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A. ASSIGNMENT OF ERROR

The State presented insufficient evidence to convict Ms. Cross of any crime.

B. ISSUES PRESENTED

1. Did the State present sufficient evidence to convict Ms. Cross of Identity theft in the Second degree where the State presented no evidence that Ms. Cross possessed Mr. Rugamas' information with the intent to commit a crime?
2. Did the State present sufficient evidence to convict Ms. Cross of forgery where the State presented no evidence that Ms. Cross knew the check was a forgery?

C. STATEMENT OF THE CASE

**Factual and Procedural Background**

In early December, 2009, Ms. Teresa Cross had just ended a long-term relationship and was single for the first time in 24 years. RP 219-222, 225, 246-247. Ms. Cross had been unemployed for two-and-a-half years, since the birth of her youngest child. RP 252. Ms. Cross' mother had been supporting her ever since the birth of Ms. Cross' youngest child. RP 222-223, 252. Ms. Cross was very vulnerable at the time. RP 225. Ms. Cross began an online romantic relationship with a man calling himself John Lauren she met on a website titled MyYearbook.com. RP 220-221, 246-247. Mr. Lauren told Ms. Cross that he was from the U.K. but was living in Florida. RP 222, 248. Mr. Lauren told Ms. Cross that he had a six-year-old son who still lived in the U.K. RP 228, 248-249. Mr.

Lauren told Ms. Ross that he was a civil engineer, but Ms. Cross didn't know what a civil engineer was. RP 255.

Ms. Cross communicated with Mr. Lauren mostly by e-mail and instant messaging. RP 247. Ms. Cross did speak to Mr. Lauren three times on the telephone but the phone calls were very short and she spoke to him for a total of no more than 30 minutes during the two months of the relationship. RP 247-248. Mr. Lauren never gave Ms. Cross his phone number and said that he didn't have a telephone. RP 250. Mr. Lauren did have an accent, but it was not very strong. RP 248. Mr. Lauren told Ms. Cross that he was going to move to Washington State. RP 251.

Several weeks prior to January 26, 2010, Mr. Lauren began asking Ms. Cross to send him money. RP 226, 250. Mr. Lauren asked Ms. Cross for \$300 to \$500 dollars. RP 250. Mr. Lauren told Ms. Cross that he had been mugged in the U.K. and that he needed to money to pay for his son's school. RP 222, 228, 254-255. Ms. Cross told Mr. Lauren she was unemployed and had no money and declined to send Mr. Lauren any money. RP 225-226, 254.

On January 26, 2010, Ms. Cross received an instant message from Mr. Lauren asking if she had received the check. RP 226. Ms. Cross did not know what Mr. Lauren was talking about and responded to Mr. Lauren by telling him that he must have her confused with someone else. RP 226-

227. Mr. Lauren had previously told Ms. Cross that he would pay her back if she loaned him money, so Ms. Cross believed that someone else had loaned Mr. Lauren money and Mr. Lauren had gotten Ms. Cross confused with the person who had loaned Mr. Lauren the money. RP 226-227.

Mr. Lauren told Ms. Cross that she was the person he had intended to send the check to and that he was not confused. RP 227-228. Mr. Lauren told Ms. Cross that he had borrowed some money from a friend and had the friend send the check to Ms. Cross. RP 259. Mr. Lauren asked Ms. Cross to deposit the check in her bank account and told her that it would clear in two or three days. RP 229, 256. Mr. Lauren asked Ms. Cross to then send a personal check of her own to Mr. Lauren's son, David. RP 227, 256-257, 261.

Ms. Cross checked her mailbox at her apartment on the night of January 26<sup>th</sup> and found a slip indicating that she had an envelope waiting for her at the manager's office. RP 228.

On the morning of January 27, Ms. Cross went to her apartment manager's office and picked up an envelope which she discovered contained a check. RP 258-259. The check was for \$2,850.75. RP 138. Ms. Cross sent Mr. Lauren an instant message and told him that unless he could give her a good reason why he had sent the check to her and not

directly to his son she would send the check back to Mr. Lauren's friend. RP 227, 232-233, 256-257. Ms. Cross never received a response to this message. RP 261.

Ms. Cross saw that the check was a Wells Fargo check. RP 229-230. Because the check was from Wells Fargo, Ms. Cross decided to cash the check at a Wells Fargo branch near her home rather than deposit the check in her bank account. RP 229-230. Ms. Cross did this because she was concerned about there being insufficient funds in the account of the person who wrote the check to cover the check and Ms. Cross did not want any trouble with her account or her mother's account. RP 230-231.

The check was drawn on the account of a Utah couple, Elizabeth and Robert Rugamas. RP 233. Ms. Cross went to the Wells Fargo and copied down the names, address, and telephone number of the Rugamas as given on the front of the check. RP 233-234. Ms. Cross copied this information down in case Mr. Lauren did not answer Ms. Cross' instant message and she needed to put the money back into the Rugamas account. RP 234. Ms. Cross left the slip of paper with the Rugamas information on it on the seat of her car in the UPS envelope that the check had arrived in. RP 235.

Ms. Cross went into the Wells Fargo and presented the check to Belinda DeLeon, a teller in the bank. RP 200-204, 235. Ms. Cross asked

to cash the check. RP 204, 264. Because Ms. Cross was not a member of the Wells Fargo Bank, Ms. DeLeon required Ms. Cross to provide two forms of identification in order to cash the check. RP 204. Because the check was for such a large amount, Ms. Cross was required to put her thumbprint, name and address on the back of the check. RP 204.

Ms. DeLeon noticed that the check was physically larger than the average personal check. RP 204. Because of the physical size of the check and the amount of money the check was for, Ms. DeLeon contacted her supervisor, Ms. Jocelyn Jones. RP 125-126, 204.<sup>1</sup> Ms. Jones also felt that the check looked abnormal. RP 135-136, 204. Ms. Jones noted that the check was unusually physically large, there were three or four different fonts used on the check, the fonts were of different sizes, and the memo confirmation did not make sense. RP 139.

Ms. Cross told Ms. Jones that she had received the check in the mail and had come into Wells Fargo to cash it because it was a Wells Fargo check. RP 206. Ms. Cross said she was supposed to cash the check and send the money to someone else. RP 208-209.

Ms. Cross told Ms. Jones that she knew the person who had mailed her the check, but did not know the people whose names were on the front

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<sup>1</sup> Ms. Jones' maiden name is Jocelyn Palmer. RP 126. Ms. Jones' legal name is Jones, but she went by Palmer while working at Wells Fargo. RP 126. During Ms. DeLeon's

of the check. RP 186.<sup>2</sup>

Elizabeth and Robert Rugamas, the individuals whose names were on the check as the owners of the account the check was drawn on, were members of the Wells Fargo banking system and Ms. Jones was able to look them up and find out their information. RP 139-140. Ms. Jones called the Rugamases to ask them about the check. RP 139-140. Ms. Jones called the phone number in the Wells Fargo computer system, not the phone number on the front of the check. RP 140.

At the same time Ms. Jones was calling the Rugamases, Ms. Cross called the phone number on the front of the check. RP 140-141, 237. At the same time Ms. Jones was speaking to Mr. Rugamas, Ms. Cross told Ms. Jones that she was speaking to Mr. Rugamas. RP 140-142.

A man answered the phone number that Ms. Cross called. RP 238. Ms. Cross had a conversation with the man on the phone and felt relieved at the end of the call. RP 238-239.

Mr. Rugamas told Ms. Jones that he had never heard of Ms. Cross and that he and his wife had not authorized the check. RP 142. Ms. Jones

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testimony, she referred to Ms. Jones as Ms. Palmer. RP 205-206, 209. Ms. Jones will be referred to by her legal name in this brief.

<sup>2</sup> At trial, Ms. Jones testified that Ms. Cross first said that she knew the person that gave her the check, but, when pressed, changed her story to say that she didn't know the person and that she had gotten the check in the mail. RP 145. However, the responding officer documented in his police report that Ms. Jones told the officer that Ms. Cross had told Ms. Jones that she got the check from someone she knew but that she didn't know the person on the check. RP 186-187.

hung up the phone and dialed 911. RP 142. Ms. Cross went and sat in the lobby and waited. RP 142. The police arrived before Ms. Jones got off the telephone with the 911 operator. RP 142.

Puyallup Police Office Don Bourbon was dispatched to the Wells Fargo Bank on January 27, 2010. RP 163-167. When Officer Bourbon arrived at the bank, he contacted Ms. Cross who was waiting in the lobby. RP 167-168. Officer Bourbon identified himself, told Ms. Cross he was investigating a crime, and informed Ms. Cross of her constitutional rights. RP 168, 242. When Officer Bourbon identified himself, Ms. Cross hung her head and said, "oh, no." RP 168, 242. Ms. Cross indicated she understood her rights and agreed to talk to Officer Bourbon. RP 169, 243.

Ms. Cross told Officer Bourbon that she had been in an internet relationship with a man for about a month, that the man had told Ms. Cross he had been mugged, that his son needed money, and that the man asked Ms. Cross to send him some money. RP 170. Ms. Cross told Officer Bourbon that she communicated with the man by instant messaging. RP 170. Ms. Cross told Officer Bourbon that the man's name was John Lauren, the man's son's name was David Lauren, and that John Lauren lived in Florida. RP 171-172. Ms. Cross told Officer Bourbon that Mr. Lauren had repeatedly asked her to send him money but that she declined because she was unemployed and had no money. RP 172. Ms.

Cross told Officer Bourbon that Mr. Lauren had sent her a check that she received the morning of January 27, 2010. RP 172. Ms. Cross told Officer Bourbon that she knew who had sent her the check but did not know the maker of the check. RP 245. Ms. Cross told Officer Bourbon that she had brought the check to the bank to see if it was legitimate or not. RP 173. Ms. Cross told Officer Bourbon that Mr. Lauren had asked her to cash the check and send the money to his son. RP 173.

When Officer Bourbon finished talking with Ms. Cross, he spoke with Ms. Jones who told him what had transpired that morning. RP 143, 174. After learning from Ms. Jones that the Rugamases confirmed that Ms. Cross wasn't supposed to have the Rugamases account number or any of their information, Officer Bourbon placed Ms. Cross under arrest. RP 174.

Ms. Jones told Officer Bourbon that Ms. Cross had told Ms. Jones that she got the check from someone she knew but that she didn't know the person on the check. RP 186-187. Ms. Jones also told Officer Bourbon that Ms. Jones had called the phone number on the check. RP 188-189, 244.

Officer Bourbon handcuffed Ms. Cross and placed her in the back of his patrol car. RP 175, 243. At that point Ms. Cross told Officer Bourbon that the envelope the check came in was in her car and gave

Officer Bourbon permission to retrieve the envelope from her car. RP 175, 243. Officer Bourbon retrieved the envelope from the passenger seat of Ms. Cross' vehicle and found the piece of paper with the Rugamases information inside of the envelope. RP 175.

Officer Bourbon called the telephone number on the check and it connected to a Vancouver, British Columbia land line. RP 184. Officer Bourbon never spoke to anyone at the Vancouver number since the number went to voicemail. RP 185.

After Ms. Cross had been taken to jail, Officer Bourbon contacted the Rugamases and confirmed what they had told the bank. RP 176. At the jail, Ms. Cross insisted she was innocent and filled out a statement form. RP 176.

On January 29, 2010, Ms. Cross was charged with one count of identity theft in the second degree and one count of forgery. CP 1-2.

On November 18, 2010, Ms. Cross filed a list of 15 exhibits she wished to have introduced at trial along with copies of those exhibits. CP 10-80.

On December 7, 2010, a hearing was held regarding the admissibility of the exhibits Ms. Cross wished to have introduced at trial. RP 15-61. The exhibits consisted of the following documents: printouts of computer conversations between Ms. Cross and Mr. Lauren; printouts of



computer conversations between Ms. Cross and other victims of Mr. Lauren's check cashing romance scams; printouts of a web page dedicated to exposing Mr. Laurens' criminal activities from a website titled romancescam.com; printouts of discussions between victims of Mr. Lauren posted on romancescams.com; a copy of the mailing label on the envelope the check arrived in; a copy of the second check Ms. Cross received from Mr. Lauren to cash; a printout of the instant message conversation that occurred between Ms. Cross and Mr. Lauren on January 26, 2010; and printouts from romancescam.com showing a list of names, including John Lauren, associated with a particular picture being used to scam women in romance scams. CP 10-80. At the hearing, counsel for Ms. Cross also offered some scam-related e-mail and a copy of a telephone bill as additional exhibits. RP 18-19.

Counsel for Ms. Cross explained to the court the purpose of the exhibits and what the exhibits would be offered to prove. RP 19-35. The State objected to the admissibility of all the exhibits on the bases that Ms. Cross had cited no authority for the admission of the exhibits, the exhibits were hearsay and no exception to the hearsay rule had been cited to render any of the exhibits admissible, none of the exhibits had been properly authenticated, and many of the exhibits post-dated January 27, 2010, rendering the exhibits irrelevant. RP 35-44.

Counsel for Ms. Cross argued that Ms. Cross could authenticate the documents printed from the internet. RP 45-46. The trial court, assuming that Ms. Cross could authenticate all the documents, questioned counsel for Ms. Cross regarding the relevance of each of the exhibits. RP 46. Counsel for Ms. Cross responded that the relevance was that it demonstrated that the person posing as John Lauren had repeatedly executed the same scam of becoming involved in online romantic relationships and then getting the women he was involved with to unknowingly cash fraudulent checks. RP 46-47. The trial court then asked how Ms. Cross would overcome the problem that the exhibits were made up largely of hearsay. RP 47. Counsel for Ms. Cross responded that the statements in the exhibits would be admissible under the past recollection recorded, present-sense impression, and excited utterance exceptions to the hearsay rule. RP 47-55.

The trial court requested that counsel for Ms. Cross prepare a written document that listed each exhibit and why Ms. Cross believed each exhibit was admissible and under was evidentiary rule the exhibits were admissible. RP 57-58. The court held that until such a document was provided, no mention of any of Ms. Cross' proposed exhibits would be permitted. RP 58. Counsel for Ms. Cross argued that the exhibits were relevant because it established that Mr. Lauren scammed Ms. Cross in the



same manner that he had scammed other women. RP 59-60. Counsel for Ms. Cross prepared and filed a document listing each proposed defense exhibit and indicating the relevance of the exhibit and under what evidentiary rule the exhibit was admissible. RP 61, CP 110-114.

On December 7, 2010, a 3.5 hearing was held to determine the admissibility of Ms. Cross' statements to Officer Bourbon. RP 62-89. The trial court ruled that Ms. Cross' statements were admissible. RP 89.

Following the 3.5 hearing, the trial court again addressed the admissibility of Ms. Cross' proposed exhibits. RP 89-114. The trial court ultimately ruled that all the exhibits were inadmissible because all the exhibits, save the telephone records, post-dated the attempted cashing of the check and were, therefore irrelevant to any issue before the jury. RP 108, 114. The court also ruled that none of the exhibits had sufficient "indicia of trustworthiness" and that Ms. Cross could not authenticate the exhibits and that the exhibits were all irrelevant. RP 109, 114.

Trial began on December 8, 2010. RP 26.

Ms. Cross moved the court to permit Ms. Cross to introduce evidence that Ms. Cross received a second check from Mr. Lauren, but the trial court refused to permit admission of evidence of the check on grounds that evidence of the second check was irrelevant. RP 193-195. The trial court held that Ms. Cross could not authenticate where the

second check came from and that any statements by Ms. Cross regarding the check would be self-serving and, therefore, inadmissible. RP 194-195.

The jury found Ms. Cross guilty of both charges. CP 145-146.

Ms. Cross stipulated to her prior record and offender score and received a sentence of alternative confinement. CP 253-266.

Notice of appeal was filed on May 19, 2011. CP 274-275.

D. ARGUMENT

**The State presented insufficient evidence to convict Ms. Cross of any crime.**

The standard of review on a challenge to the sufficiency of the evidence is whether, after viewing the evidence most favorably to the State, any rational trier of fact could have found the essential elements of the crimes charged beyond a reasonable doubt. *State v. Prestegard*, 108 Wn.App. 14, 22, 28 P.3d 817 (2001), *citing State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

In determining whether the “necessary quantum of proof exists,” the reviewing court must be convinced that “substantial evidence” supports the State’s case. *Prestegard*, 108 Wn.App. at 22-23, 28 P.3d 817, *citing State v. Fiser*, 99 Wn.App. 714, 718, 995 P.2d 107, *review denied*, 141 Wn.2d 1023, 10 P.3d 1074 (2000). “Substantial evidence is evidence that ‘would convince an unprejudiced, thinking mind of the truth of the fact to which the evidence is directed.’” *Prestegard*, 108 Wn.App.

(1) No person may knowingly obtain, possess, use, or transfer a means of identification or financial information of another person, living or dead, with the intent to commit, or to aid or abet, any crime.

(2) Violation of this section when the accused or an accomplice violates subsection (1) of this section and obtains credit, money, goods, services, or anything else of value in excess of one thousand five hundred dollars in value shall constitute identity theft in the first degree. Identity theft in the first degree is a class B felony punishable according to chapter 9A.20 RCW.

(3) A person is guilty of identity theft in the second degree when he or she violates subsection (1) of this section under circumstances not amounting to identity theft in the first degree.

Thus, to convict Ms. Cross of second degree identity theft, the State had the burden of proving, beyond a reasonable doubt, that Ms. Cross (1) *knowingly* obtained, possessed, used, or transferred (2) a means of identification or financial information of another person (3) with the *intent* to commit, aid, or abet any crime and (4) obtained anything of a value less than \$1500.

The undisputed evidence presented at trial was that Ms. Cross was in an online relationship with someone calling themselves John Lauren and that Mr. Lauren asked Ms. Cross to send him money but Ms. Cross declined to do so. The undisputed evidence presented at trial was that Ms. Cross then received an envelope containing a check that Mr. Lauren asked her to deposit into her checking account and then send the money on to

Mr. Lauren's alleged son. The undisputed evidence introduced at trial was that Ms. Cross copied down Mr. Rugamas' information in case she needed to send the check or the money back to Mr. Rugamas. The undisputed evidence presented at trial was that Ms. Cross attempted to cash the check, complying with all anti-fraud precautions such as putting her thumbprint and name and address on the back of the check she was trying to cash, and that Ms. Cross complied with everything the bank employees asked her to do and waited in the lobby until the police arrived. The undisputed evidence presented at trial was that Ms. Cross consistently told everyone from the bank teller to the jury that she had received the check in the mail from someone she knew, Mr. Lauren, that she did not know the people who purported made the check, and that Mr. Lauren had asked her to deposit the check in her account but she decided to cash it instead because she didn't want her or her mother's bank account to be affected if there were insufficient funds to cover the check.

The undisputed evidence at trial clearly established that Ms. Cross received a check in the mail, that she believed it was from Mr. Lauren, and that Ms. Cross cashed the check believing that the check was from a friend of Mr. Lauren. Ms. Cross believed that she was doing Mr. Lauren a favor and that she was authorized to possess the check and the information on the check. The State presented no evidence which would support an

inference by the jury that Ms. Cross knowingly obtained, possessed, used, or transferred a means of identification or financial information of another person, living or dead, **with the intent to commit, or to aid or abet, any crime.**

At worst, Ms. Cross was guilty of being naive and falling for a scam run by an experience scam artist. However, the evidence support no inference that Ms. Cross possessed Mr. Rugamas' information with the intent to commit any crime. Any inference on the part of the jury that Ms. Cross possessed Mr. Rugamas' information with the intent to commit a crime would be rank and baseless speculation and conjecture. The only evidence introduced regarding Ms. Cross' intent as to Mr. Rugamas' information was that Ms. Cross copied the information down in case she needed to send the check or money back to Mr. Rugamas. This is *not* evidence of an intent to commit a crime using Mr. Rugamas' information.

The State presented insufficient evidence to establish the element of second degree identity theft that Ms. Cross possessed Mr. Rugamas' information with the intent of using it to commit a crime.

*b. Forgery.*

Ms. Cross was charged with forgery in violation of RCW 9A.60.020(1)(a)(b) based on the check Ms. Cross attempted to cash. CP 1-2. Under RCW 9A.60.020(1),

A person is guilty of forgery if, with intent to injure or defraud:

(a) He or she falsely makes, completes, or alters a written instrument or;

(b) He or she possesses, utters, offers, disposes of, or puts off as true a written instrument which he or she knows to be forged.

Thus, to convict Ms. Cross of forgery, the State's burden was to prove, beyond a reasonable doubt, that Ms. Cross (1) made, completed, or altered a written instrument, or (2) possessed, uttered, offered, disposed of, or put off as true, a written instrument which (3) she *knew* to be forged.

The State presented no evidence that Ms. Cross made, completed, or altered a written instrument. The undisputed evidence presented at trial was that Ms. Cross received the check in an envelope mailed to her from California.

Similar to the identity theft charge, the State presented no evidence that Ms. Cross *knew* the check was a forgery. The undisputed evidence introduced at trial established that Ms. Cross believed the check was from a friend of Mr. Lauren's and that she was supposed to cash it and send the money to Mr. Lauren's son. No evidence introduced by the State even suggested that Ms. Cross *knew* the check was a forgery. Any inference by the jury that Ms. Cross *knew* the check was a forgery was baseless speculation and conjecture unsupported by any evidence introduced at

trial.

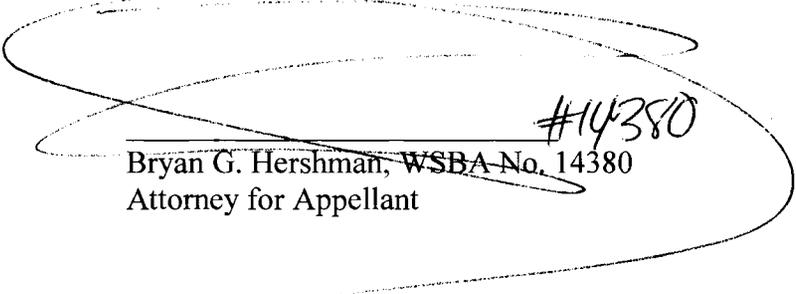
The State presented insufficient evidence to establish either that Ms. Cross made a false instrument or that Ms. Cross knowingly possessed and attempted to use a false instrument. Thus, the State presented insufficient evidence to convict Ms. Cross of forgery.

E. CONCLUSION

For the reasons stated above, this court should vacate Ms. Cross' convictions and dismiss the charges against her with prejudice.

DATED this 7<sup>th</sup> day of November, 2011.

Respectfully submitted,

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Bryan G. Hershman, WSBA No. 14380  
Attorney for Appellant



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Court of Appeals No. 42117-8-II

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

STATE OF WASHINGTON, )  
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 Respondent, )  
 )  
 vs. )  
 )  
 Teresa Cross, )  
 )  
 Appellant. )  
 )  
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CERTIFICATE OF SERVICE  
(AMENDED)

THIS IS TO CERTIFY that copies of Appellant's  
**Opening Brief of Appellant**, have been hand delivered to the Pierce  
County Prosecuting Attorney's, at 930 Tacoma Ave. S., Tacoma., WA  
98402, and an original, plus one copy has been hand delivered to the  
the Court of Appeals, Division II, 950 Broadway Suite 300 Tacoma, WA  
98402. Further, a copy has been mailed to the Appellant Teresa  
Cross at her address 2905 5<sup>th</sup> Ave NE, Apt G104, Puyallup, WA 98372.

DATED this 9th day of November, 2011.

BY: BRYAN G. HERSHMAN, #14380  
Attorney for Appellant

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