

NO. 47413-1-II

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

STATE OF WASHINGTON,
Respondent,

v.

CHASE SCOTT POLEDNA,
Appellant.

APPEAL FROM THE SUPERIOR COURT OF THE STATE
OF WASHINGTON FOR GRAYS HARBOR COUNTY

THE HONORABLE STEVEN E. BROWN, JUDGE

BRIEF OF RESPONDENT

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RESPONDENT'S COUNTER STATEMENT OF THE CASE

The State agrees with the factual and procedural history in Defendant's brief with the following additions.

Defendant and his significant other, Christine Curry, both had an intake interview on August 22, 2013 at the Aberdeen DSHS CSO (customer service office). VRP 3/12/2015 at 50-51. The interview was for benefits in addition to the food benefits they were already receiving. VRP at 60-61. DSHS employee Renee Rood performed a TANF intake interview and a "Work First" intake interview with Defendant. VRP 3/12/2015 at 53. At trial Ms. Rood could not recall whether Defendant was actually in her cubicle with Curry during the TANF interview, but remembered that he was in the office at the time. VRP 3/12/2015 at 53-54. Defendant and Curry also filled out applications for benefits that day. Ex. 6 & 7. The applications were filled out at the Aberdeen community service office of DSHS. VRP 3/12/2015 at 99-100. These applications were filled out and electronically signed within an hour of each other. *Id.* The electronic signature system that the Department of Social and Health Services uses requires the user to type their name and enter a code which display at the bottom of the screen. VRP 3/12/2015 at 92.

RESPONSE TO ASSIGNMENTS OF ERROR

1. Welfare Fraud is Theft in the First Degree regardless of the amount stolen pursuant to RCW 74.08.331(1).

Defendant claims the State charged him with Theft in the Third Degree, not a felony, because it failed to allege or prove a specific dollar amount of welfare illegally obtained. This claim is based upon a line of cases which interpreted a previous version of the statute.

Prior to 2003 a person that committed welfare fraud was “guilty of grand larceny....” Laws of 2003, ch 53, § 368. Obviously, “grand larceny” is not a specific crime under the current criminal code, but RCW 9A.56.100 provides that “All offenses defined as larcenies outside of this title shall be treated as thefts as provided in this title.”

The issue in *State v. Sass* was how to interpret the term “grand larceny,” (not simply “larceny”) as it appeared in former RCW 74.08.331(1). *See State v. Sass*, 94 Wn. 2d 721, 724-25, 620 P.2d 79 (1980) (emphasis added.) The statute equating “larceny” and “theft” was in force at the time. *Sass* at 723 *and see* RCW 9A.56.100. The specific question in *Sass* was, assuming “larceny” means “theft,” does it follow that “grand larceny” means “theft in the first degree,” given that both are

the highest degrees of their respective crimes? *Sass* at 724-25. The court held that it did not. *Id.*

Campbell was built on *State v. Sass*, holding that that the dollar amount obtained was an essential element and must be in a charging instrument. *See State v. Campbell*, 125 Wn. 2d 797, 804, 888 P.2d 1185, 1189 (1995).

As noted by Defendant in 2003 the legislature replaced the words “grand larceny” with the words “Theft in the First Degree” and a citation to that specific statute. Laws of 2003, ch 53, § 368 This change obviates the need for the analysis in *Sass*, *Campbell* and *Decambre*. Welfare Fraud is now Theft in the First Degree, not whatever “grand larceny” means.

Defendant claims otherwise, arguing the court should simply ignore the 2003 amendment. His logic is that because “larceny” means “theft” then “theft” means “larceny,” and the change is one of mere form. Under this argument we would need to interpret the pre-1976 code to give meaning to the modern theft statute.

Additionally, this argument ignores the obvious legislative purpose in changing the law. “When amending a statute, the legislature is presumed to know how the courts have construed and applied the statute.” *State v. Roggenkamp*, 153 Wn. 2d 614, 625, 106 P.3d 196, 201 (2005)

(citing *In re Pers. Restraint of Quackenbush*, 142 Wash.2d 928, 936, 16 P.3d 638 (2001).) Assuming the legislature knew that a statute which used to punish welfare fraud more severely was no longer doing so, the legislature fixed the statute to comport with its original purpose.

Further, Defendant's argument would ignore the plain meaning of the statute. Courts "'assume the Legislature meant exactly what it said and apply the statute as written.'" *Id.* (quoting *In re Recall of Pearsall–Stipek*, 141 Wash.2d 756, 767, 10 P.3d 1034 (2000).) The plain meaning is that Welfare Fraud is Theft in the First Degree. *Delcambre* held that welfare fraud has "its own scienter element and means of committing the offense. Only its penalty is determined by reference to the theft provisions." *State v. Delcambre*, 116 Wn. 2d 444, 451, 805 P.2d 233, 237 (1991). Because RCW 74.08.331 contains no requirement of a specific amount of welfare illegally obtained one cannot be simply imported from RCW Chapter 9A.56.

References to both RCW 74.08.331(1) and 9A.56.030 appear in the Amended Information (Clerk's Papers at 16-17) and in fact in the original Information as well (CP at 1-2.) Defendant was charged and convicted of first degree felony theft, and was on notice of this from the

time of arraignment. The first assignment of error is without merit and this court should uphold the conviction.

2. The jury could have found that Defendant was an accessory of Christine Curry, but if they did not Defendant suffered no prejudice.

Defendant claims that the inclusion of an accessory instruction was error, but fails to explain how he could have been prejudiced. Defendant's example of *Asaeli* was a challenge to the sufficiency of the evidence, and did not assert a violation of rights. Indeed, there could be no prejudice because the jury could have believed that Defendant was an accessory to Christine Curry's acts.

Defendant could have been an accessory to Christine Curry.

Defendant claims that the State's evidence only proved that Defendant and Curry lived together and had children together, so therefore there was insufficient evidence to support an accessory liability instruction. However, the evidence at trial was that Defendant and Curry both attended intake interviews at the Aberdeen DSHS office on August 22, 2013, where they both filled out applications for benefits, electronically signing them within an hour of each other, and electronically transmitted to DSHS. *See Exhibits 6 & 7.* One of the

applications was signed by both Defendant and Curry, the other only by Defendant. *Id.*

Because of the accessory liability statute, RCW 9A.08.020, the State did not have to prove whether Curry or Defendant actually signed either one of the documents. Given the apparent ease these documents can be electronically signed, the jury may have believed that it could have been Curry, not Defendant, who actually typed the name in the form, but that Defendant aided in the fraud and was therefore an accessory. Therefore, it was not error to include the accessory liability instruction.

Defendant fails to show prejudice, even if he were not an accessory.

Defendant fails to show how he could possibly have been prejudiced by inclusion of an accessory liability instruction. He cites to no case for the proposition that an accessory liability instruction is prejudicial. His example of *State v. Asaeli* appears to be a sufficiency of the evidence challenge, and does not stand for the proposition that this instruction is prejudicial. *See State v. Asaeli*, 150 Wn. App. 543, 570, 208 P.3d 1136, 1152 (2009).

If the evidence shows that Defendant was an accessory, then inclusion of the instruction was proper. If, as Defendant asserts, there was no evidence that he was an accessory, then the instruction could not be

prejudicial. “An erroneous instruction is harmless if, from the record in [the] case, it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.” *State v. Carter*, 154 Wn. 2d 71, 81, 109 P.3d 823, 828 (2005) (citing *State v. Brown*, 147 Wash.2d 330, 332, 58 P.3d 889 (2002).) In the instant case it is ambiguous whether Curry or Defendant actually signed the documents at the Aberdeen DSHS office on August 22. But the State does not need to prove which was the accessory and which the principal. *See State v. Silva-Baltazar*, 125 Wn. 2d 472, 480, 886 P.2d 138, 143 (1994) and RCW 9A.08.020.

The Welfare Fraud statute specifically includes an accessory liability provision.

Even if Defendant’s claim that he were somehow prejudiced by this instruction were plausible, he fails to recognize that RCW 74.08.331 states that, in addition to the person who obtains the benefits, “or aids or abets any person to obtain any public assistance to which the person is not entitled or greater public assistance than that to which he or she is justly entitled” is also guilty of the crime. RCW 74.08.331(1). This is clearly an accessory liability clause. In order to correctly appraise the jury of the law the instructions necessarily needed to define accessory liability. There was no error and this court should uphold the conviction.

CONCLUSION

A violation of RCW 74.08.331 is now always a felony Theft in the First Degree by the plain terms of the statute. Defendant's argument is based upon case law which has superseded by the 2003 revision of the law. He was charged and convicted of a felony.

Although it was unclear whether Defendant falsely signed the applications for DSHS benefits or Christine Curry did the matter is moot. Defendant could be charged and convicted either way. The accessory liability instruction could not possibly have prejudiced him.

Defendant had a fair trial and was convicted of two felonies. This court should affirm those convictions.

DATED this 9th day of October, 2015.

Respectfully Submitted,

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GRAYS HARBOR COUNTY PROSECUTOR

October 09, 2015 - 11:15 AM

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