

No. 65072-6-I

**COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION ONE**

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**STATE OF WASHINGTON, Respondent,**

**v.**

**ANDREW STEAN, Appellant.**

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**BRIEF OF RESPONDENT**

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**A. ISSUE PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR**

1. Whether there is sufficient evidence to support Stean's conviction for criminal impersonation in the first degree, pursuant to RCW 9A.60.040(1)(a), because Stean assumed another identification in an effort to defraud offices from determining he had an outstanding warrant for his arrest.

**B. FACTS**

**1. Substantive Facts**

On May 28<sup>th</sup>, 2008 Whatcom County Deputy Paz initiated a traffic stop on a vehicle driven by Andrew Stean. Supp CP \_\_ (FF 1), 1RP 9-11. Stean claimed he did not have his driver's license with him and instead told Deputy Paz he was "Thomas Anderson" and his date of birth was October 19, 1982. 1RP 18. Dispatch then relayed to Deputy Paz that Anderson had no outstanding warrants and no Washington driver's license. 1RP 20. Stean then advised Deputy Paz of a different spelling of his name and that his driver's license was issued out of California. RP 20. Even after Deputy Paz arrested Stean for providing false information, Stean maintained his assumed identity and was arrested as "Thomas Anderson." RP 20. Another officer finally determined and advised Deputy Paz that he thought he might have Andrew Stean in his custody. RP 23. When Paz confronted Stean with this identity, Stean admitted he was not Thomas Anderson and that he had given a bad name to avoid

arrest on an outstanding warrant. RP 24, 41. Stean subsequently told Deputy Gervol following his arrest and admission that he was not Thomas Anderson, that Thomas Anderson was the name of one of his relatives. RP 55.

## **2. Procedural facts**

Stean was charged with first degree criminal impersonation, driving while license suspended in the third degree and misdemeanor possession of marijuana. CP 44-46. After failing to appear for a status hearing conference, Stean was also charged with one count of bail jumping. CP 39-41. At a pre-trial hearing the State moved to dismiss the driving while license suspended charge and the court suppressed marijuana evidence found in a search of Stean's car incident to his arrest pursuant to Arizona v. Gant. 1RP 7, 112-115.

After a bench trial Stean was found guilty of criminal impersonation and once count of bail jumping. 1RP 110-117. The trial court belatedly entered findings of fact and conclusions of law on November 2<sup>nd</sup> 2010 after appellate counsel notified the trial division that findings still needed to be entered. Supp CP \_\_\_\_ (sub nom 61). Stean timely appeals his criminal impersonation conviction. CP 13-22.

## C. ARGUMENT

1. **Evidence that Stean assumed the identity of another throughout a traffic stop to avoid being arrested on an outstanding warrant is sufficient to support Stean's conviction for criminal impersonation.**

Stean contends the evidence presented below is insufficient to support his conviction for criminal impersonation. Br. of App. at 4. Specifically, Stean contends there is insufficient evidence in the record to demonstrate he 'assumed' a false identity or acted with 'intent to defraud' another. Br. of App. at 4, 7.

In reviewing a challenge to the sufficiency of the evidence, the issue is "whether, after examining the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Joy, 121 Wn.2d 333, 338-39, 851 P.2d 654 (1993). In applying this test, "all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant." Id. at 339. Circumstantial and direct evidence are considered equally reliable. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). Where the sufficiency of the evidence depends on the legal meaning of a statutory term, the initial issue is a question of law which is reviewed de novo. State v. McCormack, 117 Wn.2d 141, 812 P.2d 483 (1991).

a. *There was sufficient evidence to support a finding Stean assumed a false identity.*

Stean was charged with one count of criminal impersonation pursuant to RCW 9A.60.040(1)(a). A person is guilty of criminal impersonation in the first degree if a person assumes a false identity and does an act in his or her assumed character with intent defraud another or for any other unlawful purpose. RCW 9A.60.040(1)(a).

In order to determine the meaning of a statute, courts look to the plain meaning of the language of the statute. “If the statute is clear on its face, its meaning is to be derived from the language of the statute alone.” State v. Keller, 143 Wn.2d 267, 276, 19 P.3d 1030 (2001). Where the language of the statute is clean and unambiguous, courts must give effect to its plain meaning. State v. A.M., 109 Wn.App. 325, 328, 36 P.3d 552 (2001). “Unlikely, absurd or strained consequences resulting from literal reading should be avoided.” State v. McDougal, 120 Wn.2d 334, 350, 841 P.2d 1232 (1992).

A statute is ambiguous when its language is susceptible to two or more reasonable interpretations. Under the rule of lenity, courts must construe ambiguous statutes in the light most favorable to the defendant. State v. McGee, 122 Wn.2d 783, 864 P.2d 912 (1993). The rule of lenity does not require however, courts to “reject and available and sensible

interpretation in favor of a fanciful or perverse one.” *Id. citing Commonwealth v. Tata*, 28 Mass. App. Ct.23, 545 N.E.2d 1179 (1989).

The criminal impersonation statute does not further define assumes or the term “assumes a false identity.” Where there is no statutory definition for a term courts give words their common legal or ordinary meaning. *State v. Chester*, 133 Wn.2d 15, 22, 940 P.2d 1374 (1997). Non-technical words are given their dictionary definition. *Id.* at 22.

In *State v. Donald*, 68 Wn.App. 543, 550, 844 P.2d 447, *review denied*, 121 Wn.2d 1024 (1993), the court commented in the context of determining criminal impersonation is not a lesser included offense of attempting to obtain a controlled substance either by use of a false name or by fraud, deceit, misrepresentation or subterfuge, that the “assumption of a false identity” was different than the use of a false name. *Id.* at 550. Stean argues inferentially based on *Donald* that “assumption of a false identity” therefore requires the use of someone else’s identification or an “officially prepared document” and therefore requires more than just providing a false name. Br. of App. 5.

Stean suggests a strained reading of the statute and misconstrues the facts of this case. The plain meaning of the criminal impersonation statute is clear from its language. The dictionary defines “assume” as “to take upon oneself: Undertake” “to take on: adopt.” WEBSTER’S II NEW

RIVERSIDE DICTIONARY 132 (1984). The statute therefore does not require Stean physically use somebody else's identification or formal document but merely requires evidence in the record that demonstrates the defendant undertook or adopted another's identification for fraudulent or unlawful purpose.

In this case Stean held himself out or adopted another person's identification, one of his relatives, by providing a false name and then by maintaining this false identity throughout his contact with law enforcement. Stean maintained his assumed identity, Thomas Anderson, by providing the spelling, his date of birth and clarifying that his driver's license was issued by the state of California. FF 1, 2, 1RP 18-22. In holding himself out as "Thomas Anderson" and maintaining this false identity throughout the entire investigatory stop and arrest, Stean assumed another's identity. When officers finally confronted Stean with his correct identity after he was arrested, Stean acknowledged he assumed the identity of "Thomas Anderson" so officers would not discover his outstanding warrant.

These facts, viewed in the light most favorable to State, infer Stean assumed the identity of another as proscribed by the plain language of the criminal impersonation statute.

*b. There is sufficient evidence in the record to support the trial court's determination that Stean assumed Thomas Anderson's identity with intent to defraud officers or for the unlawful purpose of avoiding arrest on an outstanding warrant.*

Stean further challenges his conviction by asserting there is insufficient evidence in the record to demonstrate Stean acted with intent to defraud another or for any other unlawful purpose as required by the statute. Br. of App. at 7.

A person acts with intent when he acts with objective or purpose to accomplish a result constituting a crime. State v. Ferreira, 69 Wn. App. 465, 850 P.2d 541 (1993). A trier of fact may infer intent from circumstantial evidence. State v. Simpson, 22 Wn. App. 572, 575, 590 P.2d 1276 (1979). Criminal intent may be inferred if a defendant's conduct plainly indicates the required intent as a matter of logical probability. State v. Stearns, 61 Wn. App. 224, 228, 810 P.2d 41 (1991).

In this case Stean provided a false name and assumed the identity of "Thomas Anderson" throughout his contact with law enforcement in an effort to defraud officers to avoid being arrested on an outstanding warrant. 1RP 24, 54-55. Stean's intent can be discerned by his conduct (consistently insisting on his false identity) and his explanation when officers finally determined and confronted him with his true identity, that

he assumed his false identity to avoid detection. By Stean's actions and admission, the court reasonable inferred Stean assumed his relative, Thomas Anderson's, identity for an unlawful purpose of obstructing law enforcement to avoid being arrested on an outstanding warrant. In doing so, Stean committed the crime of criminal impersonation.

**3. Remand for entry of findings of fact and conclusions of law is not necessary because the trial court entered such findings November 2<sup>nd</sup>, 2010.**

Stean requested this Court remand this matter to the trial court for entry of findings of fact and conclusion of law. Br. of App. at 10. The trial court has however, now entered its findings and conclusions. Supp. CP \_\_\_\_ (sub nom 61). Therefore, the only potential issue is whether the court's late entry of findings mandates reversal. State v. Eaton, 82 Wn.App. 723, 727, 919 P.2d 116 (1996); State v. Head, 136 Wn.2d 619, 622-25, 964 P.2d 1187 (1998). The State contends they do not.

Criminal Rule 6.1(d) directs the trial court to set forth written findings of fact and conclusions of law following a bench trial. Appellate courts rely on the trial court's findings and conclusions "to ensure efficient and accurate appellate review." State v. Cannon, 130 Wn.2d 313, 329, 922 P.2d 1293 (1996). In Cannon, the defendant argued for a reversal

where the trial court waited nearly two years before filing its written findings and conclusions. The appellate court refused, noting that,

Although the practice of submitting late findings and conclusions is disfavored, they may be “submitted and entered even while an appeal is pending” if the defendant is not prejudiced by the belated entry of findings.

Id. at 329.

After examining the record, the court in Cannon concluded that the defendant had not suffered prejudice because “the appeal was not delayed by the late filing” and “the State did not tailor or alter the findings and conclusions to meet issues and arguments raised by [the defendant] in his brief.” Cannon, 130 Wn.2d at 330.

Here, the record does not support an inference that the State tailored its findings to address the sufficiency of the evidence issue asserted in Stean’s opening brief. Special deputy Kristen Reid did not read Stean’s opening brief prior to preparing the findings in this case. Additionally, the findings reflect the trial court’s oral ruling immediately following the bench trial. Under these circumstances, Stean cannot demonstrate how the belated entry of the trial court findings were prejudicial or could somehow require reversal of his conviction.

D. CONCLUSION

Based on the foregoing, the State respectfully requests this court affirm Stean's conviction for criminal impersonation in the first degree.

Respectfully submitted this 16 day of November 2010.

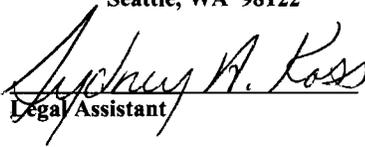


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CERTIFICATE

I certify that on this date I placed in the United States mail with proper postage thereon, a true and correct copy of the document to which this certificate is attached, to appellant's counsel, Andrew Zinner, addressed as follows:

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