

No. 43721-0-II

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

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STATE OF WASHINGTON,

Respondent,

v.

KAITLYN SELIX,

Appellant.

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

The Honorable Chris Wickham, Judge  
Cause No. 12-1-00220-1

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BRIEF OF RESPONDENT

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A. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

1. Whether the evidence presented at trial, along with the reasonable inferences from that evidence, is sufficient to support Selix's two convictions for second degree identity theft.

B. STATEMENT OF THE CASE.

The State accepts Selix's statement of the substantive and procedural facts.

C. ARGUMENT.

1. The evidence presented at trial, along with the reasonable inferences from that evidence, was sufficient to support Selix's two convictions for second degree identity theft.

Selix challenges her two convictions for second degree identity theft on the grounds that there was insufficient evidence presented at trial to prove that she possessed stolen credit and debit cards with the intent to commit any crime. She does not dispute that she possessed stolen identification or financial information. Her sole argument is that there was insufficient evidence of intent to commit "any crime."

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, credibility of witnesses, and the persuasiveness of the evidence. State v. Walton, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992).

Identity theft is prohibited by RCW 9.35.020(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.

First degree identity theft occurs when the perpetrator obtains anything with a value of more than \$1500; every other identity theft is second degree. RCW 9.35.020(2), (3).

Selix's argument presupposes that the "any crime" element must be a crime committed by Selix and committed by using the stolen credit and debit cards to obtain something of value. The statute does not say that. Even if Selix was telling the truth that her friend Josh Beacon brought the stolen cards into her car, there was sufficient evidence, taken with the reasonable inferences from that evidence, both that she was aiding and abetting Beacon's crime of second degree possession of stolen property, access devices, RCW 9A.56.160(1)(c), as well as committing identity theft herself, even though, as she points out in her brief, she had not used them "yet." Appellant's Opening Brief at 5.

Lacey police officer Mark Eley stopped the Dodge Intrepid Selix was driving because it had no taillights but its emergency flashers were on. RP 24, 34. There were two other occupants, one in the front passenger seat and one in the rear passenger side seat. RP 25-26. Eley immediately noticed in the passenger compartment a set of custom-made golf clubs in a bag with "Capital City GC" embroidered on it. Eley took particular note of the golf

clubs because he knew that a set of custom-made clubs had been stolen the night before. RP 26. The owner of the stolen clubs came to the scene of the traffic stop and identified the ones in Selix's car as his, along with a Range Finder, a *Rules of Golf* book, sunglasses, and an iPod. RP 29, 67.

Selix gave Eley permission to search her vehicle. He discovered a Coach purse, a man's wallet containing a driver's license in the name of Matthew Bowe, and a Safeway rewards card and a debit card in the name of Patricia Bowe, a GPS unit with a power cord, a checkbook in the names of Patricia and Matthew Bowe, a Bible in a bag with the name of Tantum Leonard Bowe on it, and a Ford vehicle manual in a cover with the name of Robert McCoy and a license plate number on it. RP 30-33.

Selix was arrested and taken to the jail, where she was searched. In the cuff of her sweatpants were several cards in the names of Matthew and Patricia Bowe. They included two Mastercards, a Capital One credit card, two USAA cards, a City card, a Lowe's credit card, and a Costco membership card. RP 35-36. The cards were held between Selix's leg and the elastic cuff of her pants. RP 40.



Selix testified that Beacon was her best friend. He brought all of the stolen items into her car, although her car was such a mess she could not really distinguish between his items and hers. RP 78-80. She had spent the better part of the day with Beacon, going to different pawn shops. Beacon was attempting to raise money, but his identification had expired and he could not pawn things himself. RP 82, 86. When the officer signaled Selix to pull over, Selix testified that Beacon handed her some cards and without thinking, or knowing what they were, she put them in the waistband of her pants. RP 80-81. When the officer at the jail searched her, the cards fell from her waistband and lodged in the cuff of her sweatpants. RP 85. The cards were, however, found stacked together. RP 41.

When Officer Eley asked Selix at the time of the stop about the golf clubs, she told him that a person named Keiwan, who was no longer in the car, had put the clubs there. RP 83-84. She testified that she lied because she was “shook up” and didn’t know what to say. RP 84. Selix did not think it odd that Beacon had loaded into her car a woman’s purse, a GPS unit, a set of expensive golf clubs, a Bible, a checkbook with both a man’s and a

woman's names on it, a pair of sunglasses, and some credit and debit cards. RP 86.

The State must prove every essential element of a crime beyond a reasonable doubt. State v. Sweany, 162 Wn. App. 223, 227-28, 256 P.3d 1230 (2011), *affirmed*, 174 Wn.2d 909, 281 P.3d 305 (2012). A challenge to the sufficiency of the evidence may be made for the first time on appeal. Id. at 228.

The jury was instructed that direct and circumstantial evidence are of equal value. RP 98. "When substantial evidence is present, the drawing of reasonable inferences therefrom and the doing of some conjecturing on the basis of such evidence is permissible and acceptable." Sweany, 162 Wn. App. at 233. Here, the jury could, and obviously did, quite reasonably conclude that no one is so dim as to believe that Beacon owned all of the items he brought into her car, and which had been there for much of the day, particularly since they spent considerable time pawning or attempting to pawn property, and since she had lied to the officer about how the golf clubs came to be in her car. The jury, which was the sole judge of the credibility of the witnesses, could reasonably have concluded that even if Selix was telling the truth that Beacon handed her the stack of cards, it was highly unlikely

that she was so naïve as to be unaware of their nature or so distracted as to shove them into the waistband of her sweatpants just for a place to put them.

Intent is not a tangible object and must always be inferred from a person's words and actions. "The intent to commit the crime of forgery may be inferred from the surrounding facts and circumstances if such intent is ""a matter of logical probability.""  
State v. Vasquez, 166 Wn. App. 50, 52-53, 269 P.3d 370 (2012), *review granted* 174 Wn.2d 1017, 282 P.3d 96 (2012) (quoting State v. Esquivel, 71 Wn. App. 868, 871, 863 P.2d 113 (1993)).

In Vasquez, the defendant was stopped by a grocery store security guard for shoplifting. The guard patted him down for weapons and identification, and located a forged Social Security card and a forged permanent resident card. Vasquez was convicted of two counts of forgery. He admitted that the cards were fakes and belonged to him, but argued that there was insufficient evidence to prove he intended to injure or defraud anyone by possession of the forged documents. The cards had been taken from him; he had not offered them for any purpose. Id. at 51-52; RCW 9A.60.020. In affirming the convictions, the Court of Appeals cited to Esquivel:

Indeed, *Esquivell* suggests that the unexplained possession of a forged instrument makes out a prima facie case of guilt against the possessor because the forgery does not require that anyone actually be defrauded. . . . And here, why else would Mr. Vasquez have them?


Vasquez, 166 Wn. App. at 53.

RCW 9.35.020 prohibits the possession of identification or financial information of another person with the intent to commit, aid, or abet any crime. Since one does not aid or abet one's own crime, the statutory language must contemplate aiding or abetting another's crime, in this case Beacon's possession of stolen property and identity theft. The evidence and the reasonable inferences from it also support the conclusion that Selix intended to commit a crime herself. Why else would Selix have them?

#### D. CONCLUSION.

The evidence, along with reasonable inferences from it, amply support Selix's convictions for identity theft, and the State respectfully asks this court to affirm both.

Respectfully submitted this 15<sup>th</sup> day of April, 2013.

  
\_\_\_\_\_  
Carol La Verne, WSBA# 19229  
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CERTIFICATE OF SERVICE

I certify that I served a copy of Respondent's Brief, on the date below as follows:

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I certify under penalty of perjury under laws of the State of Washington that the foregoing is true and correct.

Dated this 15<sup>th</sup> day of April, 2013, at Olympia, Washington.

  
\_\_\_\_\_  
Chong McAfee

# THURSTON COUNTY PROSECUTOR

**April 16, 2013 - 11:07 AM**

## Transmittal Letter

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