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Supreme Court No. 97367-9

Court of Appeals No. 51118-5-II

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent

v.

ERIC ROMERO LEMUS Petitioner

BRIEF OF PETITIONER

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I. IDENTITY OF PETITIONER

Eric Romero Lemus, through his attorney, Marie Trombley, petitions the Court for review of a decision of the Court of Appeals in *State v. Lemus*, 51118-5-II.

II. DECISION OF LOWER COURT

The Court of Appeals filed an unpublished opinion on May 30, 2019, affirming Mr. Lemus's convictions. A copy of the Court's opinion is attached as appendix A.

III. ISSUES PRESENTED FOR REVIEW

- A. Where an individual is in possession of the means of identification or financial information of another, are the actions of another insufficient to prove intent to commit a crime beyond a reasonable doubt?
- B. Where an individual is in possession of forged instruments are the actions of another insufficient to prove intent to commit a crime beyond a reasonable doubt?

IV. STATEMENT OF THE CASE

Eric Lemus lived in his mother's home, along with his brothers Francisco and Jorge. RP 443, 536. Mr. Lemus's mother used his car to drive Jorge to the airport to return to Mexico. She saw Jorge put a binder full of documents in the trunk of the vehicle and saw he did not

take them with him on his trip. RP 444-45. Jorge had a history of identity theft and fraud. RP 242-43, 545, 563.

She later cleaned out Jorge's room, which he had kept double locked and allowed no one to enter. RP 447. She saw a large accumulation of documents that belonged to family members, including his cousin Jesus Lemus Zuniga. RP 474. She also saw mail that belonged to others she did not know, including Jorge's employer. RP 475-77. After Jorge moved to Mexico, Mr. Lemus also found an accumulation of credit cards, letters, and financial information that belonged to him, family members and others, in a storage unit in the backyard. RP 542,545.

He put the papers in a binder and put the binder in the car trunk. RP 533-34, 549. He did not notice the binder Jorge had left in the trunk and was surprised when officers later showed it to him. RP 549. Mr. Lemus removed two checks and credit cards from the front of the binder, placed them in his wallet, intending to show them to his mother. RP 543-44, 560-63. The checks were not endorsed. RP 316-17.

Shortly thereafter, Mr. Lemus took his brother, Francisco, to the bank. Francisco used the ATM machine while Mr. Lemus sat in the car. RP 537. As they left the parking lot, police stopped the vehicle for a cracked windshield. RP227-28, 537-39. After learning Mr. Lemus had a

suspended license, officers arrested him searched his wallet. RP 309,540.

Inside the wallet, they found two checks made out to his cousin, Jesus Lemus, and the two credit cards from the storage shed. RP 310-11, 366-67, 371, 311, 312. In a consent search of the vehicle, officers found an ATM deposit slip, and checks made out to James Jones signed by Sandra Bunting. RP 236-37. Officers found the two binders with family financial documents that included pay stubs, bank letters, loan papers, DOT claims, doctor invoices, and a bank statement belonging to Greg Berntsen. RP 249-250; 259-263;Exh. 11A. The second binder contained loan information, bank statements, and property tax information that did not belong to any members of the Romero family. Exh. 14,16A, 17, 2A-5, 12A.

The jury found Mr. Lemus guilty of nine counts of identity theft in the second degree, one count of possession of stolen property, and three counts of forgery. CP 112-125.

In its ruling affirming the identity theft convictions, the Court of Appeals reasoned the number of personal and financial documents belonging to individuals who did not know Mr. Lemus or authorize him to possess, "strongly suggests an intent to commit a crime." *Slip Op.* at 11. The Court also reasoned that because Francisco had deposited a

check in a bank account (not Mr. Lemus's), it suggested an intent to commit a crime and Mr. Lemus's connection to that crime. The Court did not address intent for the other counts.

Similarly, the Court found the possession of forged checks, coupled with the receipt for the deposited forged check would allow a rational trier of fact to conclude beyond a reasonable doubt he intended to injure or defraud someone. *Slip. Op.* at 11.

V. ARGUMENT FOR ACCEPTANCE OF REVIEW

The considerations which govern the decision to grant review are found in RAP 13.4(b). Petitioner believes this Court should accept review because the decision of the Court of Appeals conflicts with decisions from the Washington Supreme Court and published decisions from the Court of Appeals.

Due process protects an accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged. *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970). There must be substantial evidence to sustain a conviction, that would persuade an "unprejudiced thinking mind of the truth of the fact to which the evidence is directed." *Id.* A conviction cannot meet the requirements of due process if it is based on "possibility, suspicion, speculation,

conjecture or a *modicum of evidence*.” *State v. Taplin*, 9 Wn.App. 545, 556, 513 P.2d 549 (1973); *State v. Colquitt*, 133 Wn.App. 789, 796, 137 P.3d 892 (2006).

The distinguishing feature between criminal and noncriminal possession of identification or financial information of another are knowledge of possession coupled with intent to commit an unlawful act. Washington courts do not permit inferences of intent from evidence that is patently equivocal, nor does it permit inferences of intent based on mere possession. *State v. Vasquez*, 178 Wn.2d 1, 8, 309 P.3d 318 (2013).

In its opinion, the Court of Appeals held that “possession together with ‘slight corroborating evidence’ can be” sufficient to infer intent. *Slip Op.* at 10. However, in *Vasquez*, this Court considered what was necessary to show more than “naked possession”, analogizing to possession of controlled substances with intent to deliver. *Vasquez*, 178 Wn.2d at 8-9. This Court concluded that “possession of a large amount of controlled substances, without some additional factor is insufficient to establish intent.” *Id.* at 9.

Here, the Court of Appeals found “the sheer volume of personal and financial documents” belonging to others strongly suggested an intent to commit a crime. The Court also relied on the fact that

someone (Francisco Lemus) who had been in Mr. Lemus's car had deposited a forged check which suggested intent to "commit a crime and Mr. Lemus's connection to that crime." *Slip Op.* at 11.

First, the Court's reasoning is exactly what this Court cautioned against in *Vasquez*: possession alone, even in large quantities, does not lead to a logical inference of intent. *State v. Lopez*, 79 Wn.App. 755, 768, 904 P.2d 1179 (1995); *State v. Adel*, 136 Wn.2d 629, 640, 965 P.2d 1072 (1998). The State must prove intent beyond a reasonable doubt. *Vasquez*, 178 Wn.2d at 9. The evidence here showed that over the several weeks Mr. Lemus possessed the documents *he* had done nothing with them except drive around with them in the trunk of his car or carry some in his wallet.

Washington courts have continually held that possession alone cannot establish an inference of intent. See *State v. Bockrob*, 159 Wn.2d 311, 331-32, 150 P.3d 59 (2009)(shoplifting pseudoephedrine well in excess of the legal purchase limit did not amount to intent to manufacture methamphetamine); *Vasquez*, 178 Wn.2d at 10 (mere possession of forged identification cards cannot support an inference of an intent to injure or defraud); *State v. Liles*, 11 Wn.App. 166, 521 P.2d 973 (1974)(large quantity of heroin, lack of paraphernalia, and

lack of packaging was insufficient to raise an inference of intent to deliver rather than mere possession).

Second, without the State providing any evidence that Mr. Lemus supplied the forged check to his brother, the Court relied on Mr. Lemus's brother's act of depositing the forged check as the "slight corroborating evidence" to infer intent on Mr. Lemus's part. *Slip Op.* at 10. This is error. Presentment of the forged check was his brother's unlawful act.

In *Vasquez*, the Court reasoned that while possession plus slight corroborating evidence is sometimes sufficient to infer intent, inferences of intent "may be drawn *only* from conduct that *plainly* indicates such intent as a matter of logical probability." *State v. Vasquez*, 178 Wn.2d at 14.

The evidence the State presented at trial was that several family members were well aware that Jorge Lemus engaged in identity theft activities. Several family members saw the binder from his room; the second binder was found in the family backyard shed. That Mr. Lemus possessed documents for weeks without using them could show he may have considered using them to commit a crime, but the evidence does not plainly indicate that he formed an intent to do so. The State failed to prove the requisite intent beyond a reasonable doubt. The

Court of Appeals erred when it held that Francisco's act of depositing a forged check showed slight corroborating evidence of intent on Mr. Lemus's part.

For the same reasons, the convictions for forgery must be reversed and vacated. A person is guilty of forgery if, with intent to injure or defraud, he possesses, utters, disposes of, or puts off as true a written instrument which he knows to be forged. RCW 9A.60.020(1)(b). The statute requires not only possession, but intent to defraud or injure another. Possession of a forged instrument alone cannot justify a forgery conviction. *State v. Scoby*, 117 Wn.2d 55, 62, 810 P.2d 1358, 815 P.2d 1352 (amended) (1991).

The State argued that Mr. Lemus possessed 3 forged checks for several weeks. (RP 604). None of the checks listed him as a payee, none of the checks had been endorsed, and he had presented no forged check for payment. Mr. Lemus took no action from which a rational trier of fact could reasonably conclude he intended to injure or defraud another.

The entire family had access to the document binders at one point or another. Francisco Lemus deposited the forged check. The deposit slip was found in the car, where Francisco was a passenger, stuffed between the front passenger seat and the center console.

(3/23/17 RP 236). The Court's reliance on the act of Francisco, to impute intent to injure or defraud to Mr. Eric Lemus is error.

The State failed to prove the requisite intent beyond a reasonable doubt and the convictions must be reversed and dismissed with prejudice. *State v. Hickman*, 135 Wn.2d 97, 103, 954 P.2d 900 (1988).

VI. CONCLUSION

Based on the foregoing facts and authorities, Mr. Lemus respectfully asks this Court to accept review of this petition.

Dated this 28th day of June 2019.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Marie J. Trombley, attorney for Jose Lemus, do hereby certify under penalty of perjury under the laws of the United States and the State of Washington, that a true and correct copy of the Petition for Review was sent by first class mail, postage prepaid, on June 28, 2019:

Jose Santiago Romero Lemus A208108144
1623 E. J. Street # 5
Tacoma, WA. 98421

And through the electronic portal of the Court of Appeals to:
Pierce County Prosecuting Attorney at
pcpatcecf@co.pierce.wa.us).

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APPENDIX A

May 29, 2019

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

ERIC SANTIAGO ROMERO LEMUS,

Appellant.

No. 51118-5-II

UNPUBLISHED OPINION

SUTTON, J. — Eric Santiago Romero Lemus appeals from his jury trial convictions for nine counts of second degree identity theft and three counts of forgery.¹ He argues that the evidence is insufficient to support these convictions. He also argues that under the recent amendments to RCW 36.18.020(2)(h),² we must strike the criminal filing fee imposed by the trial court. We affirm the convictions, but we remand for the trial court to strike the interest provision on Romero Lemus’s legal financial obligations (LFOs) and to determine whether the criminal filing fee can be imposed under RCW 36.18.020(2)(h).

¹ Romero Lemus was also convicted of one count of second degree possession of stolen property. He does not challenge that conviction on appeal.

² See Laws of 2018, ch. 269, § 17.

FACTS

I. BACKGROUND

On March 23, 2017, Pierce County Deputy Sheriffs Chad Helligso and Chris Olson stopped Romero Lemus shortly after he left the parking lot of a Wells Fargo bank because his car had a cracked windshield. At the time of the stop, Romero Lemus's brother Francisco Romero Lemus was in the passenger's seat. After arresting Romero Lemus for driving with a suspended license, Deputy Olson searched Romero Lemus's wallet and found two checks and what appeared to be two credit cards that did not belong to Romero Lemus.

The first check, check number 526, was drawn on James and Sandra Bunting's Wells Fargo bank account. Ex. 3A. This check was made out to Jesus Zuniga Lemus, dated March 16, and appeared to have been signed by "Sandra Bunting." The second check, check number 280, was drawn on Sandra Bunting's KeyBank account. This check was made out to Jesus Zuniga Lemus, dated March 21, and appeared to have been signed by "Sandy Bunting."

The first card was a "VA Equity 100 VA Home Loan" card in the name of Greg Berntsen. Ex. 5; 3 Report of Proceedings (RP) at 232. The second card was an Amazon Prime Visa card in the name of Eric R. Jensen.

Romero Lemus told the deputies that he had found the cards at a casino a few days earlier. And, despite the two checks being dated within days of the arrest, Romero Lemus told the deputies that his brother "Jesus" gave him the checks "several weeks prior." 3 RP at 240-41; 4 RP at 294. Romero Lemus could not explain why the dates on the checks were inconsistent with his assertion that his brother had given him the checks several weeks earlier.

With Romero Lemus's permission, Deputy Olson also searched Romero Lemus's car. Between the center console and the front passenger's seat, Deputy Olson found a receipt for a deposit at a Wells Fargo bank and another check. He also found two red plastic folders in the car's passenger compartment.

The receipt was dated March 23, and time stamped about an hour before the deputies stopped Romero Lemus. The receipt included a photograph of check number 274 drawn on Sandra Bunting's KeyBank account. The check was issued to a "James Jones," dated March 20, 2017, and appeared to have been signed by "Sandra Bunting." Romero Lemus told the deputies that he was not the one who had made this deposit, but he refused to say who had made the deposit.

The check that was found in the car, check number 275, was also from Sandra Bunting's KeyBank account. It was dated March 20, was made out to "James Jones," and appeared to have been signed by "Sandy Bunting." Romero Lemus told the deputies that his brother Jesus had left check number 275 at his (Romero Lemus's) house before moving to Mexico a month earlier. Once again, Romero Lemus could not explain why the check was dated more recently.

According to Deputy Helligso, after the deputies found the two red folders, Romero Lemus said "that his brother left all of that stuff in [Romero Lemus's] vehicle, and his brother had a history of [identity] theft and fraud." 3 RP at 242-43. Romero Lemus also stated that "he should have known better than to have that stuff in his vehicle" and that he thought the items in the vehicle "were stolen items." 3 RP at 243.

The deputies later examined the items in each of the two folders. The first folder, Exhibit 1, contained various financial and medical documents related to Romero Lemus. In addition, it contained several documents belonging to Greg and Elizabeth Berntsen, including:

- Bank statements.
- A pre-approval notification letter addressed to Greg Berntsen's from Freedom Mortgage that had previously included a "VA Equity 100 card" that would verify Berntsen's preapproval. This notification letter matched the information on the VA Equity card found in Romero Lemus's wallet, and the letter appeared to have originally had a card attached to it.
- "[A]n invitation to apply for a Delta Sky Miles credit card." Ex. 11-C; 3 RP at 250.

In the second folder, Exhibit 2, the deputies found more financial and medical information related to Romero Lemus. They also found some items bearing Francisco's³ name. The second folder also contained numerous documents belonging to other people, including:

- "[A]n empty envelope addressed to somebody named Bunting" from Comcast. Ex. 2-4; 3 RP at 258-59.
- A Pierce County property tax statement addressed to Douglas Harbaugh.
- Two property tax payment slips addressed to Douglas Harbaugh.
- Various documents from the Wounded Warrior Project addressed to David Calhoun.
- "[A] special notice from Medicare insurance addressed to a David Calhoun." 3 RP at 264.
- A bank notice addressed to Daniel and Suzanne Calhoun.
- A credit union statement addressed to a Sara N. Smith.
- Bank statements addressed to James H. Harmon.
- Bank statements addressed to Sue and Steven Nichols.

II. PROCEDURE

The State charged Romero Lemus with nine counts of second degree identity theft, three counts of forgery, and three counts of second degree possession of stolen property. The case proceeded to a jury trial.

³ Because the appellant and Francisco share the same last name, we refer to Francisco by his first name to avoid confusion. We intend no disrespect.

A. TRIAL

1. STATE'S WITNESSES

The deputies testified to the facts described above. Additionally, Sarah Smith, Eric Jensen, David Calhoun, James Bunting, Sandra Bunting, Douglas Harbaugh, Sue Nichols, James Harmon, and Greg Allen Berntsen, Sr. testified for the State.

Each of the civilian witnesses identified and testified about the various financial documents, checks, and credit cards in their names that were found on Romero Lemus's person or in his car. None of these witnesses knew Romero Lemus or gave him permission to possess any of the documents, checks, or credit cards at issue. Sandra Bunting specifically testified that she had not written or signed the check depicted on the deposit receipt or the signed checks that the deputies found in Romero Lemus's wallet or car.

2. DEFENSE WITNESSES

Romero Lemus's mother testified that in February 2017, she was living with her four sons, Jorge Mariano Bernardino, Salvador Romero Lemus, Francisco, and Romero Lemus. She further testified that when Bernardino moved out of her house the first part of March, he left a red folder in the trunk of Romero Lemus's car.

Romero Lemus's mother also testified that when she subsequently cleaned out Bernardino's room, which he had previously kept locked, she found documents and paperwork belonging to family members and to people who did not live in her home. Some of these documents belonged to David Calhoun, Douglas Harbaugh, Eric Jensen, and Sarah Smith. Romero Lemus's mother also testified that Romero Lemus did not help clean out the room. Jordyn Fox,

Romero Lemus's girlfriend, also testified that she had helped clean out the room and that they found a lot of paperwork, including bank statements, belonging to other people.

Romero Lemus testified that immediately before his arrest, he had taken Francisco to use an automatic teller machine at a Wells Fargo bank branch. Romero Lemus stated that Francisco had returned to the car with a "piece of paper," but Romero Lemus did not see what was on the paper. 7 RP at 538.

Romero Lemus admitted that he had the two checks and two credit cards in his wallet when he was arrested and testified that he told the deputies he found the cards at a casino. But he further testified that he had actually found the items in his wallet among other documents in a "storage" room/unit at his house a couple of days after Bernardino left. 7 RP at 542-43, 546. Romero Lemus stated that he had put these four items in his wallet because he had intended to show them to his mother and to talk with her about his brother. Romero Lemus admitted, however, that he had not talked to his mother about the items in his wallet.

Romero Lemus further testified that there were other documents, including documents of family members, with the checks and credit cards that he removed and that he put these documents in one of the folders and had planned to sort through them later. He admitted to putting one of the folders in his car, but he testified that did not know the second folder was in his car or know how it got there. He also testified that he did not know about the check found between the passenger's seat and the center console until the State told him about it.

Romero Lemus denied planning to obtain money using any of the items found in his car and denied telling the deputies that he believed the items in his car were stolen. He also denied using the name Jesus Zuniga Lemus, but he testified that he had a cousin with this name.

3. VERDICT AND SENTENCING

The jury found Romero Lemus guilty of the nine counts of second degree identity theft and the three counts of forgery.

At sentencing the trial court waived all nonmandatory legal fees, but it imposed a \$200 criminal filing fee. The judgment and sentence also stated that interest on the LFOs would “bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments.” Clerk’s Papers (CP) at 145.

The trial court also found that Romero Lemus was indigent for purposes of appeal. The trial court did not, however, say under what subsection of RCW 10.101.010(3) it found Romero Lemus indigent. Nor does the order of indigency indicate what subsection of RCW 10.01.010(3) the trial court relied on.

Romero Lemus appeals.

ANALYSIS

Romero Lemus argues that the evidence was insufficient to support the second degree identity theft and forgery convictions. He also argues that under RCW 36.18.020(h), we must strike the criminal filing fee imposed by the trial court.

Romero Lemus’s sufficiency arguments fail. But we remand for the trial court to strike the interest provision from Romero Lemus’s judgment and sentence and to determine whether the criminal filing fee can be imposed under RCW 36.18.020(h).

I. SUFFICIENCY

A. LEGAL PRINCIPLES

When reviewing the sufficiency of the evidence, we ask whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found that the State proved the crime’s essential elements beyond a reasonable doubt. *State v. Homan*, 181 Wn.2d 102, 105, 330 P.3d 182 (2014). We assume that all of the State’s evidence and any reasonable inferences from it are true, and all reasonable inferences from the evidence must be drawn in the State’s favor and interpreted most strongly against the defendant. *Homan*, 181 Wn.2d at 106.

Circumstantial evidence and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). And we defer to the jury to resolve issues of conflicting testimony and determining the persuasiveness of the evidence. *Homan*, 181 Wn.2d at 106.

B. SECOND DEGREE IDENTITY THEFT CONVICTIONS

To prove second degree identity theft, the State had to prove that (1) Romero Lemus “*knowingly* obtain[ed], possess[ed], use[d], or transfer[ed] a means of identification or financial information of another person, living or dead,” and (2) he did so “with the intent to commit, or to aid or abet, any crime.” RCW 9.35.020(1) (emphasis added). Romero Lemus argues that the evidence was insufficient to support the second degree identity theft convictions because the State failed to prove that he (1) *knowingly* obtained or possessed the documents other than the items that were found in his wallet, or (2) possessed any of these items with intent to commit a crime.

1. KNOWLEDGE

Romero Lemus argues that the evidence was insufficient to establish that he knew that he possessed the documents found in the folders, because he testified that he had not gone through the folder he asserts that he found in the storage unit and he was unaware of the other folder found in his car. But this argument fails to consider the evidence in the light most favorable to the State. *See Homan*, 181 Wn.2d at 106.

A person has knowledge if “he or she is aware of a fact.” RCW 9A.08.010(b)(i). The evidence here is sufficient to show that Romero Lemus was aware of the documents that were found in each of the two folders.

As to the first folder, Exhibit 1, Romero Lemus’s assertion that he did not go through this folder is not supported by the record. In fact, Romero Lemus identified the documents and testified that he had gone through this folder, “saw documents that were in [his] name,” removed the items to show his mother, and that those items were the ones found in his wallet. 7 RP at 543-44. Additionally, this folder contained financial information belonging to Berntsen that related directly to one of the cards in Romero Lemus’s wallet as well as the documents belonging to Romero Lemus. Based on these facts, a rational trier of fact could conclude that Romero Lemus not only possessed the first folder because it contained some of his own documents, but that he had gone through its contents and was aware of the nature of its contents. Therefore, a rational trier of fact could conclude that Romero Lemus knowingly possessed the documents in that folder.

Romero Lemus’s assertion that he was unaware of the existence or contents of the second folder is equally unavailing. The second folder contained an envelope related to the Buntings. It also contained documents belonging to Romero Lemus. As with the first folder, taking this

evidence in the light most favorable to the State, the fact that the second folder contained documents belonging to Romero Lemus would allow a rational trier of fact to conclude that Romero Lemus owned that folder. And the fact that Romero Lemus had actual possession of items related to the owners of an item found in the second folder would allow a rational trier of fact to conclude that Romero Lemus was aware of the folder's contents. Thus, Romero Lemus's claim that the evidence of knowledge was insufficient fails.

2. INTENT TO COMMIT A CRIME

Romero Lemus next argues that the evidence was insufficient to support the second degree identity theft convictions because it did not show that he possessed the documents with intent to commit a crime.⁴ Again, we disagree.

Our Supreme Court has held that for "crimes where possession and intent are elements of the crime, Washington courts do not permit inferences based on naked possession." *State v. Vasquez*, 178 Wn.2d 1, 8, 309 P.3d 318 (2013). "When intent is an element of the crime, 'intent to commit a crime may be inferred if the defendant's conduct and surrounding facts and circumstances plainly indicate such an intent as a matter of logical probability.'" *Vasquez*, 178 Wn.2d at 8 (quoting *State v. Woods*, 63 Wn. App. 588, 591, 821 P.2d 1235 (1991)). Possession alone is not, however, sufficient to infer intent. *Vasquez*, 178 Wn.2d at 8. But "possession together with 'slight corroborating evidence'" can be. *Vasquez*, 178 Wn.2d at 8 (quoting *State v. Esquivel*, 71 Wn. App. 868, 870, 863 P.2d 113 (1993)). Such corroborating evidence is present here.

⁴ Identity theft requires the possession or use of a means of identification of another person "with the intent to commit, or to aid or abet, any crime." RCW 9.35.020(1).

Here, the sheer volume of personal and financial documents belonging to several different individuals who did not know Romero Lemus and who had not authorized him to possess these documents strongly suggests an intent to commit a crime. And the fact that someone who had been in Romero Lemus's vehicle had deposited one of Sandra Bunting's checks, a check that she had not written or signed, also suggests an intent to commit a crime and Romero Lemus's connection to that crime. This evidence would allow a rational trier of fact to conclude beyond a reasonable doubt that Romero Lemus possessed these documents with an intent to commit a crime. Accordingly, Romero Lemus fails to show that the evidence was insufficient to prove intent to commit a crime.

C. FORGERY CONVICTIONS

Romero Lemus next argues that the evidence is insufficient to support the forgery convictions because the State failed to prove that he intended to injure or defraud anyone. Again, we disagree.

As noted above, although possession of the forged documents "alone is not sufficient to infer intent to injure or defraud in forgery cases, . . . possession together with 'slight corroborating evidence' might be." *Vasquez*, 178 Wn.2d at 8 (quoting *Esquivel*, 71 Wn. App. at 870). Here, Romero Lemus's possession of the forged checks coupled with the receipt for the deposit of a similarly forged check is sufficient evidence to allow a rational trier of fact to conclude beyond a reasonable doubt that Romero Lemus intended to injure or defraud someone. Thus, Romero Lemus's sufficiency arguments fail.

II. CRIMINAL FILING FEE

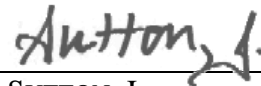
Finally, Romero Lemus argues that under the current version of RCW 36.18.020(2)(h), we must strike the criminal filing fee imposed by the trial court. The State concedes that the current version of RCW 36.18.020(2)(h) applies, and it also asserts that we must strike the interest provision in the judgment and sentence under RCW 10.82.090(1).

In 2018, the legislature amended RCW 10.82.090(1) and RCW 36.18.020(2)(h). LAWS OF 2018, ch. 269 §§ 1, 17. As relevant here, these amendments eliminated interest on non-restitution LFOs and prohibited imposing the filing fee on defendants found indigent under RCW 10.101.010(3) (a) through (c). RCW 10.82.090(1), RCW 36.18.020(h); *State v. Ramirez*, 191 Wn.2d 732, 747, 426 P.3d 714 (2018). The 2018 amendments apply to this case because this case was not final on June 7, 2018, when the amendments took effect. *Ramirez*, 191 Wn.2d at 747. Accordingly, we remand to the trial court to strike the interest provision and to determine whether the criminal filing fee can be imposed under RCW 36.18.020(2)(h).

CONCLUSION

We affirm the convictions, but we remand for the trial court to strike the interest provision and determine whether the criminal filing fee can be imposed under RCW 36.18.020(2)(h).

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 in accordance with RCW 2.06.040, it is so ordered.

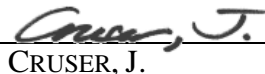


SUTTON, J.

We concur:



MELNICK, P.J.



CRUSER, J.

MARIE TROMBLEY

June 28, 2019 - 1:50 PM

Filing Petition for Review

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Appellate Court Case Number: Case Initiation
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