

NO. 70812-1-1

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

REC'D
FEB 12 2014
King County Prosecutor
Appellate Unit

STATE OF WASHINGTON,

Respondent,

v.

MAHAMUD HARO,

Appellant.

FILED
COURT OF APPEALS DIVISION ONE
STATE OF WASHINGTON
2014 FEB 12 PM 4:29

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Timothy Bradshaw, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The trial court abused its discretion by permitting the State to introduce Haro's bank statements showing a low or negative balance as evidence of knowledge.

2. The trial court erred by permitting the State to argue to the jury, over defense objection, that the fact Haro had previously only made deposits in small amounts showed he forged a check for a larger amount.

Issue Pertaining to Assignments of Error

Did the trial court abuse its discretion by permitting the State to introduce Haro's bank statements and to use Haro's poverty to imply that he was more likely to be guilty of forgery?

B. STATEMENT OF THE CASE

On August 29, 2011, someone deposited a check for \$4768.25 into an account in the name of Mahamud Haro. Exh. 1, RP 203.¹ The check was drawn on the account of Thuy Nguyen and made out to Haro. Exh. 1, RP 197. Thuy Nguyen testified that she did not write this check and did not know Haro. RP 217. She said the signature on the check was not hers. RP 217.

¹ The four volumes of the verbatim report of proceedings are sequentially numbered and hereinafter referred to as "RP."

The person making the deposit at the bank ATM also made a withdrawal of \$200. RP 212. The bank returned Nguyen's check for insufficient funds. RP 213. A Bank of America representative testified that the bank's total loss was \$273. RP 207.

Haro was charged with one count of forgery. CP 26. He was found guilty as charged. RP 337. He was sentenced to fifteen days of jail time. RP 344. This appeal timely follows. CP 68-69.

C. ARGUMENT

THE TRIAL COURT ERRED BY PERMITTING THE STATE TO INTRODUCE HARO'S BANK STATEMENTS AND TO USE HARO'S POVERTY TO IMPLY THAT HE WAS MORE LIKELY TO BE GUILTY OF FORGERY.

Prior to trial, the defense moved to exclude Haro's bank statements, arguing that these statements were irrelevant and that the probative value was outweighed by the prejudice. RP 89, 91, 96. Haro argued that the bank statements show a low and overdrawn balance and therefore could be used improperly by the jury to infer that because Haro was poor, he was more likely to have committed the crime. RP 89, 91-92, 96. According to the State, the bank statements were relevant to "the essential elements of the case, including knowledge." RP 89. The State argued that showing the jury Haro had not made a deposit over \$394.80 in the three months surrounding the disputed deposit would show "that

this is an out of ordinary occurrence, making it more likely—from a relevance standpoint, more likely than not that this is a forged instrument.” RP 90.

The court ruled under ER 401 and 403 that the bank statements were admissible because “to the element of knowledge, there is sufficient relevance to be found,” and would not result in unfair prejudice. RP 95. The court further ruled that because the evidence would go to the defendant’s knowledge that the check was forged, it would not be excluded under ER 404(b). RP 97-98, 99.

Haro’s bank statements were introduced as Exhibit 1. They show that in the three months prior to the deposit of the disputed check, of the daily balance was often at or near a balance of \$0. The overdraft fees incurred were redacted. RP 185.

In closing argument, the prosecutor argued that because Haro did not “have a lot of money” in his bank account, he decided to forge and deposit the check. RP 302. Haro’s objection of “improper comment” was overruled. RP 302. The State then argued to the jury that if they looked to Haro’s bank account, they would see that no other transaction “comes close” to \$4768.25 and

that this goes to Haro's knowledge that the check was forged. RP

304. In rebuttal, the prosecutor told the jury:

And [Haro] clearly knew exactly what he was doing. He intended to do it. He intended to do it . . . Why else would somebody forge a check for that amount of money when it's shown that in his account there is no other transaction that even comes close to that? This is clearly a forged check and he's clearly the one that did it.

RP 328-29.

The trial court abused its discretion by denying the defense motion to exclude Haro's bank statements and in overruling the defense objection to the prosecutor's improper argument to the jury that Haro's low bank balance made him more likely to commit forgery.

"Relevant evidence is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." State v. Jones, 93 Wn. App. 166, 173, 968 P.2d 888 (1998); ER 401. Under ER 403, relevant evidence may be excluded if "its probative value is substantially outweighed by the danger of unfair prejudice." State v. Rice, 48 Wn. App. 7, 13, 737 P.2d 726 (1987). A trial court's rulings on evidence are reviewed using the "manifest abuse of discretion" standard. State

v. Luvene, 127 Wn.2d 690, 707, 903 P.2d 960 (1995). The improper admission of evidence is harmless error only where that evidence is of minor significance in reference to the “overall, overwhelming evidence as a whole.” State v. Bourgeois, 133 Wn.2d 389, 403, 945 P.2d 1120 (1997).

Here, the State was permitted to introduce Haro’s bank statements, purportedly to show his “knowledge” that the check was forged. Those statements show that Haro had a very low to negative balance at the time the check was deposited. Exh. 1. The State used this evidence of Haro’s poverty to argue that it made him more likely to commit a crime to obtain money. RP 302, 304, 328-29.

In State v. Jones, the Court explained problems with the admissibility of the defendant’s financial status:

In crimes where acquisition of money is a primary motive, such as drug dealing, the State could always craft a theory that financial hardship led to the defendant’s commission of the crime. It would follow that evidence of a defendant’s financial status would be routinely admitted, and the jury would be invited to infer, solely on the basis of a defendant’s income, that he or she is more likely to have committed a financially-motivated offense. This inference is impermissible.

93 Wn. App. at 175.

In Jones, a drug delivery case, the court permitted the introduction of evidence of Jones' unemployment because the State was permitted to show that Jones had no legitimate source of the large amount of cash found on him after the alleged drug deal. 93 Wn. App. at 175-176. The Court stressed that if Jones had not had cash on his person, the evidence would have been inadmissible, and that:

any inquiry into a criminal defendant's financial situation should be undertaken with extreme care. . . . The evidence should be sufficiently limited to its purpose so that any stigma of bankruptcy or poverty is not made a point of primary focus for the jury. . . .

93 Wn. App. at 176, n.20.

While the defendant's lack of money might be somewhat relevant to show why he might commit a crime to obtain money, the practical result of such an argument is to put a poor person under unfair suspicion and at a relative disadvantage to another person with more money. That is the reason courts have permitted evidence of the defendant's financial status only when the focus is not on the defendant's poverty and where the evidence is essential to the State's theory of the case. See State v. Jones, 93 Wn. App. 166; and State v. Matthews, 75 Wn. App. 278, 877 P.2d 252 (1994) (evidence of defendant's dire financial status was admitted to

support the State's theory that the defendant's financial woes motivated him to commit a robbery that ended in murder only because the defendant's identity was disputed and the State's theory of the case—interrupted robbery led to murder—depended on its admission).

In this case, the bank statements were not essential to the State's theory of the case, nor did the probative value of this evidence to knowledge or motive outweigh its prejudicial effect. The State's theory of the case was that Haro forged one of Nguyen's checks and deposited it in his account. RP 301-310. The fact that Haro had a low account balance does not make that theory any more or less probable, unless the argument is that a poor person is more likely to forge a check, which is the impermissible inference.

Haro's knowledge, the reason given for the admission of this evidence by the trial court, was never in dispute. The State argued Haro forged the check and the defense argued that the State had not proved that Haro forged the check. RP 301-310; 315-316. Thus, the trial court erred by admitting, over defense objection, the evidence of Haro's poverty and permitting the State to argue it

showed Haro was more likely to have committed the crime of forgery.

The trial court erroneously permitted the State to bring in evidence of Haro's poverty and argue to the jury, over defense objection, that his low bank balance proved his guilt. This evidence was not relevant to knowledge, nor any other fact necessary to the State's theory of the case.

Moreover, the prejudice of putting this evidence before the jury was unfair in that it permitted the impermissible inference that Haro's poverty made him more likely to commit a monetary crime like forgery. This error was not harmless. The prosecutor's arguments to the jury that Haro was "clearly" guilty of forgery, based on the history of low deposits in his account, was the last argument he made to the jury before deliberation and would have been fresh in jurors' minds. Therefore, the trial court's admission of this evidence was manifest error requiring reversal and retrial.

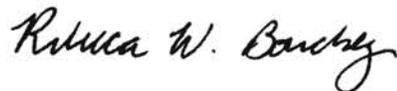
D. CONCLUSION

Haro's forgery conviction should be reversed because the trial court erroneously permitted the State to introduce irrelevant and unfairly prejudicial evidence of Haro's poverty and to argue that Haro's low bank balance made him more likely to commit this crime.

DATED: February 12, 2014

Respectfully submitted,

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DIVISION ONE

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MAHAMUD HARO,)	
)	
Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 12TH DAY OF FEBRUARY, 2014, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY EMAIL AND/OR DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] MAHAMUD HARO
C/O PRIVATUS FIRST CLASS
2721 SW TRENTON STREET
P.O. BOX 46542
SEATTLE, WA 98146

SIGNED IN SEATTLE WASHINGTON, THIS 12TH DAY OF FEBRUARY, 2014.

x *Patrick Mayovsky*

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