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Court of Appeals  
Division III  
State of Washington  
No. 31891-5-III

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

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STATE OF WASHINGTON,

Appellant,

v.

Chantell M. Graham,

Respondent.

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

The Honorable Evan Sperline

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RESPONDENT'S BRIEF

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## **A. SUMMARY OF ARGUMENT**

Chantell Graham went into an Ephrata Wal-Mart, selected two items from the shelf, immediately “returned” the items with customer service in exchange for a gift card, used the gift card to purchase another item, and then returned the latter purchase to Wal-Mart for cash. Based on these facts, the State charged Ms. Graham with second-degree trafficking in stolen property. But the trial court dismissed the charge for lack of evidence, noting that the defendant’s actions may have amounted to theft but did not constitute trafficking in stolen property. The trial court did not err. The order dismissing the underlying charge should be affirmed.

## **B. APPELLANT’S ASSIGNMENT OF ERROR**

1. “The court erred when it dismissed the charge of Trafficking in Stolen Property in the Second Degree for insufficient evidence.” (State’s Brief pg. 1)

## **C. RESTATEMENT OF ISSUES**

(Issue 1): Whether the court properly granted Ms. Graham’s *Knapstad* motion to dismiss where the facts, taken in a light most favorable to the State, did not establish second-degree trafficking in stolen property.

- a. Ms. Graham did not “traffic in stolen property” when she obtained the gift card because no property had yet been stolen; theft occurred for the first time when Ms. Graham obtained the gift card itself by deception.
- b. Ms. Graham did not traffic in stolen property when she returned the second television bracket for cash; the second television bracket was not “stolen,” only one unit of prosecution was intended regardless of subsequent uses of a

single stolen gift card, and/or a single scheme or course of conduct should only result in one count of theft under these circumstances.

- c. Ms. Graham did not traffic in stolen property when she used the stolen gift card to purchase the second television bracket.
  - i. Using a stolen gift card is not the same as disposing of “stolen property” under the trafficking statute.
  - ii. Ms. Graham did not dispose of stolen property to “another person” as anticipated by the trafficking statute.
  - iii. To the extent the trafficking statute may be unclear on the above issues, the rule of lenity requires that any ambiguity be resolved in Ms. Graham’s favor.

#### **D. RESTATEMENT OF THE CASE**

This is the State’s appeal from the dismissal of Chantell Graham’s charge of Second-Degree Trafficking in Stolen Property for lack of evidence pursuant to *State v. Knapstad*<sup>1</sup>. The State’s alleged facts, as set forth below, are presumed true for purposes of the underlying motion to dismiss and this appeal.

On December 8, 2012, Ms. Graham entered a Wal-Mart in Ephrata, Washington. She placed a television wall bracket and toy battery in her shopping basket. Without paying for the items, Ms. Graham went to customer service to effectuate a “return.” Because she did not have a receipt, Wal-Mart issued Ms. Graham a gift card for the items, totaling

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<sup>1</sup> *State v. Knapstad*, 107 Wn.2d 346, 729 P.2d 48 (1986).

approximately \$128. Ms. Graham then used the gift card to purchase a more expensive television bracket. (CP 4-8)

The following day, Ms. Graham returned the more expensive television bracket to the same Wal-Mart and, since she now had a receipt for this item that she purchased in part using the gift card, Wal-Mart issued her approximately \$100 cash. (CP 4-8) At all times during these transactions, Ms. Graham was acting alone. (CP 8)

The State charged Ms. Graham with second-degree trafficking in stolen property. (CP 1) Ms. Graham moved to dismiss the charge, arguing that these facts could at most only establish theft or fraud rather than trafficking. (7/23/13 RP 2-3; CP 18-19) The trial court agreed, stating that Ms. Graham used the initial items to wrongfully obtain control over the gift card by color or aid of deception. (CP 30, 39-40) In other words, the trial court said Ms. Graham committed theft of the gift card pursuant to RCW 9A.56.020(1)(b). (*Id.*) The court further held that Ms. Graham then used the stolen gift card as it was intended, as if it were cash, in the separate transaction to purchase the second television bracket and then made a lawful return of that item. (CP 31) These facts, the court held, did not establish second-degree trafficking in stolen property, and Ms. Graham's motion to dismiss without prejudice was granted. (CP 40)

The State timely appealed (CP 42). It now seeks a precedent-setting decision from this Court that a person who makes a fraudulent return to a store of its own property and then uses the proceeds from that return to purchase additional items is engaged in trafficking in stolen property rather than mere theft. (7/23/13 RP 5, 8 – prosecutor acknowledged a lack of case law on the issue of whether the “return” of an item to its original owner rather than some third party, such as here, constitutes trafficking).

#### **E. ARGUMENT**

**Issue 1: Whether the court properly granted Ms. Graham’s *Knapstad* motion to dismiss where the facts, taken in a light most favorable to the State, did not establish second-degree trafficking in stolen property.**

When the defendant brings a *Knapstad* motion to dismiss the charges against her, “the court shall grant the motion if there are no material disputed facts and the undisputed facts do not establish a prima facie case of guilt.” CrR 8.3(c)(3). “In determining defendant’s motion, the court shall view all evidence in the light most favorable to the prosecuting attorney and the court shall make all reasonable inferences in the light most favorable to the prosecuting attorney.” CrR 8.3(c)(3); *State v. Sullivan*, 143 Wn.2d 162, 171 n.32, 19 P.3d 1012 (2001); *Knapstad*, 107 Wn.2d at 356. “The court may not weigh conflicting statements and base its decision on the statement it finds the most credible.” CrR 8.3(c)(3).

The trial court assumes, for the sake of argument, the truth of the facts alleged by the State. *State v. Jackson*, 82 Wn. App. 594, 608, 918 P.2d 946 (1996), *review denied*, 131 Wn.2d 1006 (1997).

Similar to reviewing for sufficiency of the evidence, “[a]n appellate court will uphold the trial court’s dismissal of a charge pursuant to a *Knapstad* motion if no rational finder of fact could have found beyond a reasonable doubt the essential elements of the crime.” *State v. Snedden*, 112 Wn. App. 122, 127, 47 P.3d 184 (2002), *aff’d*, 149 Wn.2d 914, 73 P.3d 995 (2003). Given that no facts are in dispute for purposes of a *Knapstad* motion, review by this Court is de novo. *State v. Montano*, 169 Wn.2d 872, 876, 239 P.3d 360 (2010).

The State charged Ms. Graham with second-degree trafficking in stolen property. A person is guilty of this crime if she recklessly trafficked in stolen property. RCW 9A.82.055(1)<sup>2</sup>. A person is reckless or acts recklessly when she “knows of and disregards a substantial risk that a wrongful act may occur and... her disregard of such substantial risk is a gross deviation from conduct that a reasonable person would exercise in the same situation.” RCW 9A.08.010(1)(c).

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<sup>2</sup> C.f. RCW 9A.82.050(1) (first-degree trafficking, a class B felony, where a person “knowingly” trafficked as opposed to “recklessly” trafficked).

“‘Traffic’ means [a] to sell, transfer, distribute, dispense, or otherwise dispose of stolen property<sup>3</sup> to another person, or [b] 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) (emphasis added). The first part of this statute contemplates guilt for essentially pawning an item that the person stole or that the person knows or should know to be stolen. *See e.g., State v. Hermann*, 138 Wn. App. 596, 604, 158 P.3d 96 (2007) (“Evidence that a defendant knowingly pawns stolen goods is sufficient to support a charge of trafficking in stolen property.”)

The second part of the trafficking definition establishes liability for the person who knowingly or recklessly received the stolen goods with intent to further dispose of them to another person, which is not at issue in this case. *State v. Strohm*, 75 Wn. App. 301, 303-12, 879 P.2d 962 (1994) (defendant guilty of both theft and trafficking in stolen property where he oversaw the theft of car parts that were then placed in other vehicles that were then sold to unsuspecting purchasers). *See also State v. Michielli*, 132 Wn.2d 229, 937 P.2d 587 (1997) (citing *Florida v. Camp*, 579 So.2d 763 (Fla. Dist. Ct. App. 1991), *aff’d*, 596 So.2d 1055 (Fla.1992) (Defendant was guilty of theft and trafficking where he sold three items he

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<sup>3</sup> “‘Stolen property’ means property that has been obtained by theft, robbery, or extortion.” RCW 9A.82.010(16).

had stolen to a pawn shop. The Court noted that the “trafficking statute was “designed to dismantle the criminal network of thieves and fences [or middlemen] who knowingly redistribute stolen property.”)

- a. Ms. Graham did not “traffic in stolen property” when she obtained the gift card because no property had yet been stolen; theft occurred for the first time when Ms. Graham obtained the gift card itself by deception.**

Trafficking means that the defendant disposed of “stolen property” to another person. RCW 9A.82.010(19). “‘Stolen property’ means property that has been obtained by theft...” RCW 9A.82.010(16). And “theft” requires intent to deprive the owner of such property. RCW 9A.56.020(1). The evidence was insufficient to establish that the television bracket and battery were “stolen property” “obtained by theft.” Ms. Graham never deprived or intended to deprive Wal-Mart of these items. On the other hand, Ms. Graham intended to deprive Wal-Mart of the gift card through deception. The trial court properly held that Ms. Graham committed theft of the gift card by deception rather than trafficking in stolen property.

Theft may be committed where a person:

“(a)... wrongfully obtain[s] or exert[s] unauthorized control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services; or

“(b) By color or aid of deception...obtain[s] control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services...”

RCW 9A.56.020(1); CP 30, 39-40.

Theft may be proven where deception was used by the defendant and the victim relied on the defendant's deception "in some measure operated as inducement." *State v. Mehrabian*, 175 Wn. App. 678, 700-01, 308 P.3d 660 (2013). "If the victim would have parted with the property even if the true facts were known, there is no theft." *Id.* at 701.

"'Deception' includes a broad range of conduct, including...

"not only representations about past or existing facts, but also representations about future facts, inducement achieved by means other than conduct or words, and inducement achieved by creating a false impression even though particular statements or acts might not be false."

*Mehrabian*, 175 Wn. App. at 700 (quoting *State v. Casey*, 81 Wn. App. 524, 528, 915 P.2d 587 (1996)); RCW 9A.56.010(5). In sum, theft by deception may exist if "the false representations were believed and relied on by the victim and in some measure operated to induce the victim to part with the property." *Id.* at 701.

When Ms. Graham took the initial television bracket and battery to customer service to pass them off as her own, she never intended to deprive Wal-Mart of such property. RCW 9A.56.020(1)(b). Instead, she immediately took the property to customer service for a "return."

The State is correct that a person who takes items in a store, whether or not they have yet left the store, may be guilty of theft if that

person intended to deprive the store of such property. *See e.g., State v. Britten*, 46 Wn. App. 571, 572-74, 731 P.2d 508 (1986) (defendant put several jeans on under his own clothes and, although he had not yet left the store, he was guilty of theft because he intended to deprive the store of the items). But *State v. Britten, supra*, is distinguishable from this case because “[t]here [was] no issue as to Britten’s intent...” *Id.* at 573. Mr. Britten had removed the tags and concealed several pairs of jeans under his own clothing, evidencing his intent to deprive the store of the jeans themselves. *Id.* at 573-74. Whereas here, Ms. Graham never intended to deprive or actually deprived Wal-Mart of the television bracket or battery. No theft had yet occurred until she obtained the gift card by deception. Ms. Graham did not dispose of “stolen property” when she obtained the gift card; no property had yet been stolen.

On the other hand, Ms. Graham did intend to deprive Wal-Mart of the gift card when, using deception, she “returned” the items to customer service for the gift card. Ms. Graham made false representations to Wal-Mart customer service that she owned the items and was entitled to a return of money, when in fact Wal-Mart was still the rightful owner of the items. Ms. Graham made false representations about existing facts (her ownership of the television bracket and battery), which Wal-Mart relied upon in issuing Ms. Graham a gift card. Ms. Graham intended to deprive

Wal-Mart of the gift card, which she accomplished by deception through the false return. Under these circumstances, the trial court correctly found that Ms. Graham could only be prosecuted for theft rather than trafficking.<sup>4</sup>

**b. Ms. Graham did not traffic in stolen property when she returned the second television bracket for cash; the second television bracket was not “stolen,” only one unit of prosecution was intended regardless of subsequent uses of a single stolen gift card, and/or a single scheme or course of conduct should only result in one count of theft under these circumstances.**

When Ms. Graham returned the second television bracket, she also did not traffic in stolen property. The second television bracket was not “stolen property” where it was purchased with the gift card and Ms. Graham’s other funds. Further, there is no indication that the Legislature intended to punish each subsequent use of a stolen gift card as separate thefts with multiple units of prosecution. Ms. Graham would only be subject to one count of theft for a single scheme or course of conduct as opposed to multiple thefts or trafficking in stolen property.

As set forth above, stolen property is that obtained by theft. RCW 9A.82.010(16). Theft may generally be established where a person wrongfully obtains or exerts unauthorized control over the property or services of another, or by color or aid of deception does the same. RCW

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<sup>4</sup> See e.g. *Grady v. State*, 743 S.Ed.2d 22, 23 (Ga. App. 2013) (defendant guilty of theft by shoplifting where he obtained a gift card from Wal-Mart in exchange for two items that he took from within the store).

9A.56.020(1). Theft further requires an “intent to deprive the owner of such property.” *Id.*

Here, Ms. Graham did not wrongfully obtain the second television bracket or obtain it through use of deception. She passed through the Wal-Mart check-out line and used a gift card and other funds in her possession, as they were intended, to purchase an item. She did not commit a theft under these facts; she did not steal the television bracket. It follows, then, that she could not be found guilty of trafficking in “stolen property” when she returned the television bracket to the store for cash.

Ms. Graham’s analysis above is also consistent with charging rules for units of prosecution involving theft. Subsequent purchases made with a stolen gift card do not create additional and separate incidences of theft.

“If the legislature fails to define the unit of prosecution or its intent is unclear, under the rules of lenity any ambiguity must be ‘resolved against turning a single transaction into multiple offenses.’” *State v. Hall*, 168 Wn.2d 726, 730, 230 P.3d 1048 (2010) (internal quotes omitted). “A statute is ambiguous if it is susceptible to two or more reasonable interpretations, it is not ambiguous merely because different interpretations are conceivable.” *State v. K.R.* 169 Wn. App. 742, 748, 282 P.3d 1112 (2012). A “unit of prosecution can be either an act or a course of conduct.” *Hall*, 168 Wn.2d at 731.

The Legislature has made it clear that it intends to punish as multiple counts of theft where a person steals multiple credit cards. *See e.g., Hall*, 168 Wn.2d at 732-33 (citing *State v. Ose*, 156 Wn.2d 140, 146, 124 P.3d 635 (2005) (interpreting statute and legislative intent in the context of stolen “access devices” and holding that possession of each separate stolen access device is a separate violation of the statute)). C.f., RCW 9.35.001 (following the Supreme Court’s opinion in *State v. Leyda*,<sup>5</sup> the legislature amended the identity theft statute to specify that the ‘unit of prosecution for identity theft by use of a means of identification or financial information is each individual unlawful use of any one person’s means of identification or financial information.’)

In determining if Ms. Graham trafficked in stolen property, the critical inquiry is determining what was stolen. The pertinent issue in this case is theft of “an access device,” which refers to and creates liability for each stolen access device. *See* RCW 9A.56.040; *Hall*, 168 Wn.2d at 732-33; *Ose*, 156 Wn.2d at 146 (“possession of each stolen access device is a separate violation of the statute.”) In other words, if multiple access devices were stolen, there could be multiple counts of theft. But subsequent uses of a single stolen access device do not create separate

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<sup>5</sup> *State v. Leyda*, 157 Wn.2d 335, 345, 138 P.3d 610 (2006), (“once the accused has engaged in any one of the statutorily proscribed acts against a particular victim, and thereby committed the crime of identity theft, the unit of prosecution includes any subsequent proscribed conduct, such as using the victim’s information to purchase goods after first unlawfully obtaining such information.”) Superseded by statute, RCW 9.35.001

incidences of theft. The subsequent transactions with the gift card did not constitute separate thefts.

Here, unlike with identity theft, the legislature has not stated that there shall be separate units of prosecution for each subsequent use of a single stolen access device. It would seem absurd to charge someone with theft of a gift card and then also charge that same person with 100 counts of theft for 100 subsequent purchases with the same card that had been stolen. Although the theft statutes and pertinent case law are clear that multiple counts may be charged for thefts of multiple access devices, no such support is found in the law for considering each subsequent use of a single stolen access device as a separate theft of subsequently purchased goods. Ms. Graham's use of the stolen gift card for subsequent purchases, including the second television bracket, was not a separate theft. This property was not stolen and therefore could not support a charge of trafficking in stolen property when it was returned to Wal-Mart.

Absent specific direction from the legislature that subsequent uses of a stolen access device creates multiple thefts or units of prosecution, Ms. Graham would only be subject to a single unit of prosecution for theft of the gift card. The television bracket purchased with the gift card was not "stolen property" obtained by a separate theft and therefore could not support the trafficking charge. Moreover, the unit of prosecution in this

case should be one count of theft because Ms. Graham was engaged in a single course of conduct by her actions in this case. *See Hall*, 168 Wn.2d at 731. Ultimately, through her deceptive actions, Ms. Graham came into possession of the wrongfully obtained gift card. That is the proper charge in this case, a single count of theft. The evidence does not support the charge of trafficking in stolen property, which was properly dismissed by the trial court below.

**c. Ms. Graham did not traffic in stolen property when she used the stolen gift card to purchase the second television bracket.**

The Legislature cannot have intended for each person who uses stolen money (or gift cards) to, in addition to the initial theft of the stolen money or gift card, also be guilty of limitless counts of trafficking in stolen property for each and every purchase that is then made using the stolen funds. It would be absurd to apply the trafficking statute in such a manner, would contravene legislative intent, and would create a slippery slope for abusive prosecutorial charging practices.

**i. Using a stolen gift card is not the same as disposing of “stolen property” under the trafficking statute.**

As set forth above, “[t]raffic’ means...to sell, transfer, distribute, dispense, or otherwise dispose of stolen property to another person...” RCW 9A.82.010(19)(a) (emphasis added). The State cited no case, and none is otherwise known to this Respondent despite exhaustive research,

suggesting that a person may be liable for trafficking in stolen property where she disposes of money or a gift card as opposed to some tangible property item. C.f., *Strohm*, 75 Wn. App. at 303-12; *Michielli*, 132 Wn.2d 229; *Hermann*, 138 Wn. App. 596 (all involved trafficking actual items of tangible property rather than disposing of stolen money or gift cards). *And see State v. Killingsworth*, 166 Wn. App. 283, 285-92, 269 P.3d 1064, *review denied*, 174 Wn.2d 1007 (2012) (defendant guilty of trafficking where he pawned an iPod and GPS unit to a pawn shop that he knew was stolen).

First, a gift card is not necessarily “property” in and of itself under the criminal profiteering act (of which both trafficking and theft are subsections). RCW 9A.82 et seq. Instead, the gift card represents the “value thereof” of certain other property items (the television bracket and battery). See generally RCW 9A.56.020(1) (distinguishing theft of “property” from theft of the “value thereof”); RCW 9A.56.010(1) (gift card may be device used “to obtain money, goods, services, or anything else of value...,” but it is not necessarily defined as property itself).

Ms. Graham used a gift card to pay Wal-Mart for the second television bracket. But, contrary to the pawning cases above, she did not transfer, sell or otherwise dispose of “property” in exchange for that more expensive television bracket. By a plain reading of the trafficking statute,

Ms. Graham did not transfer or otherwise dispose of stolen “property” to another person.

The theft statutes very clearly impose liability for the theft of “property or services of another or the value thereof.” RCW 9A.56.020(1) (emphasis added). On the other hand, the trafficking statute only imposes liability for disposing of stolen “property,” not for disposing the “value thereof.” RCW 9A.82.010(19)(a). The State would have this Court read additional language into the trafficking statute like exists in the theft statute, establishing trafficking for disposing of “stolen property or the value thereof” to another person. But this is not how the trafficking statute reads, nor should this Court now interpret such additional liability into the statute.

**ii. Ms. Graham did not dispose of stolen property to “another person” as anticipated by the trafficking statute.**

The trial court implied in dictum that the trafficking statute required Ms. Graham to dispose of stolen property to a person other than the victim of the initial theft. (CP 31, 46) In other words, a return of property to its original owner, Wal-Mart, would not constitute trafficking. (*Id.*) This conclusion was ultimately stricken from the trial court’s findings. Regardless, if this Court chooses to address this issue, Ms. Graham contends that a third party’s involvement is indeed anticipated by

the trafficking statutes. Regardless, whether or not the trial court's dictum was correct, the evidence was otherwise insufficient to establish second-degree trafficking in stolen property, as set forth above, so the trial court's decision to dismiss should be upheld.

Again, "traffic" is defined as disposing of stolen property "to another person." RCW 9A.82.010(19). The question is whether "another person" refers to a person other than the defendant or to a person other than the parties to the theft. It is not necessarily helpful to rely on the interpretation of "another person" from entirely different criminal statutes, especially where the underlying purposes for imposing criminal liability are different. *C.f.*, *State v. Graham*, 153 Wn.2d 400, 413, 103 P.3d 1238 (2005) (specifically in context of the reckless endangerment statute, "another person" means the risk is created to one other than the actor, though court limited holding to this context and noted definition also included one "different or distinct from the one first named or considered.")

In the context of reckless endangerment, there could be but one conclusion: that "another person" referred to endangering someone other than the defendant actor. *See Graham*, 153 Wn.2d at 413. But for trafficking in stolen property, where the goal is to dismantle a criminal network of thieves and middlemen who knowingly redistribute stolen

property (*Michielli*, 132 Wn.2d at 234-35), “another person” more likely refers to another knowing or unknowing third party who then sells or disposes of the stolen property. Otherwise, the trafficking statute would impose liability for each person who steals something and then disposes of it for personal use, contrary to the legislature intention. *See id.*

This analysis of “another person” as referring to a third party other than the defendant or victim of the theft is consistent with *State v. Walker*, 143 Wn. App. 880, 883, 181 P.3d 31 (2008). There, the defendant went onto national forest service grounds and split and stacked blocks of old growth cedar to sell to a local mill. The Court explained that there were two distinct crimes at issue, theft and trafficking in stolen property. *Id.* at 887. “For theft, the State had to prove [the defendant] intended to deprive the owner of its property; while (2) for trafficking, the State had to prove [the defendant] intended to sell or dispose of another’s property to a third party.” *Id.* (emphasis added). The Court noted, “[a] person could steal (i.e., intend to deprive an owner) of its property without intending to sell or dispose of that property to a third party and could sell property to another knowing that it was stolen without having been a thief.” *Id.*

Analogizing *Walker, supra*, Ms. Graham never intended to sell or dispose of Wal-Mart’s property to a third party; Ms. Graham at all times acted alone without any third party involvement. Trafficking in stolen

property does not include theft of a gift card from a store and later use of that card with the same store. It envisions more of a criminal network, or third party involvement. Accordingly, for this additional reason, the trial court's order to dismiss Ms. Graham's charge should be affirmed.

**iii. To the extent the trafficking statute may be unclear on the above issues, the rule of lenity requires that any ambiguity be resolved in Ms. Graham's favor.**

As argued above, neither the theft nor trafficking statutes, on their face, impose liability for every later purchase on a stolen gift card. Further, trafficking requires disposition of property to some other third-party person. Both of these plain readings of the statute are consistent with legislative intent and would not lead to absurd results. To the extent this Court finds any ambiguity in the statute, it must be resolved in favor of Ms. Graham.

This Court conducts the following de novo review when interpreting a statute:

“In construing a statute, the court's objective is to determine the legislature's intent... [I]f the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent... The 'plain meaning' of a statutory provision is to be discerned from the ordinary meaning of the language at issue, as well as from the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole...

*State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 283 (2005) (internal cites omitted) (emphasis added).

“If after that examination [of the statute as written], the provision is still subject to more than one reasonable interpretation, it is ambiguous. If a statute is ambiguous, the rule of lenity requires us to interpret the statute in favor of the defendant absent legislative intent to the contrary.”

*Jacobs*, 154 Wn.2d at 600 (emphasis added); *Michielli*, 132 Wn.2d at 234-35 (quoting *Camp*, 596 So.2d at 1057 (“trafficking statute ‘was designed to dismantle the criminal network of thieves and fences [i.e. middlemen] who knowingly redistribute stolen property...’ The trafficking statute was ‘not designed to punish persons who steal for personal use.’”); *cf.* *Hermann*, 138 Wn. App. at 603-04 (affirming trafficking conviction where defendant stole his mother’s jewelry and pawned it for a loan at a pawn shop; the Court explained, “the legislation clearly intended to prohibit any commercial transaction involving property known to be stolen.”).

Here, the plain language of the trafficking statute does not contemplate liability for shoplifters, and no such trafficking liability has been imposed in any known case law throughout this country. Ms. Graham may have committed theft, but not trafficking in stolen property. The trafficking statutes were enacted to dismantle the criminal network of thieves who knowingly dispose of stolen property in commercial transactions. It is undisputed that Ms. Graham acted alone in this case. There is no “criminal network of thieves” to dismantle; Ms. Graham’s

theft was for her own personal use, not to perpetuate some larger criminal enterprising like occurred in the many pawning cases cited above.

To the extent any ambiguity remains in this trafficking statute, it must be resolved in Ms. Graham's favor. Ms. Graham may be liable for theft, but she is not liable for trafficking in stolen property.

F. **CONCLUSION**

For the reasons stated, the trial court's order dismissing Ms. Graham's charge of second-degree trafficking should be affirmed.

Respectfully submitted this 20<sup>th</sup> day of November, 2013.

/s/ Kristina M. Nichols  
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Attorney for Appellant

COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON )  
Plaintiff/Appellant ) COA No. 31891-5-III  
vs. )  
 )  
CHANTELL MARIE GRAHAM ) PROOF OF SERVICE  
 )  
Defendant/Appellant )  
\_\_\_\_\_ )

I, Kristina M. Nichols, assigned counsel for the Respondent herein, do hereby certify under penalty of perjury that on November 20, 2013, I caused a true and correct copy of the opening brief to be hand-delivered to Chantell M. Graham.

Having obtained prior permission from Grant County Prosecutor's Office, I also served Ryan Valaas at [kburns@co.grant.wa.us](mailto:kburns@co.grant.wa.us) by e-mail.

Dated this 20<sup>th</sup> day of November, 2013.

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