In a separate instruction the Court instructed the jury that “[a]cting knowingly or with knowledge also is established if a person acts intentionally.” CP 7 (Instruction No. 9). There was no objection by Campbell to these instructions as given by the trial court. RP 63. The jury found Mr. Campbell guilty as charged. CP 10. This appeal followed. CP 19.

### **RESPONSE TO ASSIGNMENTS OF ERROR**

**The defendant’s conviction did not violate his Fourteenth Amendment Right to Due Process.**

**The court’s knowledge instruction did not create a mandatory presumption and did not relieve the State of its burden to prove the essential elements of the crime.**

The Fourteenth Amendment’s due process clause states that criminal defendants are presumed innocent until proven guilty and the government must prove guilt beyond a reasonable doubt. U.S. Const. amend XIV; *In re Winship*, 397, U.S. 358, 362, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970). If a jury instruction were to relieve the State of its burden of proof of every element of the charge, it would be a violation of due process. *State v. Thomas*, 150 Wn.2d 821, 844, 83 P.3d 970 (2004).

Due process requires the State to prove beyond a reasonable doubt every essential element of a crime. *State v. Marohl*, 170 Wn.2d 691, 698, 246 P.3d 117 (2010). This due process requirement is fully satisfied in the case below.

Mr. Campbell assigns error to the trial court's Instruction No. 9, which states:

A person knows or acts knowingly or with knowledge with respect to a fact, circumstance, or result when he or she is aware of that fact, circumstance, or result. It is not necessary that the person know that the fact, circumstance, or result is defined by law as being unlawful or an element of a crime.

If a person has information that would lead a reasonable person in the same situation to believe that a fact exists, the jury is permitted but not required to find that he or she acted with knowledge of that fact.

When acting knowingly as to a particular fact is required to establish an element of a crime, the element is also established if a person acts intentionally as to that fact.

CP 7. Citing *State v. Goble*, 131 Wn.App. 194, 126 P.3d 821 (2005), Campbell claims that Instruction No. 9 “creat[es] a mandatory presumption permitting conviction upon proof of any intentional act, even in the absence of actual knowledge.” Brief of Appellant, 7-8. But as discussed further below, *Goble* has been limited by the Court of Appeals and has no application to the present case.

“Jury instructions are ‘sufficient when they allow counsel to argue their theory of the case, are not misleading, and when read as a whole properly inform the trier of fact of the applicable law.’ ” *State v. Douglas*, 128 Wn.App. 555, 562, 116 P.3d 1012 (2005) (quoting *Bodin v. City of Stanwood*, 130 Wn.2d 726, 732, 927 P.2d 240 (1996)). The appellate court reviews challenged jury instructions de novo, examining the effect of a particular phrase in an instruction by considering the instructions as a whole and reading the challenged portions in the context of all the instructions

given. *State v. Pirtle*, 127 Wn.2d 628, 656, 904 P.2d 245 (1995), *cert. denied*, 518 U.S. 1026, 116 S.Ct. 2568, 135 L.Ed.2d 1084 (1996).

In a criminal case, the trial court must instruct the jury that the State has the burden to prove each essential element of the crime beyond a reasonable doubt. *Pirtle*, 127 Wn.2d at 656, 904 P.2d 245; *Marohl, supra*. It is reversible error if the instructions relieve the State of that burden. *Pirtle*, 127 Wn.2d at 656, 904 P.2d 245.

The standard for clarity in jury instructions is higher than that for a statute because although courts may use statutory construction, juries lack these same interpretive tools. *State v. LeFaber*, 128 Wn.2d 896, 902, 913 P.2d 369 (1996), overruled on other grounds by *State v. O'Hara*, 167 Wn.2d 91, 217 P.3d 756 (2009). Accordingly, in order to be valid, the instructions must be manifestly apparent to the average juror. *Id.*; *State v. Irons*, 101 Wn. App. 544, 550, 4 P.3d 174 (2000).

*Goble* analyzed the same “knowledge” instruction at issue here. *Goble*, 131 Wn.App. at 202, 126 P.3d 821. *Goble* held that the last sentence in the instruction was confusing under the circumstances of that case because it potentially allowed the jury to find the defendant guilty of third degree assault against a law enforcement officer if the jury found that the defendant *intentionally* assaulted the victim, but without having to find that the defendant *knew* the victim was a law enforcement officer performing his official duties. *Goble*, 131 Wn.App. at 202-03, 126 P.3d 821. In *Goble*, the instruction improperly conflated the separate intent and knowledge elements

required under the to-convict instruction into a single element and relieved the State of its burden of proving that the defendant knew the victim's status if the jury found that the assault was intentional. *Goble*, 131 Wn.App. at 203, 126 P.3d 821.

But the instruction at issue in *Goble* is distinguishable from the challenged instruction here. In this case, there is no second required mental element to conflate. The crime of Trafficking in Stolen Property in the First Degree requires the single intent to “knowingly traffic.” Clearly, “knowingly” modifies the entire phrase “traffics in stolen property.” The knowledge element required for this offense is knowledge that the property trafficked is stolen. It does not split the statute’s mental state into multiples.

Conceding that Instruction No. 5 does not use the word “intentionally” in defining the term “traffic,” Campbell nonetheless attempts to add an intent other than *knowledge that the property is stolen*. Brief of Appellant, 6-7. In his attempt to add another element, Campbell overlooks a critical portion of the final sentence in Instruction No. 9: “...When acting knowingly *as to a particular fact is required* to establish an element of a crime, the element is also established if a person acts intentionally *as to that fact*.” CP 7. “That fact” referred to in this instruction that pertains to the crime of Trafficking Stolen Property in the First Degree is that *the property is stolen property*. This fact is supported by inclusion of the term “stolen property” in Instruction No. 5, and by definition of “stolen property” in Instruction No. 6. CP 6. Therefore, the required mental state for this crime

is not simply “an intent to sell,” but “an intent to sell stolen property.” There is *only one intent element* to be proven here, not two.

*Goble's* holding is expressly limited to cases that require the State to prove two mental states. *State v. Gerdts*, 136 Wn.App. 720, 728, 150 P.3d 627 (2007); *State v. Boyd*, 137 Wn.App. 910, 924, 155 P.3d 188 (2007). *Goble* thus has no application in this case because there is only one required mental state: “an intent to sell stolen property.” When there is only one mental state to consider, there is no danger of conflation. *Gerdts*, 136 Wn.App. at 728, 150 P.3d 627.

This limitation in *Goble* is also recognized by the Supreme Court in *State v. Sibert*, 168 Wn.2d 306, 317, 230 P.3d 142 (2010). In *Sibert*, the State was only required to prove Sibert's mental state with respect to one element—whether he knew that the substance he delivered was a controlled substance. *Id.* The *Sibert* court found that there was no second *mens rea* to conflate in a conviction for delivery of a controlled substance and hence the holding of *Goble* did not apply. The court further held that the jury instructions at the trial, taken as a whole, accurately defined knowledge and did not create a mandatory presumption. *Id.*

Here, the State is required to prove only one *mens rea*: that Campbell knowingly trafficked in stolen property. Jury Instruction No. 8 required the State to prove that Campbell knew he was trafficking in stolen property. CP 6. *Gerdts* and *Sibert* are dispositive here; there is no second mental state required and Instruction No. 9 does not create any mandatory presumption.

## CONCLUSION

The trial court did not err when it included the line stating “[a]cting, knowingly or with knowledge also is established if a person acts intentionally” in the knowledge instruction. The holding in *State v. Goble* is limited to a specific set of facts not applicable in this case. There was no error, and no violation of the defendant’s Fourth Amendment due process rights.

The judgment and verdict in this case should be affirmed.

Respectfully Submitted,

By:   
JAMES G. BAKER  
Senior Deputy Prosecuting Attorney  
WSBA #12446

STATE OF WASHINGTON  
DIVISION II

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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,  
  
v.  
  
JOHN CAMPBELL,  
  
Appellant.

No.: 41868-1-II  
  
**DECLARATION OF MAILING**

**DECLARATION**

I, Janette Jennings hereby declare as follows:

On the 21st day of September, 2011, I mailed a copy of the Brief of

Respondent and Notice of Association of Counsel to:

Lisa E. Tabbut  
Attorney at Law  
P. O. Box 1396  
Longview, WA 98632-7822

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.

DATED this 21st day of September, 2011, at Montesano, Washington.

Janette Jennings

COURT OF APPEALS  
DIVISION II

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

9 STATE OF WASHINGTON,

10 Respondent,

No.: 41868-1-II

11 v.

**DECLARATION OF MAILING**

12 JOHN CAMPBELL,

13 Appellant.

14  
15 **DECLARATION**

16 I, Bonette Jennings hereby declare as follows:

17 On the 22nd day of September, 2011, I mailed a copy of the Brief of

18 Respondent and Notice of Association of Counsel to:

19 Lisa E. Tabbut  
20 Attorney at Law  
21 P. O. Box 1396  
Longview, WA 98632-7822

22 by depositing the same in the United States Mail, postage prepaid.

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

25 DATED this 22nd day of September, 2011, at Montesano, Washington.

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