

NO. 43721-0-II

COURT OF APPEALS, DIVISION II

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STATE OF WASHINGTON,

Respondent,

vs.

KAITLYN DAWN VANCE SELIX,

Appellant.

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APPEAL FROM THE SUPERIOR COURT  
FOR THURSTON COURT  
The Honorable Chris Wickham, Judge  
Cause No. 12-1-00220-1

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BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

01. The trial court erred in not taking count II, identity theft in the second degree, from the the jury for lack of sufficient evidence.
02. The trial court erred in not taking count III, identity theft in the second degree, from the the jury for lack of sufficient evidence.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

Whether there was sufficient evidence to uphold Selix's two convictions for identity theft in the second degree where the State failed to prove she possessed either Patricia or Matthew Bowe's identification or financial information with the intent to commit, or aid or abet, any crime?  
[Assignments of Error Nos. 1 and 2].

C. STATEMENT OF THE CASE

01. Procedural Facts

Kaitlyn Dawn Vance Selix (Selix) was charged by second amended information filed in Thurston County Superior Court on July 18, 2012, with three counts of possession of stolen property in the second degree, counts I, IV-V, and two counts of identity theft, counts II-III, contrary to RCWs 9A.56.160(1)(a), 9A.56.160(1)(c), 9A.56.140(1) and 9.35.020(1)(3). [CP 14-15].

No motions were filed nor heard regarding either a CrR 3.5 or CrR 3.6 hearing. [CP 6]. Trial to a jury commenced on July 17, the Honorable Chris Wickham presiding.

The jury found Selix guilty as charged, she was sentenced within her standard range and timely notice of this appeal followed. [CP 48-52, 57-66].

03. Substantive Facts<sup>1</sup>

On February 20, 2012, Patrol Officer Mark Eley stopped a vehicle driven by and registered to Selix and occupied by Joshua Beacon and Lance Palmer for a traffic infraction. [RP 24-25, 79]. Noticing “a large bag” of tailored-made golf clubs in the rear passenger seat, and remembering he had been briefed earlier that day about some tailored-made clubs being stolen during a vehicle prowling the previous evening, Eley confirmed with dispatch and the owner of the stolen clubs, Michael Henslee, that the clubs in Selix’s car were a match. [RP 26-27]. Henslee responded to the scene and positively identified the bag containing his clubs and other items, the replacement value of which was \$4,000.00. [RP 29, 69].

Selix consented to a search of her car and Eley removed the clubs, a Coach purse containing credit cards and identification belonging to

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<sup>1</sup> All references to the Report of Proceedings are to the transcript entitled “JURY TRIAL.”

Patricia Bowe, a wallet containing similar items belonging to Matthew Bowe, and a Garmin GPS unit belonging to Geraldine McCoy, who placed its replacement value at approximately \$180.00. [RP 30-32, 37, 43-45, 48-49, 73].

Selix was arrested for possession of stolen property and taken to the police department, where additional credit cards were seized from the cuff of her pant leg during booking. [RP 34-35, 40]. At trial, she asserted that the bag of golf clubs and Coach purse belonged to Beacon, whom she represented as her best friend. [RP 76, 80]. The credit cards found on her person were handed to her by Beacon when they were pulled over by Eley. [RP 80, 85]. “I really didn’t have time to process it all at the time. Everything happened very quickly.” [RP 80]. It was her position that all of the stolen property seized by Eley had been put in her car by Beacon. [RP 85-86]. In explaining why she had initially told Eley that the clubs had been put in her car by another person, she said, “I was scared, I guess. I was shook up. I didn’t know what to say.” [RP 84].

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D. ARGUMENT

THERE WAS INSUFFICIENT EVIDENCE TO UPHOLD SELIX'S TWO CONVICTIONS FOR IDENTITY THEFT IN THE SECOND DEGREE WHERE THE STATE FAILED TO PROVE SHE POSSESSED EITHER PATRICIA OR MATTHEW BOWE'S IDENTIFICATION OR FINANCIAL INFORMATION WITH THE INTENT TO COMMIT, OR AID OR ABET, ANY CRIME.<sup>2</sup>

The test for determining the sufficiency of the evidence is whether, after viewing the evidence in light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. Salinas, at 201; State v. Craven, 67 Wn. App. 921, 928, 841 P.2d 774 (1992). Circumstantial evidence is no less reliable than direct evidence, and criminal intent may be inferred from conduct where "plainly indicated as a matter of logical probability." State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom. Salinas, at 201; Craven, at 928.

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<sup>2</sup> As the argument is the same for each offense, the offenses are addressed collectively herein for the purpose of avoiding needless duplication.

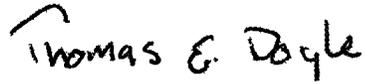
A person commits second degree identity theft by “knowingly obtain(ing), possess(ing), us(ing), or transfer(ring) a means of identification or financial information of another person, living or dead, with the intent to commit, or aid or abet, any crime.” RCW 9.35.020(1).

There was no proof that Selix possessed the identification or financial information with the intent to use it to commit a crime. Patricia and Matthew Bowes testified to their respective items of identification and financial information stolen the night before they were recovered in Selix’s possession. [RP 30-32, 34-35, 37, 40, 43-45, 48-49]. There was no proof, however, that Selix possessed these items with the intent to use them “to commit, or aid or abet, any crime.” The State only presented evidence that Selix possessed the identification documentation and, in closing, conceded that it “hadn’t actually been used yet.” [RP 124]. Possession of the documents recently stolen from the Mr. and Mrs. Browes, alone, does not support a finding that Selix intended to use the documents to commit a crime, with the result that her two convictions for identification theft must be reversed and dismissed.

E. CONCLUSION

Based on the above, Selix respectfully requests this court to reverse and dismiss her convictions for identification theft in the second degree consistent with the argument presented herein.

DATED this 31<sup>st</sup> day of January 2013.



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CERTIFICATE

I certify that I served a copy of the above brief on this date as follows:

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DATED this 31<sup>st</sup> day of January 2013.



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**January 31, 2013 - 12:46 PM**

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