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Court of Appeals
Division I
State of Washington

NO. 73035-5-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

ALLEN BUMANGLAG,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE REGINA S. CAHAN

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

1. Trial counsel is presumed to be effective, and a decision not to move for suppression of evidence is not ineffective assistance if the motion would have failed. Search warrants are reviewed with great deference to the issuing magistrate's discretion. The search warrant in this case was based, among other things, upon evidence of identity theft found in Bumanglag's possession after he was seen leaving a residence in a stolen car with a known member of a group known to use that residence for identity theft. Has Bumanglag failed to show that his lawyer's decision not to challenge the search warrant amounted to ineffective assistance?

2. To prevail on his claims of insufficiency of the evidence, Bumanglag must show that, when taking all the evidence and all reasonable inferences in the light most favorable to the State, no rational jury could have found the essential elements of the crime beyond a reasonable doubt. For a charge of identity theft, the evidence showed that Bumanglag possessed a handwritten social-security number of a real person whose identity was recently stolen, along with dozens of other stolen financial documents and handwritten personal-data "profiles" of real people. For a charge of

taking a motor vehicle, the evidence showed a Honda had been stolen a day earlier; it was started with a filed-down Chevrolet key; Bumanglag fled from police; he immediately blurted out that he didn't know the car was stolen; and the vehicle's altered registration certificate was found in a backpack that he had been carrying. Was there sufficient evidence to find that Bumanglag knew that the social-security number belonged to a real person and that the Honda was stolen?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

Allen Bumanglag was charged by First Amended Information in King County Superior Court with Taking a Motor Vehicle Without Permission in the Second Degree and six counts of Identity Theft in the Second Degree, all alleged to have occurred on or about March 18, 2014, in King County, Washington. CP 11-13. A jury convicted Bumanglag as charged. CP 70-76. Bumanglag was sentenced to a total of 52 months in prison. CP 84. Bumanglag timely appealed. CP 167.

2. SUBSTANTIVE FACTS

On March 18, 2014, officers with a Bellevue Police Department Special Enforcement Team staked out a house at 7319

16th Avenue Southwest in Seattle in hope of finding two men, Eljohn Dacome and Jason Felipe, who had warrants for their arrest in pending felony cases. Ex. 3; 1RP 146; 2RP 5-6.¹ Dacome and Felipe both had been arrested at this house, along with several other people, when the same police team searched it in February 2013 and seized more than 100 items of evidence, including stolen credit cards, social-security documents, ID cards and checks. Ex. 3; 2RP 6. The pending charges stemmed from this raid. Ex. 3; 2RP 5.

At around 3 p.m., an officer spotted Dacome leave the house and walk to a backyard outbuilding that officers knew was used as a living area. Ex. 3; 2RP 7. A few minutes later, an officer saw a woman named Dia Tacardon, who was known to be Dacome's girlfriend, also walk from the main house to the outbuilding.² Ex. 3; 2RP 7, 145. Tacardon also had warrants for her arrest. Ex. 3; 2RP 7.

Around an hour later, Officer Greg Grannis saw Felipe and Bumanglag, who was not yet known to the officers, leave the

¹ The State shares Bumanglag's numbering of the verbatim report of proceedings, which is in three volumes: 1RP (December 4 and 8, 2014); 2RP (December 9, 2014); and 3RP (December 10 and 11, 2014).

² Tacardon's last name is misspelled as "Decardont" in the verbatim report of proceedings.

property together and climb into a Honda sedan. Ex. 3; 2RP 136. Felipe was carrying a black satchel, and Bumanglag was carrying an orange backpack. Id. Bumanglag appeared to toss the orange backpack into the back seat. 2RP 137. Felipe got into the driver's seat and Bumanglag got into the passenger seat, and they drove off. Ex. 3; 2RP 135. Officer Brian Schafer, in a marked patrol car, and Officer Gregory Oleden, in an unmarked pickup, followed. Ex. 3; 2RP 69-70; 3RP 8, 14. Schafer attempted to stop the Honda to arrest Felipe on his warrant. 2RP 74. The car accelerated to about 60 miles per hour in a 35-mph zone. Id. Schafer suspended pursuit and turned off his lights as the Honda ran through a red light and went out of sight. 2RP 76.

Then Schafer and Oleden saw people flagging them down and pointing into an office-park lot. 2RP 77. The Honda was abandoned in the lot with its doors open. 2RP 79. Officer Schafer learned through dispatch that the Honda was stolen. 2RP 80. Schafer and Oleden ran after the two men, but Felipe escaped up a wooded hillside. 2RP 22. Officer Schafer found Bumanglag at a gas station and handcuffed him. 2RP 84. Before Schafer told Bumanglag why he was being arrested, Bumanglag blurted out, "I didn't know the car was stolen." 2RP 84-85.

Officers searched Bumanglag incident to arrest and found a wallet containing Bumanglag's driver's license, his social-security card with the last four digits scratched out, a bank-deposit slip in a woman's name, and a scrap of paper with a social-security number written on it. Ex. 3, 7; 2RP 86-87. A police dispatcher determined the social-security number was assigned to Labinot Hasani. Ex. 3. Hasani's wife had reported to Bellevue police in January that fraudulent accounts had been opened in Hasani's name for purchases of cell phones and cell service. Id. Hasani's wife had told police she suspected her husband's financial information was stolen from their mail. Id.

About an hour later, Officer Grannis saw Dacome and Tacardon leave the property at 7319 16th Avenue Southwest and walk to a convenience store, where officers arrested them on their warrants. Ex. 3; 2RP 147-48. Tacardon had another woman's credit-card document in her pants pocket. Ex. 3.

That evening, based on an affidavit of Detective Jeffrey Christiansen, King County District Judge Elizabeth Stephenson authorized a search warrant for the entire property at 7319 16th Avenue Southwest, including the outbuilding, and for the stolen Honda. Ex. 3.

In the outbuilding, a detached garage converted into living quarters, police found a locked bedroom. 3RP 54. Inside, police found a red backpack hanging on a hook, and evidence that Bumanglag stayed alone in the room. 1RP 153, 186; Ex. 6. Inside the backpack were dozens of financial instruments and documents belonging to other people. CP 162-73; Ex. 5. These included driver's licenses, credit cards, checks, a social-security card, bank statements, federal income-tax documents bearing social-security numbers, medical-insurance forms bearing social-security numbers of adults and children, and even an official birth certificate for a 14-year-old girl. Id.

Also among the papers were handwritten notes listing people's names, their addresses and phone numbers, their dates of birth and social-security numbers, and even one woman's place of birth, her parents' names, her date of admission to the United States and her alien-registration number. Id. The backpack also contained documents, such as wage reports, addressed to Bumanglag. Id.

Inside the Honda, police found a Chevrolet key that was filed down to serve as a "jiggler" — an automotive skeleton key — and partially inserted into the ignition. 1RP 182; Ex. 7. In the

passenger-side back seat, the officers found the orange backpack that Officer Grannis had seen Bumanglag carrying. 1RP 183; 2RP 136. Inside the backpack was a black satchel containing gloves, a screwdriver, and two pocketknives. 1RP 184. Also in the orange backpack was the vehicle-registration certificate of the stolen Honda. Id. The vehicle description and the name of the registered owner were scratched off. 1RP 184; 2RP 46.

Pretrial, Bumanglag did not seek suppression of any evidence pursuant to CrR 3.6. 1RP 18.

At trial, Detective Christiansen testified from his training and experience about common methods of identity theft. 1RP 132-37. Those methods include group activity in which some people steal mail and pass it along to more experienced accomplices who build “profiles” of their victims, including social-security numbers, dates of birth, bank account numbers, and any other personal data that might help thieves open lines of credit or drain bank accounts. Id. Christiansen testified that ID thieves often write profiles in notebooks or on simple pieces of paper, which can be taken to stores and other places to use the information to open up fraudulent accounts. 1RP 135-36.

Christiansen also testified from his training and experience about common methods of auto theft. 1RP 138-40. This included the use of shaved "jiggler" keys, screwdrivers and other tools, including gloves. Id.

Christiansen testified that it appeared that no one shared Bumanglag's bedroom in the outbuilding. 2RP 32. The officers found evidence that Dacome and Tacardon shared a different bedroom in the outbuilding. 2RP 28, 160.

Hasani, the man whose social-security number was in Bumanglag's wallet, told the jury that he learned that his financial data had been compromised when someone opened accounts in his name for cellular-phone service with four separate carriers. 1RP 191-92. The other named victims similarly testified that they had mail stolen, and all of them lived or worked in the general vicinity of the residence the police had searched. 2RP 34-35, 49, 104, 110-13, 116-18; 3RP 71-72. Most of the victims said they learned of their mail theft from police, and had not noticed any fraudulent use of their accounts. 2RP 109, 122; 3RP 77. But victim Ronald Svik said he noticed his bank statement never arrived in February, and later that month two unauthorized purchases for cellular-phone service were made. 2RP 36.

In closing argument, the prosecutor summed up the evidence proving Bumanglag knew that the Honda was stolen: The car was stolen only about a day earlier; Bumanglag approached the car with Felipe with no apparent hesitance; the key was not on a key ring and was obviously a Chevy key; and the backpack Bumanglag had been carrying contained the Honda registration that was scraped off in a manner very similar to Bumanglag's own social-security card. 3RP 104-06. The prosecutor argued that the fact that the altered registration was in the backpack showed that Bumanglag already had it before he got into the car. 3RP 108-09. Additionally, the prosecutor pointed out, Bumanglag ran away from the vehicle, and then blurted out that he didn't know the car was stolen before he was even told why police were after him. 3RP 107-08.

As to the identity-theft charge based on Hasani's social-security number in Bumanglag's wallet, the prosecutor argued that the jury could infer that Bumanglag knew the number belonged to a real person and was not "just a random number" because he carried it along with his own social-security card, and because of the unique nature of social-security numbers. 3RP 110. More, the prosecutor urged the jury to look at all the other documents taken

from Bumanglag's room and conclude that Bumanglag was engaged in collecting profiles of people he knew were real. 3RP 111. That was because this was not a "hobby," the prosecutor said, but "a way for him to make money and to do so by committing crimes." 3RP 112. Profiles would be useless, the prosecutor stressed, if "they were for fictional people." 3RP 115. "They have to be based on real people so that people gain money from opening accounts." Id.

Bumanglag focused his closing argument about the stolen Honda by suggesting the most likely scenario was that Felipe announced mid-flight from the police that the car was stolen and Bumanglag fled because he was scared. 3RP 127-28. Bumanglag argued that there was no evidence that he knew what was in the orange backpack he was carrying. 3RP 124.

As for the identity-theft charges, Bumanglag blamed Felipe and Dacome as the real criminals who lived in a "den of thieves." 3RP 132-35. He argued that there was no proof that Bumanglag possessed the documents in the red backpack in the outbuilding bedroom, and that it was more likely that it all belonged to Felipe or Dacome. 3RP 134-37. Thus, Bumanglag argued, the jury should not use all those other documents and writings to infer anything

about Hasani's social-security number in Bumanglag's wallet.

3RP 137.

C. ARGUMENT

1. DEFENSE COUNSEL WAS NOT INEFFECTIVE BECAUSE THE SEARCH WARRANT WAS SUPPORTED BY SUFFICIENT EVIDENCE AND A CHALLENGE WOULD HAVE FAILED.

Bumanglag asserts that his trial counsel was ineffective for failing to challenge the search warrant. He argues that the affidavit supporting the warrant lacked sufficient evidence of a nexus between evidence of identity theft and the residence that all four suspects had left minutes before their arrests. To the contrary, the issuing judge was presented with more than enough evidence to find probable cause that a group of organized identity thieves was still using the residence for their criminal activity. Bumanglag was not prejudiced by his attorney's decision not to challenge the search warrant because it would have failed. Thus, Bumanglag's ineffective-assistance claim fails.

a. Standards Of Review.

To prevail in a claim of ineffective assistance of counsel, Bumanglag must show (1) that his trial counsel's performance was deficient and (2) that this deficiency prejudiced him. Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674

(1984). An ineffective assistance of counsel claim fails without proof of both elements. State v. Hendrickson, 129 Wn.2d 61, 78, 917 P.2d 563 (1996). A reviewing court must begin with a strong presumption that counsel provided adequate and effective representation. State v. McFarland, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995). Deficient performance is that which falls below an objective standard of reasonableness. Id. at 334. Prejudice occurs when trial counsel's performance was so inadequate that there is a reasonable probability that the trial result would have differed, undermining the confidence in the outcome. Strickland, 466 U.S. at 694.

“Counsel may legitimately decline to move for suppression on a particular ground if the motion is unfounded.” State v. Nichols, 161 Wn.2d 1, 14, 162 P.3d 1122 (2007). There is no ineffectiveness if a challenge to admissibility of evidence would have failed. Id. at 14-15.

A search warrant may be issued only upon a determination of probable cause. State v. Thein, 138 Wn.2d 133, 140, 977 P.2d 582 (1999). “Probable cause exists if the affidavit in support of the warrant sets forth facts and circumstances sufficient to establish a reasonable inference that the defendant is probably involved in

criminal activity and that evidence of the crime can be found at the place to be searched.” Id. The issuing magistrate’s determination of probable cause is reviewed for abuse of discretion and is given great deference by the reviewing court. State v. Maddox, 152 Wn.2d 499, 509, 98 P.3d 1199 (2004). All doubts are resolved in favor of the warrant’s validity. Id.

In determining probable cause, the magistrate makes a practical, commonsense decision, taking into account all the circumstances set forth in the affidavit and drawing commonsense inferences. Id. at 509-10 (citing Illinois v. Gates, 462 U.S. 213, 238, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983)). Facts that, standing alone, would not support probable cause can do so when viewed together with other facts. State v. Garcia, 63 Wn. App. 868, 875, 824 P.2d 1220 (1992). Probable cause requires a probability of criminal activity, not a prima facie showing of criminal activity. Maddox, 152 Wn.2d at 510. Common sense is “the ultimate yardstick” of probable cause. Id. at 512.

b. A Suppression Motion Would Have Failed Because Sufficient Evidence Supported Probable Cause For The Search Warrant.

The district-court judge who issued the warrant in Bumanglag’s case had plenty of probable cause to believe that

evidence of identity theft would be found on the property at 7319

16th Avenue Southwest:

- The affiant, Detective Christiansen, attested to extensive experience investigating crimes, including identity theft and fraud. Ex. 3.
- Christiansen attested to an intimate familiarity with this specific residence because he personally had assisted with a previous search of the residence about a year earlier. Id.
- During that search, police discovered “multiple suspects” all engaged in identity theft at the residence. Id.
- During the search, police seized “more than one hundred items of evidence associated with identity theft, including dozens of stolen and/or fraudulently obtained credit cards, driver’s licenses, social security cards, and checks.” Id.
- Dacome and Felipe were part of the large group of suspects involved in the operation. Id.
- Bumanglag exited the residence with Felipe, a known group member, and they acted as accomplices in possession of a stolen car, then both fled an attempted traffic stop. Id.
- Bumanglag, who had minutes earlier left a house known for organized identity theft, was in possession of the social-security number of man who had recently reported fraudulent accounts opened in his name, as well as a bank slip belonging to a woman, and had altered his own social-security number. Id.
- Dacome, another known member of the ID-theft group, and Tacardon, who had a history of arrests, left together from the

property, and Tacardon was in possession of someone else's credit-card document. Id.

- Detective Christiansen attested, based on his extensive experience, that possession of other people's financial information, including social security numbers and bank-account numbers, is indicative of identity theft. Id.

To summarize, the issuing judge was presented with a house that was previously confirmed as a headquarters of a large, organized group of identity thieves, and now two known members of that organization left the house with two other people who were found with identity-theft evidence on their persons. Additionally, Bumanglag was riding in a stolen car driven by one of the known members. The judge had more than enough evidence, taken as a whole, to make a commonsense decision, based on reasonable inferences, that the identity-theft ring was still active at the residence and that evidence of those crimes would be found there.

Nonetheless, Bumanglag asks this Court to compare this case to Thein and find that the nexus to the home was based on nothing more than broad generalizations by police. 138 Wn.2d at 148-49. This Court should reject such a comparison because the situation here bears no resemblance to Thein.

In Thein, Seattle police raided a building in South Seattle and found evidence of marijuana cultivation in the basement. 138 Wn.2d at 137. They found evidence that Thein was the landlord and controlled the basement, and an informant told them Thein dealt marijuana. Id. at 137-38. But there was no other evidence that Thein had anything illegal in his actual residence in West Seattle. Id. In seeking a search warrant for Thein's residence, the police simply made sweeping generalizations about drug dealers tending to keep illegal things in their homes. Id. at 138-39.

Our Supreme Court held that "the generalized statements ... standing alone," were insufficient to support a search of Thein's residence. Id. at 148. The court said it was unreasonable "to infer evidence is likely to be found in a certain location simply because police do not know where else to look for it." Id. at 150.

That is not the case here. In this case, the police had prior knowledge that two of their suspects were involved in an organized identity-theft ring based out of this specific residence, and were now associated with two others who were in possession of identity-theft documents. The police had, moments earlier, observed all four of them leave the known identity-theft headquarters. This was far more than the "generalized statements ... standing alone" that

Thein addressed. In fact, the only generalizations the officer made in the affidavit, if any, were minor observations from his training and experience that possessing other people's financial information is indicative of identity theft, not generalizations about where identity thieves keep their wares. The facts themselves carried the day.

Bumanglag adds that the magistrate should have ignored the officer's knowledge of the activities in the residence because the previous raid was a year earlier. But probable cause is a low bar, and "common sense is the test for staleness of information in a search-warrant affidavit." Maddox, 52.Wn.2d at 505. Information "is not stale for purposes of probable cause if the facts and circumstances in the affidavit support a commonsense determination that there is continuing and contemporaneous possession of the property to be seized." Id. at 506. The issuing judge here had evidence that the activities at the property had resumed, if they ever had stopped, both from the documents found on Bumanglag and Tacardon and from the fact that both Felipe and Dacome were still there after absconding from their felony cases from the previous raid.

Still, Bumanglag argues that because the affidavit did not say that Bumanglag or the others resided there, no nexus was shown. First, this is faulty because the question before the magistrate was not whether it was probable that evidence incriminating Bumanglag would be found there, but whether all the evidence as a whole showed a probability that evidence of criminal activity involving any or all of the four suspects would be found.

Moreover, the fact that a location searched is not the suspect's residence is of no consequence. In State v. G.M.V., a family's home was searched because police saw a young man, who did not live there, leave, make a drug deal, and return. 135 Wn. App. 366, 369, 144 P.3d 358 (2006). The Court of Appeals held that unlike in Thein, the police saw the young man leave the house shortly before being involved in crime, forming sufficient nexus. Id. at 372. Though Bumanglag wishes G.M.V. were distinguishable simply because Bumanglag did not conduct a drug deal, the case is really quite comparable. Bumanglag and Tacardon both left a known base of an organized identity-theft ring in the company of known members, and were caught minutes later

with identity-theft evidence. The nexus here is at least as strong as in G.M.V., and miles away from Thein.³

As G.M.V. illustrates, our courts easily distinguish Thein and limit the case to its core holding — that absent some other actual evidence, broad assumptions and generalizations about the habits of drug dealers will not support a nexus between drug crimes and a particular location. See State v. McReynolds, 104 Wn. App. 560, 570, 17 P.3d 608 (2000) (inferences considered improper for drug crimes may be appropriate for property crimes); State v. Dunn, 186 Wn. App. 889, 898, 348 P.3d 791 (2015) (“[I]nstead of expanding the Thein ruling to limit inferences made in nondrug offenses, the McReynolds court suggested a more limited reading.”). See also Maddox, 152 Wn.2d at 511-12 (while generalizations, “*standing alone*, cannot establish probable cause,” such generalizations can support probable cause along with other facts) (emphasis in original).

³ Bumanglag mentions a Wyoming case, Bouch v. State, 143 P.3d 643 (2006), and a Sixth Circuit case, U.S. v. Rose, 714 F.3d 362 (6th Cir. 2013), for help on the issue of sufficiency of nexus. But in Bouch, a child-rape case, the affidavit simply failed to state that the address listed was the defendant’s address, whereas here the affidavit said Bumanglag was seen leaving the specific residence. 143 P.3d at 649. In Rose, a child-pornography case, a Cincinnati police officer similarly forgot to state that the address listed was the suspect’s home. 714 F.3d at 365. Neither case has any bearing on Bumanglag’s argument.

In Bumanglag's case, the evidence in the search-warrant affidavit provided solid evidence of criminal activity and a nexus to the residence searched. Bumanglag was not prejudiced by his trial counsel's decision not to challenge the warrant, and his ineffective-assistance claim must fail.

2. EVIDENCE WAS SUFFICIENT TO FIND THE DEFENDANT KNEW THE SOCIAL-SECURITY NUMBER WAS OF A REAL PERSON AND THE CAR WAS STOLEN.

Next, Bumanglag argues that there was insufficient evidence to support his identity-theft conviction for possessing Hasani's social-security number because supposedly there was no evidence that Bumanglag knew it belonged to a real person. And he contends there was insufficient evidence that Bumanglag knew the Honda was stolen. When looking at all the evidence as a whole, in the proper light, both arguments fail.

a. Standard Of Review.

When reviewing a sufficiency challenge to a conviction, this Court determines whether, after viewing the evidence in the 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. Green, 94 Wn.2d 216, 221-22, 616 P.2d 628

(1980). A sufficiency challenge admits the truth of the State's evidence and accepts all reasonable inferences from it. State v. O'Neal, 159 Wn.2d 500, 505, 150 P.3d 1121 (2007). In determining the sufficiency of the evidence, reviewing courts do not consider circumstantial evidence any less reliable than direct evidence. State v. Embry, 171 Wn. App. 714, 742, 287 P.3d 648 (2012).

b. The Jury Had Sufficient Evidence Of Knowledge As To Both Counts.

i. Identity theft: The social-security number.

To convict a defendant of identity theft in the second degree, the State must prove that the defendant knew the means of identification or financial information he used or possessed belonged to some other real person. State v. Felipe Zeferino-Lopez, 179 Wn. App. 592, 600, 319 P.3d 94 (2103). See also Flores-Figueroa v. United States, 556 U.S. 646, 129 S. Ct. 1886, 173 L. Ed. 2d 853 (2009) (rejecting argument that phrase "another person" in federal statute included fictional persons as well as actual persons). See also United States v. Maciel-Alcala, 612 F.3d 1092, 1100 (9th Cir. 2010) (federal statute proscribing aggravated

identity theft only required that government prove that defendant knew number belonged to some real person, living or dead).

Bumanglag contends that it was impossible for the jury to conclude that he knew the social security number in his wallet belonged to a real person because it was on a scrap of paper. His argument might have merit if the scrap of paper were viewed in a vacuum, but this Court should not accept that invitation.

More than seeing a mere scrap of paper, the jury learned that someone recently had opened fraudulent accounts in Hasani's name. 1RP 191-92. The obvious reasonable inference was that whoever had Hasani's financial information knew it was an active social-security number of a real person. Second, the jury could consider the possession of Hasani's social-security number along with the dozens of other financial-fraud documents and the evidence that Bumanglag was a professional identity-theft "profiler" who collected the information of real people. As the prosecutor put it in closing argument, a fictional social-security number would have been useless to Bumanglag.

Bumanglag compares his case to the facts in Zeferino-Lopez to aver that the State's argument about the unique nature of social-security numbers was not enough to convict. But the evidence

against Bumanglag did not stop there. In Zeferino-Lopez, the defendant bought a fake social-security card so he could work in the United States, but he testified that he had no idea whether the number belonged to a real person. Zeferino-Lopez, 179 Wn. App. at 594. The purpose for Zeferino-Lopez having the number did not hinge on it belonging to someone else, and perhaps even made it less useful. Here, the evidence showed Bumanglag was engaged in profiling real people's financial data to steal their identities and their money. The volume of evidence overwhelmed any notion that Bumanglag wrote nine random digits on a piece of paper and stuck it in his wallet.

Because the evidence was more than sufficient for a rational jury to find beyond a reasonable doubt that Bumanglag knew the number belonged to a real person — especially when taking all the evidence in the light most favorable to the State — his argument fails.

ii. Knowledge of stolen vehicle.

The crime of taking a motor vehicle without permission in the second degree is committed when a person “intentionally takes or drives away any automobile or motor vehicle,” or “voluntarily rides in or upon the automobile or motor vehicle with knowledge of the

fact that the automobile or motor vehicle was unlawfully taken.”
RCW 9A.56.075. A person knows of a fact by being aware of it or having information that would lead a reasonable person to conclude that the fact exists. State v. Womble, 93 Wn. App. 599, 604, 969 P.2d 1097 (1999) (citing RCW 9A.08.010(1)(b)). Although knowledge may not be presumed simply because a reasonable person would have knowledge under similar circumstances, it may be inferred. Womble, 93 Wn. App. at 604.

“Once it is established that a person rode in a vehicle that was taken without the owner’s permission, *slight corroborative evidence* is all that is necessary to establish guilty knowledge.” Id. (internal quotation marks removed, emphasis added).

Corroborative evidence can include fleeing when stopped and the absence of a plausible explanation for legitimate possession. Id.

Applying the proper standard — taking all the evidence together, in the light most favorable to the State — there was more than enough to find the “slight corroborative evidence” needed to convict. Actually, the facts in Bumanglag’s case are even more corroborative than in Womble:

Womble was a passenger in a stolen car; he gave an implausible explanation when confronted by the owner; and he fled.

Id. at 605. Bumanglag was a passenger in a stolen car; he fled when confronted; and he implausibly announced that he didn't know the car was stolen before he was even told why he was being arrested.⁴ But more, Bumanglag had the car's altered registration document in a backpack. His case is nothing like State v. L.A., on which he relies, where a 14-year-old girl was merely driving a stolen car with a broken window, without any other evidence. 82 Wn. App. 275, 276, 918 P.2d 173 (1996).

Essentially, Bumanglag asks this court to find insufficient evidence of knowledge by taking each incriminating fact separately and concluding there are other innocent explanations for each. Setting aside the fact that the possibilities Bumanglag offers either do not match the evidence or are far-fetched, this Court must review the evidence in totality and discount any innocent explanations because they are not in the light most favorable to the State.

Bumanglag further argues that the fact that he was merely a passenger makes his flight irrelevant because he did not have

⁴ Bumanglag asserts that he did not run away but merely "left the scene" to dissociate himself from Felipe. The testimony was clearly to the contrary. See 2RP 79 (testimony of Officer Schafer: "We found the car, it's unoccupied, people are flagging us down. They're telling us that the ... subjects that had gone out of the car were last seen running southwest through this industrial park over here.").

possession of the vehicle. But Womble couldn't have been more clear that "[f]light is also a corroborative factor" when the defendant was a passenger in a stolen vehicle. 93 Wn. App. at 604.

This Court should find ample evidence of knowledge, and reject Bumanglag's argument.

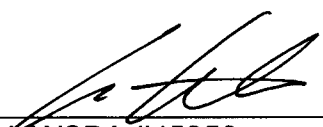
D. CONCLUSION

For all the foregoing reasons, the State respectfully asks this Court to affirm Bumanglag's judgment and sentence.

DATED this 15th day of September, 2015.

Respectfully submitted,

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Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to Richard W Lechich, the attorney for the appellant, at richard@washapp.org, containing a copy of the BRIEF OF RESPONDENT in State v. Allen A Bumanglag, Cause No. 73035-5, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 2nd day of September, 2015.

W Brame

Name:

Done in Seattle, Washington