

No. 334155

FILED
Dec 28, 2015
Court of Appeals
Division III
State of Washington

IN THE COURT OF APPEALS DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent

v.

CRAIG S. COLEMAN, Appellant

APPEAL FROM THE SUPERIOR COURT
OF BENTON COUNTY
THE HONORABLE JUDGE CARRIE RUNGE

BRIEF OF APPELLANT

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I. ASSIGNMENTS OF ERROR

A. The Evidence Was Insufficient To Sustain A Conviction For First Degree Identity Theft.

B. The Evidence Was Insufficient To Sustain A Conviction For Theft In The Second Degree.

ISSUES RELATED TO ASSIGNMENTS OF ERROR

A. Was there sufficient evidence to prove first-degree identity theft ?

B. Was there sufficient evidence to prove second-degree theft?

II. STATEMENT OF FACTS

The Benton County Prosecutor charged Craig Coleman by second amended information with first-degree identity theft, RCW 9A.56.020(2) and second-degree theft RCW 9A.56.020(1)(a), RCW 9A.56.040(1)(a). CP 16-17.

On September 2, 2014, Mr. Coleman went to the Baker Boyer Bank to cash a check made payable to him in the amount of \$3,470.18. RP 34-35. The check was drawn on the account of Columbia River Plumbing and the signature appeared genuine to the teller. RP 35;50. Mr. Coleman presented his Washington State identification information, which the teller wrote on the back of the check. RP 35.

Shortly after Mr. Coleman left the bank, the teller had second thoughts about having cashed the check. RP 39. The amount of the check surprised her and the fact that Mr. Coleman's address was outside of the city. RP 39. She enlisted a coworker to call the owner of Columbia River Plumbing. RP 41.

The owner, Ms. Lindstrom, testified that check had been made out to a subcontractor, Hooper Plumbing. RP 27. Hooper Plumbing had not reported the check as stolen and never contacted Ms. Lindstrom to say they had not received payment for their services. RP 28. Ms. Lindstrom had no direct knowledge as to whether Hooper Plumbing had hired Mr. Coleman to provide services for their company, and no direct knowledge of what that company did or did not do with the check. RP 29-30. Both the bank and Ms. Lindstrom called the police. RP 23.

After a jury trial, Mr. Coleman was convicted on both counts. CP 53-54. The court imposed a 70-month sentence on count 1 and 22 months on count 2, to run concurrent. 5/22/15 RP 16. Mr. Coleman makes this timely appeal. CP 115-116.

III. ARGUMENT

Every person accused of a crime is constitutionally endowed with an overriding presumption of innocence, a presumption that

extends to every element of the charged offense. *Morissette v. United States*, 342 U.S. 246, 275, 72 S.Ct. 240, 96 L.Ed.2d 288 (1952). “Lest there remain any doubt about the constitutional stature of the reasonable-doubt standard, we explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged. *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970).

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 elements of the charged crime beyond a reasonable doubt. *State v. Longshore*, 141 Wn.2d 414, 420-21, 5 P.3d 1256 (2000). On review, all reasonable inferences are interpreted in the State’s favor. *State v. Hosier*, 157 Wn.2d 1, 8, 133 P.3d 936 (2006). However, inferences drawn from circumstantial evidence must be reasonable and cannot be based on speculation. *State v. Vasquez*, 178 Wn.2d 1, 16, 309 P.3d 318 (2003). Where the prosecution fails to meet the burden of proof beyond a reasonable doubt, the remedy is reversal and dismissal with prejudice. *State v. Hickman*, 135 Wn.2d 97, 103, 954 P.2d 900 (1998).

A. The Evidence Was Insufficient To Sustain A Conviction For First-Degree Identity Theft.

A person is guilty of identity theft if he (1) knowingly obtained, possessed, used, or transferred means of identification or financial information of another person (2) with intent to commit or aid or abet any crime. RCW 9.35.020(1). An individual acts with intent when he acts with the objective or purpose to accomplish a result that constitutes a crime. RCW 9A.08.010(1)(a). A specific criminal intent can be inferred from the defendant's conduct, but *only* where it is plainly indicated as a matter of logical probability. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). (Emphasis added).

The "intent" element requires the State to prove that Mr. Coleman knew and understood that he was committing an illegal act, that is, to present evidence from which a reasonable jury could conclude Mr. Coleman knew the check was wrongly made out to him, and negotiated it with the intent to steal.

However, the State did not provide any evidence that showed Mr. Coleman knew or even thought there was anything amiss with the check. Not only did he go to the bank the check was drawn on, but also supplied his Washington State identification to

the teller so he could cash it. The signature of the payor appeared authentic to the teller and to Ms. Lindstrom. (RP 25). There was nothing to indicate to Mr. Coleman the check was fraudulent or forged. It actually appears that the person who paid Mr. Coleman with the check was the individual who perpetrated the crime.

The State's evidence only established that Mr. Coleman possessed the check and cashed it. What the State did not present was substantial evidence of intent to commit a crime.

Substantial evidence, the evidence necessary in a criminal case, means evidence sufficient to persuade "an unprejudiced thinking mind of the truth of the fact to which the evidence is directed." *State v. Taplin*, 9 Wn.App. 545, 557, 513 P.2d 549(1973). The Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of *every fact* necessary to constitute the crime with which he is charged. *In re Winship*, 397 U.S. at 364. (Emphasis added). Nothing in the circumstances supports a conclusion that Mr. Coleman knew the check was not legitimate, or acted with the intent to commit a crime. Mere possibility, suspicion, speculation, conjecture, or even a scintilla of evidence is not substantial evidence, and does not meet the minimum requirements of due process. *State v. Moore*, 7

Wn.App. 1, 499 P.2d 16 (1972). The remedy is dismissal with prejudice. *State v. Kirwin*, 166 Wn.App. 659, 674, 271 P.3d 310 (2012).

B. The Evidence Was Insufficient To Sustain A Conviction For Second-Degree Theft.

The applicable law regarding sufficiency of the evidence is set forth in the first section and incorporated herein.

To convict for second degree theft, the State was required to prove beyond a reasonable doubt that Mr. Coleman wrongfully obtained or exerted unauthorized control over \$750 but not more than \$5000, with the intent to deprive the owner Baker Boyer Bank, of such property. RCW 9A.56.020(1)(a); RCW 9A.56.040(1)(a).

Here, the State failed to prove beyond a reasonable doubt that Mr. Coleman had intent to deprive Baker Boyer Bank of its property. Mr. Coleman believed he had received a legally authorized check made out to him. He presented the check at the bank on which it was drawn. He provided his identifying information to the teller. Ms. Lindstrom testified it looked like her signature on the check, the check had been sent to Hooper Plumbing, a subcontractor, and Hooper Plumbing had not reported it as stolen.

Every fact necessary to constitute the crime with which a defendant is charged must be proved beyond a reasonable doubt. *In re Winship*, 397 U.S. at 364. Intent, typically proved through circumstantial evidence, may not be inferred from evidence that is “patently equivocal.” *State v. Woods*, 63 Wn.App. 588, 592, 821 P.2d 1235 (1991). Mr. Coleman’s actions in cashing the check were consistent with his belief that he had received a check made out to him. Evidence that is equally consistent with innocence as it is with guilt is not sufficient to support a conviction; it is not substantial evidence. *State v. Aten*, 130 Wn.2d 640, 927 P.2d 210 (1996). Even viewed in a light most favorable to the state, no rational trier of fact could find the essential elements of the crime beyond a reasonable doubt. The absence of proof beyond a reasonable doubt requires dismissal of the conviction and the charge with prejudice. *State v. Green*, 94 Wn.2d 216, 220-21, 616 P.2d 628 (1980).

IV. CONCLUSION

Based on the foregoing facts and authorities, Mr. Coleman respectfully asks this Court to reverse and dismiss with prejudice the convictions.

Respectfully submitted this 28th day of December 2015.

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