

FILED
SUPREME COURT
STATE OF WASHINGTON
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BY SUSAN L. CARLSON
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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
Respondent,)	NO. 93770-2
)	
vs.)	STATEMENT OF
ROBERT TYLER,)	AUTHORITY
)	
Petitioner.)	

Pursuant to RAP 10.8, appellant cites to the following additional authority:

1. State v. Emmanuel, 42 Wn. 2d 799, 819, 259 P.2d 845, 857 (1953) (explaining the to-convict instruction serves as the “yardstick by which the jury were to measure the evidence in determining appellant's guilt or innocence of the crime charged” and explaining the jury has “a right to regard [it] as being a complete statement of the elements of the crime charged” and is thus not required to search the other instructions to interpret the elements the State must prove)

2. State v. Ring, 191 Wn. App. 787, 364 P.3d 853 (2015) (Judge Maxa writing for the Court of Appeals and concluding that where the to-convict instruction for possession of stolen property informed the jury that the State had to prove the defendant “knowingly received, retained, possessed, concealed stolen property” [no coordinating conjunction in the

original], the law of the case doctrine required the State to prove the defendant undertook each of those acts; thus, it reversed where there was insufficient proof of concealment).

3. Encyclopedia of Rhetoric and Composition 41 (Theresa Enos ed., 1996) (citing as examples of the grammatical rule that “and” is the presumed conjunction where a coordinating conjunction is omitted from a serial comma work, including Caesar's declaration, “I came, I saw, I conquered,” and, from Abraham Lincoln's Gettysburg Address, “The government of the people, by the people, for the people shall not perish from this earth”).

4. State v. O'Laughlin, 239 Ariz. 398, 403, 372 P.3d 342 (Ct. App. 2016) (considering rules of grammar and interpreting a charging document that had a serial list with a missing coordinating conjunction as conjunctive).

5. State v. Harris, 164 Wn. App. 377, 383, 263 P.3d 1276 (2011) (examining jury instructions, taken in their entirety, to determine if the State was relieved of burden of proving all essential elements – but not considering whether this same kind of analysis is appropriate to determine what is the law of the case as set forth in the to-convict instruction)

6. State v. Hutchinson, 135 Wn. 2d 863, 884, 959 P.2d 106 (1998) (concluding where a definitional instruction appears to create an ambiguity as to a justifiable homicide defense, the court may look to other definitional instructions to see if that potential ambiguity was cured -- but not considering whether this same kind of analysis is appropriate to determine the law of the case as set forth in the to-convict instruction)

7. Lamie v. U.S. Tr., 540 U.S. 526, 530-35, 124 S. Ct. 1023, 157 L. Ed. 2d 1024 (2004) (determining that there was an “apparent legislative drafting error” where:

- a statute contained serial disjunctive list – authorizing an award “to a trustee, to an examiner, to a professional person employed under section 327..., or to the debtor’s attorney”;
- the statute was amended to remove the last item of that list (the debtor’s attorney);
- through the amendment the “or” conjunction was also removed leaving no conjunction) (“to a trustee, to an examiner, to a profession person employed under section 327”)

and concluding that removal of the term "or" from the list did not create an ambiguity allowing a debtor's attorney to claim an award because the missing term did not obscure the statute in the context on the point at issue.

DATED this 9th day of March, 2018

Respectfully submitted,
NIELSEN, BROMAN & KOCH



JENNIFER L. DOBSON, WSBA 30487



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