

NO. 47630-4-II

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

STATE OF WASHINGTON, Respondent

v.

ALLEN RUSSELL SELLERS, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.14-1-01595-0

BRIEF OF RESPONDENT

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RESPONSE TO ASSIGNMENTS OF ERROR

I. **The evidence is sufficient to sustain the forgery conviction.**

STATEMENT OF THE CASE

James Cox is retired and lives in Vancouver. RP 83-84. He had a bank account at Chase Bank, and had a check book associated with his account. RP 84. His check book was stolen out of his car on August 4, 2014. RP 85. As a result, he closed his account on August 5, 2014. RP 84-85. He also reported the theft to the police. RP 85. While he was at the Vancouver police station reporting the theft, he received a phone call from a check cashing store asking to verify a check. RP 86. The receptionist at the police station sent a unit to the check cashing store. RP 86. Mr. Cox did not write or sign a check made out to Allen Sellers. RP 86. The check in question was admitted at trial as exhibit 1. RP 54. Mr. Cox never met Allen Sellers and did not give him permission to cash a check on his (Cox's) account. RP 86.

Allen Sellers came into Cash Connection in Vancouver on the morning of August 6, 2014, and attempted to cash a personal check. RP 52-53. It is standard procedure at Cash Connection for the cashier to call the person who wrote the check to verify that the check was actually made out to the person named as the payee, and to verify that there are sufficient

funds in the account to cover the check. RP 53. The cashier at Cash Connection that day, Heidi Bennett-Koch, followed that procedure. RP 53-54.

Officer Rawlins of the Vancouver Police Department responded to the call at Cash Connection that day. RP 57-59. He contacted Allen Sellers at that location. RP 59. Based on the information he learned, Officer Rawlins detained Sellers and read him the *Miranda* warning. RP 60. Sellers said he'd received the check from "James" and "Mario," two homeless people he allowed to stay with him the previous night. RP 61-62. Sellers claimed that "James" told him that he ("James") had permission to use the check and that "James" signed the check as "James Cox," who he claimed was his grandfather. RP 62-63. However, Officer Rawlins asked Sellers if Sellers thought the check was stolen, and Sellers said "yes." RP 63. Later, Sellers changed his statement to say that it was actually "Mario" who made out and signed the check as James Cox, and that "Mario" was the one who claimed to be the grandson of James Cox. RP 63. After changing his statement, Officer Rawlins again asked Sellers if he thought the check was stolen, and Sellers confirmed that yes, he was "pretty sure" the check was stolen. RP 67.

Sellers was convicted of a single count of forgery. CP 20. This timely appeal followed. CP 61.

ARGUMENT

I. The evidence is sufficient to sustain the forgery conviction.

Sellers claims the evidence is insufficient to sustain his forgery conviction. This is so, he claims, because there was nothing about the check that was presented to Cash Connection that caused the clerk to believe it was stolen. Sellers cites no authority to support the proposition that a check must bear obvious indicia of being stolen before one can be convicted of forgery for presenting a stolen check, which the defendant knew to be stolen, and which the defendant knew to have been signed by a person other than the one with the authority to sign the check.

The State is required under the Due Process Clause to prove all the necessary elements of the crime charged beyond a reasonable doubt. U.S. CONST. amend. XIV, § 1; *In re Winship*, 397 U.S. 358, 362-65, 90 S. Ct 1068, 25 L.Ed.2d 368 (1970); *State v. Colquitt*, 133 Wn.App. 789, 796, 137 P.3d 893 (2006). When determining whether there is sufficient evidence to support a conviction, the evidence must be viewed in the light most favorable to the State. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). If “any rational jury could find the essential elements of the crime beyond a reasonable doubt”, the evidence is deemed sufficient. *Id.* An appellant challenging the sufficiency of evidence presented at a

trial “admits the truth of the State’s evidence” and all reasonable inferences therefrom are drawn in favor of the State. *State v. Goodman*, 150 Wn.2d 774, 781, 83 P.2d 410 (2004). When examining the sufficiency of the evidence, circumstantial evidence is just as reliable as direct evidence. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

“Criminal intent may be inferred from circumstantial evidence or from conduct, where the intent is plainly indicated as a matter of logical probability.” *State v. Billups*, 62 Wn.App. 122, 126, 813 P.2d 149 (1991), citing *State v. Caliguri*, 99 Wn.2d 501, 506, 664 P.2d 466 (1983) and *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980); *State v. Vasquez*, 178 Wn.2d 1, 8, 309 P.3d 318 (2013).

The appellate court’s role does not include substituting its judgment for the jury’s by reweighing the credibility of witnesses or importance of the evidence. *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). “It is not necessary that [we] could find the defendant guilty. Rather, it is sufficient if a reasonable jury could come to this conclusion.” *United States v. Enriquez-Estrada*, 999 F.2d 1355, 1358 (9th Cir. 1993), (quoting *United States v. Nicholson*, 677 F.2d 706, 708 (9th Cir. 1982)).

The determination of the credibility of a witness or evidence is solely within the scope of the jury and not subject to review. *State v. Myers*, 133 Wn.2d 26, 38, 941 P.2d 1102 (1997), citing *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). “The fact finder...is in the best position to evaluate conflicting evidence, witness credibility, and the weight to be assigned to the evidence.” *State v. Olinger*, 130 Wn.App. 22, 26, 121 P.3d 724 (2005) (citations omitted).

RCW 9A.60.020 defines forgery as follows:

(1) A person is guilty of forgery if, with intent to injure or defraud:

(a) He or she falsely makes, completes, or alters a written instrument or;

(b) He or she possesses, utters, offers, disposes of, or puts off as true a written instrument which he or she knows to be forged.

(2) In a proceeding under this section that is related to an identity theft under RCW 9.35.020, the crime will be considered to have been committed in any locality where the person whose means of identification or financial information was appropriated resides, or in which any part of the offense took place, regardless of whether the defendant was ever actually in that locality.

(3) Forgery is a class C felony.

The evidence presented in this case is sufficient to sustain the forgery conviction. Sellers received this check under suspicious circumstances, and admitted that he knew it was probably stolen when he attempted to cash it. And the check was, in fact, stolen. Mr. James Cox did

not know Sellers or give him permission to use a forged instrument to access his account. A rational juror could have found each element of forgery proven beyond a reasonable doubt. Sellers' conviction should be affirmed.

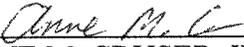
CONCLUSION

Sellers' convictions should be affirmed.

DATED this 22nd day of February 2016.

Respectfully submitted:

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