IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. JOHN DEAN CAMPBELL, Appellant.	No. 41868-1-II UNPUBLISHED OPINION

Worswick, C.J. — John Campbell appeals his conviction of first degree trafficking in stolen property, claiming the trial court's knowledge jury instruction created an unconstitutional mandatory presumption. We disagree and affirm.

Facts

Grays Harbor County Deputy Sheriff Randy Gibson contacted Campbell at a scrap metal business in Hoquiam when Campbell was attempting to sell a riding lawn mower, a freezer, and a water heater. Campbell claimed that Tom Wells Jr. had given him permission to take the lawn mower, freezer and water heater from a home on Dekay Road.[1] Campbell did not have Wells's address or phone number.

The State charged Campbell with first degree trafficking in stolen property. During the

[1] Later, at trial, Campbell claimed that Wells had given John Butts permission to take some junk cars from the Dekay Road home, and John Butts had given Campbell permission to take the lawn mower, freezer and water heater.

jury trial, David Williams testified that he owned the Dekay Road home. He identified the three items that Campbell had tried to sell as scrap as having been at the Dekay Road home. Williams testified that he had not given anyone permission to take these items and that he did not know John Campbell or Tom Wells Jr.

Tom Wells testified that he did not know Campbell or Williams and never gave them permission to be at Williams's home. Wells also denied knowing John Butts or giving him permission to be at Williams's home.

Campbell testified on his own behalf. He explained that he went to the Dekay Road home to see if he could get an address so that he could contact the owner. When he arrived, a man with a pickup and long trailer was there and identified himself as Butts. Butts said that he did not own the home and did not know who did but that Tom Wells Jr. had given him permission to pick up the cars and other junk for scrap metal. After Campbell helped Butts load the front end of a car and some fenders onto a trailer, Butts asked Campbell if he wanted a few things for scrap and helped him load the freezer, lawn tractor, and water heater into the back of Campbell's truck. Campbell further testified that it was not until the next day that he learned that the items were stolen from Williams's home.

The trial court instructed the jury that in order to find Campbell guilty of first degree trafficking in stolen property, the State had to have proven beyond a reasonable doubt:

> (1) That on or about March 18, 2010, the [sic] Mr. Campbell did knowingly traffic in stolen property; and
> (2) That this act occurred in the State of Washington.

Clerk's Papers (CP) at 6 (Jury Instruction 8). Also, the trial court defined "knowledge":

> 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 at 7 (Jury Instruction 9) (emphasis added).[2]

The jury found Campbell guilty. Campbell appeals.

Analysis

Campbell contends that the trial court's "knowledge" jury instruction relieved the State of its burden of proving an element of the offense and created an unconstitutional mandatory presumption. We disagree.

We review alleged errors of law in jury instructions de novo. *State v. Barnes*, 153 Wn.2d 378, 382, 103 P.3d 1219 (2005); *see also State v. Pirtle*, 127 Wn.2d 628, 656, 904 P.2d 245 (1995). A jury instruction that relieves the State of its burden of proof is reversible error. *Pirtle*, 127 Wn.2d at 656.

The Fourteenth Amendment's due process clause provides that criminal defendants are innocent until proven guilty and that the government must prove guilt beyond a reasonable doubt. U.S. Const. amend. XIV, § 1; *In re Winship*, 397 U.S. 358, 362, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970). Mandatory presumptions violate a defendant's due process right if they relieve the State of its obligation to prove all elements of the charged crime. *State v. Deal*, 128 Wn.2d 693,

[2] Neither the State nor the defense had any objections to the jury instructions.

699, 911 P.2d 996 (1996). A mandatory presumption is one that requires a jury "to find a presumed fact from a proven fact." *Deal*, 128 Wn.2d at 699. In deciding whether a jury instruction creates a mandatory presumption, we ask whether a reasonable juror would interpret the presumption as mandatory. *Deal*, 128 Wn.2d at 701.

Campbell argues that the last sentence of the trial court's "knowledge" jury instruction improperly created a mandatory presumption by allowing the jury to find knowledge from any of his intentional acts. As an example, he argues the jury could find that he intentionally sold the property and thus be required to find from the fact that he intentionally sold it, that he did so knowing it was stolen. He relies on *State v. Goble*, 131 Wn. App. 194, 203-04, 126 P.3d 821 (2005), where we reversed an assault conviction based on a similar "knowledge" instruction.

In *Goble*, we held that similar "knowledge" language in a third degree assault "to convict" jury instruction created an impermissible mandatory presumption. 131 Wn. App. at 203. We held that the "knowledge" language was confusing because it potentially allowed the jury to find Goble guilty of third degree assault against a law enforcement officer performing his official duties if it found the defendant intentionally assaulted the officer. *Goble*, 131 Wn. App. at 203. We agreed that the challenged jury instruction allowed the jury to presume that Goble knew the officer's status at the time of the incident if it found an intentional assault. *Goble*, 131 Wn. App. at 203. Thus, the trial court's instructions conflated the required intent and knowledge elements in the "to convict" instruction into a single element and relieved the State of its burden of proving that Goble knew the officer's status after finding an intentional assault. *Goble*, 131 Wn. App. at 203.

We reaffirmed *Goble* as applied to an amended pattern jury instruction in *State v.*

Hayward, 152 Wn. App. 632, 645, 217 P.3d 354 (2009), where similar "knowledge" language was included in a second degree assault "to convict" jury instruction.[3] We held that the knowledge language in Hayward's "to convict" instruction improperly allowed the jury to combine the required intent element with the recklessness element necessary to convict for second degree assault and thus relieved the State of its burden of proof. *Hayward*, 152 Wn. App. at 645-46.

But in *State v. Gerdts* we found a meaningful distinction. 136 Wn. App. 720, 150 P.3d 627 (2007). The State charged Gerdts with second degree malicious mischief for scraping a parked van. That crime required the jury to find only one mens rea element to convict. RCW 9A.08.010(1)(b); 9A.48.080; 136 Wn. App. at 728. Gerdts argued that the jury instruction allowed the jury to find that he acted knowingly if it found that he intentionally walked past the van. 136 Wn. App. at 727-28. We held that because the trial court's jury instructions contained no second mens rea element to conflate, *Goble* did not apply. *Gerdts*, 136 Wn. App. at 728. Our Supreme Court agreed with this distinction in *State v. Sibert*, 168 Wn.2d 306, 316-17 n.7, 230 P.3d 142 (2010) (a "knowledge" jury instruction is appropriate for delivery of a controlled substance that has one mens rea element); *see also State v. Holzknecht*, 157 Wn. App. 754, 766, 238 P.3d 1233 (2010) (assault instructions proper).

Here, the State had to prove that Campbell knowingly trafficked in stolen property. *See* RCW 9A.82.050. Jury instruction 9 required the State to prove that Campbell *knew* that he was trafficking in stolen property. There was no other mens rea element essential to convict Campbell

[3] 11 Washington Practice: Washington Pattern Jury Instructions: Criminal 10.03, at 209 (3d ed. 2008).

of knowingly trafficking in stolen property. As such, the trial court's instructions did not relieve the State of its burden of proof or create a mandatory presumption. *Gerdts* and *Sibert*, not *Goble* and *Hayward*, are dispositive.

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Worswick, C.J.

We concur:

Hunt, J.

Johanson, J.