

No. 33415-5-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

FILED
Feb 25, 2016
Court of Appeals
Division III
State of Washington

THE STATE OF WASHINGTON,

Respondent

v.

CRAIG S. COLEMAN,

Appellant

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR BENTON COUNTY

NO. 14-1-01213-0

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

I. RESPONSE TO ASSIGNMENTS OF ERROR.....1

 A. The evidence was sufficient to sustain a conviction
 for Identity Theft in the First Degree.....1

 B. The evidence was sufficient to sustain a conviction
 for Theft in the Second Degree.....1

II. STATEMENT OF FACTS1

III. ARGUMENT.....2

 A. THE EVIDENCE WAS SUFFICIENT TO
 SUSTAIN CONVICTIONS FOR IDENTITY
 THEFT IN THE FIRST DEGREE AND THEFT IN
 THE SECOND DEGREE.....2

IV. CONCLUSION.....5

TABLE OF AUTHORITIES

WASHINGTON CASES

State v. Craven, 67 Wn. App. 921, 841 P.2d 774 (1992)3
State v. Delmarter, 94 Wn.2d 634, 618 P.2d 99 (1980)3, 4
State v. Salinas, 119 Wn.2d 192, 829 P.2d 1068 (1992)3
State v. Scoby, 117 Wn.2d 55, 810 P.2d 1358 (1991).....3

WASHINGTON STATUTES

RCW 9.35.020(2).....1
RCW 9A.56.020(1)(a) 1, 3-4
RCW 9A.56.040(1)(a)1, 4
RCWA § 9.35.020 (West).....3

I. RESPONSE TO ASSIGNMENTS OF ERROR

- A. The evidence was sufficient to sustain a conviction for Identity Theft in the First Degree.
- B. The evidence was sufficient to sustain a conviction for Theft in the Second Degree.

II. STATEMENT OF FACTS

On May 4, 2015, the State charged the defendant by second amended information with Identity Theft in the First Degree, RCW 9A.56.020(2), and Theft in the Second Degree, RCW 9A.56.020(1)(a), RCW 9A.56.040(1)(a). CP 16-18. On May 5, 2015, the defendant was tried in front of a jury for the charges filed in the second amended information. RP¹ at 7. The following facts were presented at trial.

On September 2, 2014, the defendant entered the Baker Boyer Bank in Kennewick. RP at 34. Julie McBride and Christine Corr were both working as bankers at Baker Boyer on the date in question. RP at 32, 34, 47, 51. Ms. McBride and Ms. Corr testified that they observed the defendant's mannerisms in the bank that day. Specifically, both testified that the defendant was on his phone and remained on his phone when he proceeded to cash a check. RP at 35, 51. The defendant presented a check on the account of Columbia River Plumbing in the amount of \$3,470.18. RP at 34, 38-39, 50.

Desiree Lindstrom testified that she is the owner of Columbia River Plumbing. RP at 17. She testified that there are five to seven employees employed by her company. RP at 17-18. Ms. Lindstrom testified that she does the payroll for Columbia River Plumbing. RP at 18. She testified that she knows all of her employees and all of the subcontractors used by her company. RP at 17, 20. Ms. Lindstrom testified the defendant has never been an employee of the company and that he has never been hired as a subcontractor. RP at 21. Ms. Lindstrom told the jury she had written a check to Hoopers Plumbing in the amount of \$3,470.18. RP at 23, 38-39. She said Hoopers Plumbing never received the check. RP at 23. Ms. Lindstrom also testified that Hoopers Plumbing never used Columbia River checks to pay someone else. RP at 29.

The jury found the defendant guilty of both counts. CP 52-53; RP at 96-97. The court sentenced the defendant to 70 months on May 22, 2015. CP 107. The defendant timely appealed. CP 115-16.

III. ARGUMENT

A. THE EVIDENCE WAS SUFFICIENT TO SUSTAIN CONVICTIONS FOR IDENTITY THEFT IN THE FIRST DEGREE AND THEFT IN THE SECOND DEGREE.

¹ RP refers to the verbatim report of proceedings for the dates of March 11, 2015, and May 5, 2015, transcribed by Court Reporter Patricia Adams.

The State presented sufficient evidence to support the jury's finding of guilt for Identity Theft in the First Degree. The test for determining the sufficiency of the evidence is whether, after viewing the evidence in a 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. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992); *State v. Scoby*, 117 Wn.2d 55, 61, 810 P.2d 1358 (1991). A claim of insufficiency admits the truth of the State's evidence. *Salinas*, 119 Wn.2d at 201. All reasonable inferences must be drawn in favor of the State and interpreted most strongly against the defendant. *Id.*; *State v. Craven*, 67 Wn. App. 921, 928, 841 P.2d 774 (1992). In determining the sufficiency of the evidence, circumstantial evidence is not to be considered any less reliable than direct evidence. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

A person is guilty of Identity Theft in the First Degree if he 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. RCWA § 9.35.020 (West). A person is guilty of Theft in the Second Degree if he wrongfully obtained or exerted unauthorized control over \$750.00 but not more than \$5,000.00, with the intent to deprive the owner of such property. RCW

9A.56.020(1)(a); RCW 9A.56.040(1)(a). The specific criminal intent of the accused may be inferred from the conduct where it is plainly indicated as a matter of logical probability. *Delmarter*, 94 Wn.2d at 638.

The defendant was neither an employee of Columbia River Plumbing nor a subcontractor used by Columbia River Plumbing. RP at 21. Desiree Lindstrom, owner of Columbia River Plumbing, does all of the payroll for Columbia River Plumbing which includes paying subcontractors. RP at 18. Ms. Lindstrom never hired the defendant, neither as an employee nor a subcontractor. RP at 21. Ms. Lindstrom testified the defendant was not authorized to checks belonging to the company. RP at 22. Ms. Lindstrom wrote a check to Hoopers Plumbing for \$3,470.18. RP at 23, 38-39. She wrote this check in September 2014. RP at 30. Hoopers Plumbing never received the check. RP at 23. Ms. Lindstrom called Hoopers Plumbing and confirmed they never received their check. *Id.* The defendant entered Baker Boyer Bank on September 2, 2014, and presented a check for \$3,470.18 drawn on the account of Columbia River Plumbing. RP at 34, 38-39. Ms. Lindstrom testified Hoopers Plumbing never used Columbia River Plumbing's checks for another company. RP at 29-30.

Julie McBride and Christine Corr were working as bankers at Baker Boyer Bank on September 2, 2014. RP at 32, 34, 47, 51. They both observed the defendant enter the bank. RP at 34, 50. They both testified

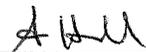
about the peculiarity of his mannerisms as he cashed the check for \$3,470.18 that day. RP at 34-35, 39, 51. The defendant was on his phone during the course of the transaction. RP at 34-35, 51. He did not converse with the teller in the same way that the bank's normal customers typically do. RP at 35, 51. Julie McBride testified that Baker Boyer is a smaller bank. RP at 33. She said they know most of their customers and have personal conversations with them. *Id.* The defendant did not engage Ms. McBride when he was asked about the work done with Columbia River Plumbing. RP at 35. The above evidence and inferences to be drawn therefrom support a rational trier of fact could have found the essential elements of the crimes of Identity Theft in the First Degree and Theft in the Second Degree beyond a reasonable doubt.

IV. CONCLUSION

Based on the foregoing facts and authorities, the State respectfully asks this Court to affirm the defendant's convictions for Identity Theft in the First Degree and Theft in the Second Degree.

RESPECTFULLY SUBMITTED this 25th day of February,
2016.

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