

October 6, 2020

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

LEONARD MICHAEL HAAN,

Appellant.

No. 53704-4-II

UNPUBLISHED OPINION

CRUSER, J. — Leonard Michael Haan appeals his guilty plea convictions for attempted second degree identity theft and third degree possession of stolen property. He argues that the trial court erred when it found that there was a factual basis for his guilty pleas. Because the declaration of probable cause establishes a factual basis for the guilty pleas, we affirm.

**FACTS**

On October 12, 2017, Haan was arrested while riding in a stolen vehicle with Christopher Roberson. While Haan was being booked into the jail, a deputy “noted a number of credit cards in Haan’s wallet,” two of which did not belong to Haan. Clerk’s Papers (CP) at 2. The State charged Haan with two counts of second degree identity theft, second degree possession of stolen property, and taking a motor vehicle without permission.

Haan pleaded guilty to the amended charges of attempted second degree identity theft and third degree possession of stolen property. Rather than provide a factual statement, Haan agreed

that the trial court could review the declaration of probable cause to establish the factual basis for the pleas.

The declaration of probable cause stated,

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 issue[d] 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 (sic) found 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.

*Id.* at 2.

Based on the declaration of probable cause and the plea colloquy, the trial court found a factual basis for the pleas, determined that the pleas were voluntary, and accepted the guilty pleas.

Haan appeals.

## ANALYSIS

Haan argues that the trial court erred when it found that there was a factual basis for his guilty pleas because the declaration of probable cause was insufficient to establish a factual basis for either offense as required under CrR 4.2(d). This argument fails.

### I. LEGAL PRINCIPLES

To ensure that a defendant is entering his or her guilty plea with an understanding of the law in relationship to the facts, a trial court "shall not enter a judgment upon a plea of guilty unless it is satisfied that there is a factual basis for the plea." CrR 4.2(d); *State v. S.M.*, 100 Wn. App. 401,

414, 996 P.2d 1111 (2000). In assessing the factual basis for a plea, the trial court may look to any reliable source of information in the record. *State v. Newton*, 87 Wn.2d 363, 369-70, 552 P.2d 682 (1976).

“The factual basis requirement of CrR 4.2(d) does not mean the trial court must be convinced beyond a reasonable doubt that defendant is in fact guilty. ‘It should be enough if there is sufficient evidence for a jury to conclude that [the defendant] is guilty.’” *Id.* at 370 (quoting *United States v. Webb*, 433 F.2d 400, 403 (1st Cir. 1970)).

## II. ATTEMPTED SECOND DEGREE IDENTITY THEFT

To establish a factual basis for the attempted second degree identity theft charge, the declaration of probable cause had to provide sufficient evidence to allow a jury to conclude that Haan took a substantial step towards knowingly obtaining, possessing, using, or transferring another person’s means of identification or financial information, “with the intent to commit, or to aid or abet, any crime.” RCW 9.35.020(1); RCW 9A.28.020(1). Haan argues that the declaration of probable cause was insufficient to establish that he possessed the Amoses’ credit cards with intent to commit any crime because possession alone is insufficient to establish intent. We disagree that the declaration of probable cause is insufficient.

“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, 8, 309 P.3d 318 (2013) (quoting *State v. Woods*, 63 Wn. App. 588, 591, 821 P.2d 1235 (1991)). Although “naked possession” alone does not permit an inference of intent, “possession together with ‘slight corroborating evidence’”

can permit an inference of intent. *Id.* at 8 (quoting *State v. Esquivel*, 71 Wn. App. 868, 870, 863 P.2d 113 (1993)). Such corroborating evidence is present here.

Taken as a whole, the declaration of probable cause shows that Haan's conduct and the surrounding facts and circumstances would allow a jury to conclude that Haan possessed the credit cards with intent to commit a crime. Haan possessed credit cards belonging to more than one person whom he did not know, and the cardholders had not given him permission to possess the credit cards. Haan had placed those credit cards in his wallet, commingling them with his own property, which would be consistent with Haan intending to use the credit cards. And, when asked by the police, he offered no alternative explanation as to why he put the credit cards in his wallet rather than throw them away or contact the police if he believed the credit cards belonged to someone else. His placing the credit cards with his own and his response to questioning as to why he had done so provide the "slight corroborating evidence" necessary to permit a jury to infer that Haan intended intent to use the credit cards, which he had no authority to do. *Id.* at 8 (quoting *Esquivel*, 71 Wn. App. at 870). Accordingly, Haan fails to show that the declaration of probable cause was insufficient to provide a factual basis for this element. Thus, the trial court did not err when it determined that there was a factual basis for the guilty plea to the attempted second degree identity theft charge.

### III. THIRD DEGREE POSSESSION OF STOLEN PROPERTY

To establish a factual basis for the third degree possession of stolen property charge, the declaration of probable cause had to allow the trial court to find that a jury could conclude that Haan possessed stolen property. RCW 9A.56.170. "Possessing stolen property' means knowingly to receive, retain, possess, conceal, or dispose of *stolen property knowing that it has been stolen*

and to withhold or appropriate the same to the use of any person other than the true owner or person entitled thereto.” RCW 9A.56.140(1) (emphasis added). Haan argues that the declaration of probable cause was insufficient to establish that (1) the credit cards were stolen, or (2) he knew the credit cards were stolen. Again, we disagree.

A. STOLEN PROPERTY

Haan argues that the declaration of probable cause was not sufficient to establish a factual basis for the third degree possession of stolen property charge because it did not establish that the credit cards were stolen. Specifically, he asserts that the declaration of probable cause merely stated that Richard Amos “‘believed’” the cards belonged to the Amoses and was “‘confused as to why Haan would have them,’” not that they were stolen. Br. of Appellant at 8 (quoting CP at 2). Haan contends that the cards could have, instead, been lost, misplaced, or discarded.

“‘Stolen’ means obtained by theft, robbery, or extortion.” RCW 9A.56.010(17). And “[t]heft” means:

(a) To wrongfully obtain or exert unauthorized control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services; or

....

(c) To appropriate lost or misdelivered property or services of another, or the value thereof, with intent to deprive him or her of such property or services.

RCW 9A.56.020(1).

As stated above, the declaration of probable cause stated that Haan had possession of two credit cards belonging to two people he did not know, which establishes that he exerted control over the property of another. It also states that Haan did not have permission to possess the credit cards, establishing that his control over the credit cards was unauthorized. And it further states that

Haan had placed these credit cards in his own wallet and when asked, he made clear that he had no plan to discard the credit cards or contact the police about them, which is sufficient to establish that Haan intended to deprive the Amoses of their property and keep the credit cards for himself. And even if the credit cards had merely been lost or misdelivered, these same facts were sufficient to establish that Haan appropriated the lost or misdelivered credit cards with intent to deprive the Amoses of the credit cards.

From these facts, a jury could conclude Haan had obtained the credit cards by theft and that the credit cards were therefore stolen. Accordingly, the declaration of probable cause provided a factual basis for this element.

#### B. KNOWLEDGE

Finally, Haan argues that his possession of the credit cards alone did not prove that he knew the cards were stolen. But Haan overlooks RCW 9A.56.140(3), which provides, “When a person has in his or her possession, or under his or her control, stolen access devices<sup>[1]</sup> issued in the names of two or more persons, . . . he or she is presumed to know that they are stolen.”

Haan could have rebutted this presumption at trial. RCW 9A.56.140(4). But because the declaration of probable cause established that Haan possessed two stolen access devices, which created a presumption that he knew the credit cards were stolen, a jury could conclude that Haan knew that the credit cards were stolen. Accordingly, the declaration of probable cause provided a factual basis for this element.

Accordingly, Haan fails to show that the declaration of probable cause was insufficient to provide a factual basis for the third degree possession of stolen property charge, and the trial court

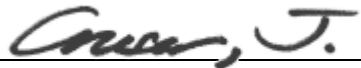
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<sup>1</sup> The parties do not dispute that the credit cards were “access devices.”

did not err when it determined that there was a factual basis for the guilty plea to the attempted second degree identity theft charge.

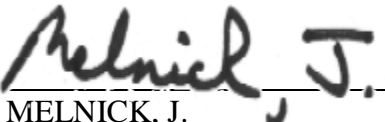
Because Haan does not show that the trial court erred when it found a factual basis for the guilty pleas, we affirm.

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 in accordance with RCW 2.06.040, it is so ordered.

  
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CRUSER, J.

We concur:

  
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WORSWICK, P.J.

  
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MELNICK, J.