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SUPREME COURT
STATE OF WASHINGTON
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NO. 90378-6

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

STATE OF WASHINGTON

Respondent

v.

VADIM FEDOROV,

Petitioner

ANSWER TO PETITION FOR REVIEW

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Prosecuting Attorney

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Attorney for Respondent

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ORIGINAL

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I. STATEMENT OF THE CASE

The facts of the case are adequately set out in the decision of the Court of Appeals and the State's response brief. The State relies on those sources for the statement of the case.

II. ARGUMENT

A. WHETHER THERE WAS SUFFICIENT EVIDENCE TO SUPPORT THE CHARGE ON A BASIS NOT ARGUED OR DECIDED BY THE COURT OF APPEALS SHOULD NOT BE CONSIDERED BY THIS COURT.

On appeal to the Court of Appeals the defendant argued there was insufficient evidence to support his conviction for second degree identity theft on the basis that the evidence did not show that the person that the defendant claimed to be was a real person. Alternatively he argued there was insufficient evidence to prove which crime he intended to commit when he gave the officer a false name.

In his petition for review the defendant argues that this Court should accept review of the decision of the Court of Appeals because it conflicts with another decision of the Court of Appeals, State v. Zeferino-Lopez, 179 Wn. App. 592, 319 P.2d 94 (2014), RAP 13.4(b)(2). Zeferino-Lopez held that to prove identity theft the State must prove the defendant knew the means of identification that he used belonged to another person. Id. at 599.

The Court of Appeals did not consider whether the evidence was sufficient to convict the defendant on this basis. Thus the decision of the Court of Appeals is therefore not in conflict with another decision of the Court of Appeals. The Court should not accept review of the case on the basis of this issue.

The defendant also relies on the claim that decision of the Court of Appeals presents a significant question of law under the constitution of the United States or the State of Washington. RAP 13.4(b)(3). Due process requires that the State bears the burden to prove every element of an offense beyond a reasonable doubt. State v. Deal, 128 Wn.2d 693, 698, 911 P.2d 996 (1996). Evidence is sufficient if after reviewing the facts 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, 221-222, 616 P.2d 628 (1980). The elements of the offense may be proved by either direct or circumstantial evidence. State v. Delmarter, 80 Wn.2d 634, 638, 618 P.2d 99 (1980). The term 'circumstantial evidence' refers to evidence from which, based on common sense and experience, the jury may reasonably infer something that is at issue in this case. 11 Wash. Prac., Pattern Jury Instr. Crim. WPIC 5.01 (3d Ed).

The law concerning the burden of proof and the sufficiency of the evidence to convict a defendant of an offense has long been settled. The specific application of these principals to a given fact pattern does not raise a significant question of law under either the State or Federal constitutions. RAP 13.4(b)(3). Nor does it involve an issue of substantial public interest that this Court should review. RAP 13.4(b)(4).

In addition, under the facts of this case there was sufficient evidence for a rational trier of fact to find the defendant guilty of the charge. There is a real person named Zachary Anderson. The defendant gave the officer that name, and a date of birth that correctly identified Mr. Anderson's month and year of birth. The date of birth was only one day off from Mr. Anderson's true birthday. The officer pointed out to the defendant that Mr. Anderson had warrants and date of birth for Mr. Anderson, thereby giving the defendant the opportunity to correct his statement that his date of birth was in fact August 30, 1984 rather than August 31, 1984. The officer obtained Mr. Anderson's photograph when investigating whether the defendant was Zachary Anderson. Accounting for the time that had passed between the when the

photo was taken and when the stop was made the officer believed that the defendant could be Mr. Anderson. RP 105-112, 129-131.

From this information a rational trier of fact could conclude that the defendant not only knew that there was a person name Zachary Anderson, but also that he was acquainted with that person. The slight difference between the date of birth the defendant gave and Mr. Anderson's true date of birth makes no difference in this analysis because someone who is only acquainted with another may easily make that minor error. Further, the defendant was specifically informed that there was a real Zachary Anderson born August 30, 1984 by the officer. Despite that the defendant insisted that he was Zachary Anderson, ultimately conceding that Mr. Anderson's true date of birth was in fact his. The facts are sufficient to prove that the defendant knew he was using the identification of another person when he claimed to be Mr. Anderson.

B. THE ADDITIONAL ISSUES RAISED BY THE DEFENDANT IN HIS PETITION DO NOT MEET THE CRITERIA FOR REVIEW UNDER RAP 13.4(B)(2),(3), OR (4).

The defendant asks this Court to accept review of three additional issues that he did raise in the Court of Appeals. First he asks the court to review the Court of Appeals' decision that there

was sufficient evidence to prove that the defendant provided the name of a real person to support his conviction for second degree identity theft. Second he argue that the Court should review whether a specific named offense is an essential element of second degree identity theft that should be included in the "to convict" instruction. Third, he argues this Court should review whether the reasonable doubt instruction is a correct statement of the law.

The State relies on its brief filed in the Court of Appeals and the decision of the Court of Appeals as a basis on which to conclude that none of these issues justifies relief under RAP 13.4(b).

III. CONCLUSION

For the foregoing reason the State asks the Court to deny the petition for review.

Respectfully submitted on July 30, 2014.

MARK K. ROE
Snohomish County Prosecuting Attorney

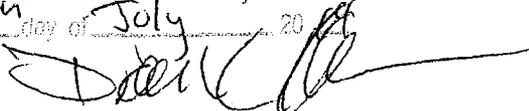
By: Kathleen Webber
KATHLEEN WEBBER WSBA #16040
Deputy Prosecuting Attorney
Attorney for Respondent

Sent via email
~~On this day I mailed a properly stamped envelope addressed to the attorney for the defendant that contained a copy of this document.~~

I certify under penalty of perjury under the laws of the State of Washington that this is true.

Signed at the Snohomish County Prosecutor's Office

this 30th day of July, 2014



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Subject: State v. Vadim Fedorov

Good Afternoon...

RE: State v. Vadim Fedorov
Supreme Court No. 90378-6

Please accept for filing the attached pleading: State's Answer to Petition for Review

Thanks.

Diane.

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