

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	No. 66458-1-I
Respondent,)	
)	DIVISION ONE
v.)	
)	
DEMETRIA LUCILLE ZIMMERMAN,)	UNPUBLISHED OPINION
)	
Appellant.)	FILED: June 11, 2012
_____)	

Becker, J. — Demetria Zimmerman appeals her conviction for first degree identity theft contending that the “to-convict” instruction omitted an essential element. We conclude that because Zimmerman requested a to-convict instruction that contains the same alleged error as the one given by the trial court, the invited error doctrine bars her claim.

The State alleged Zimmerman committed identity theft by using another person’s name during two visits to Harborview Hospital. The person whose name Zimmerman used received bills from Harborview totaling about \$4,500. Zimmerman, who had been escorted to the hospital by police, testified she used a different name so that the police would not discover outstanding arrest warrants in her name.

A person commits first degree identity theft by knowingly obtaining, possessing, using, or transferring a means of identification or financial information of another person, living or dead, with the intent to commit, or to aid or abet, any crime and obtains credit, money, goods, services, or anything else of value in excess of one thousand five hundred dollars. RCW 9.35.020(1), (2). At trial, the State argued that the “any crime” element was satisfied because Zimmerman had used the identification of another person with intent to commit theft or to obstruct a law enforcement officer.

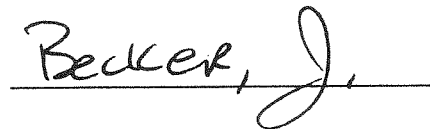
The to-convict instruction given by the court required the jury to find that the defendant had “intent to commit any crime” rather than the specific crimes of theft or obstructing a law enforcement officer. On appeal, Zimmerman argues that because the instruction did not identify the underlying crimes, the instruction did not include all the essential elements.

Zimmerman did not make this argument to the trial court. Below, the State did argue that it had no burden to prove precisely which crime Zimmerman intended to commit when she used another person’s name. But Zimmerman did not contest this argument. Instead, she argued that the jury should not hear argument or be instructed on the crime of obstructing a law enforcement officer. Alternatively, Zimmerman wanted an instruction requiring the jury be unanimous about the predicate crime. The court rejected Zimmerman’s arguments.

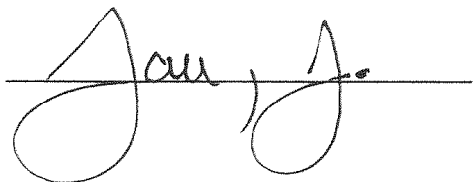
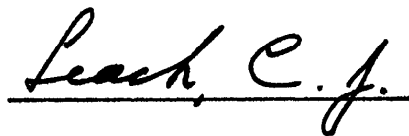
That Zimmerman did not raise the issue below does not necessarily preclude her from raising it on appeal. See RAP 2.5(a) (allowing a party to raise

a manifest error affecting a constitutional right for the first time on appeal). However, under the invited error rule, a party may not request an instruction and later complain on appeal that the requested instruction was given. State v. Studd, 137 Wn.2d 533, 546, 973 P.2d 1049 (1999). The invited error doctrine applies even to cases where the to-convict instruction omitted an essential element of the crime. See State v. Henderson, 114 Wn.2d 867, 869, 792 P.2d 514 (1990); State v. Summers, 107 Wn. App. 373, 380-82, 28 P.3d 780 (2001), modified on other grounds, 43 P.3d 526 (2002). Here, Zimmerman proposed a to-convict instruction with the same “any crime” language. Thus, regardless of the merit of Zimmerman’s argument on the essential elements of identity theft, the invited error doctrine precludes relief.

Affirmed.

Handwritten signature of Becker, J. in cursive script, written over a horizontal line.

WE CONCUR:

Handwritten signature of Jan, J. in cursive script, written over a horizontal line.Handwritten signature of Leach, C. J. in cursive script, written over a horizontal line.