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FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2014 FEB 25 PM 2:54

NO. 70325-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

JUAN AGUAYO-RAMIREZ,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE MARY E. ROBERTS

BRIEF OF RESPONDENT

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A. ISSUE PRESENTED

Challenges to the sufficiency of the evidence involve the evaluation of all facts and circumstances, accepted as true, and viewed in the light most favorable to the State to determine whether a rational fact-finder could find beyond a reasonable doubt the elements at issue. When the appellant is found in possession of stolen checks and driver's licenses taken from a vehicle prowled two months prior, in possession of other stolen property belonging to the victims, and states that the property "belong to friends" when it in fact belongs to two persons who did not know the appellant or permit him to be in possession of it, does insufficient evidence support his convictions for identity theft in the second degree?

B. STATEMENT OF FACTS

Juan Aguayo-Ramirez was driving through the City of Burien, Washington on December 5, 2012, when he was observed failing to stop for a red traffic light. RP 249-50. King County Sheriff's Office Deputy Michael McDonald was stopped at the intersection when he observed Aguayo-Ramirez drive straight through the intersection contrary to the red light. RP 250. This

forced Deputy McDonald and several other motorists to stop to avoid a collision. RP 250.

Deputy McDonald initiated a traffic stop, and ultimately placed Aguayo-Ramirez under arrest. RP 251. Aguayo-Ramirez did not pull over right away, and was angling his car against the curb in a manner that Deputy McDonald believed the driver was trying to get away. RP 276. As the deputy identified himself as a law enforcement officer and ordered him to stop, Aguayo-Ramirez was seen "digging" in the car's console in a nervous manner. RP 277-78.

Aguayo-Ramirez continued to act nervously during the contact, staring off and appearing to ignore the deputy; the deputy testified that it is not uncommon for a subject to act nervously during an encounter with law enforcement. RP 252, 277. Aguayo-Ramirez, however, insisted that he did not run the red light during the beginning of the contact. RP 279.

During a search incident to arrest of Aguayo-Ramirez's person, Deputy McDonald found a checkbook and two California licenses bearing the names of other people in Aguayo-Ramirez's left rear pocket. RP 253-55. He also found in other pockets a .22 caliber bullet, a SIM card for a phone, a calling card in the name

of Gary T. Stille, and a commemorative gold coin. RP 254-59. Aguayo-Ramirez also possessed his own Washington driver's license. RP 255. Aguayo-Ramirez told Deputy McDonald that the driver's licenses and checkbook "belon[g] to my friends." RP 255.

Admitted at trial were the California driver's licenses bearing the name, date of birth, and driver's license numbers of Gary Thomas Stille and Frederick Sambrano. RP 256-57. The driver's licenses bore the photographs of Mr. Stille and Mr. Sambrano. RP 257. Also found was a checkbook bearing the names and former address of both Mr. Stille and Mr. Sambrano; both were admitted into evidence. RP 256-59. The checkbook of blank checks was from a Washington Mutual account. RP 272. Deputy McDonald, drawing from his experience investigating fraudulent identification, testified that it is not uncommon for a suspect to alter or generate an identification card by placing his or her own photograph in conjunction with another person's name and date of birth. RP 278.

Mr. Stille and Mr. Sambrano both identified their California driver's licenses and the checkbook as their own, and further testified that they did not know Aguayo-Ramirez or give him permission to possess or use these documents. RP 282-84,

302-06. Mr. Stille recognized the address on the checkbook as the couple's former address in San Francisco, and his calling card as belonging to him several years before. RP 285-87. Mr. Stille testified that several coins seized from Aguayo-Ramirez were given to him by his grandmother and had been in a storage unit shared with Mr. Sambrano. RP 287-88.

Mr. Sambrano testified that all of these belongings were stolen during a vehicle prowl in October of 2012, and were in a backpack taken during the theft. RP 305-06. Aguayo-Ramirez did not testify, and the defense did not introduce any evidence. RP 310. During closing arguments the deputy prosecutor emphasized Aguayo-Ramirez's statement that the driver's licenses and checkbook belonged to friends is not credible in light of the victims' testimony that they did not know or permit him to possess them and, when viewed in light of his nervousness during the traffic stop, indicates that Aguayo-Ramirez intended to use them to commit fraud. RP 339-41. The jury returned verdicts of guilty for three counts of identity theft in the second degree. CP 139-41.

C. ARGUMENT

SUFFICIENT EVIDENCE SUPPORTS THE JURY'S
VERDICTS.

Aguayo-Ramirez argues that there was insufficient evidence admitted at trial to establish his "intent" to commit a crime, though he acknowledges that he knowingly possessed the victims' means of identification and personal information. Brief of Appellant at 5. At issue here is whether there was sufficient evidence of Aguayo-Ramirez's intent to use the driver's licenses and the checks from the joint-checking-account of two victims. The facts and circumstances before the trier-of-fact, particularly when viewed in the light most favorable to the State and accepting reasonable inferences to be drawn, amply established Aguayo-Ramirez's intent to use the personal and financial information to commit crimes related to fraud.

When a defendant challenges the sufficiency of the evidence, all reasonable inferences from the evidence must be drawn in favor of the State, and the defendant admits the truth of the State's evidence and all inferences that can reasonably be drawn from that evidence. State v. Gentry, 125 Wn.2d 570, 597, 888 P.2d 1105 (1995). Furthermore, the State is entitled to rely

upon circumstantial evidence to prove its case. State v. Bernson, 40 Wn. App. 729, 733, 700 P.2d 758 (1985). Circumstantial and direct evidence are to be considered equally reliable by the reviewing court in determining the sufficiency of the evidence. State v. Delamarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

The reviewing court need not be convinced beyond a reasonable doubt of the defendant's guilt. Gentry, 125 Wn.2d at 597. The fact-finder is the sole judge of the credibility of the witnesses and of what weight to give their testimony. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). Appellate courts must defer to the trier of fact to resolve conflicts in testimony, to weigh evidence, and to draw reasonable inferences from the evidence. State v. Gerber, 28 Wn. App. 214, 216, 622 P.2d 888 (1981). 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." State v. Vasquez, 178 Wn.2d 1, 309 P.3d 318 (2013) (citing State v. Woods, 63 Wn. App. 588, 591, 821 P.2d 1235 (1991)).

Aguayo-Ramirez relies primarily upon the reasoning set forth in Vasquez in support of his argument. In Vasquez, the

Washington Supreme Court held that insufficient evidence supported a conviction for forgery when Mr. Vasquez was arrested for shoplifting and found with a fraudulently generated Social Security card and a permanent resident card. Vasquez, 178 Wn.2d at 13-14. The Court held that Mr. Vasquez's inability to recite the Social Security Number on the face of the card, and his statements generally, were "patently equivocal," thus insufficient to establish sufficient evidence of the forgery statute's "intent to injure or defraud" element. Vasquez, 178 Wn.2d at 14; *see also* RCW 9A.60.020(1)(b).

The facts of Aguayo-Ramirez's trial are distinguishable from those in Vasquez. Aguayo-Ramirez acted nervously during the traffic stop and arrest. Aguayo-Ramirez also possessed personal identifiers and financial documents as well as other items stolen from two victims who did not know him or give him permission to be in possession of their belongings. Aguayo-Ramirez stated that these items "belon[g] to friends," when in fact they were stolen from the victims in a recent car-prowl.

The Court in Vasquez placed particular emphasis on the fact that the State introduced no evidence of intent to injure or defraud, in that the prosecution did not establish *how* the fraudulent Social

Security card was obtained or how it could have been used to injure or defraud. Vasquez, 178 Wn.2d at 17. In contrast to the facts in Vasquez, the evidence here established that the cards and checkbook had been stolen in a vehicle prowl. An identification card bearing an account-holder's name could obviously be used to aid the cashing of a check. Such an act would constitute a number of crimes. See 9A.56.320(3) (Financial Fraud). See also 9A.60.020 (Forgery) and Chapter 9A.56 RCW (Theft). Checks belonging to the victims were blank, and could be filled in with payee and specific amounts to be paid.

Unlike Vasquez, where there were no facts indicating an intent to injure or defraud, the combination of the stolen checks, and driver's licenses to aid in their cashing either in the present form or through fraudulent manufacture using information depicted on the cards, indicate the intent to commit, aid or abet a number of possible offenses. The combination of blank checks and driver's license information, bearing the same names and addresses contained on the checks, is a fact that cannot be understated. These items were stolen rather than just merely forged. Driver's licenses are often manufactured to aid a suspect to impersonate another individual. It is certainly a reasonable inference that these

were possessed with the clear purpose to commit, aid, or abet fraud. Aguayo-Ramirez's nervous demeanor and false statements further underscore his intent. All of these facts and circumstances, when viewed in the light most favorable to the State, support his convictions for Identity Theft in the Second Degree.

D. CONCLUSION

For the foregoing reasons, Aguayo-Ramirez's conviction should be affirmed, as sufficient evidence supports the jury's determination that he possessed means of identification and financial information with the intent to commit a number of fraud-related offenses.

DATED this 24th day of February, 2014.

Respectfully submitted,

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