

62424-5

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NO. 62424-5-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

PHENG KEOPRASEURT,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE PALMER ROBINSON

BRIEF OF RESPONDENT

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A. ISSUE PRESENTED

A verdict shall be overturned due to insufficient evidence only when, in viewing the evidence in a light most favorable to the State, no rational juror could have found the elements of the charged crime beyond a reasonable doubt. In this case, Pheng Keopraseurt cashed a forged check from an unused packet of checks after having been told by the victim that she would not be receiving such money, received a check for money owed to her on the same day she cashed the forged check, and offered to pay the victim back when confronted about the crime. Did the jury have sufficient evidence to conclude that Keopraseurt was guilty of Forgery?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS.

On February 25, 2008, Keopraseurt was charged by information in King County Superior Court with the crime of Forgery. RCW 9A.60.020(1)(a) and (b); CP 1. The statute reads as follows:

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

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

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

On August 13, 2008, a jury found Keopraseurt guilty as charged under part (b) of the charging language. CP 13. Based on her offender score of 0, Ms. Keopraseurt received a sentence of 13 days confinement, with one day credit for time served, and the remaining 12 days converted to 96 hours of community service. CP 27-32.

2. SUBSTANTIVE FACTS.

The University of Washington hired Deborah Skorstad in 2003 as a costumer. RP 36. In 2005, Skorstad was diagnosed with multiple sclerosis. RP 37. The disorder affected Skorstad's cognitive abilities but it did not have an effect on her memory. RP 57. Due to complications with the disorder, in 2006 Skorstad decided to hire a house cleaner. RP 37.

Skorstad worked with Keopraseurt at the University of Washington, where Keopraseurt cleaned the building in which they both worked. RP 39. Skorstad agreed to pay Keopraseurt \$100 per cleaning, twice a month. RP 40. Keopraseurt's cleaning duties were not particularized, and included keeping the entire house

clean. RP 46. Ultimately, Keopraseurt would work for Skorstad for about a year and a half to two years. RP 41. During the time of Keopraseurt's employment, Skorstad always paid Keopraseurt by check. RP 50, 91. Skorstad always wrote the checks herself, and either gave the check directly to Keopraseurt or left it on the table if Keopraseurt was coming to the house that day. RP 50. Skorstad never gave Keopraseurt a blank check. RP 50.

During the time of employment, Keopraseurt would occasionally ask for an advance on her payments. RP 41. Sometimes Skorstad was able to accommodate Keopraseurt. RP 42. There were three or four times, however, when Skorstad was not able to provide advanced payments as requested by Keopraseurt. RP 43. Skorstad testified at trial that Keopraseurt always had "very important" reasons for why she needed larger sums of money, whether it was helping her son with legal troubles or coming up with ransom money for a kidnapped relative. RP 42-43.

In the second or third week of November 2007, Keopraseurt asked Skorstad for an advance on her payments. RP 45. Skorstad told Keopraseurt that she could not afford to provide an advanced payment at that time, but Keopraseurt still asked her for the

advance a total of three times during a two-week period. RP 46.

All of these requests for advanced payments were denied. RP 46.

On December 2, 2007, Skorstad discovered that her bank account had been greatly diminished. RP 47. By viewing her account online, she discovered a check written for \$700 that had been made out to Keopraseurt on November 21, 2007 and cashed by Keopraseurt on November 26, 2007. RP 47; Ex. 1. The check was out of sequence from the rest of Skorstad's checks, and it originated from a block of checks that were not being used by Skorstad at that time. RP 47. These checks were still in the mailing packaging and were kept in Skorstad's desk drawer. RP 47. Keopraseurt did not have permission to access Skorstad's desk drawers. RP 53. Skorstad had a habit of making sure her checks were always in sequence so she could keep track of them more easily. RP 53.

On November 26, 2007, Skorstad wrote a check for \$200 to Keopraseurt for her services that month, and told Keopraseurt what the check was for. RP 48.

When Skorstad realized that she had been victimized by a forged check, she contacted both the police and her bank. RP 49. She also gave Keopraseurt a letter terminating her employment

because of the forged check and asking that Keopraseurt return her key to the house. RP 51. Keopraseurt came to the house the morning after she received the letter and told Skorstad that she was sorry and that she would pay her back. RP 54.

In trial, the State admitted into evidence four of Skorstad's checks. RP 137. Three of the checks had been properly issued to Keopraseurt. RP 137. As to the other check, which is the forged check in this matter, Skorstad testified that neither the handwriting nor the signature on the check was hers. RP 137.

Testifying at trial, Keopraseurt admitted that she cashed the forged \$700 check. RP 93. She also admitted that Skorstad had told her in November of 2007 that she could not have an advanced payment. RP 98. Keopraseurt claimed in trial that Skorstad left her the \$700 check on her table at home. RP 95. Keopraseurt further testified in trial that she did not apologize to Skorstad after receiving the termination letter, but instead told Skorstad that she would pay her back by working without pay. RP 100.

After a three-day trial, the jury returned a verdict of guilty against Keopraseurt on this charge. CP 13.

Keopraseurt now appeals. In her appeal, Keopraseurt does not contest that the check was forged, nor does she contest that

she was the one who cashed the check. Rather, Keopraseurt's only argument -- and hence the only issue on appeal -- is that there existed insufficient evidence for a rational juror to conclude that she knowingly cashed a forged check.

C. **ARGUMENT**

In this case, the State had to prove four elements to the jury: (1) that on or about November 26, 2007, Keopraseurt possessed, uttered, offered, disposed of, or put off as true a written instrument that had been falsely made, completed, or altered; (2) that Keopraseurt knew the instrument had been falsely made, completed, or uttered; (3) that Keopraseurt acted with the intent to injure or defraud; and (4) that the acts occurred in Washington. RCW 9A.60.020(1)(b); State v. Baldwin, 150 Wn.2d 448, 455, 78 P.3d 1005 (2003). A jury may find that a defendant had actual knowledge if it finds that an ordinary person would have had knowledge under the circumstances. In Re Personal Restraint of Sarausad, 109 Wn. App. 824, 838, 39 P.3d 308 (2001). While possession alone is not enough to prove knowledge, possession together with slight corroborating evidence of knowledge may be sufficient. State v. Scoby, 117 Wn.2d 55, 61-62, 810 P.2d 1358

(1991). In this appeal, Keopraseurt does not dispute that the State provided sufficient evidence for a jury to find, beyond a reasonable doubt, the first and fourth elements. Keopraseurt only challenges the second element (which logically includes the third element) and argues that insufficient evidence existed for the jury to find that she knowingly possessed and cashed a forged check. This is incorrect.

1. SUMMARY OF THE LAW -- SUFFICIENCY OF THE EVIDENCE.

An appellate court reviews a claim of insufficiency of the evidence to determine whether, viewing the evidence most favorable to the State, any rational juror could have found the elements of the charged crime beyond a reasonable doubt. State v. Smith, 155 Wn.2d 496, 501, 120 P.3d 559 (2005); State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). In evaluating whether this standard has been met, the State's evidence is accepted as true -- indeed, in challenging the sufficiency of the evidence, the appellant is deemed to have admitted the truth of the State's evidence and all reasonable inferences that can be drawn therefrom. Smith, 155 Wn.2d at 201. The appellant has an exacting burden since the reviewing court will only reverse a

conviction for insufficiency of the evidence where no rational trier of fact could find that all the elements of the crime were proved beyond a reasonable doubt. Id. Further, the appellate court will defer to the trier of fact for purposes of determining credibility, resolving conflicting testimony, and evaluating the evidence. State v. Jackson, 129 Wn. App. 95, 109, 117 P.3d 1182 (2005), rev. denied, 156 Wn.2d 1029, 133 P.3d 484 (2006).

2. THE JURY HAD SUFFICIENT EVIDENCE TO CONCLUDE THAT KEOPRASEURT KNOWINGLY POSSESSED, UTTERED, OFFERED, DISPOSED OF, OR PUT OFF AS TRUE A FORGED CHECK.

Viewing all inferences in favor of the prosecution, substantial evidence existed to support the jury's verdict that Keopraseurt knowingly possessed, uttered, offered, disposed of, or put off as true a forged check. Keopraseurt admits that she cashed the check in question. Keopraseurt is also not challenging the sufficiency of the evidence showing that a written instrument had been falsely made, completed, or altered. The only issue on appeal is whether Keopraseurt knew the check she cashed had been forged.

The two weeks leading up to the cashing of the forged check are probative as to knowledge. Although Skorstad had given

Keopraseurt payment advances in the past, in November of 2007 she told Keopraseurt repeatedly that she could not give her an advance. RP 46. This communication, and the frequency in which it happened, gave Keopraseurt clear notice that Skorstad would not be giving her an advance payment. Keopraseurt's claim that Skorstad wrote the \$700 check and left it on a table without further explanation, despite the fact that Skorstad had told her repeatedly that no such check would be issued, is not credible.

Evidence of Keopraseurt's knowledge of the forged check is further bolstered by the fact that she received a legitimate check for her work in November of 2007 on the same day that she cashed the forged check. RP 48; Ex. 1. This fact, taking into consideration the fact that Keopraseurt had been told multiple times that she would not be getting an advance payment, means Keopraseurt had knowledge of the forged check.

Either version of the way in which Keopraseurt responded to Skorstad's letter ending the employment is highly probative on the issue of knowledge in this appeal. According to Skorstad, Keopraseurt told her she was sorry and that she would pay her back. RP 54. This evidence is extremely incriminating as to knowledge of forgery. Keopraseurt refuted Skorstad's testimony,

but she testified that she told Skorstad "I will pay you back by working for you and not getting my pay." RP 100. At no time during the discussion did Keopraseurt deny forging the check, attempt to defend herself against the allegation, or even inquire as to what Skorstad was talking about. This is not the way an innocent person would respond to an allegation of forgery.

Evidence as to the location at which the forged check had been kept is also of importance in this matter. The check in question came from a packet of checks that were still in their mailing packaging and kept in Skorstad's desk drawer. RP 47. Skorstad was not using these checks at the time of the crime. RP 47. Under these circumstances, someone wrongfully obtained possession of a blank check belonging to Skorstad. Keopraseurt's job entailed keeping the house clean, and her duties were not restricted to specific parts of the house. RP 46. The trial record is devoid of any evidence showing that anyone other than Skorstad had permission to access these checks.

Keopraseurt knew or should have known that the handwriting and signature on the forged check was not Skorstad's. The State entered four of Skorstad's checks (including the forged check) into evidence for the jury to analyze as they deliberated on a

verdict. Three of the four checks were identified by Skorstad as legitimate checks she had written to Keopraseurt, and Skorstad testified at trial that the handwriting and signature on the forged check were not hers. RP 137. Keopraseurt had received legitimate checks written by Skorstad in the past. RP 50, 91.

In short, viewing the evidence provided as true, the facts showed that Keopraseurt knowingly possessed and cashed a forged check. Keopraseurt had great need for additional money in November of 2007 but was denied an advanced payment several times. Despite this, she obtained an out-of-sequence check not written by Skorstad for \$700 in late November, cashing the check on the same day that she received a legitimate paycheck. When confronted on the issue, Keopraseurt apologized and said she would pay Skorstad back. Based on this evidence, there can be little doubt that this constituted sufficient evidence for a rational trier of fact to find that Keopraseurt knowingly possessed, uttered, offered, disposed of, or put off as true a forged check. Accordingly, Keopraseurt's contention that insufficient evidence exists to show that she knowingly possessed and cashed a forged check should be rejected, and Keopraseurt's appeal must be denied.

D. CONCLUSION

For the foregoing reasons, this Court respectfully asks this Court to affirm the lower court conviction.

DATED this 15th day of July, 2009.

Respectfully submitted,

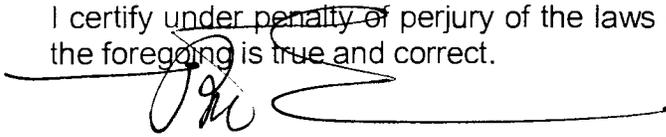
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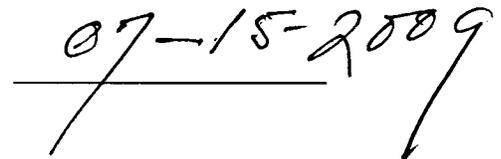
Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Thomas M. Kummerow, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Brief of Respondent, in STATE V. KEOPRASEURT, Cause No. 62424-5-1, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



Bora Ly Date
Done in Seattle, Washington



07-15-2009