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RECEIVED BY E-MAIL

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

VIANNEY VASQUEZ,

Petitioner.

BY RONALD R. CARPENTER

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SUPREME COURT
STATE OF WASHINGTON
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**BRIEF OF AMICUS CURIAE
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A. INTRODUCTION

Vianney Vasquez paid a friend in California \$100 to create fraudulent social security and resident alien cards containing his name and photograph. He had neither a social security number nor an alien registration number, as required to obtain lawful employment in the United States. He came to Washington seeking work, and in fact worked for a time. Vasquez kept the two forged documents – his only purportedly government-issued identification – in his wallet, the place where most people keep important items for frequent and routine access.

The evidence in this case, taken in the light most favorable to the State, is sufficient to establish the elements of the crime of Forgery. Although Vasquez did not present the forged identification cards during his encounter with a store security officer, the circumstantial evidence established that he possessed the cards with intent to defraud. Grafting a “use” requirement onto the alternative means of possession in the Forgery statute would judicially amend the statute and frustrate legislative intent. This Court should decline Vasquez’s and amici’s invitations to do so.

B. IDENTITY AND INTEREST OF AMICUS

The Washington Association of Prosecuting Attorneys (“WAPA”) represents the elected prosecuting attorneys of Washington State, who are responsible by law for the prosecution of all criminal cases charged under

state statutes. WAPA is interested in cases, like this one, where the defendant and amici seek to increase the burden of proof required to convict a defendant by creating an element not required by the legislature.

C. ISSUE

The legislature defined the crime of Forgery such that it may be committed by several alternative means, some of which require the use of a forged document, but one of which does not. Should this court reject Vasquez's invitation to add a "use" element to the possession means of violating the statute?

D. FACTS

On July 28, 2010, Timothy Englund was working as a loss prevention officer at a Safeway in Yakima. RP 38, 42. He noticed the defendant, Vianney Vasquez, in the health and beauty aisle. RP 42-43. Englund watched as Vasquez opened a bottle of hand lotion, squirted a considerable amount of the lotion into his hands, and rubbed it all over his hands and arms. RP 43. When Vasquez left the store, Englund and his partner approached him, identified themselves as store security, and escorted him back into the management office. RP 43-44.

Once there, Englund spoke with Vasquez, completed paperwork, checked him for weapons, and looked for identification. RP 44-45. Englund found Vasquez's wallet in his back pocket; inside were a social

security card and a resident alien card. RP 45-46. Englund asked Vasquez if the cards were his identification; he said yes. RP 48-49.

After handling the social security card for a moment, Englund noticed that the card seemed especially thick and lacked Vasquez's signature. RP 46. Vasquez was unable to recite his social security number when asked. RP 46. Englund asked Vasquez where he obtained the social security card. Vasquez reported that he had purchased the card for \$50 from a friend in California. RP 47.

Englund then asked Vasquez about the resident alien card, and Vasquez told him that he bought it for \$50 from a friend in California as well. RP 48. Vasquez told Englund that he had come to Yakima from California, was staying with friends or family, and had been working in the area but wasn't working at the time. RP 49, 76. Vasquez handwrote and signed a statement to similar effect. RP 53-54.

At trial, Special Agent Robert Rodriguez of the Social Security Administration testified that the social security card that Englund recovered from Vasquez was not an authentic card. RP 80, 82. He ran the social security number on the card through his agency's database and determined that the number was not associated with Vasquez's name. RP 94-95. He further determined that no social security number had ever been issued to anyone with Vasquez's name and date of birth. RP 95-97.

A valid social security number is required in order to obtain legal employment in the United States. RP 98.

Similarly, Officer Brenda McClain with Immigration and Customs Enforcement testified that a resident alien card is issued by Citizen and Immigration Services, a division of the Department of Homeland Security, to verify a person's legal status in the United States. RP 101-02. Every alien who obtains such legal status is issued such a card. RP 106.

McClain examined the card that Englund recovered from Vasquez and opined that it was fraudulently made. RP 103. The alien registration number appearing on the card was not associated with Vasquez. RP 105. Further, Vasquez did not appear in her agency's database as having been issued an alien registration number. RP 105-06.

E. ARGUMENT

Vasquez and amici argue that, for purposes of the crime of Forgery, evidence is sufficient to prove the element of intent to defraud only if the State proves that the defendant "used" the forged written instrument. This is not the law; nothing in the Forgery statute requires proof of use. Adding such an element to the statute would circumvent the legislature's clear intent to include possession of a forged instrument as a means of committing the crime of Forgery. Moreover, Vasquez's and amici's other arguments, which largely amount to claims that a plain

language reading of the statute will work a hardship on immigrants, are not a basis to rewrite the law.

1. INTENT TO DEFRAUD MAY BE PROVED THROUGH FACTS AND CIRCUMSTANCES SURROUNDING POSSESSION OF A FORGED INSTRUMENT.

Evidence is sufficient if, taken in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980) (citing Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)), overruled on other grounds by Washington v. Recuenco, 548 U.S. 212, 126 S. Ct. 2546, 165 L. Ed. 2d 466 (2006).¹ A claim of insufficiency of the evidence admits the truth of the State's evidence. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). “[A]ll reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant.” Id.

To convict Vasquez of Forgery as charged, the State had to prove that he, “with intent to injure or defraud[,] . . . possesse[d], utter[ed], offer[ed], dispose[d] of, or put[] off as true a written instrument” that he

¹ Amici urged this Court to accept review in part because “guidance on the appropriate standard” for assessing sufficiency of the evidence is warranted. Brief of Amici at 3-4. But Green, is the seminal case in Washington on sufficiency of the evidence. According to Westlaw, it has been cited in other Washington cases, both published and unpublished, nearly 2,000 times. The appellate courts have clearly accepted this Court’s determination of the standard, and no further “guidance” is required.

knew to be forged. RCW 9A.60.020(1)(b); CP 22. Vasquez challenges the sufficiency of the State's proof only with respect to intent. "A person acts with intent or intentionally when he or she acts with the objective or purpose to accomplish a result which constitutes a crime." RCW 9A.08.010(1)(a). "Injure" and "defraud" are not defined for purposes of this statute, so they are given their plain meaning. State v. Simmons, 113 Wn. App. 29, 32, 51 P.3d 828 (2002). One is "defrauded" if injury or loss is caused by deceit. Id.; Black's Law Dictionary 456 (8th ed. 2004).

While financial gain may be the most common focus of an intent to defraud, it is not the only motive that satisfies the statute. "Intent to injure or defraud" has been held to include an intent to conceal from a client and the county the fact that the defendant was not a registered contractor, State v. Soderholm, 68 Wn. App. 363, 374-75, 842 P.2d 1039 (1993), an intent to misrepresent the defendant's legal right to be in the country, State v. Esquivel, 71 Wn. App. 868, 871-72, 863 P.2d 113 (1993), and an intent to deprive an employer of information material to the hiring of the defendant, State v. Tinajero, 154 Wn. App. 745, 750, 228 P.3d 1282 (2009), rev. denied, 169 Wn.2d 1011 (2010). See also State v. Richards, 109 Wn. App. 648, 36 P.3d 1119 (2001) (signing false name on traffic citation may constitute Forgery); State v. Spellman, 68 Wn.2d 391, 413 P.2d 337 (1966) (signing another's name on a bail bond was sufficient to prove

Forgery). Further, because an employer is legally obligated to ensure the eligibility of its employees to work in the United States, an employer is injured or defrauded by an employee presenting forged proof of such eligibility. Tinajero, 154 Wn. App. at 750. The State need not prove the particular person that a defendant intends to defraud. RCW 10.58.040.

Because criminal intent “resides exclusively within the mind of the criminal,” State v. Bencivenga, 137 Wn.2d 703, 710, 974 P.2d 832 (1999), it must be proven through circumstantial evidence, absent a confession.² This Court has long held that circumstantial evidence of intent may be found in the facts and circumstances surrounding the criminal act. E.g., State v. Bergeron, 105 Wn.2d 1, 19-20, 711 P.2d 1000 (1985); State v. Willis, 67 Wn.2d 681, 685, 409 P.2d 669 (1966) (noting in a homicide case that inferring intent from surrounding circumstances “has been recognized as the law in Washington for more than 70 years” and is the law in every other state (citing State v. Payne, 10 Wash. 545, 39 P. 157 (1895))). Although Bergeron, an Attempted Burglary case, involves the statutory permissive inference of intent, RCW 9A.52.040, its reasoning is not limited to such cases. Instead, it is representative of numerous cases to the same effect. E.g., State v. Goodman, 150 Wn.2d 774, 781, 83 P.3d 410 (2004) (possession with intent to deliver methamphetamine); State v.

² Circumstantial evidence is no less reliable than direct evidence in determining sufficiency of the evidence. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

Myers, 133 Wn.2d 26, 38, 941 P.2d 1102 (1997) (child sexual abuse); State v. Bright, 129 Wn.2d 257, 270, 916 P.2d 922 (1996) (rape); State v. Wilson, 125 Wn.2d 212, 217, 883 P.2d 320 (1994) (assault); Delmarter, 94 Wn.2d at 638 (attempted theft); State v. Lewis, 69 Wn.2d 120, 123, 417 P.2d 618 (1966) (larceny).

Here, there was ample circumstantial evidence indicating Vasquez's intent to defraud. Vasquez had not one but two forged documents, which had a similar, limited purpose and would commonly be used in tandem. He had obtained the official-looking cards not from a government office, but from a friend for \$50 each. The cards were on his person and in his wallet – the place where most people keep important documents that they intend to access frequently and present to others upon request. He apparently did not have any other government-issued identification with him. A social security number is required to legally work in the United States, and Vasquez did not have a social security number issued to him, nor was he a registered alien. Nonetheless, Vasquez had come from California to Washington in order to work, and said he had been working. Looking at the facts and circumstances surrounding Vasquez's acquisition and possession of the forged cards, the jury was entitled to infer his intent to defraud as a matter of logical probability.

2. **PROOF OF ACTUAL USE IS NOT REQUIRED BY THE STATUTE; ADDING SUCH A REQUIREMENT WOULD FRUSTRATE LEGISLATIVE INTENT TO INCLUDE POSSESSION IN THE CRIME OF FORGERY.**

Vasquez's contention that "intent to injure or defraud" can be proved only by evidence that the defendant used a false document is incorrect. The statute has no such provision. Adding an "actual use" requirement would make the possession prong of the statute superfluous. Vasquez's argument should be rejected.

This Court's primary duty in construing a statute "is to give content and force to the language used by the Legislature." Wilson, 125 Wn.2d at 216-17. Where that language is unambiguous, this Court's inquiry is at an end. Whatcom County v. City of Bellingham, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996). Further, all statutory language must be given effect, with no portion rendered meaningless or superfluous. Id.

A defendant commits Forgery if, with intent to injure or defraud, he "possesses, utters, offers, disposes of, or puts off as true" a forged document. RCW 9A.60.020(1)(b). Proof of any one of these means will support a conviction. State v. Dixon, 78 Wn.2d 796, 803, 479 P.2d 931 (1971). According to the plain language of the statute, the State may prove the crime with evidence of simple possession, as long as it also proves intent to injure or defraud. While other alternative means of

committing the crimes – “offers,” “puts off as true” – anticipate use, “possesses” does not. Nor does the statute anywhere state that use is required in order to prove intent to defraud. When Vasquez demands that the State prove “use,” presumably he means something like utters, offers, disposes of, or puts off as true. If this Court were to adopt Vasquez’s and amici’s argument and require the State to prove that a defendant charged with Forgery “used” the forged document, it would render the word “possesses” meaningless and frustrate the intent of the legislature.

Permitting intent to be established through circumstantial evidence instead of through proof of “use” is also consistent with acceptable methods of proof of intent in other cases. For instance, in cases alleging Possession with Intent to Deliver a Controlled Substance, the State must prove both possession and intent to deliver. RCW 69.50.401; State v. Hagler, 74 Wn. App. 232, 235, 872 P.2d 85 (1994). Caselaw makes clear that intent to deliver cannot be inferred from possession alone. Id. However, neither an actual delivery nor an offer to deliver is required to prove intent to deliver. Instead, intent may be inferred from the surrounding circumstances. In Hagler, the court held that 24 rocks of cocaine and \$342 in the hands of a juvenile was sufficient to uphold a conviction for Possession with Intent to Deliver. Similarly, in State v. Lane, 56 Wn. App. 286, 297-98, 786 P.2d 277 (1989), a large amount of

cocaine – an ounce worth about \$1,000 – coupled with a scale and a large amount of cash were adequate to prove intent to deliver. In other words, the State may prove intent through any facts and circumstances in addition to possession that demonstrated intent as a matter of logical probability.

The same analysis should apply here. This Court should not require the State to prove intent to defraud through a particular act of the defendant; actual “use” of a forged document should not be a prerequisite to conviction for Forgery. Instead, to honor legislative intent that possession with intent to defraud be a basis for conviction, this Court should permit the State to prove intent to defraud through any facts and circumstances surrounding the possession – including but not limited to use or attempted use – that demonstrate intent as a matter of logical probability. Wilson, 125 Wn.2d at 217. Further, the nature and purpose of the forged document possessed – like the amount of narcotics – should be one of the facts and circumstances relevant to determining intent.

**3. VASQUEZ’S AND AMICI’S ARGUMENTS
REGARDING THE STANDARD OF PROOF OF
INTENT TO DEFRAUD LACK MERIT.**

Vasquez and amici argue that the Court of Appeals decision eliminates the requirement that the State prove intent to defraud, that other states require separate proof of intent to defraud, and that a presumption of intent to defraud is inappropriate. None of these arguments is relevant to

the basic proposition that the State may prove intent to defraud through circumstantial evidence and is not required to prove such intent through actual “use” of the forged documents.

First, Vasquez contends that the Court of Appeals opinion “reads out of existence the intent to defraud.” Petition at 6. This is incorrect. Proof of “mere possession” of a forged instrument is, standing alone, inadequate to prove intent to defraud. State v. Louthier, 22 Wn.2d 497, 502, 156 P.2d 672, 674 (1945) (“The applicable rule is that where a specific intent is an element of a crime, the specific intent must be proved as an independent fact and cannot be presumed from the commission of the unlawful act.”). Accordingly, possession of a forged instrument and intent to defraud are separate and distinct elements, each of which must be proven beyond a reasonable doubt in order to obtain a conviction. The Vasquez court did not hold otherwise.

Vasquez’s complaint that the Court of Appeals holding eliminates the element of intent to defraud focuses on language that he takes out of context. The opinion reads, “unexplained possession of a forged instrument makes out a prima facie case of guilt against the possessor because forgery does not require that anyone actually be defrauded.” State v. Vasquez, 166 Wn. App. 50, 53, 269 P.3d 370 (2012). However, this language is not the holding of Vasquez, but a discussion of a different

case, Esquivel, 71 Wn. App. 868. Additionally, the pertinent part of the Esquivel case being discussed in Vasquez was merely a quotation from a treatise on criminal law, 1 C. Torcia, Wharton on Criminal Evidence § 81, at 265-66 (14th ed. 1985), rather than Esquivel's holding.

A more accurate description of the Vasquez court's holding would be that it was reasonable for the jury to infer intent to defraud from Vasquez's unexplained³ possession of the forged cards, coupled with his conduct and his admissions to Englund that he had worked in the area.⁴ Vasquez acknowledged that proof of intent to injure or defraud was required, and that it could be proven not just by reference to Vasquez's possession of the cards, but also by examining his conduct and statements. This holding is unremarkable.

Second, Vasquez contends that other states do not presume intent to defraud from simple possession.⁵ Again, Vasquez is rebutting a

³ The Court of Appeals notes that Vasquez's possession of the forged instruments was "unexplained." In fact, the possession was "unexplainable." This is merely an observation that there is no inference that could be drawn from the facts that is consistent with an innocent purpose.

⁴ Indeed, the Vasquez court framed the issue before it as "whether, as a matter of logical probability, the jury could infer intent to defraud from Mr. Vasquez's possession of these cards, his conduct, and his exchanges with the security officer." Vasquez, 166 Wn. App. at 52 (emphasis added).

⁵ Vasquez cited numerous foreign cases for the proposition that "a person who possesses fraudulent identification or other instrument but has not offered it as true has not demonstrated the required intent to defraud." Brief at 7. These cases are easily distinguishable on their facts.

In Velasquez v. State, 623 S.E.2d 721 (Ga. App. 2005), Velasquez was stopped by police for a traffic infraction, and he presented a Mexican driver's license; a forged North Carolina identification card was later found in his wallet during a search incident to

phantom argument. The Court of Appeals did not base its decision on “mere possession.” As discussed above, the evidence presented was not limited to Vasquez’s mere possession of the forged documents, but included the facts and circumstances surrounding that possession, as the Court of Appeals properly recognized. Vasquez, 166 Wn. App. at 52.

Third, upholding the jury’s verdict does not create a “mandatory presumption” that possession of a forged document constitutes intent to

arrest. He was convicted of Forgery under Ga. Code Ann. §16-9-2(a), a statute similar to Washington’s, based on his possession of the forged North Carolina card. The Georgia Court of Appeals reversed his conviction, concluding that the State had failed to prove intent to defraud. Unlike the case at bar, Velasquez presented a different government-issued identification card to the officer when asked to identify himself; that Mexican card was not alleged to be a forgery. He provided no information as to how or why he obtained the North Carolina card. And, the card at issue was a general identification card, unlike a social security card that has a specific and limited purpose of enabling lawful employment.

Similarly, in People v. Miralda, 981 P.2d 676 (Colo. App. 1999), the defendant, a passenger in a car, provided police with a valid Colorado Asbestos Identification card when asked to identify himself. Unfamiliar with that type of identification, the officer asked for a “green card,” which he had seen in Miralda’s wallet. Miralda then supplied a forged resident alien card; a forged social security card was found in a later inventory search of his wallet. Miralda was convicted of Forgery under Colo. Rev. Stat. § 18-5-102(1), which again is similar to Washington’s statute. The Colorado Court of Appeals reversed Miralda’s conviction for Forgery, finding that these facts alone did not support a finding of intent to defraud. Unlike the case before this Court, however, Miralda carried with him and presented valid identification. Moreover, there was no evidence presented at trial that Miralda had worked, “nor was there any proof that defendant’s status was such that it could be inferred that he would be required to use either instrument to misrepresent that status.” Miralda, 981 P.2d at 679. Here, by contrast, Vasquez carried only the forged cards on his person, he admitted coming to Washington to work, he acknowledged working, and the State proved that he had neither a social security number nor an alien registration number that would permit him to do so lawfully.

The other foreign cases cited by Vasquez are to similar effect. The cases primarily underscore the uncontroversial proposition that any analysis of sufficiency of the evidence is necessarily a fact-specific inquiry. As WAPA does not urge this Court to allow mere possession to prove intent to defraud, but instead contends that a consideration of all of the facts and circumstances is required, further reference to out-of-state cases is singularly unhelpful.

defraud. A presumption is a legally compelled assumption of fact from another fact. State v. Jackson, 112 Wn.2d 867, 874, 774 P.2d 1211 (1989). An inference, on the other hand, is a logical deduction from an established fact that the law allows, but does not require. Id. “For a criminal statutory presumption to meet the test of constitutionality the presumed fact must follow beyond a reasonable doubt from the proven fact.” Id. at 876. A factfinder, however, may make any inference that it deems reasonable. Bencivenga, 137 Wn.2d at 708-09. It is the province of the factfinder, not the reviewing court, to weigh evidence, determine the credibility of witnesses, and determine what inferences from proven facts are reasonable or unreasonable.⁶ Id. Upholding the jury’s verdict here does not create a mandatory presumption in the forgery statute. Rather, it respects the jury’s role as the ultimate finder of fact, as required by Green, 94 Wn.2d at 221-22. See also Wilson, 125 Wn.2d at 217 (“Specific intent cannot be presumed, but it can be inferred as a logical probability from all the facts and circumstances.”).

⁶ The jury in Vasquez’s case was instructed regarding direct and circumstantial evidence. It was charged:

The evidence that has been presented to you may be either direct or circumstantial. The term ‘direct evidence’ refers to evidence that is given by a witness who has directly perceived something at issue in this case. The term ‘circumstantial evidence’ refers to evidence from which, based on your common sense and experience, you may reasonably infer something that is at issue in this case.

CP 53. Vasquez did not object to the giving of this instruction, and does not complain of it on appeal.

In short, Vasquez's and amici's objections to the Court of Appeals opinion are both incorrect and irrelevant. This Court should adhere to its prior holdings that intent may be inferred as a logical probability by the factfinder from the facts and circumstances surrounding the criminal act.

4. THIS COURT SHOULD DECLINE INVITATIONS TO ELIMINATE THE ALTERNATIVE MEANS OF POSSESSION SIMPLY TO AVOID THE NATURAL CONSEQUENCES OF A CRIMINAL CONVICTION.

Amici argue that this Court should adopt their flawed statutory interpretation because the consequences of a forgery conviction may be significant. This argument should be rejected.

First, the legislature has plenary power, within constitutional limits, to proscribe conduct and set penalties. State v. Thorne, 129 Wn.2d 736, 767, 921 P.2d 514 (1996), abrogated on other grounds by Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004). It presumably knows and intends the consequences of its criminal statutes. Amici cite no authority that would allow this Court to amend a statute to ameliorate the consequences of a legislature's unambiguously expressed choices. E.g., State v. Taylor, 97 Wn.2d 724, 649 P.2d 633 (1982).

Second, implementing the plain language of the statute, and permitting the reliance on circumstantial evidence to prove intent, is not unduly harsh. Nor will continuing the uncontroversial practice of

permitting juries to consider the surrounding facts and circumstances in analyzing whether a defendant has a specific intent unfairly “impact thousands.” Brief of Amici at 8.

For example, it is incorrect that the Court of Appeals decision means that an 18 year old who obtains “a driver’s license stating that he is 21 could be convicted of forgery” in the absence of additional facts supporting an inference of his intent to defraud. Brief of Amici at 8.

While the nature of the forgery itself tends to support an inference that the possessor may wish to represent himself as older than he is, no surrounding facts or circumstances give rise to an inference that he intends to defraud. And, even if the facts supported an inference of intent to use, a bar or tavern suffers no loss or injury by relying in good faith on a forged identification. RCW 66.20.210 (providing immunity from prosecution or suit to providers of liquor who appropriately check identification).

Likewise, inferring intent from circumstantial evidence, as is always done, will not turn every possession of a forged social security card or resident alien card into a Forgery.⁷ To the contrary, if Vasquez had possessed the forged cards in a drawer at home, while keeping a valid form of identification in his wallet, a conviction for Forgery probably

⁷ However, federal law already sanctions Vasquez’s conduct as a felony. 42 U.S.C. § 408(a)(7)(C) (providing that anyone who, “for any other purpose,” buys a real or forged social security card is guilty of a felony).

would not have been warranted, because intent to injure or defraud could not have been logically inferred from the facts. Alternatively, if Vasquez had found forged cards in someone else's name, instead of purchasing them himself, a jury may not have been justified in concluding he intended to defraud. Or, if the State had failed to demonstrate that Vasquez lacked a social security number, the State's proof may have been inadequate to show that he intended to use the cards to gain employment. Compare People v. Miralda, 981 P.2d 676 (Colo. App. 1999) (overturning a forgery conviction where it was unclear that the forged document was necessary for employment). In short, the State will always have to prove intent to defraud in addition to proving knowing possession of a forged document in order to sustain a conviction for Forgery.⁸

⁸ Vasquez also suggests that he should only have been convicted under the more specific statute of RCW 66.20.200(2), which he claims criminalizes mere possession of an identification card. This statute is irrelevant to this case. RCW 66.20.200(2) provides, "Any person not entitled thereto who unlawfully procures or has issued or transferred to him or her a card of identification, and any person who possesses a card of identification not issued to him or her . . . shall be guilty of a misdemeanor . . ." However, this statute, which appears in the "Liquor Permits" chapter of Title 66, governing "Alcoholic Beverage Control," has no bearing on the conduct of an individual possessing a forged social security card with intent to defraud. A "card of identification," for purposes of RCW 66.20.200, was, at the time of Vasquez's crime, "any one of those cards described in RCW 66.16.040." Former RCW 66.20.160. (RCW 66.16.040 and the relevant language of RCW 66.20.160 were repealed by Initiative 1183, approved November 8, 2011 (Laws of 2012, ch. 2, §§ 110, 215(10)).) Former RCW 66.16.040, in turn, defined a "card of identification" as one of a list of "officially issued" cards that also contained the individual's age, signature, and photograph; those cards included driver's licenses, passports, military identifications, and the like. Social security cards and resident alien cards were not on the list, and because Vasquez's cards were forged, they were also not "officially issued." He could not have been convicted of this offense. Moreover, even if it did apply, the State proved the additional element of intent to injure or defraud; at best, RCW 66.20.200(2) would be a lesser included offense, not a more specific statute.

Finally, there is no evidence that the jury, the trial judge, or the Court of Appeals allowed “societal bias against immigrants” to supplant their reasoned consideration of the evidence.⁹ Petition at 15. To the contrary, the circumstantial evidence presented supported the reasonable inference that Vasquez possessed fake identification in order to defraud employers. Immigrants are not entitled to work in the United States without appropriate documentation. If an individual possesses two types of false identification whose purpose is to make it appear that he is legally entitled to work, one can reasonably infer that his possession is with intent to defraud employers. Vasquez never argues that this is not a logical inference from the evidence; he merely argues that other inferences also could have been drawn – inferences that the jury, as the factfinder, was free to reject. In reviewing this sufficiency of the evidence claim, this Court must also reject them. Salinas, 119 Wn.2d at 201.

⁹ There is not a hint of anti-immigrant bias or racial prejudice in the comments made by the prosecutor, the trial judge, or the appellate court, and Vasquez has not directly alleged otherwise. Instead, the only immigration- or race-related bias present in the entire case appears in Vasquez’s own brief, when his lawyer asks this Court to assume that whatever work he did “was likely to be in the nature of piecemeal agricultural work without taxed wages.” Supplemental Brief of Petitioner at 19. In other words, Vasquez asks this Court to indulge in a stereotype about Hispanic immigrants, and to presume that potential employers of such workers would routinely break the law by intentionally hiring undocumented workers and paying them under the table, in order to find that the jury’s inference that Vasquez intended to defraud potential employers was not a rational inference from the evidence. This kind of argument should be rejected, whatever its source.

In short, Vasquez's and amici's arguments serve only as an attempt to blunt the effects of a federal immigration policy that they oppose. But the propriety of the immigration laws of this country are not before this Court. Instead, this Court should decide the narrow question before it: May the State prove a defendant's intent to defraud through circumstantial evidence, such as the facts and circumstances surrounding the defendant's possession of the forged documents, the purpose of the documents, and the nature of the forgery? All of this Court's prior caselaw make the answer a clear yes. Vasquez's convictions should be affirmed.

F. CONCLUSION

WAPA respectfully asks this Court to affirm Vasquez's two convictions for Forgery, and to reject his challenge to the sufficiency of the evidence regarding his intent to defraud.

DATED this 12 day of February, 2013.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 
ERIN H. BECKER, WSBA #28289
Senior Deputy Prosecuting Attorney
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Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to the following attorneys,

Sarah A Dunne ACLU of Washington Foundation dunne@aclu-wa.org	Matthew Hyrum Adams NW Immigrants' Rights Project matt@nwirp.org
Nancy Lynn Talner Attorney at Law talner@aclu-wa.org	Suzanne Lee Elliott Attorney at Law suzanne-elliott@msn.com
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containing a copy of the Brief of Amicus Curiae Washington Association of Prosecuting Attorneys, in STATE V. VIANNEY VASQUEZ, Cause No. 87282-1, in the Supreme Court, for the State of Washington.

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

U Brame
Name
Done in Seattle, Washington

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Date 2/12/13

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Cc: Becker, Erin; James.Hagarty@co.yakima.wa.us; TrefryLaw@WeGoWireless.com
Subject: RE: State v. Vianney Vasquez, No. 87282-1

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Cc: Becker, Erin; James.Hagarty@co.yakima.wa.us; TrefryLaw@WeGoWireless.com
Subject: State v. Vianney Vasquez, No. 87282-1

Please accept for filing the attached documents (Motion for Leave to File Amicus Curiae Brief and Brief of Amicus Curiae Washington Association of Prosecuting Attorneys) in State of Washington v. Vianney Vasquez, No. 87282-1.

Thank you.

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This e-mail has been sent by Wynne Brame, paralegal (phone: 206-296-9650), at Erin Becker's direction.

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