

**State of Wisconsin
Court of Appeals
District IV**

Appeal No. 2015AP001176

City of Madison,
Plaintiff-Respondent,
v.
Jacob Ong,
Defendant-Appellant.

**Appeal from a Judgment Entered in
the Dane County Circuit Court,
The Honorable Stephen E. Ehlke, presiding**

Appendix

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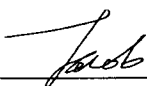
Appendix Certification

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with § 809.19 (2) (a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under § 809.23 (3) (a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

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Dated on 7th day of September, 2016

By:  _____

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1 these instructions. Yeah, just the "or with intent,"
2 add that.

3 All right. I'm going to give each of you five
4 minutes or so to gather your thoughts, and then we'll
5 come back in. I'll read the instructions -- well,
6 first of all, we'll strike the alternate. Then I'll
7 read the instructions to the jury, and then each of
8 you will be allowed to make your closing remarks.
9 Okay?

10 So we'll go off the record, I'll give you five
11 or so minutes, and then I'll come back in.

12 (Recess)

13 (Jury enters courtroom at 3:59 p.m.)

14 THE COURT: Welcome back. Please be seated,
15 everyone.

16 As you know, there are seven of you here. Only
17 six of you are required by law to deliberate, so one
18 of you will be chosen in just a moment as the
19 alternate. And the statutes require that be done by
20 random lot, which I do by mixing up your jury sheets,
21 as you can see, in front of you, or in front of me,
22 and then I shuffle them up and ask Dawn to pick one of
23 them at random. And then that person becomes the
24 alternate.

25 Mr. Uhlig, you are the alternate. So you are

1 THE COURT: Your objection is of record. And if
2 I -- and if -- depending on what happened, if you
3 wanted to appeal, the Court of Appeals could review
4 this and determine whether I've exercised my
5 discretion appropriately or not.

6 MR. ONG: Your Honor, can I reflect so that, you
7 know, I wasn't aware that the order was made on
8 Friday, like, for the witness list, that I had to
9 submit a witness list. I am not a lawyer. This is my
10 first time in trial. I don't know that there is such
11 an order made, and I wasn't given a copy of such an
12 order.

13 THE COURT: No. I think I said on the record
14 that the witness lists and so forth were due by
15 Thursday. Or I don't remember if I said Thursday or
16 Friday, but I definitely said that week.

17 MR. ONG: Your Honor, I believe our pretrial
18 conference is all off the record, so there wasn't any
19 way I could --

20 THE COURT: It's -- is it in the minutes? I
21 don't remember if we were on the record or off the
22 record. I'd have to look.

23 But I remember -- I remember telling everybody
24 to have things in by Thursday, I believe.

25 MR. ONG: Your Honor, if I may request that you

1 whatever is on the ordinance then?

2 THE COURT: That's what we'll do then. I'll
3 change it to what the City's requested, so --

4 MR. ONG: Including the comment that says that
5 the City may have a photograph evidence of -- I think
6 it's part of the entire ordinance. That's what I'm
7 trying to say.

8 THE COURT: Well, now I don't have the ordinance
9 in front of me.

10 MS. McREYNOLDS: I can bring it back up for you.

11 (Pause)

12 THE COURT: Well, I'm looking -- just so the
13 record's crystal clear, I'm looking at Ordinance
14 23.58, apparently created on August 10th of 2011,
15 definition section, which has "intentionally" defined.
16 Then sub (2) further defines what it means to
17 unlawfully take, carry away, use, transfer, conceal.
18 Number 3 -- sub (3) just talks about using
19 authenticated photographs of the property in lieu of
20 producing the property. I don't think that's relevant
21 here. And Number 4 is the penalty section.

22 So there's nothing else from that section that
23 would be relevant to this instruction on the elements.

24 So Number 3 is not relevant to the elements.

25 All right. Any other comment, Mr. Ong?

1 THE COURT: Just wait one second. And then
2 we'll change State's to City's burden of proof. Thank
3 you for that.

4 Mr. Ong.

5 MR. ONG: Your Honor, I'd like to point out
6 there's the statutory definition of the violation
7 instead of the crime. It's not a crime; right?

8 THE COURT: Right. We're taking the words "of
9 the crime" out. That's what she was just saying. I
10 missed that. That was my fault. I missed that.

11 MR. ONG: Sorry. I misunderstood.

12 THE COURT: That's being struck. The words "of
13 the crime" are being stricken from that.

14 MR. ONG: Thank you, your Honor, for clarifying.

15 (Pause)

16 THE COURT: Any other comments, Ms. McReynolds?

17 MS. McREYNOLDS: No, your Honor.

18 THE COURT: Mr. Ong, any objection to this? I
19 believe it is the standard instruction on theft.

20 MR. ONG: Your Honor, I'd like to clarify
21 quickly that should the clarification be made that the
22 intent should occur during the removal of the
23 property?

24 THE COURT: Let me just see the instruction.

25 I think that's fairly characterized in here.

