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SUPREME COURT  
STATE OF WASHINGTON  
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No. 100548-2

IN THE SUPREME COURT OF THE STATE OF  
WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

ROBERT S. ZIESEMER,

Petitioner.

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COURT OF APPEALS No. 54369-9-II  
ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR THURSTON COUNTY

The Honorable Carol Murphy, Judge  
Cause No. 18-1-01084-34

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ANSWER TO PETITION FOR REVIEW

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## A. ISSUES PERTAINING TO REVIEW

1. Whether review is appropriate under RAP 13.4(b)(1), where the decision of the Court of Appeals applies the holding of this Court's decision in State v. Vasquez, 178 Wn.2d 1, 309 P.3d 318 (2013), and does not conflict with the holding of that case.

## B. STATEMENT OF THE CASE

The Petitioner, Robert S. Zieseemer, was charged with two counts of identity theft in the second degree and one count of possession of stolen property in the second degree. CP 4-5. He entered into a diversion agreement with the State, which required that he complete conditions and contained a stipulation that, in the event of a violation, the Prosecuting Attorney's Office may submit copies of all materials which make up the law enforcement/investigating agency reports and the court "may determine [his] guilt or innocence" based on those reports. CP 13-17. The declaration included a stipulation which read, "I stipulate that the facts contained within the

investigation reports are sufficient for a Trier of Fact to find me guilty of the charge(s) presently filed against me in this matter.”

CP 15. The diversion agreement was only for two counts of identity theft in the second degree, and the prosecutor moved to dismiss the charge of possession of stolen property at the stipulated facts bench trial. CP 15, RP (1/16/20) 4-5.

Zieseemer stipulated that he had violated the terms of his agreement and the matter was set for a stipulated facts bench trial. RP (1/13/20) 10-15, CP 24. At the stipulated facts bench trial, the trial court considered police reports and entered findings of fact and conclusions of law, finding Zieseemer guilty of both charges. CP 36-50. During the hearing, Zieseemer’s counsel argued that the evidence was insufficient to demonstrate intent. RP (1/16/20) 6-7. The prosecutor noted the stipulation to the facts was sufficient and stated, “So to a certain extent, I think it’s disingenuous for Defense Counsel to now be raising potentially a defense at this point.” RP (1/16/20) 7. The Prosecutor then argued that the circumstantial evidence

supported the conclusion that Zieseemer had the requisite intent.  
RP(1/16/20) 8.

The Trial Court stated, “The Court does have a role in reviewing those documents to make sure that the State has met its burden, and the Court did review these documents.” RP (1/16/20) 9. The Court indicated, “having reviewed the documents in the file, the facts are essentially uncontested, and I don’t believe that anything is necessary in order to prove the elements of identity theft in the second degree as to both counts.” RP (1/26/20) 9. After making that finding, the Court noted,

the Court has considered the stipulation that was entered into previously by Mr. Zieseemer. But again, it does not appear to me that any valid reason was ever given for Mr. Zieseemer possessing those items. And based upon my review, I believe that the State has met its burden...

RP (1/16/20) 9-10.

The police reports that the trial court relied upon indicated that on June 24, 2018, Deputies responded to a report

of two occupants in a vehicle who appeared under the influence of drugs. CP 44. While in route, Deputy Perez learned that the registered owner of the vehicle, Robert Zieseimer's, license was suspended in the third degree. CP 44. When Deputy Perez arrived in the area, he saw the vehicle pulling away from the gas pumps and noticed that the driver looked similar to Zieseimer's description. CP 44. He stopped the vehicle and found the driver was Timothy Morgan, who was also suspended in the third degree. Zieseimer was in the passenger seat. CP 44. Morgan indicated that he had used heroin that morning. CP 44.

Deputy Perez spoke with Zieseimer to confirm that he was the registered owner of the vehicle and noticed that Zieseimer appeared to be under the influence of narcotics as well. Zieseimer admitted that he had used heroin a few hours prior. CP 44. Zieseimer gave consent to search the vehicle. CP 44. In the back seat, Deputy Perez found a backpack which Zieseimer indicated was his. CP 44. Inside the backpack, Deputy Perez located a temporary Washington ID card



belonging to Kimberly Hines, a blank Wells Fargo check belonging to Kimberly Hines and Lee Hines, a social security card belonging to Kimberly Hines, and a check belonging to West Hill Honda in Bremerton. CP 45. Ziesemer told law enforcement that he did not know Kimberly Hines. CP 45. When asked why he had Kimberly Hines' ID, social security card and a blank check belonging to her in his backpack, Ziesemer indicated that he had been arrested by Officer Rodriguez a couple of weeks prior and he had also found some property belonging to Kimberly Rodriguez, but was vague in his response. CP 45.

Deputy Perez contacted Officer Rodriguez and he recalled that he had seized identification documents during that incident. CP 45. Hines had been the victim of recent burglary cases and she had told law enforcement about the circumstances regarding those burglaries, including that she was aware that her checks were "in circulation." CP 45, 49. When Deputy Perez again spoke to Ziesemer, Ziesemer said that a homeless

person named Ramon tried to write him a check, but he didn't want it and Ramon gave him the documents, and then said that Officer Rodriguez must not have found it all. CP 45. Later Zieseemer said that he forgot that it was his backpack. CP 45. Zieseemer also had a lock pick at the time of his arrest. CP 45. On the front passenger floorboard, Deputy Perez found 55 miscellaneous keys. CP 45.

Zieseemer appealed his convictions. In an unpublished opinion, Division II of the Court of Appeals held that there was sufficient evidence to support the identity theft convictions “because the evidence supported a reasonable inference that Zieseemer intended to commit a crime with the financial information that he possessed.” State v. Zieseemer, No. 54369-9-II, Slip Op. at 1 (hereinafter cited as Unpublished Opinion). Zieseemer now seeks a review of that decision.

### C. ARGUMENT

This Court will accept review when the decision of the Court of Appeals conflicts with a decision of the Supreme

Court, RAP 13.4(b)(1), conflicts with another decision of the Court of Appeals, RAP 13.4(b)(2), raises a significant question of law under the Washington or the United States Constitutions, RAP 13.4(b)(3), or involves an issue of substantial public interest that should be determined by the Supreme Court. RAP 13.4(b)(4). Ziesemer argues that the decision of the Court of Appeals conflicts with a decision of this Court under RAP 13.4(b)(1).

1. The decision of the Court of Appeals followed this Court's decision in *State v. Vasquez* and does not conflict with it, therefore the Court of Appeals correctly found that the evidence was sufficient to support the findings of guilt.

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 p.2d 1068 (1992). “A claim of insufficiency admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom.” *Id.* Circumstantial

evidence and direct evidence are equally reliable. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). In determining whether the necessary quantum of proof exists, the reviewing court need not be convinced of the defendant's guilt beyond a reasonable doubt, but only that substantial evidence supports the State's case. State v. Galisia, 63 Wn. App. 833, 838, 822 P.2d 303 (1992). Credibility determinations are for the trier of fact and are not subject to review. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). A reviewing court defers to the trier of fact on issues of conflicting testimony, the credibility of witnesses, and the persuasiveness of the evidence. State v. Walton, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992).

Proof of the crime of identity theft in the second degree requires that a person 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. RCW 9.35.20(1) and (3); State v. Sells,

166 Wn. App. 918, 923, 271 P.3d 952 (2012), *review denied*, 176 Wn.2d 1001 (2013). Actual use of the means of identification is not required in order to support a conviction. *Id.* at 924. Nor does the State need to prove the specific crime that the defendant intended to commit. State v. Federov, 181 Wn. App. 187, 197-198, 324 P.3d 784, *review denied*, 181 Wn.2d 1009 (2014). Some proof of intent is required, however. *Id.* at 197.

In State v. Vasquez, 178 Wn.2d 1, 8, 309 P.3d 318 (2013), this Court held that possession alone does not support an inference of intent. That case involved the intent element of the crime of forgery. *Id.* at 7. “When intent is an element of the crime, intent to commit a crime may be inferred if the defendant’s conduct and surrounding facts and circumstances plainly indicate such an intent as a matter of logical probability.” *Id.* at 8, *citing* State v. Woods, 63 Wn. App. 588, 59, 821 P.2d 1235 (1991) (internal quotes omitted). While possession alone is not sufficient to demonstrate intent,

“possession with slight corroborating evidence might be.”  
Vasquez, at 8, *citing* State v. Esquivel, 71 Wn.App.868, 870,  
863 P.2d 113 (1993); State v. Ladely, 82 Wn.2d 172, 175, 509  
P.2d 658 (1973); State v. Ramirez-Tinajero, 154 Wn. App. 754,  
750, 228 P.3d 1282 (2009).

The decision of the Court of Appeals applied the Vasquez holding in finding that there was sufficient evidence to support the conclusion that Ziesemer intended to commit a crime with the financial information that he possessed. Unpublished Opinion, at 5. The stipulated facts attached to the findings of fact and conclusions of law demonstrated that Ziesemer possessed a temporary Washington ID card belonging to Kimberly Hines, a blank Wells Fargo check belonging to Kimberly Hines and Lee Hines, a social security card belonging to Kimberly Hines, and a check belonging to West Hill Honda in Bremerton. CP 45. The facts further indicated that Ziesmer told law enforcement that he did not know Kimberly Hines. CP 45. Hines had been the victim of recent burglary cases and she

had told law enforcement about the circumstances regarding those burglaries, including that she was aware that her checks were “in circulation.” CP 45, 49. Ziesemer also had a lock pick at the time of his arrest. CP 45. When asked why he had Kimberly Hines ID, social security card and a blank check belonging to her in his backpack, Ziesemer indicated that he had been arrested by Officer Rodriguez a couple of weeks prior and he had also found some property belonging to Kimberly Rodriguez, but was vague in his response. CP 45. When Deputy Perez again spoke to Ziesemer, Ziesemer said that a homeless person named Ramon tried to write him a check, but he didn’t want it and Ramon gave him the documents, and then said that Officer Rodriguez must not have found it all. CP 45. Later Ziesemer said that he forgot that it was in his backpack. CP 45.

The circumstantial evidence supported the finding that Ziesemer possessed multiple means of identification and financial information belonging to another person with the

intent to commit a crime. There was no legitimate reason for Zieseemer to possess the information belonging to others. Moreover, his inconsistent statements regarding the documents further indicated that he intended to commit a crime with the financial information that he possessed. The decision of the Court of Appeals does not conflict with the holding in Vasquez. Zieseemer's conduct and the surrounding facts and circumstances plainly indicate an intent to commit a crime with the financial documents as a matter of logical probability. There was more than mere possession of the documents in the record.


#### D. CONCLUSION

The State respectfully requests that this Court deny Zieseemer's petition for review.

I certify that this document contains 2018 words, not including those portions exempted by rule, as counted by word processing software, in compliance with RAP 18.17.



Respectfully submitted this 4<sup>th</sup> day of February, 2022.

  
\_\_\_\_\_  
Joseph J.A. Jackson, WSBA# 37306  
Attorney for Respondent

**DECLARATION OF SERVICE**

I hereby certify that on the date indicated below I electronically filed the foregoing document with the Clerk of the Supreme Court using the Appellate Courts' Portal utilized by the Washington State Court of Appeals, and the Washington State Supreme Court, which will provide service of this document to the attorneys of record.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Olympia, Washington.

Date: February 4, 2022

Signature:  \_\_\_\_\_

**THURSTON COUNTY PROSECUTING ATTORNEY'S OFFICE**

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