IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. TED ERNEST COXWELL and ADRIAN GREGORY DILLARD, Appellants, PAUL RAYMOND RIMBEY Defendant.	)	No. 61822-9-I (consolidated with No. 61109-7-I) DIVISION ONE UNPUBLISHED OPINION FILED: October 26, 2009

Appelwick, J. — In this consolidated case, Dillard and Coxwell appeal their convictions arising from a residential burglary of the apartment of Grey. Dillard claims errors based on the denial of his motion to suppress certain financial records, governmental misconduct, prosecutorial misconduct, and his exceptional sentence. Coxwell claims errors based on the failure to give a jury instruction on accomplice testimony, the confrontation clause, the unconstitutionality of the jury pool arrangement, and cumulative errors that deprived him of a fair trial. Finding no error, we affirm.

FACTS

Richard Grey claims that more than $70,000 in cash was stolen from his apartment the day after he bought a truck from the Huling Brothers car dealership in West Seattle. On July 21, 2006, James Cowan sold Grey a pickup truck. Before the sale was complete, Grey indicated that he had the money for the truck at his apartment. Consequently, Cowan drove Grey to the apartment. Gray went inside and returned with $30,000 in cash. Upon returning to the dealership, Cowan told his co-workers that Grey claimed to have a large quantity of cash at his apartment.

The next day, Grey came to the dealership and asked Cowan for help, as his truck had been impounded. While Cowan took Grey to retrieve the truck, two co-workers, Jarod Kortman and Robert Zuanich, drove to Grey's apartment to try to steal the money. Zuanich also noticed two other salesmen from Huling Brothers, Adrian Astruon and Vic Poeuv, near Grey's apartment. Kortman and Zuanich returned to the dealership. At some point, Zuanich and Kortman went again to Grey's apartment where Kortman entered it and found $8. Kortman and Zuanich returned to the dealership frustrated by the find.

Back at the dealership, Zuanich and Kortman noticed Ted Coxwell, another salesman, "pretty happy, jumping around." Zuanich testified that Coxwell confessed that he had taken money from Grey's apartment. Coxwell gave Zuanich $27, which he had previously owed Zuanich. Coxwell's girlfriend, Debra Moskalski, arrived at Huling later that day. At Coxwell's direction she

gave Zuanich $500 of "hush money."

According to Gabe Gallegos, another Huling Brother's employee, he talked with Gregory Dillard sometime in September, in Dillard's office. According to Gallegos, Dillard admitted that he had taken $70,000 from Grey's apartment and used the money to pay off debt.

At the end of October, police investigated Zuanich for stealing a vehicle from Huling Brothers. During an interview with Detective Donovan Daly, Zuanich told him that Coxwell and Dillard had burglarized a customer's house. Together with Detective Caryn Lee, Daly began an investigation into the alleged burglary of Grey.

On November 3, 2006, Officer Joel Nark and Detective Lee met with King County Deputy Prosecutor Lynn Prunhuber, regarding the investigation into the theft of Grey's $70,000. Although no single suspect had emerged, the Prosecutor advised the detectives to "follow the money." Because Gallegos told investigators that Dillard claimed to have stolen $70,000 and used the money to pay off his credit cards, the prosecutor advised Detective Lee to discuss with Steve Huling, one of Huling's owners, the possibility of obtaining an old payroll check of Dillard's. From Huling, the officers obtained Dillard's cancelled payroll check, which established that Dillard banked at Bank of America.

Using a Seattle Police Department account with Experian, Detective Lee ran Dillard's credit report. Lee did not obtain a warrant. Using the report, Lee determined where Dillard banked and which companies had extended him credit.

Based on the payroll check issued to Dillard and the credit report the prosecutor prepared a subpoena duces tecum for Dillard's Bank of America records and a subpoena duces tecum for Dillard's Seattle Metropolitan Credit Union bank records. On January 2, 2007, a special inquiry judge issued two subpoenas, finding that the recipients, Seattle Metropolitan Credit Union and Bank of America, had information relevant to the inquiry of the theft and the residential burglary.

The Seattle Metropolitan Credit Union records showed that shortly after the robbery of Grey, Dillard purchased four cashier's checks, totaling $20,402 and that the payment consisted of 204 one hundred dollar bills.

The State charged Coxwell with one count of residential burglary and one count of first degree theft. The State charged Dillard with residential burglary, theft, and money laundering.

Nine months later, Dillard moved to suppress the financial records obtained by the prosecutor on the ground that the financial records were illegally seized. At the request of the State, the suppression hearing was continued. The State subsequently obtained search warrants for the credit reports and other financial records on September 20 and 25th, 2007. On September 27th, the trial court granted the defendant's motion and suppressed all evidence obtained from the warrantless searches. Dillard then moved to suppress the financial records obtained by the State through the September 20th and 25th search warrants on the grounds that they were not supported by probable cause,

did not meet the independent source rule, and were not sufficiently specific. The court denied the motion, finding the warrants resulted from sources independent of the records obtained without a warrant.

After a joint trial, the jury found Coxwell guilty of residential burglary and theft. The court entered a standard range sentence. The jury found Dillard guilty of theft and money laundering, but not of residential burglary. In addition, the jury returned a special verdict for particular vulnerability of the victim on Dillard's theft charge. The court imposed an exceptional sentence, based on the particular vulnerability aggravating factor. The court sentenced Dillard to a total of 12 months.

Dillard and Coxwell timely appealed.

DISCUSSION

I. Dillard's Claimed Errors

A. Motion to Suppress

Dillard argues that the trial court should have suppressed the financial evidence police seized, because the initial warrantless search tainted the subsequent search warrant. The State urges us to hold that the independent source exception to the exclusionary rule applies.[1]

We review a trial court's conclusions of law at a suppression hearing de novo. State v. Carter, 151 Wn.2d 118, 125, 85 P.3d 887 (2004). We review challenged findings of fact for substantial evidence, which is enough evidence to

[1] Dillard has not renewed his challenge to adequate probable cause on appeal.

persuade a fair-minded rational person of the truth of the finding. State v. Vickers, 148 Wn.2d 91, 116, 59 P.3d 58 (2002). Unchallenged findings are verities on appeal. State v. Acrey, 148 Wn.2d 738, 745, 64 P.3d 594 (2003). The findings must support the conclusions of law. Vickers, 148 Wn.2d at 116.

Evidence seized during illegal searches and evidence derived from illegal searches is subject to suppression under the exclusionary rule. State v. Gaines, 154 Wn.2d 711, 716–17, 116 P.3d 993 (2005). However, under the independent source exception to the exclusionary rule, evidence tainted by unlawful government actions is not subject to exclusion, provided it is ultimately obtained under a valid warrant or other lawful means independent of the unlawful action. Gaines, 154 Wn.2d at 718.

We are not asked to determine whether the initial suppression of the financial records was proper or whether the police needed a warrant to obtain the credit reports. We therefore only review whether the trial court erred in finding that the September warrants were supported by sources that were independent from any illegally obtained materials.

Here, the trial court found that the financial records had been obtained by warrants, "unrelated to and different from" the evidence gathered through the illegal search. Dillard does not challenge these findings.

Dillard contends that the independent source rule cannot apply where the evidence was immediately seized and warrants not obtained until nine months later. In essence, he argues that the independent source rule includes a

temporal limitation. But no Washington authority supports Dillard's framing of the independent source rule. Instead, under Gaines, the inquiry is whether the State provided sufficient probable cause to support the warrant, separate and independent from any illegal act by police.[2] Id.

Here, the State filed three separate affidavits for probable cause in order to obtain the records. The first affidavit sought credit reports, documents, and records from Experian, Equifax Credit Information Services, and TransUnion. The affidavit was based on police interviews with Grey, Cowan, Zuanich, Kortman, Gallegos, and Huling. These interviews were all conducted prior to December 24, 2006, when police obtained the financial records later suppressed. The affidavit acknowledged that the financial records had previously been obtained without a warrant. It did not refer to the contents of those records. A court issued the search warrants to Experian, Equifax Credit Information Services, and TransUnion on September 20, 2007.

The second affidavit sought records for the period beginning July 22 to September 30, 2006, from sixteen of Dillard's creditors, including Seattle Metropolitan Credit Union. To establish probable cause, the second affidavit relied on the police interviews referred to in the prior affidavit, but was also based on the Experian and Equifax credit reports obtained in September 2007

[2] A search warrant may be issued only upon a determination of probable cause. State v. Cole, 128 Wn.2d 262, 286, 906 P.2d 925 (1995). Probable cause exists if the affidavit in support of the warrant sets forth facts and circumstances sufficient to establish a reasonable inference that evidence of a crime will be found at the place to be searched. State v. Jackson, 150 Wn.2d 251, 264, 76 P.3d 217 (2003). A search warrant is not rendered invalid by the inclusion of illegally obtained information if it contains otherwise independent facts sufficient to establish probable cause. State v. Maxwell, 114 Wn.2d 761, 769, 791 P.2d 223 (1990).

as a result of the first warrant request. The warrants for records from Dillard's creditors were also issued.

The third affidavit sought, from Huling Brothers, copies of the front and back of all pay stubs and pay checks issued to Dillard for the period beginning July 22 to August 31, 2006. This affidavit was based on the same police interviews referred to in the first and second affidavits.

The three affidavits contain no reference to the contents of the financial records that the police had previously obtained without a warrant. Moreover, all of the sources for the affidavits derived from the police investigation prior to obtaining the financial records that the trial court suppressed. There was no use of or reliance on information gleaned from the previously obtained financial records. We conclude the warrants at issue here had an independent basis from any allegedly illegal prior conduct.

Dillard claims in the alternative that the case should be remanded, because the trial court belatedly entered findings of facts and conclusions of law, as required by CrR 3.6. The trial court must enter written findings of fact and conclusions of law at the conclusion of a hearing on a motion to suppress. CrR 3.6(b). Ordinarily, the proper remedy for a failure to enter findings is a remand rather than a reversal. State v. Head, 136 Wn.2d 619, 624, 964 P.2d 1187 (1998). We will not reverse a conviction for the late entry of findings unless the defendant can establish that he was prejudiced by the delay or that the findings and conclusions were tailored to meet the issues presented in his appellate

brief. State v. Byrd, 83 Wn. App. 509, 512, 922 P.2d 168 (1996). Here, the findings of fact were entered while the appeal was pending. But Dillard fails to show they were tailored for the appeal or that he was prejudiced by the late entry. Remand is not required.

We hold the trial court did not err in denying Dillard's motion to suppress because the probable cause on which the warrants were based was independent from the originally obtained financial records.

B. Governmental Misconduct

Dillard assigns error to the trial court's denial of his motion to dismiss for governmental misconduct. Dillard claims that the State's conduct in obtaining his financial records without a warrant and releasing that information to the media was so outrageous that it violated due process. The only remedy, he claims, is dismissal.

In determining whether police conduct violates due process, the conduct must be so shocking that it violates fundamental fairness. State v. Lively, 130 Wn.2d 1, 19, 921 P.2d 1035 (1996); State v. Myers, 102 Wn.2d 548, 551, 689 P.2d 38 (1984); State v. Smith, 93 Wn.2d 329, 351, 610 P.2d 869 (1980). A claim based on outrageous conduct requires the defendant to demonstrate more than mere flagrant police conduct. Myers, 102 Wn.2d at 551. Dismissal based on outrageous conduct is reserved for only the most egregious circumstances and must be "so outrageous that due process principles would absolutely bar the government from invoking judicial processes to obtain a conviction." United

States v. Russell, 411 U.S. 423, 431–32, 93 S. Ct. 1637, 36 L. Ed. 2d 366 (1973).

We review de novo whether the government conduct is sufficiently outrageous to bar prosecution. State v. O'Neill, 91 Wn. App. 978, 990–91, 967 P.2d 985 (1998). In doing so, we consider all the circumstances in the particular case, focusing on the State's behavior. Lively, 130 Wn.2d at 21–22.

Without deciding whether the police actions constituted misconduct, we hold that Dillard fails to establish that the alleged misconduct rises to the level requiring reversal. Further, as the State correctly argues, dismissal for improper governmental misconduct is not required where suppression of evidence may eliminate whatever prejudice is caused by governmental misconduct. State v. Marks, 114 Wn.2d 724, 730, 790 P.2d 138 (1990).

Here, the trial court suppressed all of the records initially obtained without a warrant. The evidence relied upon by the State at trial flowed from independent sources. The State did not benefit from any allegedly improper acts. Dillard fails to establish that he suffered any prejudice from any improper acts by the government not cured by suppression of the financial records.

Dillard claims that the police conduct in obtaining the cancelled payroll check released by Huling was outrageous, because it "encouraged private citizens to aid them in their illegal efforts." Detective Lee contacted Huling and requested the check without a warrant or subpoena. Huling spoke with a private attorney before releasing the check. The check was a business record to which

both Huling and Dillard were parties. Dillard does not address this issue, nor does he provide any authority to support the argument. Accordingly, we do not address the argument further.

We hold that Dillard has failed to establish that reversal is required due to governmental misconduct.

C. Prosecutorial Misconduct

Dillard claims the prosecutor committed misconduct, requiring reversal, by shifting the burden of proof to the defense during closing argument.

A defendant who alleges prosecutorial misconduct must establish that the conduct was both improper and prejudicial. State v. Brown, 132 Wn.2d 529, 561, 940 P.2d 546 (1997). A prosecutor has wide latitude in closing argument to draw reasonable inferences from the evidence and may freely comment on the credibility of the witnesses based on the evidence. State v. Stenson, 132 Wn.2d 668, 727, 940 P.2d 1239 (1997). The prejudicial effect of improper comments during closing argument must be viewed not in isolation, but "in the context of the total argument, the issues in the case, the evidence addressed in the argument, and the instructions given to the jury." Brown, 132 Wn.2d at 561.

To establish the conduct was prejudicial, the defendant must prove there is a "substantial likelihood the instances of misconduct affected the jury's verdict." State v. Pirtle, 127 Wn.2d 628, 672, 904 P.2d 245 (1995). If the prejudice could have been cured by an instruction to the jury, but the defense did not request one, reversal is not required. State v. Russell, 125 Wn.2d 24,

85, 882 P.2d 747 (1994).

Dillard argues the following statement by the prosecutor constituted misconduct:

> It is the [S]tate's obligation to put on evidence. The defense is under no obligation to put on any evidence. But that's not what they did in this case. They chose to put on evidence. And you can evaluate that evidence.
>
> Dillard entered by stipulation Defense Exhibit 24, which is a copy of the loan check, the $15,000, from May 22, 2006, that Dick Stansbury from Seattle Metropolitan Credit Union referenced. That is the only evidence that they provided with respect to his financial transactions.
>
> There's no evidence provided, no bank records provided by the defendant showing that he cashed this check in a manner that produced $100 bills.
>
> There's no other evidence that the money that he transferred into a cashier's check came from some other account, some other transaction where he received $100 bills.
>
> There's no other bank records, no other testimony from any other bank personnel showing that [the] money came from anywhere but Richard Grey's apartment. And you have to ask yourself, why is that?

Defense counsel objected on the grounds of "[i]mproper argument," which the court overruled. The prosecutor continued:

> And the answer why that evidence wasn't put before you is because it doesn't exist because, as we all know, that money was the product of the burglary two days prior at Richard Grey's apartment.

Again, defense counsel objected and the court overruled the objection.

As an advocate, the prosecuting attorney is entitled to make a fair response to the arguments of defense counsel. Id. at 86. The mere mention by the prosecutor that the defendant lacks evidence to support his or her theory of

the case does not constitute prosecutorial misconduct or shift the burden of proof to the defense. State v. Jackson, 150 Wn. App. 877, 885–86, 209 P.3d 553 (2009).

Here, the prosecutor's comments were not improper, because they merely addressed Dillard's theory of the case. It was not misconduct for the prosecutor to argue that the evidence did not support the defense's theory. See Russell, 125 Wn.2d at 87. At trial Dillard's counsel argued that the money he used to pay off debts came from two $15,000 checks from the bank. The prosecutor's comments merely sought to undermine this theory. Moreover, the prosecutor prefaced his statement by reminding the jury the State, not the defendant, had the burden of producing the evidence. Then in his closing statement, Dillard's counsel reminded the jury that it was the State's burden of proof, not the defendant's, to prove each element of the case, including the production of bank records. The prosecutor did not impermissibly shift the burden and we therefore hold that there was no prosecutorial misconduct.

D. Exceptional Sentence

Dillard appeals his exceptional sentence claiming the trial court erred by failing to give a jury instruction defining the phrase "particularly vulnerable" and in denying his motion to dismiss the aggravating factor.

A court may impose a sentence outside the standard range "if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence." RCW 9.94A.535.

Pursuant to RCW 9.94A.535(3)(b), a court may impose an exceptional sentence if the jury determines that "[t]he defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance."

A statute is presumed constitutional unless it appears unconstitutional beyond a reasonable doubt. State v. Halstien, 122 Wn.2d 109, 118, 857 P.2d 270 (1993). The party challenging a statute under the void for vagueness doctrine bears the burden of proof. Id. A statute is vague if it either fails to define the offense with sufficient precision that a person of ordinary intelligence can understand it, or it does not provide standards sufficiently specific to prevent arbitrary enforcement. State v. Eckblad, 152 Wn.2d 515, 518, 98 P.3d 1184 (2004). But, a defendant's failure to propose a definition of an aggravating factor precludes review of a claim that the undefined term was unconstitutionally vague. State v. Whitaker, 133 Wn. App. 199, 233, 135 P.3d 923 (2006).

Here, Dillard failed to propose any instructions clarifying the meaning of "particularly vulnerable victim," the term to which he now objects. His failure to propose an instruction precludes appellate review.

Next, Dillard claims reversal is required, because the trial court entered findings of fact and conclusions of law relating to Dillard's exceptional sentence while this appeal was pending.

Generally, the failure to enter written findings and conclusions is a clerical error that may be corrected after an appeal is filed. State v. Pruitt, 145 Wn. App.

784, 794, 187 P.3d 326 (2008). But reversal is warranted if the defendant can show actual prejudice from belated entry of findings. Id. The defendant carries the burden to prove such prejudice and may do so "by establishing that the belated findings were tailored to meet the issues raised in the appellant's opening brief." Id.

Here, the State concedes that the findings of fact and conclusions of law were entered belatedly. But Dillard fails to establish that the findings of fact were tailored to meet any issue on appeal or that he was otherwise prejudiced. We hold that no error occurred.

II. Coxwell's Claimed Errors

A. Instruction on Accomplice Testimony

Coxwell argues that the trial court erred in not giving the proposed jury instruction on accomplice testimony.

A party is entitled to have a proposed jury instruction if it describes his theory of the case and is supported by sufficient evidence. State v. Williams, 132 Wn.2d 248, 259, 937 P.2d 1052 (1997). We review a trial court's refusal to give an instruction based on the facts of the case for a clear showing of an abuse of discretion. State v. Lucky, 128 Wn.2d 727, 731, 912 P.2d 483 (1996) (overruled on other grounds by State v. Berlin, 133 Wn.2d 541, 947 P.2d 700 (1997)).

When the State relies solely on the uncorroborated testimony of an accomplice, the trial court must instruct the jury to carefully examine it in the light

of other evidence. State v. Harris, 102 Wn.2d 148, 154–55, 685 P.2d 584 (1984) (overruled on other grounds by State v. Brown, 111 Wn.2d 124, 761 P.2d 588 (1988), State v. Brown, 113 Wn.2d 520, 782 P.2d 1013 (1989), and State v. McKinsey, 116 Wn.2d 911, 810 P.2d 907 (1991)); State v. Sherwood, 71 Wn. App. 481, 485, 860 P.2d 407 (1993).

In general, a trial court should provide the jury with the standard accomplice instruction whenever accomplice testimony is introduced. Harris, 102 Wn.2d at 155; Sherwood, 71 Wn. App. at 485. But the court does not commit reversible error by failing to give the instruction if the accomplice testimony is substantially corroborated by independent evidence. Harris, 102 Wn.2d at 155; Sherwood, 71 Wn. App. at 485. "[W]hether failure to give this instruction constitutes reversible error when the accomplice testimony is corroborated by independent evidence depends upon the extent of the corroboration." Harris, 102 Wn.2d at 155.

Coxwell proposed the following jury instruction:

> The testimony of an accomplice, or co-defendant, whether charged or uncharged, given on behalf of the plaintiff, should be subjected to careful examination in the light of other evidence in the case, and should be acted upon with great caution. You should not find the defendant guilty upon such testimony alone unless, after carefully considering the testimony, you are satisfied beyond a reasonable doubt of its truth.

The State argues that the trial court did not abuse its discretion in refusing to give the instruction, because neither Zuanich nor Moskalski were accomplices, thus, no instruction was warranted. A person is an accomplice of

another person in the commission of a crime if:

> (a) With knowledge that it will promote or facilitate the commission of the crime, he
> (i) solicits, commands, encourages, or requests such other person to commit it; or
> (ii) aids or agrees to aid such other person in planning or committing it; or
> (b) His conduct is expressly declared by law to establish his complicity.

RCW 9A.08.020(3); see also State v. Luna, 71 Wn. App. 755, 759, 862 P.2d 620 (1993).

We agree with the State. The record does not support Coxwell's argument that Zuanich or Moskalski were accomplices.

Coxwell claims that Zuanich participated in the same series of criminal acts he is accused of and thus Zuanich was an accomplice.[3] The record shows that several groups of Huling employees sought to burglarize Grey's apartment. But no testimony suggests that these efforts were unified. Instead, the record established that the groups of Huling employees, including Zuanich and Coxwell, acted independently of each other. Zuanich does not meet the definition of an accomplice: Zuanich did not solicit, command, or aid Coxwell in the commission of residential burglary, the crime with which he was charged.

Coxwell also claims that Zuanich received a portion of the stolen property,

[3] Coxwell argues that State v. Calhoun, 13 Wn. App. 644, 536 P.2d 668 (1975), requires the court to give a cautionary instruction if a witness was involved in the same series of criminal acts. While Zuanich and Coxwell both attempted to commit the same crime, residential burglary of Grey, the record establishes they did this independently. Unlike the participants in Calhoun, here, they were not part of the same series of criminal acts. Calhoun, 13 Wn. App. at 648.

which makes him an accomplice. Zuanich testified that Coxwell admitted to taking the money, but only after prodding him for information. But, the payments received by Zuanich did not aid in the crime charged, residential burglary, as required for accomplice liability. See State v. Roberts, 142 Wn.2d 471, 509–513, 14 P.3d 717 (2000); State v. Cronin, 142 Wn.2d 568, 578–580, 14 P.3d 752 (2000).

Likewise, the record does not establish that Moskalski was an accomplice. Moskalski testified to receiving a total of $2,200 from Coxwell and gave $500 to Zuanich. But, this is insufficient to establish she was an accomplice to the crime of residential burglary.

We hold that the trial court did not abuse its discretion in refusing to give Coxwell's proposed instruction.

B. Confrontation Clause

Coxwell claims his constitutional right to confront a witness was violated when Kortman testified to out of court statements made by Dillard that were incriminating.

The Sixth Amendment to the United States Constitution grants criminal defendants the right "to be confronted with the witnesses against him." In Crawford v. Washington, the United States Supreme Court held that the confrontation clause "applies to 'witnesses' against the accused—in other words, those who 'bear testimony.'" 541 U.S. 36, 51, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004). (quoting 2 N. Webster, An American Dictionary of the English

Language (1828)).

In Bruton v. United States, the Court recognized that admitting a non-testifying codefendant's confession that implicates the defendant may be so damaging that even instructing the jury to use the confession only against the codefendant is insufficient to cure the resulting prejudice. 391 U.S. 123, 126, 88 S. Ct. 1620, 20 L. Ed. 2d 476 (1968). As the Bruton court stated:

> [T]here are some contexts in which the risk that the jury will not, or cannot, follow instructions is so great, and the consequences of failure so vital to the defendant, that the practical and human limitations of the jury system cannot be ignored. . . . Such a context is presented here, where the powerfully incriminating extrajudicial statements of a codefendant, who stands accused side-by-side with the defendant, are deliberately spread before the jury in a joint trial.

391 U.S. at 135–36.

Here, Coxwell argues that Bruton applies, because Dillard's confession and Kortman's subsequent testimony about those hearsay statements is equivalent to admitting a signed confession, which violates his right to confront a witness's testimony. He argues that, because Dillard is a codefendant, the hearsay testimony was especially prejudicial.

First, he points to an exchange between Kortman and the prosecutor:

> Q And was that consistent or inconsistent with the $100 bill that you had?
> A The old ones were consistent with the one I had.
> Q And when did this discussion take place regarding the $100 bills?
> A I don't recall the date. It was several days after that weekend. And A.G. had mentioned that Ted had brought the money in to pay for a car.
> MR. FLORA: Objection to hearsay.

After a discussion, without the jury present, the court sustained the hearsay objection and stated, "[a]nd to the extent that the jury heard an answer, I'm asking the jury to disregard it."

Coxwell also points to the following testimony as a violation of the confrontation clause:

> Q You testified in direct examination about a day some days after you burglarized Mr. Grey's apartment when you came into Mr. Dillard's office and saw some money on his desk, right?
> A I went into A.G.'s office. He had mentioned to me that Ted --
> MR. FLORA: Objection to hearsay.
> THE COURT: It may well be, so ask another question.
> Q And did he tell you that he had received that money from another party?
> A Yes.
> Q Okay. And did he tell you he was suspicious of that money?
> A Yes.
> Q And did he tell you that he thought that money might be the proceeds of the burglary or a burglary of Mr. Grey's residence?
> A Yes.
> Q And did his suspicion seem genuine to you at that time?
> A Yes.
> MR. FLORA: Objection. I'll withdraw that.
> By Mr. Friedman:
> Q Did his suspicion seem genuine to you?
> A Yes.
> Q And he talked to you for a while about that, correct?
> A A short while, but, yes.
> Q Okay. And there was some talk at the dealership. There was some gossip about whether somebody at the dealership had gotten money from Mr. Grey's residence?
> A Yes.

We disagree with Coxwell, that Kortman's testimony violated his right to confront a witness, for the simple fact that the court excluded Kortman's initial statements as hearsay and directed the jury to disregard them. We presume

that the jury followed the trial judge's instructions and disregarded the exchange. See State v. Weber, 99 Wn.2d 158, 166, 659 P.2d 1102 (1983). In the second instance cited by Coxwell, the trial court ordered the attorney to ask a different question, acknowledging the witness's incomplete answer could be hearsay. Coxwell's attorney did not request a curative instruction. Unlike Bruton, here no improper testimony or confession of a codefendant was admitted. No error occurred.

In addition to the two instances where Kortman referred to Dillard's statements about "Ted," Coxwell argues that Kortman implicated him throughout the testimony by discussing the money left on Dillard's desk. But, any hearsay statements by Dillard were already stricken by the trial court. The discussions about money on Dillard's desk did not implicate the confrontation clause under Bruton or Crawford. No error occurred.

We hold that Coxwell's Sixth Amendment right to confront a witness was not violated.

C. Jury Pool

Coxwell first contends that the trial court violated his right to an impartial jury of the county, because the jury was drawn from only a portion of the county. [4] This argument was already squarely rejected in State v. Lanciloti,165 Wn.2d 661, 671, 201 P.3d 323 (2009), where the Supreme Court held that "the legislature was within its power to authorize counties with two superior

[4] Coxwell argues that his counsel was ineffective for failing to raise it. Because the Supreme Court has determined the King County arrangement is constitutional, this claim fails.

courthouses to divide themselves into two districts." Lanciloti is dispositive of Coxwell's claimed error.

Coxwell also argues that the statute and rule violate his Sixth Amendment right to an impartial jury composed of a fair cross-section of the community. He asserts, without support in the record, that "[t]he statute and rule in this case systematically and effectively exclude from jury service a distinct segment of the population of King County." But in addressing an identical claim, the Lanciloti court concluded that on "the scant factual record of the actual makeup of the jury source lists," the defendant failed to carry his burden of showing a systemic exclusion of a distinctive group. Id. at 672. Thus, the court declined to consider "this unripe claim." Id. Likewise, Coxwell has not met his burden of showing a systematic exclusion of a distinct group. Id.

We hold under Lanciloti and the record developed by Coxwell that his constitutional rights were not violated by King County's jury district arrangement.

D. Cumulative Errors

The cumulative error doctrine applies when there have been several trial errors that, when combined, denied the defendant a fair trial, although none of them alone would justify reversal. State v. Greiff, 141 Wn.2d 910, 929, 10 P.3d 390 (2000). Because Coxwell has not established that any errors occurred at trial, we hold the doctrine does not apply.

We affirm.

Appelwick, J.

WE CONCUR:

Grosse, J.

Ajid, J.