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**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON,

Respondent,

v.

LEONARD MICHAEL HAAN,

Appellant.

Appeal from the Superior Court of Pierce County
The Honorable Stephanie Arend

No. 17-1-03943-0

BRIEF OF RESPONDENT

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I. INTRODUCTION

Leonard Haan was a passenger in a stolen car when the car was pulled over by the police. After his arrest, jail deputies found two credit cards inside Haan's wallet that belonged to a married couple Haan did not know. One of the cards still had activation stickers on it. The owners of the cards did not give Haan permission to possess the credit cards. As a result of this incident, Haan was charged with four felony offenses.

After negotiating with the State, Haan entered guilty pleas to two gross misdemeanors – third degree possession of stolen property and attempted second degree identity theft. In exchange, Haan received a deferred one-year sentence. As part of Haan's plea agreement with the State, Haan waived his right to appeal his convictions and sentence.

This Court should affirm the convictions because Haan waived his right to appeal as part of his valid, binding plea agreement. Further, Haan is precluded from asserting for the first time on appeal that his plea lacked a factual basis. But even if this Court addresses the merits of his claim, the trial court properly concluded that there was a factual basis for the plea. The record shows that Haan understood the nature of the charges and the consequences of pleading guilty, as well as the rights he was waiving by entering a plea of guilty to the reduced charges. This Court should affirm.

II. RESTATEMENT OF THE ISSUES

- A. Did Haan waive his right to appeal where the record establishes that he entered a knowing, voluntary, and intelligent plea to reduced charges with a deferred sentence recommendation based on plea negotiations with the State?
- B. Is Haan precluded from raising the issue that his plea lacked a factual basis where he did not raise the issue below and where he has not shown that the issue involves a manifest constitutional error warranting review for the first time on appeal under RAP 2.5(a)?
- C. Did the trial court properly conclude that a factual basis supported Haan's guilty pleas where the Declaration of Probable Cause contained sufficient evidence for a finding of guilt?

III. STATEMENT OF THE CASE

The State charged defendant Leonard Haan with two counts of second degree identity theft, one count of second degree possession of stolen property, and one count of taking a motor vehicle without permission in the second degree. CP 3-5.

According to the Declaration of Probable Cause, a citizen reported a white Lincoln sedan was speeding in the area and provided the license plate number. CP 1. Dispatch ran the license plate and reported the car was stolen. CP 1. A Tacoma Police Officer responded to the area and located the car. CP 1. Haan was a passenger in the car. CP 2.

After providing a story of how the pair came to possess the car, both Haan and the driver were arrested and taken to jail. CP 1-2. During the booking process, Pierce County Jail Corrections Deputies found credit cards

in Haan's wallet that did not belong to him. CP 2. Two of the cards were Alaska Airlines Visa cards issued to Richard Wilson Amos and Mia Grace Amos. CP 2. The credit card issued to Mia Amos still had an activation sticker on the front. CP 2. When asked about the cards, Haan told the deputy that he did not know the people they belonged to and that he found them on the floor inside his home. CP 2. Haan said he has five roommates, and he "had no idea how the cards came to be in his house." CP 2. Haan had no explanation for why he picked the cards up and placed them in his wallet. CP 2. The deputy contacted Mr. Amos, who believed the cards were his and his wife's and seemed confused as to why Haan would have them. CP 2. He did not know Haan and had not given Haan permission to have the credit cards. CP 2.

Haan engaged in plea negotiations with the State. 06/04/19 RP 3. The State agreed to reduce the charges from four felonies to two gross misdemeanors, and Haan entered a guilty plea to attempted second degree identity theft and third degree possession of stolen property. *See* CP 16-24. Haan's attorney advised the court, "I'm confident this is a knowing and voluntary and intelligent decision he's making and one that I heartily recommend." 06/04/19 RP 5. Haan's signed plea paperwork included statements that the plea was made freely and voluntarily, that no one had

threatened Haan to enter the plea, and that no promises were made in exchange for the plea. CP 23.

Haan's attorney informed the court that he reviewed the guilty plea with Haan, who was "well aware" of the charges involved, the elements of the crimes, and the consequences of entering into the plea. 06/04/19 RP 5. Haan informed the court that he understood the information contained in the plea and that his attorney answered all of his questions. 06/04/19 RP 6. The court confirmed that Haan understood the charges, the elements of the charges, the maximum sentence that could be imposed, and the implications of violating a condition of a deferred sentence. 06/04/19 RP 7-9. The court also confirmed that Haan understood the rights he was waiving by pleading guilty, including the right to appeal a guilty verdict. 06/04/19 RP 7-8.

Haan adopted the Declaration of Probable Cause as the factual basis for the plea. 06/04/19 RP 5, 10; CP 23. The Declaration of Probable Cause stated, in relevant part:

Roberson and Haan were transported to the Pierce County Jail for booking and during the booking process, correction deputies noted a number of credit cards in Haan's wallet. Two of the cards, both Alaska Airlines Visa cards, did not belong to Haan. The cards were Bank of America Alaska Airlines Mileage Plan Visa cards issues [*sic*] to Richard Wilson Amos and Mia Grace Amos. The card issued to Mia Amos still had the activation notice sticker on the front. The officer asked Haan about the card and he said he didn't know them, he said found [*sic*] the credit cards on the floor near his laundry room earlier that morning and that he had five roommates and he had no idea how the cards came to be in his house. When asked why he

picked them up and put them in his wallet, rather than discard them or call police, he did not have an answer. The officer contacted Richard Amos and he said he believed those cards belonged to him and his wife and seemed confused as to why Haan would have them. He said he didn't know Roberson or Haan and never gave them permission to have his credit cards.

CP 2. The court read the Declaration of Probable Cause and determined there was a factual basis for the plea. 06/04/19 RP 10. After conducting a detailed colloquy with Haan, the court determined that Haan understood the consequences of the plea and the rights he was waiving by pleading guilty. 06/04/19 RP 5-12. The court accepted Haan's guilty plea as knowingly, intelligently, and voluntarily made. 06/04/19 RP 10-12; CP 24.

At sentencing, Haan acknowledged the benefits his plea afforded him, noting that the parties put in "a lot of hard work" in reaching the agreed resolution that "worked for everybody." 07/02/19 RP 5-6. Haan addressed the deferred sentence and informed the court that he appreciates the opportunity to show the court that he can "walk a good line." *Id.* The court followed the joint recommendation and sentenced Haan to a one-year deferred sentence. 07/02/19 RP 6-7; CP 25-26. The trial court advised Haan of his limited right to appeal. CP 39-41. Haan filed a timely notice of appeal. *See* CP 28-31.

IV. ARGUMENT

A. Haan waived his right to appeal by entering a knowing, voluntary, and intelligent guilty plea to reduced charges based on plea negotiations with the State.

The Washington Constitution grants a right of appeal to all criminal defendants. Const. art. I, § 22. However, a defendant may waive this right if it is done so knowingly, voluntarily, and intelligently, and with an understanding of the consequences. *State v. Perkins*, 108 Wn.2d 212, 215-18, 737 P.2d 250 (1987). Waiver is the intentional relinquishment or abandonment of a known right or privilege. *State v. Sweet*, 90 Wn.2d 282, 286, 581 P.2d 579 (1978). A defendant can waive his right to appeal in exchange for the dismissal of certain charges or a favorable sentencing recommendation by the State, or both. *Perkins*, 108 Wn.2d at 215; *Accord State v. Lee*, 132 Wn.2d 498, 505-06, 939 P.2d 1223 (1997).

A plea is voluntary in the constitutional sense if the defendant understands the nature and extent of the constitutional protections waived by pleading guilty. *Hews v. Evans*, 99 Wn.2d 80, 87, 660 P.2d 263 (1983). The defendant must be apprised of the nature of the charges against him, including being informed of the elements of the crime and understanding how his conduct satisfies those elements. *Id.* at 87-88. An information that notifies a defendant of the nature of the crime to which he pleads guilty

creates a presumption that the plea was knowing, voluntary, and intelligent. *In re Pers. Restraint of Ness*, 70 Wn. App. 817, 821, 855 P.2d 1191 (1993).

To ensure a defendant is entering a voluntary plea, the courts have adopted CrR 4.2(d) to protect a defendant against entering an involuntary plea. *See State v. Robinson*, 172 Wn.2d 783, 790-92, 263 P.3d 1233 (2011). CrR 4.2(d) provides that a court shall not accept a guilty plea “without first determining that it is made voluntarily, competently and with an understanding of the nature of the charge and the consequences of the plea.” CrR 4.2(d) also provides that the court should be satisfied that there is a factual basis for the plea. Once the safeguards of the rules have been employed, a defendant will be permitted to withdraw a plea only upon a showing that withdrawal is necessary to avoid a manifest injustice. *State v. Perez*, 33 Wn. App. 258, 261, 654 P.2d 708 (1982).

A voluntary guilty plea acts as a waiver of the right to appeal. *State v. Smith*, 134 Wn.2d 849, 852, 953 P.2d 810 (1998). “When a defendant completes a plea statement and admits to reading, understanding, and signing it, this creates a strong presumption that the plea is voluntary.” *Id.* “When the judge goes on to inquire orally of the defendant and satisfies himself on the record of the existence of the various criteria of voluntariness, the presumption of voluntariness is well nigh irrefutable.” *Perez*, 33 Wn. App. at 262.

Washington State recognizes a strong public interest in “enforcing the terms of plea agreements which are voluntarily and intelligently made.” *In re Pers. Restraint of Breedlove*, 138 Wn.2d 298, 309, 979 P.2d 417 (1999). They are regarded and interpreted as contracts between the parties where both parties are bound by the terms of a valid plea agreement. *Id.* Moreover, courts have a strong interest in defendants raising challenges to an information prior to conviction. *See State v. Majors*, 94 Wn.2d 354, 358-59, 616 P.2d 1237 (1980). “It would create an intolerable situation if defendants, after conviction, could defer their attacks upon indictments or informations until witnesses had disappeared, statutes of limitation had run, and those charged with the duty of prosecution had died, been replaced, or had lost interest in the cases.” *Id.* (quoting *Keto v. U.S.*, 189 F.2d 247, 251 (8th Cir. 1951)).

Here, Haan entered a voluntary guilty plea, thereby waiving his right to appeal. Haan was originally charged with four felony offenses. CP 3-5. He resolved this case by entering into a plea agreement with the State, where he entered guilty pleas to two gross misdemeanors, and received a deferred one-year sentence. CP 16-27. Pursuant to this agreement, Haan waived the right to appeal. CP 19-20; 06/04/19 RP 7-8. Haan signed the plea agreement and verbally acknowledged he understood he was giving up his right to appeal by entering his plea. 06/04/19 RP 8; *see* CP 19-20, 23.

Haan's guilty plea statement, when examined in conjunction with the transcript of the plea hearing, establishes that his plea was knowing, intelligent, and voluntary. During the detailed colloquy with the court, Haan indicated he understood the charges he was pleading guilty to and the sentences of each charge. 06/04/19 RP 7-8. The parties spent the day negotiating the resolution and Haan's attorney advised the court that he was "confident this is a knowing and voluntary and intelligent decision" Haan was making and that he "heartily" recommends it. 06/04/19 RP 4-5. Counsel informed the court that Haan was "well aware" of the charges involved, the elements of those charges, and the consequences of entering the plea. 06/04/19 RP 5. Haan confirmed that he understood the charges and all aspects of the plea agreement and that his attorney answered "all" of his questions. 06/04/19 RP 6-8. Finally, Haan understood all of the constitutional rights he was waiving by entering the plea. 06/04/19 RP 7-8.

Like Haan's colloquy with the court, Haan's plea form echoed that he understood the exact implications of entering his guilty plea. The forms indicated that he was giving up specific constitutional rights by entering his plea, including the right to appeal. CP 19-20. The form listed the consequences of entering his plea, including the maximum sentence and fine, the prosecutor's recommended sentence, and the fact that the judge need not follow the recommendation. CP 20. By Haan signing his name to

the plea paperwork, Haan certified that he was making the plea freely and voluntarily, he was not threatened to enter the plea, and he was not made any promises to enter the plea. CP 23. Moreover, Haan verbally certified the same to the court during his colloquy when he told the court he understood the implications of entering his plea. *See* 06/04/19 RP 6-12.

Haan was not under duress when he entered his plea – he actively engaged in the colloquy with the Court and indicated that he was freely entering the plea. 06/04/19 RP 12. No one made him any promises or threatened him to enter the plea. 06/04/19 RP 12; CP 23. The fact that Haan understood, and even appreciated, his plea was shown at sentencing as well. Haan informed the court that the parties put in “a lot of hard work” in reaching an agreed resolution that “worked for everybody.” 07/02/19 RP 5-6. As Haan’s attorney explained to the court, the parties spent hours negotiating the case in order to reach an agreement that “we are all comfortable with, including [Haan].” 07/02/19 RP 5. Haan informed the court that the joint recommendation is “a good decision for everybody” and he appreciates the opportunity for a deferred sentence. 07/02/19 RP 5-6.

At the conclusion of the colloquy, the trial court agreed that there was a factual basis for the plea, that the plea was made knowingly, intelligently, and voluntarily, and that Haan understood the charges and consequences of those charges. 06/04/19 RP 10-12; CP 24. The record

shows Haan entered his plea knowingly, intelligently, and voluntarily, and in turn received a deferred sentence for two gross misdemeanors, rather than facing trial for four felonies. Because his plea was knowing, voluntary, and intelligent, Haan waived his right to appeal.

B. Haan is precluded from raising the issue that his plea lacked a factual basis because he did not raise this issue below and it does not involve a manifest constitutional matter that can be raised for the first time on appeal under RAP 2.5(a)?

Haan cannot establish manifest error affecting a constitutional right such that he may challenge the factual basis for his guilty plea for the first time on appeal. As a general rule, appellate courts will not consider issues raised for the first time on appeal. RAP 2.5(a); *State v. McFarland*, 127 Wn.2d 322, 332-33, 899 P.2d 1251 (1995). However, a claim of error may be raised for the first time on appeal if it is a “manifest error affecting a constitutional right.” *McFarland*, 127 Wn.2d at 333 (citing RAP 2.5(a)(3)). An appellant must identify a constitutional error and show how the alleged error actually affected his rights in the case. *State v. O’Hara*, 167 Wn.2d 91, 98, 217 P.3d 756 (2009).

RAP 2.5(a) is not intended to afford criminal defendants a means for obtaining new trials whenever they can identify some constitutional issue not raised before the trial court. *McFarland*, 127 Wn.2d at 333. “[P]ermitting *every possible* constitutional error to be raised for the first time on appeal undermines the trial process, generates unnecessary appeals,

creates undesirable retrials and is wasteful of the limited resources of prosecutors, public defenders and courts.” *Id.* (emphasis in original).

Courts do not assume the alleged error is of constitutional magnitude. *O'Hara*, 167 Wn.2d at 98. Rather, courts look to the asserted claim and assess whether, if correct, it implicates a constitutional interest as compared to another form of trial error. *Id.* After determining the error is of constitutional magnitude, the appellate court must consider whether the error was manifest. *Id.* at 99. For an error to be manifest, the appellant must show actual prejudice. *Id.* There must be a plausible showing that the asserted error had practical and identifiable consequences in the case. *Id.*

Haan’s unpreserved contention that his plea lacked a factual basis, and thus should be withdrawn, is not a matter of constitutional magnitude warranting review under RAP 2.5(a). The CrR 4.2(d) requirement of a factual basis supporting a plea is a procedural protection, not a constitutional mandate. *In re Pers. Restraint of Hews*, 108 Wn.2d 579, 592 n.2, 714 P.2d 983 (1987), *abrogated on other grounds by State v. Buckman*, 190 Wn.2d 51, 409 P.3d 193 (2017). The establishment of a factual basis is not a constitutional requirement and is constitutionally significant only insofar as it relates to the defendant’s understanding of the plea. *Hews*, 108 Wn.2d at 591-92.

The Constitution does not require the establishment in all cases of a factual basis for a guilty plea, but it does require that the plea be voluntary. *Id.* at 592. Failure to establish a factual basis is likely to affect voluntariness because some information about the facts is necessary to assess whether the defendant understood “the law in relation to the facts” and “the nature of the charge against him.” *Id.* Notifying a defendant of the nature of the crime to which he pleads via an Information creates, at the very least, a presumption that the plea was knowing, voluntary, and intelligent. *Id.* at 596.

“The constitutionally required ingredients of a voluntary plea are these: The defendant's awareness that he is waiving the rights (1) to remain silent, (2) to confront his accusers, and (3) to jury trial; (4) his awareness of the essential elements of the offense with which he is charged; and (5) his awareness of the direct consequences of pleading guilty.” *In re Pers. Restraint of Hilyard*, 39 Wn. App. 723, 727, 695 P.2d 596 (1985). The duty imposed by the court rule that the judge must be satisfied of the plea's factual basis should not be confused with the constitutional requirement that the defendant understand the nature of the charge. *Id.* CrR 4.2(d) is intended simply to enable the judge to verify the defendant's understanding of the charge. *Id.*

Haan has not rebutted the presumption that he entered a voluntary plea. He was notified of the nature of the misdemeanor charges he was pleading guilty to in the Amended Information by both his attorney and the court. Haan never indicated any lack of understanding of the nature of the charges and, in fact, explicitly advised the court that his attorney answered “all” of his questions. *See* 06/04/19 RP 6. The court engaged in a detailed colloquy with Haan, who informed the court that he understood all the rights he was waiving by pleading guilty and understood the elements of the offenses and the consequences of pleading guilty. 06/04/19 RP 5-12. Further, Haan’s attorney advised the court, “I’m confident this is a knowing and voluntary and intelligent decision he’s making and one that I heartily recommend.” 06/04/19 RP 5. The record supports the voluntariness of the plea.

Haan argues that the lack of voluntariness was evidenced by his explanation at sentencing that he did not intend to commit another crime with the stolen credit cards. Br. of App. at 11. But, “the Constitution does not require that a defendant admit to every element of the charged crime in order to enter a valid guilty plea, but necessitates merely that the defendant understand the critical elements of the crime and admit to conduct which satisfies those elements.” *Hews*, 108 Wn.2d at 596. As Haan was apprised of the necessary elements of the misdemeanor offenses, and admitted to

conduct which met those elements, Haan has failed to show that any unpreserved claim is of constitutional magnitude.

Not only is this issue not of constitutional magnitude such that it may be raised for the first time on appeal, but Haan also fails to show that any alleged error is “manifest” such that it caused him “actual prejudice” that had practical and identifiable consequences at trial. *See O’Hara*, 167 Wn.2d at 98-99. Haan fails to address how any alleged error is “manifest” and caused him actual prejudice where he received the exact agreement he bargained for—a reduction in charges from four felonies to two gross misdemeanors and a one-year deferred sentence that avoided any incarceration in jail or prison. Accordingly, Haan has not shown a manifest constitutional error and is precluded from raising this issue for the first time on appeal under RAP 2.5(a).

C. Even if this Court addresses the merits of Haan’s claim, the trial court properly concluded that there was a factual basis for the plea.

Even if this Court addresses the merits of Haan’s claim, which he raises for the first time on appeal, this Court should affirm Haan’s convictions because there was a factual basis for the plea. Haan appears to have entered a plea pursuant to *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L.Ed.2d 162 (1970). *See* CP 23. As such, the trial court should exercise care in establishing whether there is a factual basis for the

plea. *State v. D.T.M.*, 78 Wn. App. 216, 220, 896 P.2d 108 (1995). A factual basis for a guilty plea exists if there is sufficient evidence for a jury to conclude that the defendant is guilty. *State v. Easterlin*, 159 Wn.2d 203, 210, 149 P.3d 366 (2006); *State v. Knotek*, 136 Wn. App. 412, 429, 149 P.3d 676 (2006). “The trial court need not be convinced of the defendant’s guilt beyond a reasonable doubt.” *Knotek*, 136 Wn. App. at 429.

Because the court relied on the Declaration of Probable Cause to find a factual basis to accept the plea, Haan’s argument amounts to a challenge to the sufficiency of the evidence set forth in the Declaration. Here, the trial court correctly concluded that the Declaration of Probable Cause provided a sufficient factual basis that Haan committed attempted second degree identity theft and third degree possession of stolen property.

1. A factual basis supports Haan’s plea to third degree possession of stolen property.

This Court should affirm Haan’s conviction for third degree possession of stolen property because there was a factual basis for his plea. Third degree possession of stolen property requires the State to prove that a person possessed (a) stolen property which does not exceed seven hundred fifty dollars in value, or (b) ten or more stolen merchandise pallets, or ten or more stolen beverage crates, or a combination of ten or more stolen merchandise pallets and beverage crates. RCW 9A.56.170(1). A person must know that the property is stolen or have knowledge of facts sufficient

to put him on notice that the property is stolen. RCW 9A.56.140(1); *State v. Rockett*, 6 Wn. App. 399, 402, 493 P.2d 321 (1972).

When a person has in his possession stolen access devices issued in the names of two or more people, he is presumed to know they are stolen. RCW 9A.56.140(3). This presumption is rebuttable by evidence raising a reasonable inference that the possession of such stolen access devices was without knowledge that they were stolen. RCW 9A.56.140(4). An “access device” means “any card, plate, code, account number, or other means of account access that can be used alone or in conjunction with another access device to obtain money, goods, or services, or anything else of value...” RCW 9A.56.010(1).

The Declaration of Probable Cause provided sufficient evidence that the credit cards were stolen property. Mr. Amos told police that they did not know Haan and never gave him permission to possess their credit cards. CP 2. Haan admitted he did not know the Amos'. CP 2. Moreover, the cards did not belong to Haan and were comingled in his wallet with other credit cards. CP 2. One of the cards still bore activation stickers, indicating it had never been used by the true owner. CP 2. The trial court properly concluded that there was a factual basis for Haan's plea.

Haan also challenges the sufficiency of the evidence proving that he knew the cards were stolen. Br. of App. at 9. Here, there is no dispute that

the credit cards constituted “access devices.” Because Haan possessed two credit cards in the names of Richard Wilson Amos and Mia Grace Amos, he *per se* is presumed to know they were stolen. *See* RCW 9A.56.140(3). Because he entered a guilty plea and did not challenge the evidence at trial, he cannot overcome the presumption that he knew the cards were stolen. *See* RCW 9A.56.140(4).

Independent evidence also proved that Haan knew the credit cards were stolen. Although possession alone is insufficient to prove guilty knowledge, “possession together with slight corroborating evidence of knowledge may be sufficient.” *State v. Scoby*, 117 Wn.2d 55, 61-62, 810 P.2d 1358 (1991); *State v. Ladely*, 82 Wn.2d 172, 175, 509 P.2d 658 (1973). The giving of a false explanation or one that is improbable or difficult to verify in addition to possession is sufficient. *Ladely*, 82 Wn.2d at 175.

Here, Haan did not have a reasonable explanation as to why he possessed, or retained, the stolen credit cards, or why the cards were comingled with his own in his wallet. When asked why he did not turn the cards over to the police or discard them, Haan had no answer. CP 2. Haan’s lack of an explanation for retaining the cards comingled with his own was the corroborating evidence, together with possession, for the court to infer that he knew they were stolen. Moreover, the fact that one of the cards still bore activation stickers indicating it had never been used was sufficient

circumstantial evidence for any reasonable person to deduce that the card had been stolen. The trial court properly concluded that the Declaration of Probable Cause provided a factual basis for the plea. This Court should affirm.

2. A factual basis supports Haan's plea to attempted second degree identity theft.

This Court should affirm Haan's conviction for attempted identity theft in the second degree because there was a factual basis for the plea. To prove that a person committed attempted identity theft, the State must show that, with intent to commit identity theft, a person does any act which is a substantial step toward the commission of second degree identity theft. *See* RCW 9A.28.020. Second degree identity theft is committed when a person knowingly obtains, possesses, transfers, or uses a means of identification or financial information of another person, knowing the information belongs to another, with the intent to commit any crime. *See* RCW 9.35.020.

Haan contends that the Declaration of Probable Cause did not provide sufficient facts to support the conclusion that he intended to commit a crime with the stolen credit cards. Br. of App. at 6. While Washington courts do not permit an inference of intent to commit a crime based on mere possession alone, “[w]hen 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, 8, 309 P.3d 318 (2013). As stated, possession together with “slight corroborating evidence” can be sufficient to prove intent to commit a crime. *Id.*; *Scoby*, 117 Wn.2d at 61-62. Such corroborating evidence is present in this case.

Haan possessed two separate cards belonging to two separate, but married, individuals that shared a common name – Amos. It was an unlikely explanation that **both** individuals lost these cards at the same place, at the same time, and Haan happened to find them inside his own home. The fact that Haan possessed two credit cards belonging to two separate people who did not authorize him to possess the documents is strongly indicative of intent to commit a crime. *See State v. Lemus*, No. 51118-5-II, 2019 WL 2295420 at *5 (Wash. Ct. App. March 29, 2019), *review den’d*, 193 Wn.2d 1042 (2019)¹ (possession of multiple people’s financial information who did not know defendant or give him permission to possess the information strongly suggests intent to commit crime). Moreover, it cannot be ignored that Haan was found in a stolen car at the time he was arrested, and instead of offering to the police the cards that he “found,” he said nothing. *See* CP 1-2.

¹ Unpublished cases have no precedential value and are not binding on any court. An unpublished case filed after March 1, 2013 may be cited as non-binding authority and may be accorded such persuasive value as this Court deems appropriate. GR 14.1(a).

Haan argues that insufficient evidence proved he intended to commit a crime using the credit cards because there was no evidence that he stole the cards, used the cards to obtain items of value, or sell the cards to another person. Br. of App. at 7-8. But intent to commit a crime need not be shown by actual commission of a crime. The surrounding circumstances of Haan's behavior and conduct, including the fact that he was in a stolen car, had credit cards in his wallet belonging to two other individuals unknown to him, and gave an unlikely explanation as to how he came into possession of the cards, provided a sufficient factual basis for the trial court to conclude that he intended to commit a crime with the stolen credit cards. The trial court properly concluded that the Declaration of Probable Cause provided a factual basis for the plea. This Court should affirm.

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V. CONCLUSION

For the above stated reasons, this Court should affirm Haan's convictions for third degree possession of stolen property and attempted second degree identity theft.

RESPECTFULLY SUBMITTED this 10th day of February, 2020.

MARY E. ROBNETT
Pierce County Prosecuting Attorney

Theodora Granby WSB# 27453
for KRISTIE BARHAM, WSB# 32764
Deputy Prosecuting Attorney

Angela Salyer
Rule 9

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The undersigned certifies that on this day she delivered by E-file or U.S. mail to the attorney of record for the appellant / petitioner and appellant / petitioner c/o his/her attorney true and correct copies of the documents to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington

on the date below

Date 2/10/20 Signature 

PIERCE COUNTY PROSECUTING ATTORNEY

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