

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

CULLEN LYLE WICK,

Appellant.

No. 38479-5-II

UNPUBLISHED OPINION

Penoyar, J. — Cullen Lyle Wick appeals his convictions for forgery, unlawful possession of a controlled substance, two counts of second degree possession of stolen property, unlawful possession of fictitious identification, and three counts of second degree identity theft. He argues that the State presented insufficient evidence to support his convictions because the evidence supporting his convictions was obtained from his unlawful arrest and should have been suppressed. He also asserts that the State presented insufficient evidence that he committed identity theft or possessed fictitious identification. We affirm.

FACTS

On November 5, 2005, Wick and his girl friend, Linda Schock, entered a Safeway on North Proctor Street in Tacoma, asking to return a bottle of truffle oil. Because the receipt that Wick proffered looked suspicious, the clerk and two managers examined it, called for the police, and stalled Wick and Schock at the customer service counter.

Tacoma police officers arrived at the scene and contacted Wick and Schock at the store's entrance as they were trying to leave. Officer Joe Mettler asked Wick what had taken place, and he responded that he was at the store to return a bottle of oil for his mother. Wick stated that he

had a receipt for the item and that he did not understand why he was being contacted.

Officer Eric Robison then spoke with the Safeway managers, and Mettler read Wick and Schock their *Miranda*¹ rights. Mettler then questioned the Safeway employees about the receipt's legitimacy.² Officer Jared Williams asked Wick for identification; Wick responded that he did not have any and verbally identified himself instead. After Mettler spoke with the Safeway employees, he stated that he had probable cause to arrest Wick for the counterfeit receipt, handcuffed Wick, placed him in the patrol car, advised him that he was under arrest, and reread him his *Miranda* rights.

Before transporting Wick to jail, Williams searched Wick and located Wick's wallet. Inside of the wallet, Williams found a Washington State identification card and noticed that the 'C' in Wick's last name had been altered with black ink to form the letter 'O.' When Williams questioned Wick about the altered identification card, Wick stated that some adolescents had stolen his wallet and it had recently been returned. Williams also found a credit card belonging to Brian Eickhoff in Wick's wallet.

Mettler spoke with Schock, who informed him that the couple had driven to the store in a dark gold Nissan Pathfinder. The officers asked the Safeway managers to walk by Wick's car. They saw a number of suspicious-looking Safeway receipts through the windshield. The officers impounded the vehicle so detectives could obtain a search warrant.

¹ *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

² Mettler questioned the employees about the authenticity of the receipt, because "I wanted to make darn sure that if we were going to arrest this guy, that, like I had said before, I didn't want to end up on the front page of the paper the next day, you know, for -- because it looked close." Report of Proceedings at 393.

On November 10, 2005, Tacoma police detectives executed a search warrant on the Nissan Pathfinder, which was registered to Wick. Inside the car, they found a cardboard box containing a personal trimmer, rulers, pens, a rotary cutter, a binder filled with documents, and photocopies of receipts. Some of the receipts had been photocopied and were on full sheets of paper, others had been cut out with a cutting tool. The box contained a total of 87 receipts. The binder contained documents regarding paint, tags, and different packaging for items purchased at stores, a baggy holding different price tags, photocopies of different universal product codes, receipts, a photograph of Wick, and photocopies of a driver's license with his photo on it. The detectives also found a baggy containing methamphetamine and glass smoking pipes. On the back left seat of the car, the detectives found a machine for scanning, printing, and copying. The detectives also located one receipt on the passenger side dashboard and five receipts on the front passenger seat.

In addition, the detectives also found a large gray tote containing paperwork, two rolls of blank thermal paper, receipts, a plastic baggy containing identifications, and a metal box. The metal box contained Jean Dougherty's driver's license, Hilary Leonard's driver's license, Linda Schock's King County library card and Washington Quest card, and a Washington identification card in the name of Cullen Wiok. The tote also contained Dougherty's US Bank Visa debit card, another identification card in the name of Cullen Wiok, Lori Kelly's Alaska Airlines Visa card, and Leonard's Visa card. Leonard, Dougherty, and Kelly later testified that their identifications and cards had been stolen from their vehicles and identified the items found in Wick's car as the items that had been stolen from their vehicles. Eickhoff's wallet was stolen from his car in 2004, and he identified the Bank of America debit card found on Wick's person as the card that had

been stolen from his car.

In an amended information, the State charged Wick with forgery, unlawful possession of a controlled substance, two counts of second degree possession of stolen property, unlawful possession of fictitious identification, three counts of second degree identity theft, and bail jumping.

The trial court heard motions in limine. The State stipulated that it would not refer to Wick's misdemeanor warrants, as described in the incident report, unless Wick took the stand or there was a challenge to the reason for the arrest. During pretrial proceedings, defense counsel did not challenge the lawfulness of Wick's arrest or the admissibility of evidence obtained after his arrest.

The jury found Wick guilty on all counts. The trial court sentenced Wick to 60 months of confinement. He now appeals.

ANALYSIS

I. Failure to Move to Suppress Evidence

Wick argues that the State presented insufficient admissible evidence to convict him of any crime, except bail jumping. He contends that his arrest was unlawful; thus, all evidence discovered following his arrest should have been suppressed.

In general, we will not consider issues raised for the first time on appeal, RAP 2.5(a), unless it is a manifest error affecting a constitutional right. RAP 2.5(a)(3). Assuming the error is of constitutional magnitude, the defendant must show how, in the context of the trial, the alleged error actually prejudiced him. *State v. McFarland*, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995). "If the facts necessary to adjudicate the claimed error are not in the record on appeal, no actual

prejudice is shown and the error is not manifest.” *McFarland*, 127 Wn.2d at 333. Because the trial court was not asked to consider the argument Wick now raises, the record was not developed for appeal. Lacking a sufficient record, we decline to consider this issue.³

II. Sufficiency of the Evidence

Wick next argues that even if none of the evidence should have been suppressed, the State failed to present sufficient evidence to prove the second degree identity theft and unlawful possession of fictitious identification charges. When reviewing a claim of insufficient evidence, we view the evidence in the light most favorable to the State in order to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *State v. Brockob*, 159 Wn.2d 311, 336, 150 P.3d 59 (2006). We draw reasonable inferences in the State’s favor and interpret them most strongly against the defendant. *State v. Hosier*, 157 Wn.2d 1, 8, 133 P.3d 936 (2006). Circumstantial evidence is not less reliable than direct evidence. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). We defer to the factfinder on issues that involve conflicting testimony, witness credibility, and the persuasiveness of the evidence. *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004).

³ The State never presented facts at trial referring to Wick’s misdemeanor warrants, because the State stipulated that it would not refer to the warrants unless Wick challenged the reason for the arrest. Further, it is unclear from the record when Mettler arrested Wick. At the CrR 3.5 hearing, Mettler testified that when he arrived, security pointed out the suspects. He then testified that he made initial contact with Wick and Schock, contacted security again, and then handcuffed Wick and placed him in the patrol car. Robison testified at trial that when the employees identified the fraudulent receipt, Mettler detained Wick in handcuffs and told him he was not under arrest at that point. Mettler testified at trial that after he contacted the Safeway employees, he arrested Wick and placed him in the patrol car. Williams testified at trial that after Mettler spoke with the store employees, Mettler stated that he had probable cause to arrest Wick, handcuffed him, and advised him of his *Miranda* rights.

A. Identity Theft in the Second Degree

A person commits second degree identity theft by knowingly obtaining, possessing, using, or transferring a means of identification or financial information of another person, living or dead, with the intent to commit or to aid or abet, any crime and obtains credit, money, goods, services, or anything else of value in less than \$1,500 in value. Former RCW 9.35.020 (2004).

Wick contends that the State failed to prove that he possessed the identification information of any other person with the intent to use that information to commit a crime. At trial, the State presented evidence that detectives found Dougherty's driver's license and US Bank Visa debit card, Kelly's Alaska Airlines Visa card, and Leonard's driver's license and Visa card in Wick's vehicle. Detectives also found photocopied receipts; cutting tools; two rolls of blank thermal paper; rulers; and a machine for copying, printing, and scanning in Wick's car. The jury could infer intent to commit a crime with the identifications and financial information since Wick had no legitimate reason to possess them and they were found in a tote holding items that could be used to forge receipts. When viewed in the light most favorable to the State, these facts support Wick's second degree identity theft conviction.

B. Unlawful Possession of Fictitious Identification

A person commits unlawful possession of fictitious identification by possessing a personal identification card with a fictitious person's identification with intent to use such identification card to commit theft, forgery, or identity theft, when the possession does not amount to identity theft. RCW 9A.56.320(4).

Wick asserts that the State failed to prove the intent element of unlawful possession of fictitious identification. Williams found an altered identification card in Wick's wallet, and Wick

told the officer that some adolescents had stolen his wallet and it was just returned. When detectives searched Wick's car, however, they discovered two additional altered identifications. Detectives also found photocopies of a driver's license with Wick's photograph on it in the Nissan Pathfinder. Additionally, detectives located photocopied receipts; cutting tools; two rolls of blank thermal paper; rulers; and a machine for copying, printing, and scanning in Wick's car. The jury could infer that the fictitious identification found on Wick's person was to be used in furtherance of Wick's receipt forging operation. When viewed in the light most favorable to the State, these facts support Wick's unlawful possession of fictitious identification conviction.

Affirmed.

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 pursuant to RCW 2.06.040, it is so ordered.

Penoyar, C.J.

We concur:

Van Deren, J.

Armstrong, J.