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No. . 93934-9

COURT OF APPEALS No. 33415-5

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON, Respondent

v.

CRAIG S. COLEMAN, Petitioner

---

SUPPLEMENTAL PETITION FOR REVIEW

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Marie Trombley  
WSBA 41410  
PO Box 829  
Graham, WA  
253-445-7920

 ORIGINAL

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I. IDENTITY OF PETITIONER

Petitioner Craig S. Coleman asks this Court to review the decision by the Court of Appeals, Division III, referred to in Section II.

II. COURT OF APPEALS DECISION

The Petitioner seeks review of the Court of Appeals decision issued October 4, 2016. A copy of the Court's unpublished opinion is attached as Appendix A. Attached as Appendix B is the Court's denial of a motion for reconsideration issued November 1, 2016. This petition for review is timely made.

III. ISSUES PRESENTED FOR REVIEW

A. Was Mr. Coleman's right to due process under Washington Constitution, Article 1, § 3 violated where the State failed to prove intent to commit a crime and intent to deprive the bank of its property?

#### IV. STATEMENT OF THE CASE

The Benton County Prosecutor charged Craig Coleman by second amended information with first-degree identity theft, RCW 9A.35.020(2) and second-degree theft RCW 9A.56.020(1)(a), RCW 9A.56.040(1)(a). CP 16-17.

On September 2, 2014, Mr. Coleman went to the Baker Boyer Bank to cash a check made payable to him in the amount of \$3,470.18. RP 34-35. The check was drawn on the account of Columbia River Plumbing and the signature appeared genuine to the teller. RP 35;50. Mr. Coleman presented his Washington State identification information, which the teller wrote on the back of the check. RP 35.

Shortly after Mr. Coleman left the bank, the teller had second thoughts about having cashed the check. RP 39. The amount of the check surprised her and the fact that Mr. Coleman's address was outside of the city. RP 39. She enlisted a coworker to call the owner of Columbia River Plumbing. RP 41.

The owner, Ms. Lindstrom, testified that check number corresponded to one that had been made out to a subcontractor, Hooper Plumbing. RP 27. Hooper Plumbing had not reported the

check as stolen and never contacted Ms. Lindstrom to say they had not received payment for their services. RP 28. Ms. Lindstrom had no direct knowledge as to whether Hooper Plumbing had hired Mr. Coleman to provide services for their company, and no direct knowledge of what that company did or did not do with the check. RP 29-30. Both the bank and Ms. Lindstrom called the police. RP 23.

After a jury trial, Mr. Coleman was convicted on both counts. CP 53-54. Mr. Coleman appealed his convictions. CP 115-116. He challenged the sufficiency of the evidence for the intent element of each crime. The Court of Appeals affirmed his convictions.

#### V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

This Court should accept review because sufficiency of the evidence for a conviction is a question of constitutional magnitude. RAP 13.4(3). Constitutional due process of law requires the State to prove all essential elements of the crime charged beyond a reasonable doubt. *Sandstrom v. Montana*, 442 U.S. 510. 99 S.Ct. 2450, 61 L.Ed.2d 39 (1979). The Court of Appeals opinion affirming the convictions does not comport with due process as it rests on impermissible inference rather than substantial evidence.

The pertinent statutory means of identity theft required proof that Mr. Coleman used a means of identification or financial information of another person...with the intent to commit...any crime. RCW 9.35.020(1). An individual acts with intent when he acts with the objective or purpose to accomplish a result that constitutes a crime. RCW 9A.08.010(1)(a). A jury may infer intent if "the defendant's conduct and surrounding facts and circumstances plainly indicate such an intent as a matter of logical probability." *State v. Woods*, 63 Wn. App. 588, 591 821 P.2d 1235 (1992). An inference of intent must be reasonable and not based on speculation. *State v. Vasquez*, 178 Wn.2d 1, 16, 309 P.3d 318 (2003).

Mr. Coleman argues the "intent" element required the State to prove that he knew and understood that he was committing an illegal act: that he knew the check was wrongly made out to him, and he negotiated it with the intent to commit a crime. Nothing about Mr. Coleman's conduct plainly indicates such intent. Rather the evidence shows he received a check and went to the bank the check was drawn on to cash it. He provided his Washington State driver's license to the teller, and the address and signature on the check matched the address and signature on his driver's license.

(RP 36). The check was dated September 1<sup>st</sup> and Mr. Coleman cashed it on September 2<sup>nd</sup>. (RP 39). Although intent is typically proved by circumstantial evidence, it may not be proved by evidence that is 'patently equivocal.' *Vasquez*, 178 Wn.2d at 8. The facts and circumstances do not make it a logical probability that he intended to commit a crime. The logical inference is that Mr. Coleman was duped by someone else into cashing the check, thinking that he was being paid for work he had done. (RP 45).

Mr. Coleman also contends the evidence does not support a conviction for second degree theft. To convict for second degree theft, the State was required to prove beyond a reasonable doubt that Mr. Coleman wrongfully obtained or exerted unauthorized control over \$750 but not more than \$5000, with the intent to deprive the owner Baker Boyer Bank, of such property. RCW 9A.56.020(1)(a); RCW 9A.56.040(1)(a).

The State was required to show intent to deprive to sustain a conviction for second degree theft. Specific intent may only be inferred when a defendant's conduct, in light of surrounding facts and circumstances plainly indicates the intent as a logical probability. *State v. Stearns*, 61 Wn.App. 224, 228, 810 P.2d 41 (1991); *Woods*, 63 Wn.App. at 591.



Thus the State was required to show more than that Mr. Coleman cashed the check: the State was required to show that he intended to deprive the bank of its property. *State v. Vargas*, 73 Wn.App. 780, 782, 683 P.2d 234 (1984). Mr. Coleman provided his identifying information to the bank: if he had intended to deprive the bank it would be logically inconsistent to provide his current driver's license information to the bank. His actions were consistent with a belief of one who believed he was cashing a check made out to him. Even viewed in a light most favorable to the State, the evidence was still insufficient to show he had the intent to deprive beyond a reasonable doubt.

## VI. CONCLUSION

Based on the foregoing facts and authorities, Mr. Coleman respectfully asks this Court accept review of his petition.

Dated this 16th day of December, 2016.

Respectfully submitted,

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# APPENDIX A

**FILED**  
**OCTOBER 4, 2016**  
In the Office of the Clerk of Court  
WA State Court of Appeals, Division III

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

STATE OF WASHINGTON,	)	No. 33415-5-III
	)	
Respondent,	)	
	)	
v.	)	UNPUBLISHED OPINION
	)	
CRAIG STEVEN COLEMAN,	)	
	)	
Appellant.	)	

LAWRENCE-BERREY, A.C.J. — Craig Coleman appeals his convictions for first degree identity theft and second degree theft. He argues the State presented insufficient evidence to support both convictions. Mr. Coleman also submitted a statement of additional grounds for review (SAG). In affirming, we determine that sufficient evidence supports both convictions and reject Mr. Coleman’s SAG arguments.

FACTS

The State charged Mr. Coleman with first degree identity theft and second degree theft. The following facts were testified to at trial:

On September 2, 2014, Mr. Coleman entered the Baker Boyer Bank in Kennewick to cash a check made payable to him in the amount of \$3,470.18. The check was drawn

on the account of Columbia River Plumbing and the maker's signature appeared genuine to the teller. Mr. Coleman endorsed the check and the teller gave Mr. Coleman \$3,470.18 in cash. The teller soon after had doubts whether the check was genuine. She directed a coworker to contact the owner of Columbia River Plumbing.

Desiree Lindstrom is the owner of Columbia River Plumbing. She testified that she does the payroll for her small company, and that she knows all of her employees and all of the subcontractors her company uses. She testified that Mr. Coleman was never an employee nor a subcontractor for her company. She told the jury she had never met Mr. Coleman, nor had she ever written a check on her company account for \$3,470.18. She explained she used the check number on the check to identify the true payee, which was Hooper's Plumbing. She further explained that the bank credited her business's account after its investigation.

On cross-examination, Ms. Lindstrom admitted that Hooper's Plumbing never called her to report the check missing. On re-direct, she stated the check she wrote to Hooper's Plumbing was never located. She also emphatically stated that Hooper's Plumbing never used her company's check to pay anyone.

On re-cross, she stated she had discussions with Hooper's Plumbing about the check—inferring that it was she who called that company about the check—but defense

counsel told her she could not testify about those discussions.

The jury convicted Mr. Coleman on both counts. He appeals.

### ANALYSIS

#### A. SUFFICIENCY OF EVIDENCE FOR BOTH CONVICTIONS

In a criminal case, the State must provide sufficient evidence to prove each element of the charged offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 316, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979). When a defendant challenges the sufficiency of the evidence, the proper inquiry is “whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt.” *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). “[A]ll reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant.” *Id.* Furthermore, “[a] claim of insufficiency admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom.” *Id.* In a challenge to the sufficiency of the evidence, circumstantial evidence and direct evidence carry equal weight. *State v. Goodman*, 150 Wn.2d 774, 781, 83 P.3d 410 (2004).

A person commits first degree identity theft when that person knowingly obtains, possesses, transfers, or uses a means of identification or financial information *with the*

*intent to commit or to aid and abet any crime*, and obtains credit, money, goods, services, or anything else of value in excess of \$1,500. RCW 9.35.020(1)-(2). A person commits second degree theft when that person wrongfully obtains or exerts unauthorized control over someone else's property, and *intends to deprive the other person of his or her property*. RCW 9A.56.020(1)(a); RCW 9A.56.040(1)(a). Here, Mr. Coleman challenges the sufficiency of the evidence on the italicized intent elements of these two crimes.

Intent means acting "with the objective or purpose to accomplish a result which constitutes a crime." RCW 9A.08.010(1)(a). "Intent is rarely provable by direct evidence, but may be gathered, nevertheless, from all of the circumstances surrounding the event." *State v. Gallo*, 20 Wn. App. 717, 729, 582 P.2d 558 (1978). Criminal intent may be inferred "from conduct that plainly indicates such intent as a matter of logical probability." *State v. Abuan*, 161 Wn. App. 135, 155, 257 P.3d 1 (2011).

The State presented the following evidence to support its case: (1) Mr. Coleman was not an employee of Columbia River Plumbing or one of its subcontractors; (2) Ms. Lindstrom, who oversees Columbia River Plumbing's payroll, never authorized a payroll check for Mr. Coleman; (3) Mr. Coleman did not have permission to use Columbia River Plumbing's checks; (4) the check number of the company check negotiated by Mr. Coleman corresponded to a company check payable to Hooper's Plumbing, but for a

lesser amount; (5) Hooper's Plumbing never received the check; and (6) Hooper's Plumbing would not use one of Columbia River Plumbing's checks to pay anyone.

Viewing the evidence and all inferences in the light most favorable to the State, a rational trier of fact could find there was only one plausible reason for Mr. Coleman to possess the altered check: Mr. Coleman, himself, altered the payee and the amount of the check with the intent of using the altered check to deprive the bank of its property. We conclude that a rational trier of fact could find, beyond a reasonable doubt, the State proved the intent element of both crimes.

B. STATEMENT OF ADDITIONAL GROUNDS

Mr. Coleman first argues the evidence is insufficient to support the convictions.

We addressed this argument above.

Mr. Coleman next asks this court for an order requiring the victim and witnesses in this case to be interviewed before trial. He cites to *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963) in support. In *Brady*, the Supreme Court held "that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." 373 U.S. at 87. Here, Mr. Coleman does not assert that any evidence was withheld. He is merely asking for an order requiring the

victim and witnesses in this case to be interviewed before trial. *Brady* does not support his request for such an order.

Mr. Coleman next argues his Sixth Amendment right to confront witnesses was violated. Specifically, he argues Hooper's Plumbing was the victim, and as the victim was required to testify, and the failure of Hooper's Plumbing to testify as to nonpayment creates reasonable doubt whether Hooper's Plumbing even exists. Under the Sixth Amendment to the United States Constitution, a defendant has a right to confront his accuser. This right has been interpreted as prohibiting hearsay evidence to the extent such evidence is testimonial in nature. *Crawford v. Washington*, 541 U.S. 36, 51, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004). Testimonial hearsay refers to pretrial statements or assertions by a nontestifying witness which, when made, could reasonably be anticipated to be used for prosecutorial purposes. *State v. Pearson*, 180 Wn. App. 576, 582, 321 P.3d 1285, review denied, \_\_\_ Wn.2d \_\_\_, 337 P.3d 327 (2014). Mr. Coleman's argument does not present a *Crawford* confrontation issue. First, the issue of who the victim is has nothing to do with the confrontation clause. Second, the bank, not Hooper's Plumbing, was the victim. The bank was out \$3,470 as a result of the altered check. Third, Ms. Lindstrom testified that she had discussions with Hooper's Plumbing about the missing check, but defense counsel correctly told Ms. Lindstrom she could not testify about those



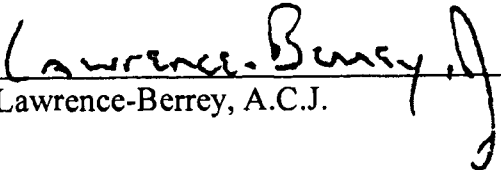
discussions. Fourth, to the extent Ms. Lindstrom testified that Hooper's Plumbing did not receive the check, that statement was not testimonial hearsay. Such a statement by Hooper's Plumbing would be made for the purpose of having Ms. Lindstrom issue a replacement check, not for prosecutorial purposes.

Mr. Coleman finally argues the State's decision not to call a witness from Hooper's Plumbing violated his rights under article I, section 9 of the Washington Constitution. That section states, "No person shall be compelled in any criminal case to give evidence against himself, or be twice put in jeopardy for the same offense." CONST. art. I, § 9. Section 9 concerns self-incrimination and double jeopardy protections. *See State v. Templeton*, 148 Wn.2d 193, 207-08, 59 P.3d 632 (2002) (explaining how the self-incrimination component of article I, section 9 is equivalent to the Fifth Amendment and receives the same definition and interpretation); *State v. Glasmann*, 183 Wn.2d 117, 121, 349 P.3d 829 (2015) (explaining how the double jeopardy component of article I, section 9 is equivalent to the Fifth Amendment and is interpreted the same). The State's decision not to call a witness from Hooper's Plumbing does not implicate Mr. Coleman's rights under article I, section 9. Mr. Coleman was not compelled to testify nor has he been placed in double jeopardy.

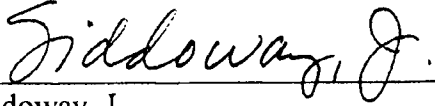
No. 33415-5-III  
*State v. Coleman*

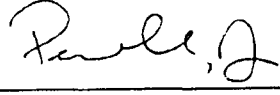
Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

  
Lawrence-Berrey, A.C.J.

WE CONCUR:

  
Siddoway, J.

  
Pennell, J.

# APPENDIX B

**FILED**  
**NOVEMBER 1, 2016**  
In the Office of the Clerk of Court  
WA State Court of Appeals, Division III

**COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON**

<b>STATE OF WASHINGTON,</b>	)	<b>No. 33415-5-III</b>
	)	
<b>Respondent,</b>	)	<b>ORDER DENYING</b>
	)	<b>MOTION FOR</b>
<b>v.</b>	)	<b>RECONSIDERATION,</b>
	)	<b>MOTION NOT TO AWARD</b>
<b>CRAIG STEVEN COLEMAN,</b>	)	<b>APPEAL COSTS AND</b>
	)	<b>MOTION TO ENLARGE</b>
<b>Appellant.</b>	)	<b>TIME TO FILE REPORT</b>

The court has considered appellant's motion for reconsideration, motion not to award appeal costs, and motion to enlarge time to file report of continued indigency.


The court is of the opinion the motions should be denied. Therefore,

IT IS ORDERED the motion for reconsideration of this court's decision of October 4, 2016, is denied.

IT IS FURTHER ORDERED that the motion not to award appeal costs and the motion to enlarge time to file report of continued indigency are denied.

PANEL: Judges Lawrence-Berrey, Siddoway, and Pennell

FOR THE COURT:

  
GEORGE FEARING  
CHIEF JUDGE

CERTIFICATE OF SERVICE (RAP 18.5(b)).

I, Marie Trombley, do hereby certify under penalty of perjury that on December 16, 2016 I provided by electronic service, per agreement between the parties, a true and correct copy of the Supplemental Petition for Review to the following:

EMAIL: prosecuting@co.benton.wa.us Andrew K. Miller  
Benton County Prosecutor's Office

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Coyote Ridge Corrections Center  
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Good morning,

Attached to this email is a motion to supplement the petition for review in State v. Craig Coleman, Supreme Court No. 93934-9.

I have also attached the supplemental Petition.

Please let me know if you have any difficulty downloading or opening the documents.

The Benton County Prosecutor has received notice of this filing by email.

Thank you,  
Marie Trombley

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