IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. DERRICK LANG HUNTER, Appellant.	No. 40275-1-II UNPUBLISHED OPINION

Johanson, J. — A jury found Derrick Lang Hunter guilty of six counts of second degree identity theft. Hunter appeals, arguing that (1) he received ineffective assistance of counsel when his trial counsel did not challenge the legality of a search that was upheld during a prior, unrelated trial; (2) the trial court erred in denying his motion for arrest from judgment because the State failed to prove that Hunter knew the documents belonged to a real person; (3) the trial court abused its discretion under ER 404(b) by admitting exhibits pertaining to persons not named as victims; (4) insufficient evidence supports the jury's verdict because the State failed to prove

possession; and (5) cumulative error denied him a fair trial. We affirm.

FACTS

In March 2007, officers found numerous financial and identification documents at Hunter's house in his backpack and briefcase while executing a search warrant for communicating with a minor for immoral purposes, attempted kidnapping with sexual motivation, luring, and failing to register as a sex offender.[1] Officers found seven credit cards, four social security cards, two drivers' licenses, three checks, a checkbook, three photo identification cards, and one certificate of live birth belonging to persons other than Hunter. Officers found handwritten lists that included the names, credit card numbers and expiration dates, dates of birth, and/or social security numbers of multiple individuals. The lists admitted as exhibits 22, 24, and 27 were written on the backs of papers that had Hunter's name and/or other information on the front side. They also found applications for driver's licenses and identification cards, and applications or letters regarding applications for credit cards for several people. Officers also found mail addressed to others, as well as a credit report and credit card statements.

The State charged Hunter by amended information with 14 counts of second degree identity theft.[2] At trial, the trial court admitted 79 of the State's exhibits, all taken during execution of the search warrant. In addition, two victims testified that they did not give Hunter their identification or financial information and had no idea how he came to possess the

[1] Hunter was tried for the crimes giving rise to the search warrant in a separate trial.

[2] The State originally charged Hunter with 1count first degree identity theft and 13 counts second degree identity theft, but amended the information toward the end of its case. The State also moved to dismiss count IX for insufficient evidence, and the trial court granted the motion.

documents. Social Security Administration Special Agent Joseph Rogers testified that he had compared a list of 24 names, dates of birth, and/or social security numbers given to him by the State. Many of the social security numbers and dates of birth matched real people, including many of the victims of the charged crimes. Hunter objected to Rogers's testimony about exhibit 10, a social security card in Hunter's name, because Rogers did not bring in the database records, only his own notes. Hunter did not object to the remaining testimony until after the State completed direct examination. The trial court overruled both objections.

Keith Brown, one of Hunter's roommates at the time police executed the search warrant, testified that the backpack, briefcase, and bedroom police searched belonged to Hunter. Brown denied that any of the exhibits found during the search warrant belonged to him.

The jury found Hunter guilty of six counts of second degree identity theft. At sentencing, Hunter moved for arrest of judgment, arguing that under *Flores-Figueroa v. United States*, 566 U.S. 646, 129 S. Ct. 1886, 173 L. Ed. 2d 853 (2009), the State had to prove that he knew the financial or identification information belonged to a real person. The trial court denied Hunter's motion, finding that the Supreme Court's analysis was limited to the federal statute discussed in *Flores-Figueroa*. Hunter appeals.

ANALYSIS

I. Search Warrant

A. Waiver

First, Hunter argues that the trial court erred in denying his CrR 3.6 motion to suppress evidence. Hunter has waived this argument. By affirmatively withdrawing a motion to suppress,

a defendant waives or abandons his Fourth Amendment objections and is not entitled to manifest error review under RAP 2.5. *State v. Valladares*, 99 Wn.2d 663, 671-72, 664 P.2d 508 (1983); *see also State v. Harris*, 154 Wn. App. 87, 95, 224 P.3d 830 (2010) (*Valladares* "reinforce[s] the definition of waiver as an intentional relinquishment or abandonment of a known right or privilege" (internal quotation marks omitted)). Hunter's counsel affirmatively withdrew his motion to suppress, and the issue is therefore waived or abandoned.

B. Ineffective Assistance of Counsel

Hunter also argues that his trial counsel was ineffective for failing to challenge the legitimacy of the search warrant to seize items related to identity theft. We disagree.

The state and federal constitutions guarantee a defendant the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 686, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995). We begin with a strong presumption that counsel provided adequate and effective representation. *McFarland*, 127 Wn.2d at 335. To prevail in an ineffective assistance of counsel claim, Hunter must show (1) that his trial counsel's performance was deficient and (2) that this deficiency prejudiced him. *Strickland*, 466 U.S. at 687. Deficient performance is that which falls below an objective standard of reasonableness. *State v. Horton*, 116 Wn. App. 909, 912, 68 P.3d 1145 (2003). Prejudice occurs when trial counsel's performance was so inadequate that there is a reasonable probability that the trial result would have differed, undermining our confidence in the outcome. *Strickland*, 466 U.S. at 694. Legitimate trial strategy or tactics cannot serve as a basis for a claim that the defendant received ineffective assistance of counsel. *State v. Mak*, 105 Wn.2d 692, 731,

718 P.2d 407, *cert. denied*, 479 U.S. 995 (1986). If Hunter fails to establish either element, we need not address the other element because 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).

Probable cause for a search warrant involves an issue of law, which we review de novo. *State v. Chamberlin*, 161 Wn.2d 30, 40, 162 P.3d 389 (2007). In doing so, we give great deference to the issuing judge. *State v. Neth*, 165 Wn.2d 177, 182, 196 P.3d 658 (2008). At the suppression hearing, the trial court acts in an appellate-like capacity; its review, like ours, is limited to the four corners of the probable cause affidavit. *Neth*, 165 Wn.2d at 182.

A search warrant may issue only upon a determination of probable cause, based upon facts and circumstances sufficient to establish a reasonable inference that criminal activity is occurring or that contraband exists at a certain location. *State v. Smith*, 93 Wn.2d 329, 352, 610 P.2d 869, *cert. denied*, 449 U.S. 873 (1980). 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). The application for a search warrant must be judged in the light of common sense, with doubts resolved in favor of the warrant. *State v. Partin*, 88 Wn.2d 899, 904, 567 P.2d 1136 (1977). Probable cause requires a nexus between (1) criminal activity and the item to be seized, and (2) the item to be seized and the place to be searched. *State v. Thein*, 138 Wn.2d 133, 140, 977 P.2d 582 (1999).

Hunter argues that there was not probable cause to believe that criminal activity had occurred and that the affidavit failed to establish a nexus between the area to be searched, the items to be seized, and the alleged crimes. This is incorrect.

First, to the extent that Hunter assigns error to a decision in his prior criminal case, his arguments are not properly before us. Hunter appealed his conviction in that case and we have already held that there was a nexus between the crimes alleged and the places searched.[3] *State v. Hunter*, noted at 157 Wn. App. 1027, 2010 WL 3064972, *6 (2010), *review denied*, 170 Wn.2d 1026 (2011).[4] Furthermore, to the extent that Hunter is arguing that the current trial court judge adopted Judge Steiner's findings, we review probable cause determinations de novo, so the trial court's rulings are not dispositive on appeal. In addition, we can affirm on any grounds supported by the record. *State v. Costich*, 152 Wn.2d 463, 477, 98 P.3d 795 (2004).

The affidavit provided probable cause to believe that Hunter had failed to register as a sex offender. A person convicted of a sex offense in another state must register as a sex offender in Washington within three business days of establishing residence here. RCW 9A.44.130(4)(a)(v). The affidavit alleged that Hunter had been convicted of a sex offense in Oregon; Hunter had a phone number registered to him at a Pierce County residence; Hunter had been soliciting students at a Lakewood, Washington high school between the summer of 2006 and January 2007; and Hunter had not registered as a sex offender in Pierce County. The affidavit sought to search for

[3] *Hunter* relied on the sex offense crimes alleged in the affidavit with which Hunter was charged in that case. *Hunter*, noted at 157 Wn. App. 1027, 2010 WL 3064972 at *6.

[4] Collateral estoppel would likely not bar our consideration of Hunter's arguments, at least as they apply to whether the affidavit was supported by probable cause, because we did not already consider an identical issue. *State v. Mullin-Coston*, 152 Wn.2d 107, 113, 95 P.3d 321 (2004) (stating that the party seeking to enforce the rule must show, *inter alia*, that the issue decided in the prior adjudication was identical with the one presented in the second). Hunter did not ask us in his earlier appeal to decide whether probable cause supported the affidavit, but rather whether there was a nexus between the crimes alleged and the places to be searched. *See Hunter*, noted at 157 Wn. App. 1027, 2010 WL 3064972 at *6.

indicia of occupancy, residency, and/or ownership of Hunter's residence and vehicle, including utility bills, telephone bills, canceled envelopes, registration certificates, and/or keys. Evidence of residence is commonly located at one's house or in one's vehicle. These facts provide probable cause to believe that Hunter had committed a crime—failing to register as a sex offender, and that evidence of that crime would be found at his house.

Thein is not analogous. In *Thein*, there was no incriminating evidence linking Thein's drug activity to the home that was searched: "The only evidence [found during the search of another house that is] linked to [Thein's] residence is innocuous: a box of nails and vehicle registration." *Thein*, 138 Wn.2d at 150. Because these facts did not establish a nexus between evidence of illegal drug activity and Thein's residence, the court ordered the evidence seized therefrom suppressed. *Thein*, 138 Wn.2d at 151. Unlike *Thein*, as stated above, the affidavit provided sufficient facts that officers would find evidence of the crime of failing to register as a sex offender at Hunter's residence and in his car.

Hunter also argues that officers violated his Fourth Amendment rights by unlawfully seizing evidence of the identity theft charges because the warrant did not authorize police to seize those items.[5] Officers, when executing a valid search warrant, may seize evidence they discover of other crimes if the "plain view" requirements are met. *State v. Reep*, 161 Wn.2d 808, 816, 167 P.3d 1156 (2007). The requirements for plain view are "(1) a prior justification for intrusion, (2) inadvertent discovery of incriminating evidence, and (3) immediate knowledge by the officer that

[5] Hunter's arguments that the police exceeded the scope of the search warrant by looking for evidence other than photos, photo studios, or computers, ignores the fact that the search warrant permitted law enforcement to also look for mail, bills, registration certificates, and keys.

he had evidence before him." *Reep*, 161 Wn.2d at 816. Inadvertent discovery is no longer a requirement to establish the plain view exception under the Fourth Amendment. *Reep*, 161 Wn.2d at 816.

Here, the officers had a prior justification for the intrusion—the valid search warrant. Hunter does not argue that the police exceeded the warrant's scope. An officer would likely know immediately that the documents seized in this case were evidence. Officers found not just one or two pieces of identification and financial information, but scores of such information. The evidence was validly seized under the plain view exception.

Because probable cause supported the search warrant and because there was a sufficient nexus between the alleged criminal activity and the area to be searched, the trial court would have denied Hunter's motion to suppress. Counsel's performance was therefore not deficient and Hunter cannot demonstrate prejudice. Hunter did not receive ineffective assistance of counsel.

II. CrR 7.4 Motion for Arrest of Judgment

Judgment may be arrested on the motion of the defendant when there is insufficient proof of a material element of the crime. CrR 7.4(a). We review a trial court's decision denying a motion for arrest of judgment de novo. *State v. Ceglowski*, 103 Wn. App. 346, 349, 12 P.3d 160 (2000). Evidence is legally sufficient to support a guilty verdict if any rational trier of fact, viewing the evidence in a light most favorable to the State, could find the essential elements of the charged crime beyond a reasonable doubt. *State v. Longshore*, 141 Wn.2d 414, 420-21, 5 P.3d 1256 (2000). A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068

(1992).

Hunter argues that the trial court erred by denying his CrR 7.4 motion for arrest of judgment. Hunter contends that under *Flores-Figueroa*, the State must prove that *he knew* the documents he possessed belonged to a real person. Because *Flores-Figueroa* does not control our interpretation of Washington law, and because *Flores-Figueroa* is inconsistent with Washington rules of statutory interpretation, we disagree.

At issue in *Flores-Figueroa* was 18 U.S.C. § 1028A(a)(1), which punishes "aggravated identity theft." A mandatory consecutive two-year prison term is to be imposed on individuals convicted of certain crimes if during and in relation to the commission of those crimes, the offender "knowingly transfers, possesses, or uses, without lawful authority, a means of identification of another person." 18 U.S.C. § 1028A(a)(1). The Court found that "[a]s a matter of ordinary English grammar, it seems natural to read the statute's word 'knowingly' as applying to all the subsequently listed elements of the crime." *Flores-Figueroa*, 129 S. Ct. at 1890. The Court reasoned that "[i]n ordinary English, where a transitive verb[6] has an object, listeners in most contexts assume that an adverb (such as knowingly) that modifies the transitive verb tells the listener how the subject performed the entire action, including the object as set forth in the sentence." *Flores-Figueroa*, 129 S. Ct. at 1890. This rule, however, is limited to the interpretation of federal criminal statutes, and does not control our interpretation of a Washington State statute. *See Flores-Figueroa*, 129 S. Ct. at 1895 (Alito, J., concurring) ("I suspect that the

[6] "A transitive verb requires an object to express a complete thought; the verb indicates what action the subject exerts on the object." The Chicago Manual of Style, § 5.96, at 229 (16th ed. 2010).

Court's opinion will be cited for the proposition that the *mens rea* of a federal criminal statute nearly always applies to every element of the offense."). In addition, the *Flores-Figueroa* majority noted that its construction of how the word "knowingly" modifies the subsequently listed elements was not binding in all situations. *Flores-Figueroa*, 129 S. Ct. at 1891 ("As Justice Alito notes, the inquiry into a sentence's meaning is a contextual one."). *Flores-Figueroa* does not bind our interpretation of a Washington statute. *See also Von Herberg v. City of Seattle*, 157 Wash. 141, 160, 288 P. 646 (1930) ("[O]ur interpretation of our statutes is binding upon the Federal courts, not theirs on us.").

Furthermore, *Flores-Figueroa*'s statutory interpretation approach is inconsistent with Washington law. The word "knowingly" is an adverb, and, as a grammatical matter, an adverb generally modifies the verb or verb phrase with which it is associated. *State v. J.M.*, 144 Wn.2d 472, 480, 28 P.3d 720 (2001). Washington's identity theft statute states that, "[n]o person may knowingly obtain, possess, use, or transfer 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." Former RCW 9.35.020(1) (2004).[7] Under this state's statutory interpretation rules, "knowingly" modifies the verb phrase—"obtain, possess, use, or transfer." Our courts have construed "another person" to require proof that the identification or financial information belonged to a "real person." *State v. Berry*, 129 Wn. App. 59, 67, 117 P.3d 1162 (2005), *review denied*, 158 Wn.2d 1006 (2006). But "knowingly" does not modify the phrase "of another person." The phrase "of another

[7] The legislature amended RCW 9.35.020 to specify when a person who violates RCW 9.35.020(1) is guilty of first or second degree identity theft, and to clarify the unit of punishment. Laws of 2008, ch. 207, § 4. None of these changes are relevant to the issues of this appeal.

person" is an object and is not modified by the adverb knowingly. *See Flores-Figueroa*, 129 S. Ct. at 1894 (Scalia, J., concurring) ("of another person" is an object). The State had to show that Hunter knowingly obtained, used, or transferred a real person's means of identification or financial information, but the State did not need to prove that *he knew* that information belonged to a real person.

Hunter failed to show that there was insufficient proof of a material element of the crime charged. The trial court did not err in denying his motion for arrest of judgment.

III. ER 404(b)

Hunter next argues that the trial court abused its discretion by admitting under ER 404(b) a number of documents unrelated to the charged counts. We disagree.

The State sought to admit evidence that Hunter possessed identification or financial information that was not related to the charged crimes. The State argued that the evidence was relevant under ER 404(b) to show a common scheme or plan, res gestae, knowledge, and intent. Specifically, the State argued that police found the uncharged evidence at the same time and in the same place as the evidence used to charge Hunter. Additionally, the State argued that the evidence showed a common scheme or plan because it intended to show that Hunter was applying for credit cards in other peoples' names, collecting other peoples' financial information, and having their mail sent to his house. Hunter also kept handwritten notes of his activities, and it would be difficult to separate the information relating to the charged crimes from the information relating to uncharged activities. Some of the evidence from uncharged victims, such as faxes Hunter sent, showed that Hunter committed certain acts close in time, and thus acquiring multiple

persons' financial information was part of a common scheme or plan. Hunter argued that the evidence was not admissible because (1) the evidence was not part of an unbroken sequence of events and (2) the State had a complete enough picture because it had charged Hunter with 14 counts of identity theft.

The trial court found that the evidence was relevant, probative, and not unduly prejudicial. The trial court found that the evidence was admissible to show res gestae, common scheme or plan, intent, preparation, and knowledge.

Evidence of other crimes, wrongs, or acts is not admissible to prove character or conformity therewith, but may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. ER 404(b). But the trial court must: (1) find by a preponderance of the evidence that the misconduct probably occurred,[8] (2) determine whether the evidence is relevant to a material issue, (3) state on the record the purpose for which the evidence is being introduced, and (4) balance the probative value of the evidence against the danger of unfair prejudice. *State v. Kilgore*, 147 Wn.2d 288, 292, 53 P.3d 974 (2002). We review the trial court's decision to admit evidence of other crimes or misconduct for abuse of discretion. *State v. Pirtle*, 127 Wn.2d 628, 648, 904 P.2d 245 (1995), *cert. denied*, 518 U.S. 1026 (1996).

The evidence was admissible to show intent and lack of mistake because Hunter asserted a defense of mistake. *State v. Hernandez*, 99 Wn. App. 312, 322-23, 997 P.2d 923 (1999) (holding

[8] The trial court did not explicitly state that it found by a preponderance of the evidence that Hunter committed the prior acts or crimes, but it implied as much by referring to the State's offer of proof. *State v. Stein*, 140 Wn. App. 43, 66, 165 P.3d 16 (2007), *review denied*, 163 Wn.2d 1045 (2008).

ER 404(b) evidence relevant to show intent and absence of mistake when defendant claimed he accidentally shot the victim), *review denied*, 140 Wn.2d 1015 (2000). During closing, Hunter argued that it was not a crime to mistakenly possess another person's mail, financial information, or social security card and that the State had to prove he had a criminal intent. But the chance that a person mistakenly or innocently possessed the information becomes less likely when he possessed seven credit cards; six social security cards; five driver's licenses; three checks; a checkbook; one photo identification; one certificate of live birth; applications for credit cards and identification; and handwritten lists of names, credit card numbers and expiration dates, dates of birth, and/or social security card numbers. These exhibits make it likely that Hunter intentionally possessed another person's financial or identification information with intent to commit a crime.

Hunter incorrectly argues that the evidence had to be admissible under multiple exceptions to ER 404(b). Br. of Appellant at 36 ("Further in order for the documents [to be admissible], the State would have had to meet the requirements for common plan or scheme."). ER 404(b) lists eight disjunctive exceptions to the rule. ER 404(b). The State had to prove only one exception applied. Finally, Hunter argues that the trial court erred by not giving a limiting instruction. Hunter did not request that the trial court give a limiting instruction and the trial court had no duty to do so *sua sponte*. *State v. Russell*, 171 Wn.2d 118, 124, 249 P.3d 604 (2011). The trial court did not abuse its discretion in admitting the ER 404(b) evidence.[9]

IV. Hearsay

[9] The trial court and State did not rely upon the "absence of mistake" basis, but we may affirm the trial court's admission of misconduct evidence on any proper ground. *State v. Powell*, 126 Wn.2d 244, 258-59, 893 P.2d 615 (1995).

Hunter also contends that the trial court abused its discretion in admitting Rogers's alleged hearsay testimony. We disagree.[10]

Rogers began his testimony with exhibit 10, a social security card issued to "Hunter Lang Darrick." Ex. 10; *see also* 2 Verbatim Report of Proceedings (VRP) at 192. Rogers had checked the social security database and determined that the name and number listed on the card matched. Hunter objected to this testimony as hearsay, arguing that this information was not a business record, but rather Rogers's interpretation of looking at a computer screen. The trial court overruled the objection, finding that data compilation is an exception to the hearsay rule.

Rogers then testified, without any objection to his testimony, that he had compared names, dates of birth, and/or social security numbers for the remaining individuals on the list provided by the State and most had matched the social security database's records. At the end of direct examination, Hunter objected to Rogers's testimony as hearsay, and the trial court overruled the objection.

We review a trial court's hearsay ruling for abuse of discretion. *State v. Strauss*, 119 Wn.2d 401, 417, 832 P.2d 78 (1992). Hearsay is a statement, other than one made by the declarant while testifying at the trial, offered to prove the truth of the matter asserted. ER 801(c). Without some documentation from the database, what the database contained is hearsay. *State v. Fricks*, 91 Wn.2d 391, 397, 588 P.2d 1328 (1979) (manager's testimony regarding the contents of a tally sheet kept by his employees was hearsay). The State offered Rogers's testimony to

[10] In his assignment of errors section, Hunter argues that the trial court's ruling also denied him the right to confront witnesses. But he presented no argument or authority to support the assignment of error and therefore waived the assigned error. RAP 10.3(a)(6); *State v. Thomas*, 150 Wn.2d 821, 874, 83 P.3d 970 (2004).

prove a material fact: that the information in the social security database matched the records recovered from Hunter's house and vehicle.

But, Hunter failed to preserve an objection to all of Rogers's testimony except in regard to exhibit 10. A party must object as soon as he or she knows the basis of the objection and at a time when the trial judge may act to correct the error. *State v. Leavitt*, 49 Wn. App. 348, 357, 743 P.2d 270 (1987), *aff'd*, 111 Wn.2d 66, 758 P.2d 982 (1988); *see also State v. Jones*, 70 Wn.2d 591, 597-98, 424 P.2d 665 (1967) (objection to testimony must be made at the earliest possible opportunity after the basis for the objection becomes apparent); ER 103(a)(1) (objection must be timely). Hunter did not object to the remainder of Rogers's testimony as hearsay until after direct examination had concluded. He also did not request a continuing objection as to the remainder of Rogers's testimony. Hunter has not preserved error as to Rogers's testimony with the exception of his testimony about exhibit 10.[11]

Rogers's testimony as to exhibit 10 did not qualify as a business records exception because the State did not introduce a business record or information contained in a public record. *State v. Hendrickson*, 138 Wn. App. 827, 833, 158 P.3d 1257 (2007), *aff'd on other grounds*, 165 Wn.2d 474, 198 P.3d 1029, *cert. denied*, 129 S. Ct. 474 (2009). Instead Rogers testified from memory about what the social security database contained. The trial court abused its discretion by admitting Rogers's testimony as to exhibit 10. *See also State v. Hines*, 87 Wn. App.

[11] Even if Hunter had preserved the error, any error would be harmless as to counts IV, V, and XIII. Rogers's testimony established that the social security numbers belonged to real people. As to counts IV, V, and XIII, other testimony established that the victims were real people. Claudia Longpre, count XIII, testified, and Brown testified that Sabrina Montgomery, count IV, and Antonio Montgomery, count V, are Hunter's relatives.

98, 101-02, 941 P.2d 9 (1997) (generally, an officer's investigative summary is inadmissible hearsay that does not qualify for admission under the business records exception to the hearsay rule).

Even if Rogers's testimony was hearsay, however, the error was harmless. Nonconstitutional error in admitting hearsay evidence requires reversal only if it is reasonably probable that the error materially affected the trial's outcome. *State v. Alvarez-Abrego*, 154 Wn. App. 351, 371, 225 P.3d 396, *review denied*, 168 Wn.2d 1042 (2010). Exhibit 10 was purported to be Hunter's social security card, not one belonging to a charged or uncharged victim. The State did not offer exhibit 10 to prove or disprove an element of any charge. There is not a reasonable probability that admission of exhibit 10 affected the trial's outcome.

V. Sufficient Evidence

Additionally, Hunter asserts that insufficient evidence supported a finding that he possessed the identification or financial documents of another. Hunter argues that the State had to show how he came to possess the documents or how they were transferred to him. Hunter also argues that there was no evidence connecting him to the vehicle that police searched. We disagree.

Sufficient evidence supports the jury's verdict if the jury has a factual basis for finding each element of the offense proven beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 221-22, 616 P.2d 628 (1980). An appellant claiming insufficiency of the evidence admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom. *Salinas*, 119 Wn.2d at 201. We view both circumstantial and direct evidence as equally reliable, and defer

to the trier of fact on issues of conflicting testimony, witness credibility, and the persuasiveness of the evidence. *Thomas*, 150 Wn.2d at 874-75.

Constructive possession means that the evidence is not in the defendant's actual, physical possession, but that the person charged with possession has dominion and control over the goods. *State v. Staley*, 123 Wn.2d 794, 798, 872 P.2d 502 (1994). The State may prove constructive possession by circumstantial evidence. *State v. Sanders*, 7 Wn. App. 891, 893, 503 P.2d 467 (1972). We examine the totality of the situation to determine if a defendant had dominion and control over an item. *Partin*, 88 Wn.2d at 906. Factors to consider when determining dominion and control include whether the defendant could reduce an object to actual possession and whether he had the ability to exclude others. *State v. McReynolds*, 117 Wn. App. 309, 341, 71 P.3d 663 (2003); *State v. Edwards*, 9 Wn. App. 688, 690, 514 P.2d 192 (1973). But exclusive control is not necessary to prove dominion and control. *State v. Davis*, 117 Wn. App. 702, 708-09, 72 P.3d 1134 (2003), *review denied*, 151 Wn.2d 1007 (2004).

Detective Darin Sale testified that he recovered all the documents from a briefcase and backpack found either in a bedroom within the residence or a vehicle. Detective Sale testified that all exhibits admitted were found in the course of executing the search warrant. Brown testified that the backpack and briefcase belonged to Hunter, and that police searched Hunter's bedroom. This is enough to show that Brown exerted dominion and control over the backpack, briefcase, and bedroom. In addition, Brown testified that Hunter had moved into the home, and did not indicate that Brown's move was only temporary. This further supported a finding that Hunter exerted dominion and control over the bedroom. Although Hunter's possession of the vehicle is

less clear, the evidence shows that Hunter owned and thus had dominion and control over the carrying case found within the vehicle.[12] Sufficient evidence supports Hunter's convictions.

V. Cumulative Error

Finally, cumulative error did not deny Hunter a fair trial. The cumulative error doctrine applies only when several errors occurred which, standing alone, may not be sufficient to justify a reversal, but when combined together, may deny a defendant a fair trial. *State v. Hodges*, 118 Wn. App. 668, 673-74, 77 P.3d 375 (2003), *review denied*, 151 Wn.2d 1031 (2004). Hunter has failed to show multiple errors.

We affirm.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Johanson, J.

We concur:

Van Deren, J.

Penoyar, C.J.

[12] When asked whether police searched Hunter's backpack, Brown stated, "They searched everything. They searched the trunk of *the* car and everything." 3 VRP at 230 (emphasis added).