

No. 36417-4-II

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

STATE OF WASHINGTON,
Respondent,

v.

JON T. MESKE,
Appellant.

FILED
COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
BY DEPUTY

APPEAL FROM THE SUPERIOR COURT OF THE STATE
OF WASHINGTON FOR GRAYS HARBOR COUNTY

THE HONORABLE F. MARK McCAULEY

BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

On April 4, 2007, Jon T. Meske was charged by information with the crime of Identity Theft in the Second Degree. These charges arose from Mr. Meske's presentation of a check for cashing at the Bank of America in Aberdeen written on the payroll account of ATS Northwest Incorporated. The State accused Meske of transferring personal information of ATS Northwest Incorporated, its name and address, in an attempt to commit or aid and abet another in the commission of a crime. The case was tried to a judge, and the judge convicted Meske of Identity Theft in the Second Degree

At trial, the State's first witness was Louise Dunjic, the assistant manager at the Bank of America in Aberdeen. She explained that, on April 2, 2007 the defendant, Jon Meske, presented a check for \$823.00 payable to Jon Meske, to be drawn from the payroll account of ATS NW, Inc. Located at 20307 Hwy 99 Ste B, Lynwood, WA 98036. (RP 16). Meske provided his photo identification to verify his identity in cashing the check. (RP 18). Dunjic pulled the bank's information for the payroll account of ATS NW and observed that a check with a similar number had recently been reversed so she contacted ATS Northwest to verify the

check. (RP 16-17). Dunjic was told the check was not issued by ATS Northwest and Dunjic called the police. (RP 19).

The State's second witness was Officer David Cox of the Aberdeen Police Department. Officer Cox spoke with Dunjic, and ATS Northwest and determined the check was not authorized by ATS Northwest. (RP 22). Officer Cox then spoke with Meske and based upon his statement spoke with two parties located in the vehicle outside who verified part of Meske's statement about receiving the check from a Matthew Dustin. (RP 24).

The State's third witness was Officer Jon Andrew Snodgrass from the Aberdeen Police Department. Officer Snodgrass also spoke with Meske who told him he had received the check from Matthew Dustin in payment for a car he brought up from Portland. Meske said \$500.00 of the check was payment for the car and \$100.00 of the check was for incidentals. (RP 27-28).

The State's fourth witness was Melissa Sawyer who was in the car and testified she drove there with Meske and waited in the car when he went into the bank. (RP 30). Sawyer said she was also with Meske when he received a car, a Ford Taurus, from someone named Mike for Sawyer in Portland. (RP 31). According to Sawyer Meske then changed his mind and was going to sell the car to a friend named Larry for \$150.00. (RP 32).

The State's next witness was Chrisy Alcatraz the office manager for ATS Northwest Incorporated located at 210307 Highway 99 South,

Unit B in Lynwood. (RP 33). Alcatraz testified Meske had never worked for ATS Northwest Incorporated (RP 36) but that the name of the business and address of the business on the check correctly identified ATS Northwest Incorporated. (RP 34).

Robert Turner, the founder and president of ATS Northwest Incorporated testified next that the account number on the check presented by Meske was the account number for ATS Northwest's payroll account. Turner further testified the business name and address were correct on the check for ATS Northwest. (RP 43). Turner testified he is the only authorized signatory of checks for ATS Northwest and that he did not sign the check presented by Meske. (RP 43).

The State's final witness was Detective Charles Joseph Chastain of the Aberdeen Police Department. The detective interviewed Meske after his arrest, and Meske gave a statement. (RP 46). When asked about the where he got the check Meske claimed it was given to him by Matthew Dustin. (RP 48). Meske told the detective he received the check as payment for a Ford Escort. Meske said he sold the car for \$600 plus \$100 for expenses and a \$100 tip. (RP 49). When asked why he received a payroll check from a company where he didn't work Meske said he thought that was peculiar too. (RP 50).

The defense presented no witnesses.

ARGUMENT

1. The court should remand this matter for entry of findings of fact and conclusions of law prior to entering a decision in this matter .

CrR 6.1(d) requires written findings of fact and conclusions of law be entered after a bench trial. The remedy for failure to issue written findings of fact and conclusions of law following a bench trial is ordinarily remand for entry of written findings and conclusions.¹ The State respectfully requests, in light of the State's inadvertance, the Court direct the parties to enter Findings of Fact and Conclusions of Law in the trial court and transmit the supplemental documents to the Court of Appeals for consideration.

2. The evidence was sufficient to convict Meske of Identity Theft in the Second Degree.

A challenge to the sufficiency of the evidence presented at a bench trial requires a review of the trial court's findings and conclusions to determine whether substantial evidence supports the challenged findings of fact and whether the findings support the conclusions of law.² Substantial evidence is evidence sufficient to persuade a fair-minded,

¹*State v. Head*, 136 Wash. 2d 619, 964 P.2d 1187 (1998).

²*State v. Madarash*, 116 Wn.App. 500, 509, 66 P.3d 682 (2003).

rational person of the truth of the finding.³ Challenges to a trial court's conclusions of law are reviewed de novo.⁴ A defendant claiming insufficiency admits the truth of the State's evidence and the Court draws all reasonable inferences in the State's favor.⁵

The defendant challenges only whether or not the evidence establishes the defendant knowingly used or transferred a means of identification and therefore the State has not briefed the evidence supporting the finding that the defendant had the requisite intent but maintains sufficient evidence was presented.

The name and address of ATS Northwest are personal information. The presenting of a check bearing the name ATS Northwest Incorporated and the address of ATS Northwest Incorporated is the possession, use and transfer of a means of identification of another person.⁶ Under RCW 9.35.005(3), a means of identification is information that is personal to or identifiable with an individual or other person, including: A current or former name of the person, telephone number, address, social security number, drivers license, tax identification number or other information that could be used to identify the person. A person under RCW 9A.04.110 includes a corporation.

³*Madarash*, 116 Wn.App. at 509.

⁴*Robel v. Roundup Corp.*, 148 Wn.2d 35, 42-43, 59 P.3d 611 (2002).

⁵*State v. Salinas*, 119 W.2d 192, 201, 829 P.2d 1068 (1992).

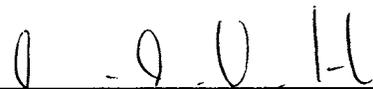
⁶RCW 9.35.020(3).

The defendant did not have any authority or permission to use ATS Northwest Incorporated's name or address. The statute's own non-inclusive list of "personal information" includes the name or address of another person. In the present case the defendant presented both. The fact that the check also included an account number, which is financial information, does not mean the check did not contain personal information. The mere fact that information is presented on a check does not make it financial information. The name ATS NW is the personal name of the corporation. The address on the check was the unique address for the corporation. Presentation of this information was part of the defendant's efforts to commit or aid or abet in commission of the crime of theft and/or forgery. By presenting this personal information unique to ATS Northwest the defendant was attempting to provide sufficient information to allow him to obtain money to which he was not entitled.

CONCLUSION

For the reasons set above, the State asks this court to affirm the verdict and deny the appellant's claim of error.

Respectfully Submitted,

By: 
MEGAN M. VALENTINE
Deputy Prosecuting Attorney
WSBA #35570

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STATE OF WASHINGTON
BY [Signature]
DEPUTY

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DECLARATION OF MAILING

DECLARATION

I, Barbara Chapman, hereby declare as follows:

On the 1ST day of February, 2008, I mailed a copy of the BRIEF OF
RESPONDENT to Christopher H, Gibson, Neilsen, Broman & Koch PLLC, 1908 East Madison,
Seattle, WA 98122, and Jon T. Meske, c/o Mary Jane Parr, 16781 740th avenue, Dassel, MN
55325, by depositing the same in the United States Mail, postage prepaid.

I declare under penalty of perjury under the laws of the State of Washington that the
foregoing is true and correct to the best of my knowledge and belief.

DATED this 1ST day of February, 2008, in Montesano, Washington.

Barbara Chapman

DECLARATION OF MAILING

H. STEWARD MENEFFEE
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MONTESANO, WASHINGTON 98563