No. 87282-1

THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

VIANNEY VASQUEZ,

ANSWER TO SECOND AMICUS MEMORANDUM BY YAKIMA COUNTY

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A. INTRODUCTION

Mr. Vasquez was charged and convicted of two counts of forgery and timely appealed. The Court of Appeals Division III upheld those convictions. State v. Vasquez, 166 Wn.App. 50, 269 P.3d 370 (2012). Mr. Vasquez's motion for reconsideration was denied. This court has now accepted review. This is the State's response to the second Amicus Curiae brief filed on February 14, 2013.

B. ISSUE PRESENTED BY AMICUS

1) Due Process requires sufficient evidence to prove criminal intent beyond a reasonable doubt.
2) The Court of Appeal disregarded due process when it failed to require sufficient evidence of intent to defraud.

ANSWER TO ISSUES RAISED

1. The decision of the Court of Appeals required the State to prove every element of this crime beyond a reasonable doubt.
2. The decision of the Court of Appeals did not disregard due process; sufficient evidence was presented to prove intent to defraud.

C. STATEMENT OF THE CASE

The facts addressing what occurred in this case are set out in the Court of Appeals decision. The State shall refer to specific sections of the record but shall not set forth a separate specific fact section in this response, pursuant to RAP 10.3

D. ARGUMENT

A.) There is not a single instance in the opinion of the Court of Appeals where the court uses the phrase "substantial evidence" standard; nor does the Court of Appeals ever use the phrase "substantial evidence" anywhere in the opinion. Amicus fails to set forth the entire quote wherein the Court of Appeals actually uses the word "substantial." What the Court actually states is;

"So the question then becomes whether, as a matter of logical probability, the jury could infer intent to defraud from Mr. Vasquez's possession of these cards, his conduct, and his exchanges with the security officer. Said another way, is the evidence of intent to defraud substantial when we consider the reasonable inferences available to the jury." (Emphasis mine.)

Amicus states "[t]he Court of Appeals does not cite Winship, infra, or its progeny, instead concluding that the evidence of intent to defraud was sufficient because it was "substantial,"..." The State can only guess that Amicus has not read State v. Sweany, 162 Wn.App. 223, 256 P.3d 1230 (2011) a decision recently upheld by this Court, State v. Sweany, 174 Wn.2d 909, 281 P.3d 305 (Wash. 2012) which is cited ten words after the

Court uses the word "substantial" in its decision. In State v. Sweany 162 Wn.App. at 227-8 as cited, states;

A defendant's right to require that the State prove each essential element of a crime beyond a reasonable doubt is a due process right guaranteed under the United States Constitution. U.S. CONST. amends. V, XIV; **In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970);** State v. Lively, 130 Wash.2d 1, 11, 921 P.2d 1035 (1996). (Emphasis mine.)

Clearly Sweany is one of the progeny that Amicus says the Court of Appeals failed to cite. Further, in this Court's ruling in Sweany affirming the Court of Appeals there is a quote from State v. Randhawa, infra, a case that uses yet another case Amicus indicates the Court of Appeals should have used in its analysis. Clearly this Court and the Court of Appeals are using the correct standard of review.

This Court stated when it affirmed Sweany:

When a defendant challenges the sufficiency of the evidence in an alternative means case, appellate review focuses on whether "sufficient evidence supports each alternative means." State v. Kintz, 169 Wn.2d 537, 552, 238 P.3d 470 (2010). **Though some cases refer to the required quantum of evidence as "substantial evidence, " the analysis has consistently been conducted according to the sufficiency of the evidence standard.** See, e.g., In re Det. of Halgren, 156 Wn.2d 795, 811, 132 P.3d 174 (2006); State v. Lee, 128 Wn.2d 151, 160, 164, 904 P.2d 1143 (1995). "The standard of review for a challenge to the sufficiency of the evidence" is whether, viewing the evidence "in a 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. Randhawa, 133 Wn.2d 67, 73, 941

> P.2d 661 (1997) (citation omitted) (internal quotation marks omitted) (quoting **State v. Green,** 94 Wn.2d 216, 221, 616 P.2d 628 (1980)). (Emphasis mine.)
> State v. Sweany, 174 Wn.2d at 914.

The first paragraph of this Court's ruling in Sweany dispels the allegation raised by Amicus. The Court of Appeals used the word "substantial" one time in the entire opinion. By the mere singular use of the word "substantial" in its opinion the Court of Appeals did not abrogate or change years of case law.

The Court never used the phrase "substantial evidence" it only used the word "substantial" and that only one time on page 52 of the opinion and as indicated above the Court thereafter cited to Sweany which applies the same standard demanded by Amicus.

Clearly the Court used Sweany, which requires sufficiency to be evaluated using the "more rigorous" test in Jackson and Green. Division III continues to use Green; see State v. Butler, 165 Wn.App. 820, 829, 269 P.3d 315 (2012) a case reviewed by the same panel that issued Vasquez. The court in Butler actually uses the phrase "substantial evidence" and then cites Green;

> The State, of course, must produce substantial evidence to support the elements of a crime. Whether the State has met that burden, a burden of production, is a question of law that we review de novo. Id. Whether there is sufficient evidence to support a conviction turns on "'whether, after viewing the evidence most favorable to the State, any rational trier of fact could have found the essential elements of

> [the crime].' " State v. Vladovic, 99 Wash.2d 413, 424, 662 P.2d 853 (1983) (quoting **State v. Green**, 94 Wash.2d 216, 221-22, 616 P2d 628 (1980)). (Added emphasis mine.)

Recently Division III once again affirmed that it still used the standard Amicus claims it has abandon, State v. Villano, 166 Wn.App. 142, 144, 272 P.3d 255 (Wash.App. Div. 3 2012);

"We review sufficiency challenges to see if there was evidence from which the trier-of-fact could find each element of the offense proven beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); State v. Green, 94 Wash.2d 216, 221-222, 616 P.2d 628 (1980). We must consider the evidence in a light most favorable to the prosecution. *Id*."

The term "substantial evidence" is found in Jackson. This was reaffirmed by this court in Sweany, the use of the word substantial in Vasquez did not lower the standard of review as Amicus claims. Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979):

> After *Winship,* the critical inquiry on review of the sufficiency of the evidence to support a criminal conviction must be not simply to determine whether the jury was properly instructed, but to determine whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt.[11] But this inquiry does not require a court to "ask itself whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt." Woodby v. INS, 385 U.S. at 282 (emphasis added). Instead, the relevant question is whether, 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. *See* Johnson v. *Louisiana,* 406 U.S. at 362. This familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. Once a defendant has been found guilty of the crime charged, the factfinder's role as weigher of the evidence is preserved through a legal conclusion that, upon judicial review, *all of the evidence* is to be considered in the light most favorable to the prosecution.[12]

[12] Contrary to the suggestion in the opinion concurring in the judgment, the criterion announced today as the constitutional minimum required to enforce the due process right established in Winship is not novel. ***See, e.g.,*** United States v. Amato, 495 F.2d 545, 549 (CA5) ("whether, taking the view [of the evidence] most favorable to the Government, a *reasonably minded jury* could accept the relevant evidence as adequate and sufficient to support the conclusion of the defendant's guilt beyond a reasonable doubt") (emphasis added); United States v. Jorgenson, 451 F.2d 516, 521 (CA10) (whether, "considering the evidence in the light most favorable to the government, there is **substantial evidence** from which a jury might *reasonably find* that an accused is guilty beyond a reasonable doubt") (emphasis added). Glasser v. United States, 315 U.S. 60, 80, has universally been understood as a case applying this criterion. *See, e.g.,* Harding v. United States, 337 F.2d 254, 256 (CA8). *See generally* 4 *Orfield*, *supra,* n. 10, § 29.28.

(Emphasis mine.)

See State v. Kirwin, 166 Wn.App. 659, 271 P.3d 310 (2012) which cites Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979) once again the court uses the phrase "substantial evidence standard "; State v. Slighte, 157 Wn.App. 618, 626, 238 P.3d 83 (2010), modified on remand, 164 Wn.App. 717, 267 P.3d 401 (2011), the court in Slighte also used the phrase "substantial evidence."

Amicus also claims "the Court of Appeals adopted and unconstitutional standard of reviewing the sufficiency of criminal intent." Amicus further states in footnote 1 that various divisions of The Court of Appeals have "misapplied the "substantial evidence rule."" Amicus cites State v. Homan, 290 P.3d 1041 (Wash.App. Div. 2 2012) however Homan states that the standard as follows (It is noteworthy that the court in Homan reversed the conviction for Luring because the evidence submitted was insufficient according to State v Green):

> Homan argues initially that the evidence was insufficient to support his conviction. A challenge to the sufficiency of the evidence presented at a bench trial requires us to review the trial court's findings of fact and conclusions of law to determine whether substantial evidence supports the challenged findings and whether the findings support the conclusions. State v. Stevenson, 128 Wash.App. 179, 193, 114 P.3d 699 (2005). We review challenges to a trial court's conclusions of law de novo. State v. Gatewood, 163 Wash.2d 534, 539, 182 P.3d 426 (2008). **Evidence is sufficient to support a conviction if, after viewing the evidence and all reasonable inferences from it in the light most favorable to the State, a rational trier of fact could find each element of the crime proven beyond a reasonable doubt. State v. Green, 94 Wash.2d 216, 221, 616 P.2d 628 (1980).**
>
> (Emphasis mine.)

The State has indicated this before and it is appropriate to state it again. The mere use of the words "substantial and evidence" in an opinion by a court does not somehow transform those words into the standard of proof or review that the court has or is using.

As was stated by this Court in Sweany;

> **Though some cases refer to the required quantum of evidence as "substantial evidence, " the analysis has consistently been conducted according to the sufficiency of the evidence standard."** See, e.g., In re Det. of Halgren, 156 Wn.2d 795, 811, 132 P.3d 174 (2006); State v. Lee, 128 Wn.2d 151, 160, 164, 904 P.2d 1143 (1995). "The standard of review for a challenge to the sufficiency of the evidence" is whether, viewing the evidence "in a 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. Randhawa, 133 Wn.2d 67, 73, 941 P.2d 661 (1997) (citation omitted) (internal quotation marks omitted) (quoting **State v. Green,** 94 Wn.2d 216, 221, 616 P.2d 628 (1980)). (Emphasis mine.)
> State v. Sweany, 174 Wn.2d at 914.

This court need only look to In re Det. of Halgren, 156 Wn.2d 795, 811, 132 P.3d 174 (2006) cited in Sweany to see an example of this very court using the phrase "substantial evidence" while adhering to the "beyond a reasonable doubt" test set forth in Green. In Halgren this court cited to State v. Kitchen, 110 Wash.2d 403, 410-11, 756 P.2d 105 (1988), which then cites State v. Green as the proper standard of review.

> In re Det. of Halgren, 156 Wn.2d 795, 811, 132 P.3d 174 (2006);
>
> Applying the *Arndt* alternative means test, we hold that there is substantial evidence to support the jury's finding that Halgren was an SVP beyond a reasonable doubt. The substantial evidence test is satisfied if this court is convinced that "a rational trier of fact *could* have found each means of committing the crime proved beyond a reasonable doubt." State v. Kitchen*,* 110 Wash.2d 403, 410-11, 756 P.2d 105 (1988). In reviewing a record for substantial evidence, this court will not second guess the credibility determinations of the jury. *E.g.,* State v. Jeannotte*,* 133 Wash.2d 847, 853, 947 P.2d 1192 (1997).

Clearly what this means is phrase used on occasion is "substantial evidence" but the analysis the courts have conducted has been and continues to be "beyond a reasonable doubt." That would appear to be obvious in that these cases all refer to the Green and the standard set forth in Green.

Amicus' reading of State v. Butler, 165 Wn.App. 820, 829, 833-4, 269 P.3d 315 (Wash.App. Div. 3 2012) in complete opposition of the State's reading. Amicus stated that this case is the most egregious example of the misapplication of the substantial evidence standard however, when read in its entirety this opinion specifically cites to Green and the standard set forth in Green;

> The State, of course, must produce substantial evidence to support the elements of a crime. State v. Werneth, 147 Wash.App. 549, 552, 197 P.3d 1195 (2008). Whether the State has met that burden, a burden of production, is a question of law that we review de novo. *Id.* Whether there is sufficient evidence to support a conviction turns on "'whether, after viewing the evidence most favorable to the State, *any rational trier of fact* could have found the essential elements of [the crime].'"State v. Vladovic, 99 Wash.2d 413, 424, 662 P.2d 853 (1983) (quoting State v. Green, 94 Wash.2d 216, 221-22, 616 P.2d 628 (1980)). Deference is given to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the general persuasiveness of the evidence. State v. Thomas, 150 Wash.2d 821, 874-75, 83 P.3d 970 (2004).
>
> **...**
>
> Again, whether the evidence is sufficient to support the elements of a crime is a question of law. Green, 94 Wash.2d at 220-21, 616 P.2d 628. Again, whether there is sufficient evidence to support a conviction depends on "'whether, after viewing the evidence most favorable to the State, *any rational trier of fact*

> could have found the essential elements of [the crime].' "Vladovic, 99 Wash.2d at 424, 662 P.2d 853 (quoting *Green,* 94 Wash.2d at 221-22, 616 P.2d 628). Again, we defer to the trier of fact on issues of conflicting testimony, credibility, and the general persuasiveness of the evidence. Thomas, 150 Wash.2d at 874-75, 83 P.3d 970.

The portion of State v. Vladovic, 99 Wn.2d 413, 424, 662 P.2d 853 (Wash. 1983) cited in Butler is;

"Petitioner challenges the sufficiency of the evidence presented at trial. The test which we apply to such challenges is "whether, after viewing the evidence 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 Wash.2d 216, 221-22, 616 P.2d 628 (1980).

Once again the **words** used are substantial evidence the **test** referred to is the decades old standard set forth in Green.

II SUFFICIENT PROOF OF INTENT TO DEFRAUD.

A complete reading of the testimony and the record on appeal demonstrates that the State proved, beyond a reasonable doubt the element of intent. At trial evidence was presented that Vasquez told the store officer that he had purchase the documents from California, that they were purchased through a friend for $50.00, that they were fake and he had come up to the area and had been working in the area. (RP 50) in order to

show intent the State elicited testimony from Special Agent Rodriquez who testified that to gain legal employment in the United States Vasquez needed a valid social security number. (RP 98) Vasquez had in his possession forged social security and permanent resident cards. The store employee was unable to determine who Vasquez actually was based on these fake cards, the company from which Vasquez had shoplifted, was intentionally defrauded by the forged documents used by Vasquez. (RP 55, 69-70) This company's policy was to "trespass" and perform a "courtesy release" if a party who had shoplifted from the store ***if*** they could determine the true identity of that person. (RP 41-2, 46-7, 54-55, 60, 68-70)

Amicus is incorrect that the State did not prove nor did the Court of Appeals require that there be proof of intent. The Court of Appeals opinion stated mere possession was not enough "...the jury could infer intent to defraud from Mr. Vasquez's possession of these cards, his conduct, and his exchanges with the security officer." Said another way, is the evidence of intent to defraud substantial when we consider the reasonable inferences available to the jury..." Vasquez at 53. (Emphasis mine.)

The court ruled that "Under the statute, "[a] person is guilty of forgery if, with intent to injure or defraud ... [he] *possesses, ...* a written instrument which he knows to be forged." (Emphasis in original.)

Mr. Vasquez was asked if they were his cards, if he was the person on the cards, if the information contained on them was his and that information was valid. Mr. Vasquez attempted to convince the security person that the fake documents were valid and was his. The reason for the questions was to allow this company representative to complete the actions needed to either trespass Vasquez and/or request restitution. Store policy could not be completed without determining who Vasquez was. There would be not method to confirm who Vasquez was if they only had this other persons social security number. Vasquez stated the cards were valid and then he admitted he had actually purchased them for $50.00 from a friend in California and that "he worked in the area." If he had been successful in convincing the store employee that the fakes ID was valid the Store would not have been able to seek or obtain compensation nor could any charges have been filed, felony or not, because the information he would have given did in fact belong to some other person.

One could also infer that the person who's social security number had been take by Vasquez had also been defrauded or injured.

Esquivel, cited by the Court of Appeals has been "good law" for twenty years. It states "[t]he intent to commit the crime of forgery may be inferred from surrounding facts and circumstances if such intent is "'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)).”

This court declined to review a very similar case State v. Tinajero, 154 Wn.App. 745, 228 P.3d 1282 (2009) review denied, 169 Wn.2d 1011, 236 P.3d 895 (Wash. 2010) The court in State v. Tinajero cited Esquivel extensively. The State cited Tinajero in its brief in the Court of Appeals.

Amicus would have this court adopt a standard not found in any cases. They would have this court mandate that a jury could only find an inference of intent if it was “so logically powerful, so plainly indicated that the jury could find the intent to defraud. There is no such standard in this State. In fact the State could find **no** case in this State where the phrase “logically powerful” was ever used. This court should decline to adopt such a standard.

Further, it is the State’s position that Amicus has confused the various standards at trial. State v. Huff, 64 Wn. App. 641, 655, 826 P.2d 698 (1992) discusses those standards:

> Lastly, Huff contends that the court erred by declining to instruct the jury that the State had the burden of proving constructive possession by "substantial" circumstantial evidence. The argument confuses the burden of production with the burden of proof. The phrase "substantial evidence" describes the burden of production in all cases, In re C.B., 61 Wn. App. 280, 286, 810 P.2d 518 (1991), while the phrase "beyond a reasonable doubt" describes the burden of persuasion in criminal cases. The burden of production is applied by the judge, while the burden of persuasion

> is applied by the jury. In re C.B., supra at 282-83. It follows that the question of "substantial evidence" is for the judge, not the jury, and that the judge in this case correctly declined to include it in the instructions that he gave to the jury. The instruction needed by the jury was one describing the burden of persuasion, and the judge gave such an instruction in appropriate form.

Using the reasoning of Amicus apparently if a court does not use the exact verbiage from a previous case the rule of law set forth in that case has not then been properly applied. Even if the court cites to the exact page where the full language of the applicable test or standard can be found Amicus would have this court deny application of ruling. The State can only surmise that if the Court of Appeals in its ruling in Vasquez had used the additional words Amicus claims are essential there would not now be a challenge before this court.

In subsection "B" of Amicus Brief, Amicus states "Possession of a false instrument is insufficient, in itself to establish intent to defraud." The State would concur, this is a correct statement of the law. The problem for Mr. Vasquez is that he in fact did more than merely possess these cards. The problem with this statement is that it does not comport with the facts proven at trial. Amicus claims there is no evidence that Vasquez "uttered" the documents, however there was testimony that he stated he was in the area and had worked and he indicated to store security that these documents were true and accurate while this officer was

attempting to determine his true identity, therefore Vasquez did in fact "utter" them. There was testimony from the store security person regarding attempt by Vasquez to use this identification to allow him to avoid the consequences of his action. The reason the State placed Officer McClain and Special Agent Rodriguez on the stand to show that to obtain work Vasquez or any person would have "uttered" these cards in order to gain employment, once again an intentional act by Vasquez.

This was not some attempt to convict Vasquez because he was from Mexico and may have been in the country illegally. Amicus' wild speculation regarding the impact of the testimony of the Officer McClain and Special Agent Rodriguez's testimony is without basis and should not be considered by this court. The record is the record and to insert this type of speculation or inference into a case such as this is clearly an attempt insert race into a case where race was not an issue. Amicus scolds the Court of Appeals and the State for alleged unfounded inferences and then inserts the highly inflammatory and purely speculative statement "It was easy for the jury to infer Vasquez must have been undocumented, and so immigration status boiled below the surface of this case." Would it not be just as easy for this jury from a very racially diverse section of this State to infer that this person was a legal resident or a citizen and he had

attempted, like thousands of others, to use someone else's identification for criminal purposes?

Nelson v. State, 302 Ga.App. 583, 691 S.E.2d 363 (Ga.App. 2010) is not "directly on point." It is distinguishable from Vasquez. At Mr. Nelson's trial the State proved nothing other than Mr. Nelson had one counterfeit bill on his person at the time he was arrested for a rubbing the breasts of a child. There was nothing else in the record to show intent. Whereas in Vasquez there was testimony that Vasquez had worked in this State and he also put off as true this identification during the investigation of the underlying shop lifting charge.

It is troublesome that Amicus would presume or infer that the jurors who sat on Mr. Vasquez's case, and therefore the verdict they rendered, was the result of racism or bigotry. There can be no other interpretation of the statement by Amicus regarding the jury inferring Mr. Vasquez must have been undocumented, apparently a status that caused these jurors hidden bias' towards this undocumented defendant to "boil below the surface." The jury with this obviously biased view apparently then convicted Mr. Vasquez solely on this "unfounded inference" that he was in the country illegally.

It is hard to conceive how, with no foundation or facts, Amicus can claim this "inferred" immigration status would "carry a significant danger

of interfering with the fact finder's duty to engage in reasoned deliberation." Thereby implying that these twelve persons who swore an oath to uphold the law would ignore that oath and allow this alleged bias to "boil" below the surface and in fact rise to the surface allowing those tendencies to undermine our judicial system and wrongly convict Mr. Vasquez. Once again a conviction that apparently was based not on the facts or the law but on this inferred immigration status and the jurors bias regarding that status.

Could it not be that in an area as racially diverse as Yakima that these well vetted jurors simply heard the evidence, applied the law, and found a man, Mr. Vasquez, guilty beyond a reasonable doubt as charged?

Amicus claims that this decision will result in deportation and permanent exclusion of persons from the United States. They have not and can not support this claim with facts, this claim is pure speculation and supposition. This ruling will only effect those persons, citizens or non-citizens, who if found in possession of fake identification can also be shown to have meet the other elements of this crime beyond a reasonable doubt. The State is not going to rush out and begin to sweep up thousands of individuals, search their wallets and interrogate them about their work status or whether they have recently committed some petty crime.

If a person does not carry fake or forged document(s) this law will not impact them. If you do carry forged documents, whether you are a citizen, legal resident or illegally in this country it will impact you identically. These charges can be filed against any person if all elements are present and proven *beyond a reasonable doubt* as the Court required in Vasquez.

Amicus states that any 18 year old with a false instrument will now face this new threat of a felony conviction. Once again the facts of this case seem to have been swept under the rug. If this 18 year old took that fake ID and tried to obtain a job or alcohol or shoplift items from a store or obtain employment they could in fact, as was Mr. Vasquez, be charged with a forgery. If they were merely to possess those documents they would still be subject, as was Mr. Vasquez to the lesser charge.

The ruling by the Court of Appeals did nothing but indicate a jury could, based on the case specific facts testified to, infer intent in a Forgery case. If, as here, this inference was factually proven by the State along with evidence sufficient to prove that a forgery had been committed and proven beyond a reasonable doubt a felony conviction could result.

The statement that individuals now liable for a misdemeanor are now subject to a felony is false. The law has not changed. The State is still required to prove all of the elements of this crime, not just mere

possession no matter how you stretch the ruling it does not say "mere possession is a felony." Once again the ruling of the Court of Appeals requires all elements be proven to support a felony conviction, Vasquez at 53-4.

The rhetorical question posed by the Court of Appeals regarding why Vasquez had these documents was preceded by facts and law, facts which clearly indict that Vasquez had been working, an act that can only be accomplished through the use of a Social Security number.

The difference between the act or evidence which result in a person being culpable for a felony versus a misdemeanor can be minor or seem inconsequential. Before the recent changes in the law regarding marijuana the possession of 39 grams of marijuana would not be a felony. Possession of that same 39 grams of marijuana in 39 individual baggies with a large amount of cash in your pocket could easily be sufficient to infer intent to deliver. 39 small baggies and some Unites State currency would be all that was needed to change the possibly crime charged from minor to major. Or as in this case an attempt to convince a security officer that your fake ID is real or you have obtained employment.

There was not, has not and can not be a claim that the State charged Mr. Vasquez with the felony because he was in the country illegally. Once again Yakima is a highly diverse area. This was a neutral

decision based on the existing law and the facts elicited at trial. The fact that a Forgery may impact a person's immigration status, may result in a "CIMT" was not addressed and did not need be addressed.

As was stated in the first response;

> Mr. Vasquez, not the store official, the Deputy Prosecutor, the jury, the trial court judge, nor Division III of the Court of Appeals, Mr. Vasquez alone determined the course and conduct of his life. He chose to purchase the forged documents, he chose to go to the store and shoplift, he chose to hold as true and accurate the forged documents he possessed, he chose to work in this country using those forged documents. It was his personal choices, a choice faced by each and every person who lives and resides here, no matter what their "status" is, that resulted in his conviction based, once again, on the totality of the information testified to and proven beyond a reasonable doubt, under sworn oath at Mr. Vasquez's trial. The "more severe consequences" a person will face based on a felony conviction will not arise if a person does not have forged documents that are uttered or offered with intent to injure or defraud. RCW 9A.60.020 This ruling does not magically turn the possession of a forged or false or fake document into a felony with all of the consequences of that degree of crime. The State has not suddenly been relieved of the burden of proof, nor the need to prove the additional elements not found in misdemeanor or gross misdemeanor crimes involving fraudulent documents.

E. CONCLUSION

The actions of the trial court and the Court of Appeals both in the published opinion and the denial of the motion for reconsideration should be upheld, the actions of the Court of Appeals should not be disturbed.

Respectfully submitted this 7th day of March 2013.

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Certificate of Service

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Dated at Spokane, WA this 7th day of March, 2013

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