

70569-5

70569-5

NO. 70569-5-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

AVRUM TSIMERMAN,

Appellant.

FILED
JUL 10 2013
CLERK OF COURT
KING COUNTY

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE MONICA J. BENTON

BRIEF OF RESPONDENT

DANIEL T. SATTERBERG
King County Prosecuting Attorney

JENNIFER P. JOSEPH
Deputy Prosecuting Attorney
Attorneys for Respondent

King County Prosecuting Attorney
W554 King County Courthouse
516 3rd Avenue
Seattle, Washington 98104
(206) 296-9650

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A. ISSUES PRESENTED

1. The party seeking review has the burden of perfecting the record so that the reviewing court has before it all of the relevant evidence. An insufficient record on appeal precludes review of the alleged errors. Tsimerman has arranged for transcription of only short excerpts of five of the eleven days of his trial and related proceedings. Does the insufficient record preclude review of his claims concerning the sufficiency of the evidence, the make-up of the jury, and his entitlement to a jury instruction on the defense of good faith claim of title?

2. Where two criminal offenses are concurrent, and one is more specific than the other, the State must charge the defendant with the more specific offense. This rule does not apply when a criminal statute and a civil statute are at issue and there is no legislative command that the civil statute precludes prosecution under the criminal statute. Did the State properly charge Tsimerman with first-degree theft despite the existence of a civil statute that penalizes the same conduct?

3. The State has discretion to aggregate multiple transactions that separately constitute misdemeanor theft into a single felony count, but is not obligated to aggregate multiple

transactions that separately constitute felony theft into a single count. Tsimerman committed four separate transactions that each constituted first-degree theft. Did the State properly charge him with four counts of first-degree theft?

4. Where a statute extends a period of limitation, it applies to offenses not barred on the effective date of the act, so that a prosecution may be commenced at any time within the newly established limitation period. Tsimerman committed first-degree theft by color and aid of deception on four separate occasions in 2008. By amendment effective in 2009, at which point none of the 2008 offenses were time-barred, the legislature extended the limitation period for this offense to six years. The State charged Tsimerman in 2012. Did the trial court properly conclude that the State timely brought these charges?

5. Each instance of bringing about a transfer of the property of another by color or aid of deception constitutes a separate unit of prosecution for first-degree theft. The State alleged, and the jury found, that Tsimerman caused DSHS to issue checks to compensate him for the care of his mother on four separate occasions after she had died. Should Tsimerman's claim that his four convictions constitute double jeopardy be rejected?

6. A sentencing court has discretion to determine the amount of restitution, and its determination of the amount of restitution will not be reversed if based upon evidence sufficient to afford a reasonable basis for estimating loss. The State proved that Tsimerman unlawfully caused DSHS to pay him \$6,423.30 for work he never performed. Was the court within its discretion to order Tsimerman to pay restitution in the amount of \$6,423.30?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

In April 2012, the State charged Avrum Tsimerman with four counts of theft in the first degree by color and aid of deception. CP 1-3. Judge Theresa Doyle granted Tsimerman's motion to proceed pro se in July 2012. CP 122-24. In September 2012, Judge Michael Hayden denied Tsimerman's motion to have the prosecutor and detective removed from the case, as well as a motion to dismiss based on the statute of limitations. CP 125-26. Judge Hayden denied reconsideration of the statute of limitations issue, and this Court denied discretionary review of that ruling. CP 127, 177-80.

In December 2012, Judge Ronald Kessler denied Tsimerman's motions to change the charges to embezzlement, to dismiss for lack of evidence, and to change venue. CP 128-62. In February 2013, Judge Kessler denied Tsimerman's motion to dismiss on double jeopardy grounds. CP 163-65. In April 2013, Judge Kessler also denied Tsimerman's motion to dismiss based upon the affirmative defense of good faith claim of title, noting that the order did not preclude Tsimerman from raising the defense should the trial court find it was available to him. CP 166-67.

The trial court, Judge Monica Benton presiding, ruled on pretrial motions in limine on May 5, 2013. CP 69-71. The court conducted a CrR 3.6 hearing on May 8, 2013. CP 72-74. On May 13, 2013, the court denied Tsimerman's oral motion for dismissal on double jeopardy grounds and conducted jury selection. CP 75-76.

Tsimerman's jury trial occurred on May 14, 15, 16, 20, 21, and 22, 2013. CP 77-88. After only 33 minutes of deliberation, the jury returned guilty verdicts on all four counts. CP 88. Although Tsimerman's standard range sentence was 4-12 months on each count, the court granted him a first-time-offender waiver and imposed only six months of community custody and 960 hours of

community restitution. CP 168-76. The court ordered Tsimerman to pay restitution in the amount of \$6,423.30. CP 42.

2. SUBSTANTIVE FACTS¹

Avrum Tsimerman was paid by the Washington Department of Social and Health Services (DSHS) to care for his mother, Leya Rekhter. CP 5; Ex. 8, 56. In order to receive payment for services he provided, Tsimerman used an automated telephonic system to confirm invoices that were mailed to him. Ex. 2, 39.

As a contracted individual service provider, Tsimerman was obligated to report the death of his mother to DSHS within 24 hours, and to follow up with written notification within seven days. CP 6; Ex. 8, 56. Tsimerman was also obligated to report any significant change in Rekhter's condition within 24 hours. CP 6; Ex. 8, 56.

About one month before Rekhter died, she purportedly signed a handwritten contract providing for payment of Tsimerman's "salary" for six months following her death. Ex. 19.

¹ This summary of the facts of the case is largely taken from the Certificate of Probable Cause, which was admitted at trial as Exhibit 56, because Tsimerman has failed to have any of the trial testimony transcribed despite this Court's warning that such failure would preclude review of alleged errors. See Notation Ruling (February 27, 2014).

There is no indication in the contract that DSHS was aware of or agreed to fund this contract.

Rekhter was hospitalized on May 5, 2008, and passed away on May 16, 2008. CP 6; Ex. 56. Tsimerman was aware of Rekhter's death and arranged for her burial. CP 6-7; Ex. 56. In making final arrangements, Tsimerman told the funeral director that he did not wish to have any documentation of his involvement. CP 7; Ex. 56. The funeral director nevertheless recorded the contact in her personal journal. CP 7; Ex. 56. The funeral director later identified Tsimerman as the person who paid for the burial service and cemetery plot for Rekhter. CP 7; Ex. 56.

Despite his mother's death, Tsimerman continued to use the automated system to confirm his invoices to DSHS, indicating that he was still caring for Rekhter. CP 6; Ex. 2, 16, 56. He received payments for services and mileage from the State of Washington until November 2008, when Rekhter's death evidently came to the attention of her case manager. CP 6; Ex. 1, 2, 3. Tsimerman received payment for services in June, July, August, and September 2008. Ex. 1, 2, 3. He also received mileage reimbursements in August and September 2008. Ex. 1.

C. ARGUMENT

1. TSIMERMAN'S FAILURE TO SUPPLY A SUFFICIENT RECORD PRECLUDES REVIEW.

Among other things, Tsimerman contends there is insufficient evidence to support his conviction on four counts of first-degree theft, that the trial court erred by refusing his motion for a new jury venire, and that the court erred by refusing to instruct the jury on the affirmative defense of good faith claim of title.² Brief of Appellant at 8-12. To address the merits of these claims, it is necessary to review the testimony taken at trial, the hearing on Tsimerman's motion for a new jury, and the entirety of the jury selection process. Because Tsimerman has failed to supply the pertinent portions of the record, review is impossible.³

The party who seeks review of an alleged trial error has the burden to provide a record adequate to permit review. State v. Wade, 138 Wn.2d 460, 464, 979 P.2d 850 (1999); Bulzomi v. Dep't

² The State interprets Tsimerman's claims that the court erred "in not recognizing Leya Rekhter's contract with defendant" and "in not recognizing that DSHS was in breach of contract and defendant was working and being paid by DSHS's client, Ley[a] Rekhter" as additional claims of evidentiary insufficiency, as Tsimerman contends that these ostensible "facts" undermine the finding of guilt. Brief of Appellant at 8.

³ See State's Motion to Compel Appellant to File Statement of Arrangements and Verbatim Report of Proceedings (February 18, 2014). Commissioner Kanazawa denied this motion, but noted that Tsimerman's failure to satisfy his burden to perfect the record would preclude review. Notation Ruling (February 27, 2014).

of Labor & Indus., 72 Wn. App. 522, 525, 864 P.2d 996 (1994).

Under Rule of Appellate Procedure (RAP) 9.2(b), “[a] party should arrange for transcription of all those portions of the verbatim report of proceedings necessary to present the issues raised on review.” More specifically, “[i]f the party seeking review intends to urge that a verdict or finding of fact is not supported by the evidence, the party should include in the record all evidence relevant to the disputed verdict or finding.” RAP 9.2(b). “An insufficient record on appeal precludes review of the alleged errors.” Bulzomi, 72 Wn. App. at 525. Absent an affirmative showing of error, the trial court’s judgment is presumed to be correct. Wade, 138 Wn.2d at 464.

Tsimerman’s trial and related hearings occurred over 11 court days, including May 2, 8, 13, 14, 15, 16, 20, 21, 22, and 31, 2013 and July 10, 2013. CP 69-88, 168-70, 181. Tsimerman arranged for transcription of short excerpts of five of these days, together amounting to little more than an hour. RP 1-66. Trial testimony is entirely absent from this record, as is the hearing on his motion for a new jury and most of voir dire. Without a record of the evidence presented during trial, it is impossible to evaluate his claim that that evidence is not sufficient to support his convictions.

His failure to provide a sufficient record in accordance with RAP 9.2(b) leaves this Court with nothing to review.

Likewise, without a complete record of the evidence adduced at trial, it is impossible to review Tsimerman's claim that the court abused its discretion by refusing to instruct the jury on the affirmative defense of good faith claim of title. A defendant is entitled to an instruction on that defense only when the evidence supports it. State v. Ager, 128 Wn.2d 85, 93, 95, 904 P.2d 715 (1995). Since Tsimerman has provided no record of the trial testimony, review of this claim is precluded and this Court must presume there was no error. Bulzomi, 72 Wn. App. at 525; Wade, 138 Wn.2d at 464.

It is also impossible to evaluate Tsimerman's claim that the jury was biased. Tsimerman has provided a transcript of an 18-minute portion of voir dire in which a number of prospective jurors expressed concern about his ability to effectively represent himself. RP 27-42. But the jury selection process occupied the court for over three hours, and it is impossible to know from the record provided how these prospective jurors responded to additional questioning by the prosecutor or by Tsimerman himself, whether Tsimerman challenged any of these jurors for cause, or

whether any of these jurors were actually seated. CP 75-76; RP 27. Because the record is inadequate on this point, review is precluded and this Court must presume there was no error. Bulzomi, 72 Wn. App. at 525; Wade, 138 Wn.2d at 464.

Similarly, Tsimerman's claim that the trial court abused its discretion by denying his motion for a new jury pool for "lack of a representative sample" is precluded by his failure to transcribe both the entirety of voir dire and the discussion and denial of this motion. CP 77. To make a prima facie showing that the underrepresentation of a distinctive group in the community violates the constitutional right to a jury venire representing a fair cross section of the community, a defendant must show that the allegedly excluded group is "distinctive," that the representation of this group in the venire is not "fair and reasonable in relation to the number of such persons in the community," and that the underrepresentation is due to "systematic exclusion of the group in the jury-selection process." In re Personal Restraint of Yates, 177 Wn.2d 1, 19, 296 P.3d 872 (2013) (citing Duren v. Missouri, 439 U.S. 357, 364, 99 S. Ct. 664, 58 L. Ed. 2d 579 (1979)). The record Tsimerman has provided does not permit review of his claim that "immigrants, second language English speakers, or minorities"

were underrepresented in the jury venire, let alone that such individuals were systematically excluded. Brief of Appellant at 45. Because the record is inadequate, review is impossible and this Court must presume there was no error. Bulzomi, 72 Wn. App. at 525; Wade, 138 Wn.2d at 464.

2. THE STATE PROPERLY CHARGED TSIMERMAN UNDER THE THEFT STATUTE.

Tsimerman contends that the State charged him under the wrong statute and that the trial court should have granted his motion to dismiss on that basis. His argument lacks merit and should be rejected.

The State charged Tsimerman with four counts of first-degree theft by color and aid of deception under former RCW 9A.56.030(a) (2008) and RCW 9A.56.020.⁴ Tsimerman contends that the more appropriate provision is RCW 74.09.210, which establishes civil penalties for fraudulent practices related to public assistance benefits. He argues that RCW 74.09.210 is “more specific” than the theft statute, and cites State v. Wilson, 158

⁴ In 2009, after Tsimerman committed the thefts in this case, the legislature amended RCW 9A.56.030(a) to raise the minimum dollar value of property or services stolen that would constitute first-degree theft from \$1,500 to \$5,000. 2009 Laws of Washington, ch. 431, § 7.

Wn. App. 305, 313-14, 242 P.3d 19 (2010), for the proposition that the State must charge a defendant under the more specific statute.

“When a specific statute and a general statute punish the same conduct, the statutes are concurrent and the State can only charge the defendant under the specific statute.” Wilson, 158 Wn. App. at 313-14. Statutes are only concurrent when every violation of the specific statute results in a violation of the general statute. Id. at 314. The determinative factor is whether it is possible to commit the specific crime without also committing the general crime, not whether in a given instance the defendant’s particular conduct meets the elements of both crimes. Id. at 314.

Wilson, and the “general-specific” rule it describes, does not apply here because one of the statutes in question is criminal and the other is civil. State v. Conte, 159 Wn.2d 797, 807, 154 P.3d 194 (2007). “Absent explicit legislative command that a civil statute precludes prosecution under an existing criminal statute or that the criminal statute is repealed, the ‘general-specific’ rule does not apply because its application would infringe on the prosecuting attorney’s discretion to charge a crime.” Id. RCW 74.09.210 contains no such legislative command. Rather, it provides for civil penalties “in addition to any other penalties provided by law” and

clearly contemplates that criminal action may (but need not) also be brought against the accused. RCW 74.09.210(2), (3).

Tsimerman's potential civil liability does not preclude his prosecution for theft, and his claim that the "wrong charges" were filed against him is without merit.

3. THE STATE WAS NOT OBLIGATED TO "CONSOLIDATE" THE FOUR COUNTS OF FIRST-DEGREE THEFT INTO ONE COUNT OF FIRST-DEGREE THEFT.

Tsimerman next contends that the State should have consolidated the four counts of first-degree theft into a single count under RCW 9A.56.010(21)(c), and that the trial court erred by denying his motion to force the State to do so. Tsimerman's arguments demonstrate a fundamental misunderstanding of the law and should be rejected.

For purposes of meeting the value element of a felony theft charge, the State may aggregate a series of transactions that separately constitute third-degree (misdemeanor) theft and are part of a common scheme or plan:

Except as provided in RCW 9A.56.340(4) and 9A.56.350(4), whenever any series of transactions which constitute theft, would, when considered separately, constitute theft in the third degree

because of value, and said series of transactions are a part of a criminal episode or a common scheme or plan, then the transactions may be aggregated in one count and the sum of the value of all said transactions shall be the value considered in determining the degree of theft involved.

RCW 9A.56.010(21)(c). By its terms, the aggregation statute is not mandatory and does not apply where each transaction in the series separately constitutes felony theft.

In State v. Carosa, 83 Wn. App. 380, 921 P.2d 593 (1996), the State charged a grocery store clerk with three counts of second-degree theft. Id. at 381. At that time, theft of \$250 or more constituted second-degree theft. Id. On each of three days, Carosa took more than \$250 from her employer's cash registers by processing several false refunds of smaller amounts of money throughout her shift. Id. at 381-82. Carosa argued that the State was required to aggregate the multiple misdemeanor thefts into a single felony count under the aggregation statute.⁵ Division Two of this Court disagreed:

The State did not prosecute Carosa under the theory that she committed multiple misdemeanors that could be aggregated into one felony under the statute. Rather, the State prosecuted Carosa for a single theft of more than \$250 on each of three

⁵ At the time, the statute was codified at RCW 9A.56.010(12)(c). Aside from the numbering, the statute is identical to RCW 9A.56.010(21)(c).

different days. ... Carosa's conduct each day fit the definition of a single felony theft, i.e., taking from the same victim at the same time and place. Accordingly, Carosa was properly charged with three counts of second degree theft.

Id. at 384. The same is true here. Tsimerman's conduct constituted first-degree theft on each of four occasions that he caused DSHS to pay him more than \$1,500 for services he did not perform. Accordingly, he was properly charged with four counts of first-degree theft.

4. THE STATE CHARGED TSIMERMAN WITHIN THE STATUTE OF LIMITATIONS.

Tsimerman next contends that the State failed to file charges within the statute of limitations applicable at the time he committed the offenses. His argument fails because it depends upon an incorrect statute of limitations.

Tsimerman was charged with four counts of theft in the first degree by color and aid of deception, all alleged to have occurred between July 2, 2008 and October 1, 2008. CP 1-3. The State filed these charges on April 4, 2012, approximately three years and nine months after the earliest charged incident. CP 1.

Tsimerman cites RCW 9A.04.080(h) to claim that the limitations period for these offenses was only three years. Brief of Appellant at 32. His reliance is misplaced because that provision applies only when the legislature has not specified a statute of limitations. RCW 9A.04.080(h) (“No other felony may be prosecuted more than three years after its commission ...”). In 2009, however, the legislature established a six-year statute of limitations for felony thefts accomplished by color and aid of deception. RCW 9A.04.080(d)(iv); 2009 Laws of Washington, ch. 53, § 1.

Tsimerman argues that the 2009 amendments are not retroactive and do not apply to him. He is mistaken. “When the Legislature extends a criminal statute of limitations, the new period of limitation applies to offenses not already time barred when the new enactment became effective.” State v. Hodgson, 108 Wn.2d 662, 666-67, 740 P.2d 848 (1987). Since Tsimerman’s offenses were not time-barred in July 2009, when RCW 9A.04.080(d)(iv) became effective, the extension of the limitations period is applicable. See Hodgson, 108 Wn.2d at 668 (“In the cases before us, none of the offenses were time barred at the time the new

statutes of limitation were enacted and became effective, therefore, each new statute became the one applicable”).

Tsimerman acknowledges Hodgson, but nevertheless argues that the 2009 amendment does not apply retroactively absent a legislative declaration of intent to the contrary. He relies on RCW 10.01.040.⁶ But our supreme court rejected the same argument in Hodgson:

Nor does the saving clause statute, RCW 10.01.040, change our determination herein. It saves “all offenses committed or penalties or forfeitures incurred” from being abated when a criminal statute is repealed. By its terms, however, this statute saves only substantive rights and liabilities of a repealed statute; it does not include a state of limitation within its operation.

108 Wn.2d at 669-70 (citations omitted).

⁶ “No offense committed and no penalty or forfeiture incurred previous to the time when any statutory provision shall be repealed, whether such repeal be express or implied, shall be affected by such repeal, unless a contrary intention is expressly declared in the repealing act, and no prosecution for any offense, or for the recovery of any penalty or forfeiture, pending at the time any statutory provision shall be repealed, whether such repeal be express or implied, shall be affected by such repeal, but the same shall proceed in all respects, as if such provision had not been repealed, unless a contrary intention is expressly declared in the repealing act. Whenever any criminal or penal statute shall be amended or repealed, all offenses committed or penalties or forfeitures incurred while it was in force shall be punished or enforced as if it were in force, notwithstanding such amendment or repeal, unless a contrary intention is expressly declared in the amendatory or repealing act, and every such amendatory or repealing statute shall be so construed as to save all criminal and penal proceedings, and proceedings to recover forfeitures, pending at the time of its enactment, unless a contrary intention is expressly declared therein.”

RCW 10.01.040.

The State filed charges against Tsimerman within the applicable six-year statute of limitations. His argument to the contrary must be rejected.

5. THE FOUR COUNTS OF FIRST-DEGREE THEFT FOR FOUR SEPARATE TRANSACTIONS ON FOUR SEPARATE DAYS DO NOT CONSTITUTE DOUBLE JEOPARDY.

Tsimerman argues that his four first-degree theft convictions violate double jeopardy by inflicting multiple punishments for “the same crime over the same time period.” Brief of Appellant at 43. He contends that each count was part of a common scheme or plan and therefore constituted a single unit of prosecution. He is mistaken.

The double jeopardy provisions of the state and federal constitutions protect defendants from multiple punishments for the same offense. State v. Turner, 102 Wn. App. 202, 205-06, 6 P.3d 1226 (2000). “When a person is charged with violating the same statutory provision a number of times, multiple convictions can withstand double jeopardy challenge only if each is a separate unit of prosecution.” Id. at 206. To determine what unit of prosecution the legislature intends as a punishable act under the statute, this

Court applies rules of statutory construction. Id. at 206-07. Any ambiguity is construed in favor of lenity. Id.

Tsimerman was charged with four counts of first-degree theft. At the time of Tsimerman's offenses, the first-degree theft statute provided in part that "[a] person is guilty of theft in the first degree if he or she commits theft of ... [p]roperty or services which exceed[s] one thousand five hundred dollars in value." Former RCW 9A.56.030 (2008).

The definition of "theft" applicable in this case is "[b]y color or aid of deception to obtain control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services." RCW 9A.56.020(1)(b). In addition to its common meaning, "[o]btain control over" means "to bring about the transfer ... to the obtainer ... of a legally recognized interest in the property[.]" RCW 9A.56.010(10)(a).

The plain language of these statutory provisions make clear that the unit of prosecution for first degree theft by color or aid of deception is the transfer of property valued at \$1,500 or more to the obtainer.

Tsimerman brought about the transfer of more than \$1,500 from DSHS to himself on four occasions after Rekhter died. He did

so by calling the automated system on June 27, July 28, August 26, and September 29, 2008 and falsely representing his entitlement to payment for four separate invoices relating to four different time periods. Ex. 16, 39. Based on these deceptive calls, DSHS issued checks to him on July 2, August 1, September 2, and October 1, 2008. Ex. 1, 3.

Since each act related to a different invoice, a different period of time, and a different check, they are separate units of prosecution. The fact that Tsimerman used the same deceptive practice to obtain control of four different sums on four different occasions does not make each instance part of a single offense. His four convictions do not violate double jeopardy.

6. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY ORDERING TSIMERMAN TO PAY RESTITUTION IN THE AMOUNT OF \$6,423.30 BECAUSE TSIMERMAN WAS CONVICTED OF STEALING \$6,423.30.

Finally, Tsimerman appears to contend that the trial court erred by not imposing enough restitution.⁷ “If the courts are not persuaded by these arguments, I request that the court recognize

⁷ Tsimerman separately appeals the order of restitution under No. 70760-4. This Court linked the two appeals, but did not consolidate them at Tsimerman's request. Notation Ruling (November 22, 2013).

all \$9,000 charged in indictment as money stolen and require payment of all of it and not just pieces of the accusation, which only totaled \$6,400.” Brief of Appellant at 48. This Court should not entertain this claim, which is offered without any authority or meaningful argument. See RAP 10.3(a)(5); Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992). To the extent that Tsimerman argues that the sentencing court abused its discretion in fixing restitution in the amount of \$6,423.30, his argument is without merit.

When restitution is authorized by statute, the sentencing court has discretion to determine the amount of restitution. State v. Mark, 36 Wn. App. 428, 433, 675 P.2d 1250 (1984). It abuses this discretion only if its ruling is manifestly unreasonable or is exercised on untenable grounds or for untenable reasons. State v. Rohrich, 149 Wn.2d 647, 654, 71 P.3d 638 (2003). The amount of restitution must be “easily ascertainable” but need not be exact if the evidence provides a reasonable basis for estimating the victim’s loss. Mark, 36 Wn. App. at 434.

Here, the amount of restitution ordered is the sum of the payments DSHS made to Tsimerman in June-September 2008, as reflected in Exhibit 1. These payments were the bases of the four

counts of theft of which Tsimerman was convicted. RP 59.

Although there was evidence that Tsimerman deceptively obtained additional payments for mileage, it was entirely reasonable for the State to omit those extra sums from its restitution request.

Because Exhibit 1 provides a reasonable basis for estimating the loss, the court did not abuse its discretion in ordering restitution in the amount reflected therein.

D. CONCLUSION

For all the foregoing reasons, the State respectfully asks this Court to affirm Tsimerman's conviction for four counts of theft in the first degree and the order of restitution.

DATED this 8th day of August, 2014.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 
JENNIFER P. JOSEPH, WSBA #35042
Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Avrum Tsimerman, the appellant, at 14150 NE 20th Street, Building F-1 #258, Bellevue, WA 98007, containing a copy of the BRIEF OF RESPONDENT, in STATE V. TSIMERMAN, Cause No. 70569-5 -I, in the Court of Appeals, Division I, 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.

Dated this 8 day of August, 2014



Name
Done in Seattle, Washington