

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION I

STATE OF WASHINGTON,	)	No. 65072-6-I
	)	
Respondent,	)	
	)	UNPUBLISHED OPINION
v.	)	
	)	
Andrew Stean, Jr.,	)	
	)	
Appellant.	)	FILED: May 31, 2011

Schindler, J. — To convict a defendant of criminal impersonation in the first degree, the State must prove beyond a reasonable doubt that the defendant “[a]ssume[d] a false identity” and did “an act in his or her assumed character with intent to defraud another or for any other unlawful purpose.”<sup>1</sup> Andrew Stean seeks reversal of his conviction for criminal impersonation, arguing insufficient evidence establishes that he assumed a false identity or acted with intent to defraud. Viewing the evidence in the light most favorable to the State, we affirm.

On May 28, 2008, Whatcom County Deputy Anthony Paz pulled over a white Cadillac for a traffic infraction. A man, later identified as Andrew Stean, was driving, another man was sitting in the front, and a woman was in the back.

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<sup>1</sup> RCW 9A.60.040(1)(a).

Deputy Paz asked the driver for his license. The driver said that he did not have his license with him. Deputy Paz then asked the driver for his name and date of birth and whether he had any type of identification. The driver said that his name was "Thomas Anderson" and his date of birth was October 19, 1982 but he did not have any identification with him. Deputy Paz tried to verify whether the driver had a valid Washington driver's license and any outstanding warrants by using the name and date of birth the driver gave him. The dispatcher checked and responded that there were no outstanding warrants and no Washington driver's license record for a Thomas Anderson with that date of birth. The driver then told Deputy Paz that his driver's license was issued in California. After checking further, Deputy Paz was unable to verify that Thomas Anderson had a driver's license from California. When Deputy Paz asked the driver if he had spelled the name correctly, the driver changed the spelling of the name he originally gave to Deputy Paz and said that "there wasn't an 'e' in Anderson."

After making sure he had correctly checked the information, Deputy Paz was still unable to verify that the driver had a valid driver's license. Deputy Paz arrested the driver for driving without a valid driver's license and providing false information. Deputy Magnus Gervol arrived to assist with the arrest and placed the driver in the back of the police car. Deputy Gervol then used the computer in his police car to search for booking photographs for Thomas Anderson.

Shortly thereafter, a police detective identified the driver as Andrew Stean. Deputy Gervol located a booking photo that confirmed the driver was Andrew Stean

and determined that Stean had an outstanding warrant for his arrest. The driver then admitted that he was Andrew Stean. Stean told the deputies that he had gave them a false name to avoid arrest on the outstanding warrant. The police arrested Stean.

Deputy Paz searched Stean's car and found 4.3 grams of marijuana.

The State charged Stean with criminal impersonation in the first degree, driving while license suspended in the third degree, and misdemeanor possession of marijuana. The State amended the information to charge an additional count of bail jumping after Stean failed to appear for a court hearing. The State later withdrew the driving while suspended charge.

Stean waived his right to a jury trial and proceeded to trial on the charge of criminal impersonation in the first degree, misdemeanor possession of marijuana, and bail jumping. The primary witnesses at trial were Deputy Paz and Deputy Gervol. Deputy Gervol testified that Stean had a tattoo with the name "Thomas" on his chest, and that Stean later admitted that Thomas Anderson was a relative of his.

The court concluded the search of the car was invalid and found Stean not guilty on the marijuana charge. The trial court found Stean guilty of criminal impersonation in the first degree and of bail jumping.

The court issued written findings of fact and conclusions of law. The court's findings of fact for the criminal impersonation conviction provide, in pertinent part:

1. On May 28, 2008, the Defendant, Andrew Stean, gave a false name to Deputy Paz.
2. The Defendant maintained that false assertion by suggesting an alternate spelling and by stating that he had a license in California.
3. By maintaining a false name, the Defendant did not merely make a false statement but rather utilized the identity or name that he had chosen.

4. The Defendant used the false name for the purpose of avoiding service of the active warrant for his arrest.
5. The Defendant was acting in that assumed character by giving more specific information to the Deputy.

The court's conclusions of law for the criminal impersonation conviction provide, in pertinent part:

1. In providing a false name and information to the officer, the Defendant assumed a false identity and acted with intent to defraud the officer to avoid arrest on an arrest warrant.
2. The Court finds the Defendant Guilty of the crime of Criminal Impersonation in the First Degree, Count I.

Stean claims insufficient evidence supports his conviction for criminal impersonation in the first degree.<sup>2</sup> In determining the sufficiency of the evidence, we view the evidence in the light most favorable to the State and determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Townsend, 147 Wn.2d 666, 679, 57 P.3d 255 (2002). A challenge to the sufficiency of the evidence admits the truth of the evidence. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Further, "all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant." Salinas, 119 Wn.2d at 201. Circumstantial evidence and direct evidence are equally reliable. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

Under RCW 9A.60.040(1)(a), a person is guilty of criminal impersonation in the first degree if the person "[a]ssumes a false identity and does an act in his or her

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<sup>2</sup> Stean does not argue that the State had to charge him under a concurrent and more specific statute. See State v. Ou, 156 Wn. App. 899, 234 P.3d 1186 (2010); State v. Presba, 131 Wn. App. 47, 126 P.3d 1280 (2005).

assumed character with intent to defraud another or for any other unlawful purpose.”<sup>3</sup>

Stean contends the evidence does not establish that he assumed a false identity. Citing State v. Donald, 68 Wn. App. 543, 844 P.2d 447 (1993), Stean argues that assuming a false identity requires more than merely using a false name. In Donald, the defendant had gone to the emergency room several times to obtain oxycodone, each time using a different name. The amended information charged him with attempting to obtain a controlled substance either by use of a false name or by fraud, deceit, misrepresentation or subterfuge. The jury convicted Donald of attempting to obtain a controlled substance through fraud in violation of former RCW 69.50.403(a)(3) (1993).<sup>4</sup> Donald, 68 Wn. App. at 545-46. On appeal, the defendant argued that the trial court erred in failing to give a lesser-included jury instruction on criminal impersonation. Donald, 68 Wn. App. at 549. The court affirmed the trial court’s refusal to give the instruction because “the ‘assumption of a false identity’ is not the same as the ‘use of a false name.’” Donald, 68 Wn. App. at 550.

Here, viewing the evidence in the light most favorable to the State, the testimony established that Stean did more than simply tell the police his name was Thomas Anderson. In addition to giving a false name more than once and changing the

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<sup>3</sup> Consistent with the statute, the information alleged, in pertinent part:

That on or about the 28th day of May, 2008, the said defendant, ANDREW MARVIN STEAN, then and there being in said county and state, did assume a false identity, to-wit: Thomas Anderson, and did enact and such assume character with the intent to defraud another or for any other unlawful purpose; in violation of RCW 9A.60.040(1)(a), which violation is a Class C Felony.

<sup>4</sup> Former RCW 69.50.403(a)(3) provides that it is unlawful for any person knowingly [t]o obtain or attempt to obtain a controlled substance, or procure or attempt to procure the administration of a controlled substance, (i) by fraud, deceit, misrepresentation, or subterfuge; or (ii) by forgery or alteration of a prescription or any written order; or (iii) by the concealment of material fact; or (iv) by the use of a false name or the giving of a false address.

spelling, Stean gave the police a false birth date and repeatedly insisted that he had a driver's license in California in order to avoid arrest. After his arrest, Stean admitted to the police officers that he was "Thomas Anderson." Sufficient evidence supports the trial court's conclusion that Stean assumed a false identity and maintained the false identity with the intent to deceive the deputies and avoid arrest.

Stean's reliance on State v. Aitken, 79 Wn. App. 890, 905 P.2d 1235 (1995) to argue that the State must prove the defendant possessed or used another person's identification, social security card, or other similar document, is unpersuasive. The defendant in Aitken was convicted of forgery and money laundering, not criminal impersonation. Aitken, 79 Wn. App. at 893. The crime of criminal impersonation in the first degree does not require the State to prove the defendant falsely made or altered a written instrument. See RCW 9A.60.040(1).

Stean also asserts there is insufficient evidence to establish intent to defraud. Stean argues the evidence does not show the intent to cause injury or loss. Where an intent to defraud is an element of an offense, "it shall be sufficient if an intent appears to defraud any person, association or body politic or corporate whatsoever." RCW 10.58.040. We may infer intent to defraud from surrounding facts and circumstances if they "plainly indicate[ ] such intent as a matter of logical probability." State v. Brooks, 107 Wn. App. 925, 929, 29 P.3d 45 (2001) (quoting State v. Bergeron, 105 Wn.2d 1, 20, 711 P.2d 1000 (1985)). RCW 9A.60.040(1)(a) states that a person is guilty of criminal impersonation in the first degree if the person assumes a false identity "with intent to defraud another or for any other unlawful purpose." But the statute does not

define “defraud.” In the absence of statutory definitions, words in a statute are given their common law or ordinary meaning, and nontechnical words may be given their dictionary definition. State v. Chester, 133 Wn.2d 15, 22, 940 P.2d 1374 (1997).

Black’s Law Dictionary 434 (7th ed.1999) defines “defraud” to mean “[t]o cause injury or loss to (a person) by deceit.” State v. Simmons, 113 Wn. App. 29, 32, 51 P.3d 828 (2002).

The case Stean relies on, City of Seattle v. Schurr, 76 Wn. App. 82, 881 P.2d 1063 (1994), is distinguishable. The defendant in Schurr was convicted for criminal impersonation in violation of former Seattle Municipal Code (SMC) 12A.08.130(B)(1) (1994). Former SMC 12A.08.130(B)(1) required proof of “intent to defraud another.” Schurr, 76 Wn. App. at 84 (quoting former SMC 12A.08.130(B)(1)). But unlike RCW 9A.60.040(1)(a), the SMC defined “intent to defraud” as “the use of deception . . . with the intention to injure another’s interest which has economic value.” Schurr, 76 Wn. App. at 84 (quoting former SMC 12A.08.130(A) (1994)).

Viewing the evidence in the light most favorable to the State, sufficient evidence supports the trial court’s finding and conclusion that Stean acted with intent to deceive and defraud the deputies by repeatedly insisting that his name was Thomas Anderson in order to avoid arrest on the outstanding warrant.<sup>5</sup> Evidence of intent to deceive is

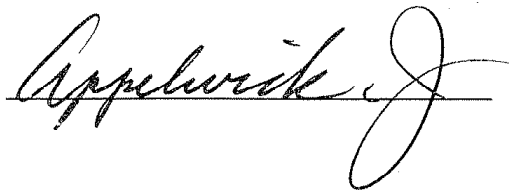
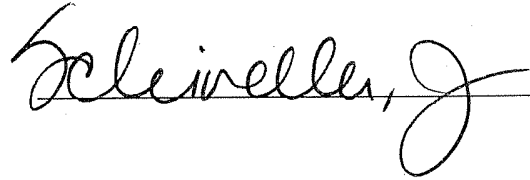
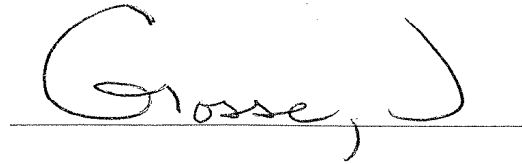
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<sup>5</sup> Under a nearly identical statute, Colorado has held that evidence that the defendant gave a false name and date of birth or address in order to avoid arrest is sufficient to prove that the defendant assumed a false identity for an unlawful purpose. In Colorado, it is a felony to commit criminal impersonation. Colo. Rev. Stat. § 18-5-113(2) (2004). The elements of the crime of criminal impersonation are almost identical in Washington and Colorado. Colo. Rev. Stat. § 18-5-113(1)(e) (2004) (“A person commits criminal impersonation if he knowingly assumes a false or fictitious identity or capacity, and in such identity or capacity he . . . [d]oes any other act with intent to unlawfully gain a benefit for himself or another or to injure or defraud another.”). See, e.g., Alvarado v. People, 132 P.3d 1205, 1206-07 (Colo. 2006) (holding that the defendant used another’s identity to unlawfully avoid arrest during a traffic stop by writing a false name and date of birth and providing more specific information when questioned by the police officer).

sufficient to prove intent to defraud or other unlawful purpose under the criminal impersonation statute, RCW 9A.60.040(1)(a).

We affirm.<sup>6</sup>

WE CONCUR:

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<sup>6</sup> After Stean filed his opening brief, the State filed the trial court's findings of fact and conclusions of law. CrR 6.1(d) requires entry of written findings of fact and conclusions of law at the conclusion of a bench trial. State v. Head, 136 Wn.2d 619, 621-22, 964 P.2d 1187 (1998). "Although the practice of submitting late findings and conclusions is disfavored, they may be submitted and entered even while an appeal is pending if the defendant is not prejudiced by the belated entry of findings." State v. Cannon, 130 Wn.2d 313, 329, 922 P.2d 1293 (1996) (internal quotation marks omitted). The burden of proving prejudice is on the defendant, and we will not infer prejudice from delay alone. State v. Head, 136 Wn.2d 619, 625, 964 P.2d 1187 (1998). Stean does not claim prejudice.