

65072-6

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NO. 65072-6-I

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

STATE OF WASHINGTON,

Respondent,

v.

ANDREW M. STEAN,

Appellant.

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

The Honorable Charles R. Snyder, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The state failed to prove every element of criminal impersonation beyond a reasonable doubt.

2. The trial court violated CrR 6.1(d) by failing to enter written findings of fact and conclusions of law in support of its guilty finding.

Issues Pertaining to Assignments of Error

1. The appellant told officers a false name during a traffic stop. Did the state fail to prove each element of criminal impersonation beyond a reasonable doubt?

2. Did the trial court violate CrR 6.1(d) by failing to enter written findings of fact and conclusions of law after finding the appellant guilty in a trial without a jury?

B. STATEMENT OF THE CASE

Whatcom County Sheriff's Deputy Anthony Paz stopped a car driven by Andrew M. Stean because the window tint on the car was too dark. 1RP 9-11. When Paz asked Stean for his driver's license, Stean said he did not have it with him. He told Paz he was "Thomas Anderson," and provided a false birth date. 1RP 18-19. Paz relayed the information to a dispatcher and learned "Anderson" had no outstanding arrest warrants and

no driver's license record in Washington. 1RP 19-20. When Paz inquired further, Stean said he had a California driver's license. A search of California's records showed nothing, either. Paz verified the spelling of "Anderson" and Stean changed a letter in the spelling. Paz checked under the corrected spelling, again came up empty, and confronted Stean. Stean stuck with the same name through the resulting arrest for false reporting. 1RP 20-22.

By this time, Deputy Magnus Gervol had joined Paz. 1RP 50-51. Gervol asked Stean for identifying information and Stean told him his name was "Thomas Anderson." 1RP 51-53. Through a computer in his car, Gervol was able to view information and booking photographs for several "Thomas Andersons," but none looked like Stean. At about this time, a detective who had been monitoring Paz's radio transmissions called Gervol and provided Stean's correct name. When Gervol typed in Stean's name, he saw a photo that matched the person Paz arrested. 1RP 23-24, 53-55. Stean then disclosed he used the false name because he had an outstanding warrant. 1RP 24, 54-55.

Paz and Gervol searched Stean's car incident to the arrest and seized suspected marijuana. 1RP 29-30, 56-57.

The state charged Stean with first degree criminal impersonation, third degree driving with a suspended license, and misdemeanor possession of marijuana. CP 44-46. Stean failed to appear for a scheduled status conference, so the state filed an amended information adding one count of bail jumping. CP 39-41; 1RP 60-64.¹

Stean later filed a motion to suppress the marijuana and waived his right to a jury trial. CP 23, 31-36; 1RP 3-6. At the beginning of the combined motion hearing/bench trial, the state moved to dismiss the driving charge, which the court granted. 1RP 7. After hearing testimony, the court granted Stean's motion to suppress the marijuana and found him not guilty of possession. 1RP 112-15. It found him guilty of criminal impersonation and bail jumping. 1RP 110-12, 115-17. The court imposed concurrent standard range sentences totaling 17 months. CP 2-10, 2RP 10-12.

The trial court did not enter written findings of fact and conclusions of law in support of its guilty finding.

¹ Stean does not challenge the bail jumping conviction in this brief.

C. ARGUMENT

1. THE STATE FAILED TO PROVE EACH ELEMENT OF CRIMINAL IMPERSONATION BEYOND A REASONABLE DOUBT.

The elements of criminal impersonation are: (1) the assumption of a false identity; and (2) commission of an act in the assumed character with intent to defraud another or for any other unlawful purpose. RCW 9A.60.040(1)(a). Because the state did not prove each element beyond a reasonable doubt, this Court should reverse Stean's conviction.

The state must prove beyond a reasonable doubt every essential element of a charged offense. State v. Byrd, 125 Wn.2d 707, 713, 887 P.2d 396 (1995). To determine whether the evidence is sufficient to sustain a conviction, courts consider it in the light most favorable to the state. State v. Engel, 166 Wn.2d 572, 576, 210 P.3d 1007 (2009). The accused "may challenge the state's proof at every turn." State v. Conklin, 79 Wn.2d 805, 807, 489 P.2d 1130 (1971).

Stean first challenges the state's proof that he assumed a false identity. The "assumption of a false identity" is different than "use of a false name." State v. Donald, 68 Wn. App. 543, 550, 844 P.2d 447, review denied, 121 Wn.2d 1024 (1993). The court in Donald did not explain how the two differed, but it did reject the claim that criminal

impersonation was 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. Donald, 68 Wn. App. at 550. The reasonable implication of this holding is that assuming a false identity requires something more than merely using a false name, such as possession of someone else's identification, birth certificate, social security card, employee parking pass, payroll stub, confidential information, or other officially prepared document that could be used to support mere use of another person's name.

An apt example is found in State v. Aitken, 79 Wn. App. 890, 892, 905 P.2d 1235 (1995). Aitken obtained a New Mexico state identification card in the name of John Alexander, using the birth date of the real John Alexander to get the card. The true Alexander died in 1955 at the age of ten months. Aitken used the identification card and the real Alexander's social security number to obtain an Albuquerque business license and opened a checking account with a New Mexico bank. A few weeks later, Aitken moved to Seattle, opened checking and savings accounts using Alexander's name, and deposited into various bank branches checks written on the Alexander account in the New Mexico bank. Aitken, 79 Wn. App. at 892.

Such additional proof requirements as existed in Aitken would explain and justify the Legislature's classification of criminal impersonation as a felony while at the same time punishing a driver's act of giving a false name and address to a police officer during a traffic stop as a mere misdemeanor. RCW 46.61.020; see City of Seattle v. Hogan, 53 Wn. App. 387, 391, 766 P.2d 1134 (1989) ("[E]qual protection is denied where two separate but identical criminal statutes set forth varying penalties."); State v. Przybylski, 48 Wn. App. 661, 666, 739 P.2d 1203 (1987) (prosecutor's discretion to charge more serious crime, even where events giving rise to prosecution may support charges for other crimes carrying various punishments, does not violate equal protection where crimes have different elements); see also State v. Shirley, 60 Wn.2d 277, 280, 373 P.2d 777 (1962) ("trial court made a mistake which eliminated the distinction between first and second degree murder" when it instructed jurors it was not necessary for appreciable period of time to elapse for premeditation to exist.).

Here Stean did nothing more than tell officers he was "Thomas Anderson." For the reasons set forth above this is not enough to prove assumption of a false identity beyond a reasonable doubt.

Nor did the state prove beyond a reasonable doubt that Stean gave the name "Thomas Anderson" with the intent to defraud. "'Defraud' means '[t]o cause injury or loss to ... by deceit.'" State v. Simmons, 113 Wn. App. 29, 32, 51 P.3d 828, 829 (2002) (quoting Black's Law Dictionary, 434 (7th ed. 1999)).²

Stean merely offered the officer a name that was not his own. The evidence does not show he intended to cause injury or loss. See City of Seattle v. Schurr, 76 Wn. App. 82, 84-85, 881 P.2d 1063 (1994) (use of another's identification to return merchandise for a cash refund is alone insufficient proof of intent to defraud; "The City is unable to point to any identifiable economic interest that would be injured by the assumption of a false identity to return merchandise. Specifically, we are unable to discern whose interest and the nature of the interest that might be injured by such action.").

Nor did surrounding circumstances support an inference of intent to defraud. For example, in State v. Esquivel, the court held the defendants' showing of false alien registration cards to inquiring police

² See State v. Taylor, 150 Wn.2d 599, 602, 80 P.3d 605 (2003) (Absent ambiguity or a statutory definition, courts give a term its plain meaning as found in a standard dictionary, such as Black's Law Dictionary).

officers suggested they intended to defraud by misrepresenting their legal status, and thereby committed forgery. Esquivel, 71 Wn. App. 868, 872, 863 P.2d 113 (1993). Stean made no attempt to misrepresent his legal status as a legal driver or in any other way. For these reasons as well, the state failed to prove the "intent to defraud" element of criminal impersonation and this Court should dismiss the conviction.

2. THE TRIAL COURT FAILED TO ENTER WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW PURSUANT TO CrR 6.1(d).

"CrR 6.1(d) requires entry of written findings of fact and conclusions of law at the conclusion of a bench trial." State v. Head, 136 Wn.2d 619, 622, 964 P.2d 1187 (1998).³ The written factual findings should address the elements of the crimes separately and state the factual basis for the legal conclusions as to each element. State v. Denison, 78 Wn. App. 566, 570, 897 P.2d 437, review denied, 128 Wn.2d 1006 (1995). The purpose of written findings and conclusions is to ensure efficient and accurate appellate review. State v. Cannon, 130 Wn.2d 313, 329, 922 P.2d

³ CrR 6.1(d) states:

In a case tried without a jury, the court shall enter findings of fact and conclusions of law. In giving the decision, the facts found and the conclusions of law shall be separately stated. The court shall enter such findings of fact and conclusions of law only upon 5 days' notice of presentation to the parties.

1293 (1996); see Head, 136 Wn.2d at 622 ("A prosecuting attorney required to prepare findings and conclusions will necessarily need to focus attention on the evidence supporting each element of the charged crime, as will the trial court. That focus will simplify and expedite appellate review.").

The current state of the record in Stean's case prohibits effective appellate review. State v. Mewes, 84 Wn. App. 620, 929 P.2d 505 (1997), is analogous. There the trial court in a juvenile case entered the following as a finding of fact: "The court, based upon the Information, testimony heard and the case record to date, finds that the defendant has been proven guilty beyond a reasonable doubt of the following offense(s): Kidnapping [sic] 2 degree". Mewes, 84 Wn. App. at 621. The reviewing court found the findings to be "effectively nonexistent." Mewes, 84 Wn. App. at 622. The trial court's findings in Stean's case are similarly unhelpful.

And even if they were more detailed, the court's oral findings would not be a suitable substitute for the written findings required by CrR 6.1(d). "A court's oral opinion is not a finding of fact." State v. Hescocock, 98 Wn. App. 600, 605-06, 989 P.2d 1251 (1999). Rather, a trial court's oral opinion is merely an expression of the court's informal opinion when rendered. Head, 136 Wn.2d at 622. An oral opinion is not binding unless

it is formally incorporated in the written findings, conclusions and judgment. Head, 136 Wn. 2d at 622.

Remand for entry of correct written findings and conclusions is the appropriate remedy. Head, 136 Wn.2d at 622-23; State v. Austin, 65 Wn. App. 759, 761, 831 P.2d 747 (1992). This Court should remand Stean's case for entry of written findings and conclusions as required by CrR 6.1(d).

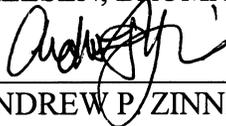
D. CONCLUSION

The state failed to prove Stean committed criminal impersonation beyond a reasonable doubt. This Court should reverse his conviction and remand for dismissal with prejudice. Alternatively, the trial court violated CrR 6.1(d) by failing to enter written findings of fact and conclusions of law after Stean's bench trial. This Court should remand for appropriate findings and conclusions that are not tailored to the sufficiency arguments raised in this brief.

DATED this 16 day of September, 2010.

Respectfully submitted,

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DIVISION ONE**

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	
v.)	COA NO. 65072-6-1
)	
ANDREW M. STEAN,)	
)	
Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 16TH DAY OF SEPTEMBER, 2010, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

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SIGNED IN SEATTLE WASHINGTON, THIS 16TH DAY OF SEPTEMBER, 2010.

x *Patrick Mayovsky*

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