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Court of Appeals
Division II
State of Washington
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**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

DESHANNA NICOLE PALMER, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Bryan Chushcoff

No. 16-1-02281-4

Brief of Respondent

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Did the State prove the corpus delicti of the crime of forgery when it established a prima facie case that the crime of forgery admitted in defendant's statement to the police had been committed?

B. STATEMENT OF THE CASE.

1. PROCEDURE

DeShanna Nicole Parker, hereinafter "defendant," was charged with one count each of burglary in the second degree, forgery, and assault in the fourth degree for an incident occurring at Key Bank in Fife. 4RP 299-300; CP 1-2.¹ Following a jury trial defendant was convicted of trespass in the first degree, a lesser included offense of burglary, and forgery. 6RP 491-492; CP 113-116. Defendant was subsequently sentenced on her forgery conviction to 90 days in the Pierce County Jail, though the sentencing court gave her permission to complete her sentence on electronic home monitoring. SRP 17; CP 127-140. She also received a

¹ The pre-trial and trial transcripts are contained in six volumes with consecutive pagination and the sentencing hearing is contained in a separate volume with separate pagination. The pre-trial and trial transcripts are referenced as "#RP" and the sentencing transcript is referenced as "SRP." Both parties on appeal have utilized the same reference system. See Brf. of App. at 2 fn. 1.

suspended sentence as to the trespass conviction. CP 120-126. Defendant timely appealed. CP 147-169.

2. FACTS

On June 3, 2016, Ruby Bates was working as a teller at Key Bank on Pacific Highway in Fife. 4RP 299-300. There are four teller stations at the bank located directly in front of the entrance. 4RP 308. The only way to access the teller stations is to have a key to open the door to their area. *Id.* However, the door is only about five feet high and there is no key required to exit the teller area. 4RP 309; 4RP 326. Bates was working at the teller station closest to this door. 4RP 306.

At some point during Bates' shift, defendant came into the bank. 4RP 300-301. Defendant went to Bates' teller station and attempted to cash a check. 4RP 301. The check was from Key Bank with Bartell Drugs as the payor. 4RP 302, 307; Exh. 2. Since defendant was not a member of Key Bank, she was required to present two forms of ID to Bates. 4RP 303.

After receiving the two forms of ID, Bates began the process of cashing the check. This included having defendant sign the back of the check with an address, as well as a phone number. 4RP 304. When Bates actually received the check, she noticed that the coloring was off. *Id.* She was able to tell this because she sees payroll checks from Bartell Drugs "all of the time" due to a perk employees have with the bank. 4RP 305.

Even though the check coloring was off, she went forward with her normal protocol to pull up a check number. 4RP 304. She discovered that the check number was not consistent with the current account history for Bartell Drugs and that the sequence of the check number did not match up to current check numbers that had been issued. 4RP 304-305. She verified that the sequencing was not accurate from a database which bank employees can access. 4RP 305-306.

Once Bates was unable to verify the sequencing of the check, she stepped away to call Bartell Drugs to verify that the check was actually issued by them. 4RP 306. Because of where the telephone is located, she had to go to the teller window furthest away from her window. *Id.* As she was unable to get ahold of anyone at Bartell Drugs, she called the banker in charge of the account to verify the check's authenticity. 4RP 307. The whole process took around five minutes. *Id.* During these five minutes defendant was pacing back and forth in the lobby demanding her check back. 4RP 310. When she was told that she could have it back once it was verified, defendant got really loud and aggressive. *Id.* At that point, she reached over the teller door and was able to unlatch it from the inside. *Id.* She then pushed her way through the area behind the teller stations, reached Bates, and knocked the phone out of Bates' hand. *Id.* Defendant continued to try and rush Bates in an attempt to grab the check. *Id.*

Another teller placed his arm out, blocking defendant from reaching Bates. 4RP 311. She continued to try and reach around him to grab the check. *Id.* To prevent defendant from grabbing the check, Bates handed it to another teller. 4RP 313. Eventually, defendant exited the teller area and again was pacing around the lobby. 4RP 314. Throughout the entire encounter defendant was on and off of her phone. 4RP 324. Towards the end of the encounter the silent alarm was triggered. 4RP 342.

At around 3:50 p.m., Officer Mark Dorn of the Fife Police Department responded to the bank. 4RP 355-356. He was told that a woman had gone behind the teller counter and had attempted to pass a fraudulent or forged check. *Id.* Upon arriving at the scene he saw a woman, later identified as defendant, who matched the description of the suspect he was given. 4RP 356. She was located outside about 50 feet from the bank entrance. 4RP 356. Officer Dorn saw defendant was yelling into her phone. *Id.* She appeared to be upset and disheveled. *Id.* Because of what Officer Dorn had learned about the incident, he decided to detain her for safety reasons prior to proceeding with the investigation. *Id.* Once detained, she calmed down relatively quickly. 4RP 358. After reading

defendant her *Miranda*² rights, defendant chose to speak with Officer Dorn and another officer who had arrived on the scene. *Id.*

In speaking with defendant, Officer Dorn learned that she had attempted to cash the check she had received from Bartell Drugs. 4RP 360. She claimed that she had received the check a few days prior from the corporate office for an injury that had happened in one of their stores. *Id.* Eventually, while questioning defendant, Officer Dorn received the check from the bank. 4RP 362. He noticed that the check had a Seattle address affixed to it and that defendant endorsed the check with a Kent address. *Id.*; Exh. 2. He then discovered that defendant had a Federal Way address on file with the Department of Licensing. 4RP 363-364. Eventually, defendant admitted that she knew the check was fake. 4RP 366. Defendant also admitted that when she heard that the bank thought the check was no good and was going to contact law enforcement, only then did she start yelling, demanding the check back, and went behind the counter. 4RP 367. She refused to state from where she had received the check. 4RP 369.

² *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed.2d 694 (1966).

C. ARGUMENT.

1. THE STATE PROVIDED PRIMA FACIE CORROBORATION OF DEFENDANT'S INCRIMINATING STATEMENT WHEN IT ESTABLISHED THAT THE CHECK DEFENDANT TRIED TO CASH HAD BEEN FORGED.

The corpus delicti rule is a common law created evidentiary rule which sets forth the standard for laying a proper foundation before admitting a defendant's confession to the charged crime as evidence at trial. *State v. Cardenas-Flores*, 194 Wn. App. 496, 507, 374 P.3d 1217 (2016). The purpose of the rule is that a defendant's statements, without more, is not sufficient to support the inference that defendant committed the charged crime. *Cardenas-Flores*, 194 Wn. App. at 507-508. As stated in the seminal case of *State v. Meyer*, 37 Wn.2d 759, 226 P.2d 204 (1951).

The confession of a person charged with the commission of a crime is not sufficient to establish the *corpus delicti*, but if there is independent proof thereof such confession may then be considered in connection therewith and the *corpus delicti* established by a combination of the independent proof and the confession.

Meyer, 37 Wn.2d at 763 (emphasis in original). However, the "independent evidence need not be of such a character as would establish the corpus delicti beyond a reasonable doubt, or even by a preponderance of the proof." *Id.* All that is required is that prima facie evidence establishes the corpus delicti. *Meyer*, 37 Wn.2d at 764. The corpus delicti

must merely show that a crime was committed by someone, not proof of the identity of who committed the crime. *City of Bremerton v. Corbett*, 106 Wn.2d 569, 574, 723 P.2d 1135 (1986).

Corpus delicti does not necessarily require that there be evidence which would independently establish the mens rea element of knowledge. *State v. C.M.C.*, 110 Wn. App. 285, 287, 40 P.3d 690 (2002). Rather, all that is required is “objective proof or substantial fact that a crime has been committed.” *C.M.C.*, 110 Wn. App. at 288 (quoting *State v. Solomon*, 73 Wn. App. 724, 727, 870 P.2d 1019 (1994) (quoting Black’s Law Dictionary 344 (6th ed. 1990))). This Court has even noted that previous attempts to require that every element of the charged crime need be proved to establish the corpus delicti have been unable to cite to any such case which stands for that proposition. *Cardenas-Flores*, 194 Wn. App. at 520.

Here, the only corpus delicti issue defendant raises is related to whether the check was actually forged and whether defendant know it was forged. *See* Brf. of App. at 10. The evidence independent of defendant’s statements show that the check was indeed forged and it does not matter if defendant knew the check was forged. During her testimony, Bates provided a multitude of information that created a prima facie showing that the check was indeed forged. She testified that when she received the

check, she noticed that the coloring was off. *Id.* She was able to tell this because she sees payroll checks from Bartell Drugs “all of the time.” 4RP 305. Even though the check coloring was off, she went forward with her normal protocol to pull up a check number. 4RP 304. She discovered that the check number was not consistent with the current account history for Bartell Drugs and that the sequence of the check number did not match up to current check numbers that have been issued. 4RP 304-305. She verified that the sequencing was not accurate from a database bank employees can access. 4RP 305-306.

This evidence can be used to establish that the check was not a valid check. Bates had experience with Bartell Drugs’ checks and knew that this one did not appear to be legitimate. The check number not having been issued clearly shows that the check was in fact, not a legitimate check. Such establishes that the check was likely forged. While this might not be sufficient evidence to support a conviction independent of other evidence, such is not required. Rather, only a prima facie showing is required. *Meyer*, 37 Wn.2d at 764. This evidence does indeed establish prima facie evidence of forgery.

As to the knowledge element, the State is not required to establish the mens rea element of knowledge of forgery for this defendant. *C.M.C.*, 110 Wn. App. at 287. Rather, the State is merely required to establish that

a crime was committed by someone. *Corbett*, 106 Wn.2d at 574. As argued above, there was prima facie evidence that the crime of forgery did occur. It does not matter for corpus delicti purposes if this defendant knew the check was forged. All that matters is that someone knew the check was forged. It is a logical conclusion that whoever made the fraudulent check knew it was forged. Because the creator of the fraudulent check knew it was forged, the corpus delicti of knowledge has been met. As such, defendant's conviction should be affirmed.

Defendant erroneously compares this case to *State v. Brockob*, 159 Wn.2d 311, 150 P.3d 59 (2006) and *State v. Aten*, 130 Wn.2d 640, 927 P.2d 210 (1996). *See* Brf. of App. at 8. Neither case though supports defendant's assertion. In *Brockob*, defendant stole 24-30 packages of various kinds of cold medicines. *Brockob*, 159 Wn.2d at 318. He was charged with unlawful possession of pseudoephedrine and/or ephedrine with intent to manufacture methamphetamine. *Brockob*, 159 Wn.2d at 319. Our Supreme Court found that the corpus delicti had not been met because defendant only possessed a quantity of Sudafed. *Brockob*, 159 Wn.2d at 332. Mere possession of Sudafed is not sufficient to independently establish that defendant intended to manufacture methamphetamine versus just possessing Sudafed. *Id.* In *Aten*, the issue had to do with there being two reasonable and logical conclusions on what

caused the victim to die, one being based on criminal conduct and one being based on innocent conduct. *Aten*, 130 Wn.2d at 661-662. Because there were two reasonable and logical conclusions on why the victim died, the corpus delicti was not met. *Id.*

The facts of both of these cases are radically different from the facts in this case. Unlike in *Brockob*, having a fraudulent check with the intent to cash it cannot be construed as having an item for non-criminal reasons. Cashing a fraudulent check is only done in an attempt to unjustly enrich one's self. Further, unlike in *Aten*, there are not two reasonable and logical conclusions about the conduct here. Defendant had a fake check which she tried to have cashed. Such actions can only be described as criminal conduct, not innocent conduct. This cannot be characterized as an innocent mistake. A person would know that the check is likely forged.

Defendant also argues that her actions within the bank can be considered innocent conduct. *See* Brf. of App. at 10. However, her actions were indicative of criminal conduct. While defendant did give Bates two different forms of ID, her addresses were wildly inconsistent. The front of the check has a Seattle address for defendant, but she endorsed the check using a Kent address. 4RP 362; Exh. 2. Her address on file with the Department of Licensing was for neither the Seattle address nor the Kent address, but rather an address in Federal Way. 4RP 363-364. Defendant

providing multiple conflicting addresses was likely a way to avoid detection and police finding her if she was caught trying to pass the forged check.

Defendant did not merely stay at the bank when there appeared to be something wrong with the check. Rather, when she was told she could get her check back once it was verified, she got loud and aggressive. 4RP 310. She then accessed the teller area without authorization and attempted to retrieve the check by force. *Id.*; Exh. 1. Defendant pushed her way through the area behind the teller stations, reached Bates, and knocked the phone out of Bates' hand. *Id.* She continued to try and rush Bates to grab the check. *Id.* Another teller had to physically block defendant from forcibly retrieving the check. 4RP 311; Exh. 1. To prevent defendant from grabbing the check, Bates handed it to another teller. 4RP 313. This is not innocent conduct or the conduct of someone who thinks they have a legitimate check; it is the conduct of someone who is trying to retrieve evidence which they know implicates them in a crime. As defendant had an item which could only be used for criminal purposes and her conduct was consistent with criminality, not innocence, the corpus delicti is met. This Court should affirm her conviction.

D. CONCLUSION.

This Court should affirm defendant's conviction for forgery as the corpus delicti was met. There was prima facie evidence that a crime had been committed as the check numbers did not match those which had been issued by Bartell Drugs. The State is not required to show that this defendant knew that the check was forged, but only that someone did. Whoever made the forged check knew it was not legitimate. The corpus delicti is met and defendant's conviction for forgery should be affirmed.

DATED: March 26, 2018

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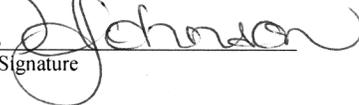
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PIERCE COUNTY PROSECUTING ATTORNEY

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