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COURT OF APPEALS, DIVISION II  
STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

vs.

DESHANNA NICOLE PALMER,

Appellant.

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On Appeal from the Pierce County Superior Court  
Cause No. 16-1-02281-4  
The Honorable Bryan Chushcoff, Judge

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OPENING BRIEF OF APPELLANT

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## **I. ASSIGNMENTS OF ERROR**

1. The state failed to prove the corpus delecti of forgery.
2. The State failed to present independent corroborating proof that DeShanna Palmer committed the crime of forgery.
3. The trial court erred by declining to grant the defense motion to dismiss at the close of the State's case.

## **II. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR**

1. Without DeShanna Palmer's admissions, was the independent evidence sufficient to establish the corpus delecti of the crime of forgery? (Assignments of Error 1 & 2)
2. Does a trial court err by denying a motion to dismiss when no evidence other than the defendant's statement exists to establish that a crime occurred? (Assignment of Error 3)
3. Where the State established that DeShanna Palmer presented a suspicious looking check, but presented no evidence that the check was actually fraudulent or that DeShanna Palmer knew it was fraudulent, did the State fail to establish the corpus delecti of the crime of forgery? (Assignments of Error 1, 2 & 3)

### III. STATEMENT OF THE CASE

#### A. PROCEDURAL HISTORY

The State charged DeShanna Nicole Palmer with one count of second degree burglary (RCW 9A.52.030), one count of forgery (RCW 9A.60.020) and one count of fourth degree assault (RCW 9A.36.041). (CP 1-2) Following a CrR 3.5 hearing, the trial court ruled that Palmer's custodial statements were admissible at trial. (2RP 113-19; CP 35-38)<sup>1</sup> The jury acquitted Palmer of the burglary and assault charges, but found her guilty of forgery and the lesser crime of criminal trespass. (CP 113-16; 6RP 491-92) The trial court imposed a standard range sentence and allowed Palmer to serve her time on electronic home monitoring. (SRP 17-18; CP 120-21, 134) Palmer timely appealed. (CP 147)

#### B. SUBSTANTIVE FACTS

Key Bank operates a branch on Pacific Highway in Fife. (4RP 299) The branch has a lobby area that is open to the public. (4RP 320, 321) There is a long, high counter area where customers and tellers conduct transactions. (RP 345-46, 386) The tellers stand behind the counter in an area that is accessed by a

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<sup>1</sup> The pretrial and trial transcripts, labeled Volumes 1 thru 6, will be referred to as "#RP." The transcript of the sentencing hearing will be referred to as "SRP."

four-foot tall door. (4RP 308, 309, 321, 386) The door remains closed and locked during business hours. (4RP 308, 309) Bank employees each have a key to unlock the door. (4RP 309, 327) The general public is not allowed behind the door or in the teller area. (4RP 330, 350)

Ruby Bates worked as a banker at the Fife branch. (4RP 299-300) On the afternoon of June 3, 2016, Bates was behind the counter at one of the teller stations assisting customers with their banking transactions. (4RP 300) A customer approached the counter and asked to cash a check. (4RP 301) The customer, DeShanna Palmer, handed Bates a check that appeared to be drawn on a Key Bank account held by Bartell Drugs. (4RP 301, 302; 5RP 406; Exh. 2)

Bates was familiar with Bartell Drugs checks, and thought the one presented by Palmer looked unusual. (4RP 304-05) She nevertheless began the process of cashing the check. (4RP 304) She asked for and received two forms of identification from Palmer. (4RP 303, 304) She then ran the check number, and found that it was out of sequence with other current Bartell checks. (4RP 304, 305)

Bates told Palmer that she would need to step away and call

Bartell and verify the validity of the check. (4RP 304, 306) Bates went to the other end of the teller line and called Bartell. (4RP 306, 307) As she was waiting for a response, Bates noticed that Palmer seemed upset, and was pacing back and forth. (4RP 301) Palmer asked Bates to give her back the check, but Bates said she needed to verify the check first. (4RP 310)

Palmer walked to the teller door, reached over the top, and opened the door from the inside. (4RP 310, 321, 327) She walked into the teller area and rushed towards Bates, demanding that she return the check. (4RP 310, 314, 326, 332, 337) Another teller blocked her path, but Palmer kept reaching towards Bates to try to get the check from her. (4RP 310, 311, 314-15, 337-38) Bates testified that Palmer knocked the telephone out of her hand and scratched her arm. (4RP 301, 314-15) Palmer said she wanted the check back so she could leave. (4RP 348)

Bates told Palmer to return to the lobby, and Palmer eventually complied. (4RP 332, 333) Another bank employee called the police to report the incident. (5RP 393) When responding officers arrived, they saw Palmer standing outside talking loudly on her cellular telephone. (4RP 356, 357; 5RP 402) Palmer walked towards the officers and appeared to be upset and

was trying to talk to them, but they could not initially understand what she was saying. (4RP 357-58) The officers quickly calmed Pamler down, then placed her into hand restraints and administered *Miranda* warnings before continuing with their investigation. (4RP 357-58; 5RP 403)

According to the officers, Palmer initially claimed the check was issued by Bartell Drugs as settlement for an injury that she sustained in one of their stores. (4RP 360-61; 5RP 403-04) She went to Key Bank to cash it, but she received a message from her daughter and needed to leave, but they would not give the check back to her. (4RP 364-65; 5RP 403-04)

According to Officer Mark Dorn, Palmer eventually changed her story when, out of the blue, she looked up at him and said, "I knew it was fake." (4RP 365-66) He clarified that she was talking about the check, and she told him that she was behind on her rent and was trying to use the check to get money to pay it. (4RP 368-69) She also acknowledged that she should not have gone behind the teller counter, but she denied touching any of the bank employees. (4RP 366-68)

The officers also testified that there were two different addresses for Palmer, one printed on the front of the check and one

written on the back where Palmer had endorsed the check, but neither matched the address listed on Palmer's identification. (4RP 363-64; 5RP 406; Exh. 2) The issue date listed on the check was that very day, but Palmer said she received the check in the mail. (5RP 404-05, 406; Exh. 2) Also, the check indicated that it had built-in security features, which apparently were absent. (5RP 407; Exh. 2)

#### **IV. ARGUMENT & AUTHORITIES**

The defense objected to the admission of Palmer's custodial statement acknowledging that she knew the check was forged, because there was insufficient evidence to prove the corpus delicti independent of Palmer's statements. (4RP 365) The trial court overruled the objection and allowed the officer to relate Palmer's statements to the jury. (4RP 365-69) After the State rested its case-in-chief, Palmer moved to dismiss the forgery charge on the same grounds. (5RP 416) The trial court denied the motion. (5RP 422-23) The trial court erred on both occasions because the State failed to present independent evidence that Palmer knowingly tried to pass a forged check.

The term "corpus delicti" means the "body of the crime." State v. Brockob, 159 Wn.2d 311, 327, 150 P.3d 59 (2006) (internal

quotation marks omitted) (quoting State v. Aten, 130 Wn.2d 640, 655, 927 P.2d 210 (1996). Under the corpus delicti rule, a defendant's self-incriminating statements cannot be the sole supporting evidence of the conviction. State v. Dow, 168 Wn.2d 243, 249, 227 P.3d 1278 (2010). The State must produce *independent* evidence other than the defendant's confession to provide prima facie corroboration that the crime described in the defendant's statement actually occurred. Brockob, 159 Wn.2d at 328.

This evidence need not be sufficient to support the conviction on a sufficiency of the evidence basis. Brockob, 159 Wn.2d at 328. "Prima facie corroboration of a defendant's incriminating statement exists if the independent evidence supports a 'logical and reasonable inference' of the facts sought to be provided." Brockob, 159 Wn.2d at 328 (internal quotation marks omitted) (quoting Aten, 130 Wn.2d at 656).

But the independent evidence must support a logical and reasonable inference of criminal activity only. Aten, 130 Wn.2d at 659-60. If the independent evidence also supports logical and reasonable inferences of non-criminal activity, it is insufficient to establish the corpus delicti. Aten, 130 Wn.2d at 659-60.

For example, in Brockob, the defendant stole about 20 packages of Sudafed, which could be used to make methamphetamine, and he admitted his purpose was to help someone make methamphetamine. 159 Wn.2d at 319. The State charged him with possession of pseudoephedrine with intent to manufacture methamphetamine. 159 Wn.2d at 319. Possession of Sudafed alone does not prove the intent to make methamphetamine, and the only evidence independent of Brockob's statement of his intent was a police officer's testimony that Sudafed was commonly used to make methamphetamine. 159 Wn.2d at 331. The Brockob Court held that the prosecution had not proved the corpus delicti of the crime independently of the defendant's statement because the officer's testimony that Sudafed may be used to make methamphetamine "does not necessarily lead to the logical inference that Brockob intended to do so, without more." 159 Wn.2d at 332.

Likewise, in Aten, the State presented medical evidence that was consistent with reasonable and logical inferences that a baby died either from asphyxiation or from sudden infant death syndrome. Because the evidence was equivocal, it was insufficient to establish the corpus delicti of a homicide, requiring exclusion of

the defendant's confession. 130 Wn.2d at 662, 665.

In this case, the State alleged that Palmer committed the crime of forgery. (CP 1-2, 106) "A person is guilty of forgery if, with intent to injure or defraud ... [h]e or she possesses, utters, offers, disposes of, or puts off as true a written instrument which he or she knows to be forged." RCW 9A.60.020(1)(b). Thus, "the corpus delicti to be established by the state is the crime of forgery." State v. Goranson, 67 Wn.2d 456, 458, 408 P.2d 7 (1965). So the State needed to show by independent evidence that a person (Palmer) knowingly, and with intent to injure or defraud, tried to cash a forged check.

The evidence presented at trial, independent of Palmer's statements, established the following facts: (1) Palmer presented Bates with a suspicious looking check that did not appear to be drawn on a valid Bartell Drugs account; (2) the check could not be immediately verified; (3) Palmer demanded that Bates return the check and tried to forcibly retrieve the check when Bates refused.<sup>2</sup> These facts do not establish a corpus delicti for the crime of forgery.

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<sup>2</sup> See 4RP 304-05, 310, 363-64.

First, these facts do not present a prime facie case that the check was actually forged. There was evidence that the check appeared to be fraudulent, but no witness provided direct, non-hearsay testimony that the check was in fact forged.<sup>3</sup> But even if the State's proof was sufficient on that point, the evidence did not show that Palmer knew it was forged and intended to defraud Key Bank by presenting the check to be cashed.

In fact, Palmer's behavior supports a logical and reasonable inference of non-criminal activity. Palmer provided two forms of valid identification when asked; she did not leave when there appeared to be a problem with the check; and she stayed at the scene and approached the officers to talk to them as soon as they arrived.<sup>4</sup> This is not the behavior of a person who knows she is committing a crime.

The State's case, independent of Palmer's statements, rested entirely on speculation unsupported by evidence. Because no sufficient independent evidence exists that would allow consideration of Palmer's admissions, the State failed to establish

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<sup>3</sup> Bates testified that she eventually learned the check was fraudulent. (4RP 319, 330) This testimony was not admitted to prove the truth of the matter asserted, but rather to explain Bates' motive in not returning the check to Palmer. (4RP 319, 330)

<sup>4</sup> See 4RP 304, 310, 333, 357.

the corpus delicti and the trial court erred by denying Palmer's motion to dismiss.

**V. CONCLUSION**

The State failed to satisfy the corpus delicti rule requiring corroborating evidence of each element of a crime absent an accused's confession. The defense motion to dismiss the forgery charge should have been granted. Palmer's conviction for forgery must be reversed.

DATED: January 31, 2018



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**CERTIFICATE OF MAILING**

I certify that on 01/31/2018, I caused to be placed in the mails of the United States, first class postage pre-paid, a copy of this document addressed to: DeShanna Palmer, 2405 S. Star Lake Road, Bldg. 62-302, Federal Way, WA 98003.



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STEPHANIE C. CUNNINGHAM, WSBA #26436

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