IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. AZAEL ORTIZ LOPEZ, Appellant.	No. 38568-6-II UNPUBLISHED OPINION

Penoyar, C.J. — Azael Ortiz Lopez appeals his first degree criminal impersonation and forgery convictions, arguing that the evidence was insufficient to support the convictions. In his statement of additional grounds for review (SAG),[1] Lopez further contends that his counsel was ineffective and that he was subject to malicious and vindictive prosecution. We affirm.

FACTS

On April 6, 2007, Azael Ortiz Lopez appeared in the Clark County Superior Court for a first appearance on a charge for possession with intent to deliver. At this appearance, Clark County deputy prosecutor, Jeffrey McCarty, asked Lopez whether his true and correct name was "Jonathan Lopez." Report of Proceedings (RP) at 41. Lopez, with the aid of an interpreter, responded that it was. The clerk's minutes noted the cause as "State of Washington versus Jonathan Ortiz Lopez." RP at 41.

A release order, filed on April 10, 2007, and a scheduling order, filed on April 13, 2007, both bore the name "Jonathan Ortiz Lopez" and Lopez's signature. Videos from the court

[1] RAP 10.10. Lopez filed two SAGs, one on July 2, 2009 (SAG (July 2, 2009)) and the other on August 17, 2009 (SAG (Aug. 17, 2009)).

hearings show Lopez signing these documents. Deputy Prosecuting Attorney, Robert Shannon, testified that the signatures, while similar to each other, were illegible.

When Officers Brian Billingsley and Spencer Harris arrested Mr. Lopez on May 1, 2008, Lopez identified himself as "Azael Ortiz Lopez." RP at 47. Lopez gave the officers a Washington State Identification Card and Washington State Driver's License Card, both bearing the name "Azael Ortiz Lopez."

Nancy Druckenmiller, a support specialist at the Clark County Sheriff's Office Identification Unit, compared Lopez's fingerprints from his April 2007 and May 2008 bookings and determined that they belonged to the same person.

On June 16, 2008, the State charged Lopez with one first degree criminal impersonation count for assuming the name "Jonathan Ortiz Lopez" during the April 2007 first appearance and subsequent appearances to sign the release and scheduling orders. It also charged Lopez with two forgery counts for "sign[ing] off on the caption[s] indicating Jonathan Ortiz Lopez" that appeared on release and scheduling orders. RP at 73. At a bench trial, the court found Lopez guilty on all counts, RP at 87, and sentenced him to 14 months' confinement. Lopez neither testified nor produced witnesses on his behalf. At the request of the State, the trial court entered findings of fact and conclusions of law.

Lopez appeals.

ANALYSIS

Lopez argues that the evidence supporting the trial court's guilty judgment on the first degree criminal impersonation and forgery charges is insufficient. In his SAG, Lopez argues that he received ineffective assistance of counsel because, at sentencing, his counsel did not argue that

the two forgery counts should have counted as only one count. He also argues that he was subject to malicious and vindictive prosecution.

I. Standard of Review

We review a challenge to the sufficiency of the evidence in the light most favorable to the State to determine whether any rational trier of fact could have found the essential elements beyond a reasonable doubt. *State v. Joy*, 121 Wn.2d 333, 338, 851 P.2d 654 (1993). Circumstantial evidence and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). We defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). We need not be convinced of the defendant's guilt beyond a reasonable doubt but only that substantial evidence supports the State's case. *State v. O'Neal*, 126 Wn. App. 395, 412, 109 P.3d 429 (2005). Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the truth of the finding. *State v. Klein*, 156 Wn.2d 103, 115, 124 P.3d 644 (2005).

II. Criminal Impersonation

Lopez concedes that he gave "Jonathan Ortiz Lopez" as his name in the April 2007 court proceedings, but argues that he did not "act" under the assumed character.[2] Supp. Br. of

[2] Lopez also seems to argue that he *is* Jonathan Ortiz Lopez and that the name "Azael Ortiz Lopez" was "[t]he court's choice," which is "arbitrary" and "is nothing more than the choice of one name over another." Supp. Br. of Appellant at 7. This argument is contrary to the fact that Lopez offered valid state identification documents that present him as "Azael Ortiz Lopez."

Appellant at 7. In his SAG, Lopez now argues that he was "told and taught" that the English equivalent of "Azael" is "Jonathan" and "[t]hat is why [he] sign[s his] name Jonathan Ortiz Lopez." SAG (July 2, 2009) at 1. The State argues that Lopez "was attempting to utilize the false information to obtain his release so that he could flee from the situation." Supp. Br. of Resp't at 6.

A person commits first degree criminal impersonation when he "[a]ssumes a false identity and does an act in his . . . assumed character with intent to defraud another or for any other unlawful purpose." RCW 9A.60.040(1)(a). "Defraud" means "[t]o cause injury or loss to . . . by deceit." *State v. Simmons*, 113 Wn. App. 29, 32, 51 P.3d 828 (2002) (quoting Black's Law Dictionary, 434 (7th ed. 1999)). "Whenever an intent to defraud shall be made 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 an intent as a matter of logical probability.'" *State v. Esquivel*, 71 Wn. App. 868, 871, 863 P.2d 113 (1993) (quoting *State v. Woods*, 63 Wn. App. 588, 591, 821 P.2d 1235 (1991)). Intent is a factual determination. *Quinn v. Cherry Lane Auto Plaza, Inc.*, 153 Wn. App. 710, 717, 225 P.3d 266 (2009).

Lopez represented to the court that his first name is "Jonathan" during the April 2007 first hearing. We note that, initially, he did not affirmatively represent this name to the court, but responded to McCarty's question whether the name was true and correct. Even if he was "disoriented, confused, and scared" when he first gave the name, RP at 78, a rational person could find that he was fully aware of his actions when he later spelled out this name for the benefit of the court and had an opportunity to correct the name when he reappeared to sign the release and

scheduling orders. Further, the trial court found that during the time that he assumed the first name "Jonathan" he also assumed a different birth date than his actual birth date of October 11, 1987. Lopez did not present his actual name and birth date until he was arrested in May 2008.

Accordingly, a rational person could infer that Lopez intended to misrepresent his identity to the court when he assumed the first name "Jonathan" and a false birth date during the first appearance and subsequently signed the release and scheduling orders. Thus, we hold that the trial court did not err in finding Lopez guilty of criminal impersonation.

III. Forgery

A person is guilty of forgery if, with intent to injure or defraud, he falsely makes, completes, or alters a written instrument. RCW 9A.60.020(1)(a). Adding a fictitious signature to a form satisfies the "makes, completes, or alters" element of the crime.[3] *See State v. Daniels*, 106 Wn. App. 571, 573-74, 23 P.3d 1125 (2001). "[I]t is forgery to sign the name of another person with the intent to defraud." *State v. Richards*, 109 Wn. App. 648, 654, 36 P.3d 1119 (2001). "[A]ny government or public record is susceptible to forgery." *Richards*, 109 Wn. App. at 654. Forgery does not require that anyone be actually defrauded. *Esquivel*, 71 Wn. App. at 871.

The trial court found that, when Lopez represented his first name as "Jonathan," his signatures appearing in the release and scheduling orders "clearly indicate[]" the letter "j." RP at 86. In contrast, the signatures appearing on his driver's license and various orders subsequent to

[3] *See also* RCW 9A.60.010(4): "To 'falsely make' a written instrument means to make or draw a complete or incomplete written instrument which purports to be authentic, but which is not authentic either because the ostensible maker is fictitious or because, if real, he did not authorize the making or drawing thereof." *See also* RCW 9A.60.010(5): "To 'falsely complete' a written instrument means to transform an incomplete written instrument into a complete one by adding or inserting matter, without the authority of anyone entitled to grant it."

the revelation that his first name was "Azael" did not show a letter "j" and were "not consistent at all" with the previous signatures. Previously, we concluded that a rational person could infer that Lopez had intent to defraud in criminally impersonating the fictitious "Jonathan Ortiz Lopez." Similarly, a rational person may also infer intent to defraud when Lopez signed the release and scheduling forms bearing the name "Jonathan Ortiz Lopez" with signatures that indicate a letter "j" and differ from his later signatures. Thus, we hold that the trial court did not err in finding Lopez guilty of forgery.

IV. SAG Issues

Lopez argues that he received ineffective assistance of counsel because, at sentencing, his counsel did not argue that the two forgery counts should have counted as only one count, thus violating Lopez's right against double jeopardy. But the "unit of prosecution" in a forgery case is the "written instrument" and when multiple counts are based on forgeries of multiple written instruments, there is no double jeopardy violation. *State v. Williams*, 118 Wn. App. 178, 183, 73 P.3d 376 (2003). Accordingly, defense counsel's decision not to pursue a double jeopardy argument did not prejudice Lopez, and thus, his ineffective assistance argument fails. *See Strickland v. Washington*, 466 U.S. 668, 698, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); *State v. McFarland*, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995).

Lopez also argues that he was subject to malicious and vindictive prosecution because the State "[a]mended the information and created a new cause." SAG (Aug. 17, 2009) at 3. But Lopez does not state what this new cause is and there is no evidence in the record of an amended information. We do not consider matters outside the record in a direct appeal. *McFarland*, 127 Wn.2d at 335.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Penoyar, C.J.

We concur:

Bridgewater, J.

Hunt, J.