

FILED
SUPREME COURT
STATE OF WASHINGTON
1/7/2025 3:36 PM
BY ERIN L. LENNON
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NO. 1036043
COA NO. 582961-II

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

MATTHEW MERZ,

Petitioner.

RESPONSE TO PETITION FOR REVIEW

RYAN P. JURVAKAINEN
Cowlitz County Prosecuting Attorney

RUSSELL LUTTMAN, WSBA #58437
Deputy Prosecuting Attorney
Representing Respondent

Cowlitz County Prosecuting Attorney
Hall of Justice
312 SW First Avenue
Kelso, WA 98626
(360) 577-3080
Office ID No. 91091

| TABLE OF CONTENTS | |
|-------------------------------------------------------------------------------------------------------------------------------------------------|------|
| | PAGE |
| I. STATE’S ANSWER TO PETITION FOR REVIEW | 1 |
| II. ISSUES PERTAINING TO THE STATE’S ANSWER TO PETITION FOR REVIEW | 1 |
| III. STATEMENT OF THE CASE | 1 |
| IV. ARGUMENT | 4 |
| A. The evidence presented at trial reasonably inferred that the criminal acts committed by Merz occurred in the State of Washington. | 4 |
| V. CONCLUSION | 8 |

TABLE OF AUTHORITIES

| | PAGE |
|------------------------------------------------------------------------------------------------------------------------------|------|
| Cases | |
| <i>In re Winship</i> , 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970) | 5 |
| <i>State v. Delmarter</i> , 94 Wn.2d 634, 618 P.2d 99 (1980) | 6 |
| <i>State v. Green</i> , 94 Wash.2d 216, 616 P.2d 628 (1980) | 5 |
| <i>State v. Jones</i> , 63 Wn.App. 703, 821 P.2d 543, <i>review denied</i> , 118 Wn.2d 1028, 828 P.2d 563 (1992) | 5 |
| <i>State v. Joy</i> , 121 Wn.2d 333, 851 P.2d 654 (1993) | 6 |
| <i>State v. Rich</i> , 184 Wash.2d 897, 365 P.3d 746 (2016) | 5 |
| <i>State v. Vasquez</i> , 178 Wash.2d 1, 309 P.3d 318 (2013). | 6 |
| <i>State v. Walton</i> , 64 Wn.App. 410, 824 P.2d 533, <i>review denied</i> , 119 Wn.2d 1011 (1992) | 5 |
| Statutes | |
| RCW 9A.90.040(1)(b) | 1 |
| RCW 9A.90.100(b) | 1 |

Other Authorities

| | |
|---------------------------------------------|---|
| <i>State v. Merz</i> , No. 58296-1-II | 1 |
|---------------------------------------------|---|

Rules

| | |
|----------------------|---|
| RAP 13.4(b)(1) | 4 |
| RAP 13.4(b)(2) | 4 |
| RAP 13.4(b)(4) | 4 |

I. STATE'S ANSWER TO PETITION FOR REVIEW

A. The evidence presented at trial was sufficient to convict Matthew Merz of the crime of Computer Trespass in the First Degree, and the crime of Electronic Data Theft.

II. ISSUES PERTAINING TO THE STATE'S ANSWER TO PETITION FOR REVIEW

A. Did the evidence presented at trial, and considered by the Court of Appeals Division II, provide reasonable inference that the criminal acts of the Petitioner occurred in the State of Washington, sufficient to convict Matthew Merz of the crimes of Computer Trespass in the First Degree, and Electronic Data Theft?

III. STATEMENT OF THE CASE

On March 11, 2022, Petitioner, Matthew Michael Merz, was charged with one count of Computer Trespass in the First Degree pursuant to RCW 9A.90.040(1)(b), and one count of Electronic Data Theft pursuant to RCW 9A.90.100(b). On March 17, 2023 Merz was convicted at trial as charged. Merz' conviction was reviewed by Court of Appeals Division II, and filed October 8, 2024 in an unpublished opinion in *State v. Merz*, No. 58296-1-II, affirming Merz' conviction. The

following highlights testimony and evidence presented at trial to convict Merz.

Merz had been a Kalama, Washington resident since 2012. VR139 ln 17-20. Merz was elected to Kalama City Council in 2019 and took office in early 2020. VR140 ln 9-15. City of Kalama's Clerk/Treasurer, Coni McMaster, managed computers and city email accounts for the City of Kalama. VR129 ln 16 – VR130 ln 12. McMaster assigned computers and email accounts to Merz and other city council members. VR130 ln 21-23. McMaster testified that laptop computers were issued to city council members in 2021, VR134 ln 3-11. Since 2021, the computers issued to city council members were laptop style computers. VR134 ln 3-11. The email accounts assigned were City of Kalama accounts that were password protected. VR130 ln 24 – VR131 ln 2.

Kalama city council member, Jonathan Stanfill, confirmed that he was issued a computer and password protected email account to conduct City of Kalama business.

VR121 ln 19 – VR122 ln 8. Merz accessed and retrieved electronic data from Stanfill's city email account without authorization. VR153 ln 10-18. Merz understood this account domain to be property belonging to the people of Kalama, to be used for Kalama City Council business. VR155 ln 9-19.

Merz met with Cowlitz County Sheriff Deputy James Hanberry at the "Hall", Hanberry's office, at the Cowlitz County Sheriff's office, and informed Hanberry that he accessed Stanfill's city email account. VR95 ln 20 – VR96 ln 6. This meeting occurred on January 3, 2022. VR96 ln 17-20. Merz met with Cowlitz County Sheriff Detective Troy Lee at the Cowlitz County Sheriff's Office, and informed Detective Lee that he had accessed Stanfill's city email account on January 2, 2022. VR113 ln 4-5, VR114 ln 20-23. When accessing his Kalama City email account from his home on January 7, 2022, Stanfill noticed IP addresses unknown to him had accessed his account on January 1-2, 2022. VR108 ln 19-23, VR126 ln 3-16, VR126 ln 20 – VR127 ln 1.

IV. ARGUMENT

A. The evidence presented at trial reasonably inferred that the criminal acts committed by Merz occurred in the State of Washington.

Merz claims that review is warranted under RAP 13.4(b)(1), and (2), that in the decision of the Court of Appeals Division II, the court mistakes speculation for reasonable inference. Merz claims that review is warranted under RAP 13.4(b)(4), that the petition involves an issue of substantial public interest that requires a determination of this Court. The State responds that the decision of the Court of Appeals was not mistaken in its review, that the law provided clear guidance to the Court of Appeals for the purposes of review, and that this matter does not warrant further review.

The Court of Appeals recognized that the core of Merz' argument was that the State failed to prove that Merz' acts occurred in the State of Washington, Opinion Page 6, a question of the sufficiency of the evidence presented at trial. Sufficiency of the evidence is a question of constitutional law

that requires review de novo. *State v. Rich*, 184 Wash.2d 897, 903, 365 P.3d 746 (2016). The State is required to prove all elements of the charged offense beyond a reasonable doubt. The State bears the burden of proving all the elements of an offense beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970). Evidence is sufficient to support a conviction if “after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *State v. Green*, 94 Wash.2d 216, 221, 616 P.2d 628 (1980).

However, a reviewing court need not itself be convinced beyond a reasonable doubt, *State v. Jones*, 63 Wash.App. 703, 708, 821 P.2d 543, *review denied*, 118 Wash.2d 1028, 828 P.2d 563 (1992), and must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Walton*, 64 Wash.App.

410, 415-16, 824 P.2d 533, *review denied*, 119 Wash.2d 1011 (1992).

The Court of Appeals found that the reasonable inferences of the cumulative evidence presented at trial was persuasive that Merz' criminal acts occurred in the State of Washington. Opinion 6-7. Inferences based on circumstantial evidence must be reasonable and cannot be based on speculation. *State v. Vasquez*, 178 Wash.2d 1, 16, 309 P.3d 318 (2013). "In determining the sufficiency of the evidence, circumstantial evidence is not to be considered any less reliable than direct evidence." *State v. Delmarter*, 94 Wash.2d 634, 638, 618 P.2d 99 (1980). All reasonable inferences must be drawn in the State's favor and interpreted most strongly against the defendant. *State v. Joy*, 121 Wash.2d 333, 338-39, 851 P.2d 654 (1993).

The State recognizes that there are unique and challenging aspects to proving the elements of cybercrime, since cybercrime can occur when a bad actor located out of

state may be able to criminally impact persons or entities located in the State of Washington. However, the Court of Appeals was able to consider that not only did Deputy Hanberry and Detective Lee testify that Merz admitted to them that he had accessed Stanfill's Kalama city email account and downloaded electronic data without authorization, but Merz testified to the same facts himself at trial. VR153 ln 10-18. Additionally, Merz did not reach out to law enforcement from another jurisdiction to report his findings, but understanding the perceived issues at hand were local to the City of Kalama, in the State of Washington, Merz reported the data he collected from Stanfill's account to Cowlitz County Sheriff's personnel. VR95 ln 5 – 23, VR113 ln 4-5. The Court of Appeals notes that evidence presented showed that Merz contacted the Cowlitz County Sheriff's office on January 3, one day after accessing Stanfill's email account. Opinion Page 7. Merz testified that he accessed Stanfill's Kalama city email account on January 2, 2022. VR114 ln 20-23.

V. CONCLUSION

The Court of Appeals found that the evidence presented at trial reasonably inferred that Merz' criminal acts occurred in the State of Washington, that the State met its burden of proof. Opinion 7. The direct and circumstantial evidence presented at trial overwhelms the Merz' contention that his actions did not occur in Washington. For the above stated reasons, the State asks the Court to decline review, and that Merz' conviction be affirmed.

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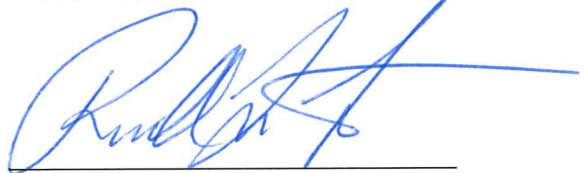
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CERTIFICATE OF COMPLIANCE

I certify under RAP 18.17(b) that excluding appendices, title sheet, table of contents, table of authorities, certificate of compliance, certificate of service, signature blocks, and pictorial images, the word count of this document is 1,245 words, as calculated by the word processing software used.

Respectfully submitted this 7th day of January, 2025.



Russell Luttman
WSBA # 58437
Deputy Prosecuting Attorney
Representing Respondent

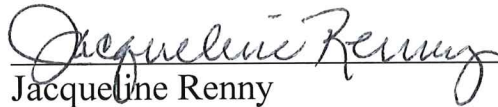
CERTIFICATE OF SERVICE

I, Jacqueline Renny, do hereby certify that the RESPONSE TO PETITION FOR REVIEW was filed electronically through the Supreme Court Portal to:

Maya Ramakrishnan
Eric J. Nielsen
Nielsen Koch & Grannis, PLLC
The Denny Building
2200 Sixth Ave, Ste 1250
Seattle, WA 98121
ramakrishnanm@nwattorney.net
nielsene@nwattorney.net
sloanej@nwattorney.net

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington on January 7, 2025.


Jacqueline Renny

COWLITZ COUNTY PROSECUTORS OFFICE

January 07, 2025 - 3:36 PM

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Appellate Court Case Title: State of Washington v. Matthew Michael Merz
Superior Court Case Number: 22-1-00282-1

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