

NO. 70812-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

MAHAMUD M. HARO,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE TIMOTHY A. BRADSHAW

BRIEF OF RESPONDENT

DANIEL T. SATTERBERG
King County Prosecuting Attorney

PETER D. LEWICKI
Deputy Prosecuting Attorney
Attorneys for Respondent

King County Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000

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A. ISSUES PRESENTED

1. Rulings as to the admissibility of evidence are reviewed for abuse of discretion. When the trial court spent considerable time discussing the admissibility of the appellant's bank account records, their relevance to an essential element of the offense charged, and where the court ruled that certain redactions to the bank records would prevent any unfair prejudice, does the appellant fail to show that the trial court abused its discretion in admitting the evidence?

2. Where there is substantial evidence introduced beyond the bank records to support the verdict, is any error harmless in light of the overwhelming evidence?

B. STATEMENT OF FACTS

Mahamud Haro deposited a check into his Bank of America checking account on August 29, 2011, at an automated teller machine (ATM) located at the Westwood Village branch. RP 199-203. The check was drawn from a Bank of America account belonging to Thuy Nguyen, and made payable to Haro for \$4,768.25. RP 197. A photograph of Haro making the transaction was captured on the ATM's camera. RP 200. Haro immediately

withdrew \$200 from his account after depositing the check.

RP 212.

Nguyen lived at 11635 First Avenue South before moving in 2011. RP 216. Nguyen ordered new checks from Bank of America in 2011, but never received them. RP 216. Nguyen did not know Haro, did not recognize him in court, nor did she ever write a check for \$4,768.25 to Haro or anyone else. RP 217. Nguyen testified that neither the handwriting nor the signature on the check were hers. RP 217-18.

Detective Laura Alspach of the King County Sheriff's Office investigated the matter, and received a copy of the fraudulent check from Bank of America. RP 222-23. Detective Alspach went to 11635 First Avenue South, Unit D106, on October 11, 2011 in an attempt to contact Haro. RP 223-24. This was also the address listed on the fraudulent check. RP 223. After knocking on the door of the unit and receiving no answer, Detective Alspach left a business card with a handwritten note stating: "Mahamud Haro, please call." RP 224-25. After approximately one hour, the detective received a phone call from a person acknowledging that he was Mahamud Haro and was calling in response to the business card left at the residence. RP 225-26.

The residence, part of the Arbor Heights Apartments in Seattle, is approximately three miles from the Westwood Village, less than a ten-minute drive. RP 226.

At trial during preliminary motions, Haro objected to the introduction of State's Exhibit Number 1, Haro's checking account records from Bank of America. RP 88-89. The court entertained argument from both parties about the relevance and purposes for which the exhibit would be admitted. RP 88-100. The court weighed the probative value and potential for prejudice, denied the objection, and found that the exhibit is admissible for the purposes of establishing "knowledge," and that all references to "overdraft" fees or fines be redacted. RP 94-95, 100. The court encouraged Haro to propose a limiting instruction. RP 99.

Exhibit Number 1 was admitted at trial. RP 193. Bank of America investigator Tim Whitesitt testified that Exhibit Number 1 reflected account records for Haro, and that the check-deposit in question occurred at the Westwood banking center. RP 199, 203. Whitesitt also testified that the records contained in Exhibit Number 1 enabled him to determine which ATM and on which date and time the check was deposited. RP 200, 203. Also admitted at trial was a certified copy of Haro's Washington Driver's License,

with an example of his signature. RP 244-45. Haro was found guilty of the crime of Forgery. CP 35.

C. ARGUMENT

1. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN ADMITTING EXHIBIT NUMBER 1.

Haro argues that the trial court abused its discretion in allowing Exhibit Number 1 to be admitted at trial. An appellate court reviews a trial court's evidentiary rulings for an abuse of discretion. State v. Atsbeha, 142 Wn.2d 904, 913, 16 P.3d 626 (2001). To show abuse of discretion, it must be clear that an action was manifestly unreasonable, exercised on untenable grounds, or for untenable reasons. State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). An abuse of discretion occurs only when no reasonable judge would take the view adopted by the trial court. State v. Castellanos, 132 Wn.2d 94, 97, 935 P.2d 1353 (1997). A decision is manifestly unreasonable if it falls outside the range of acceptable choices, given the facts and the applicable legal standard; if the record does not support the factual findings; or if the court misapplies the law. In re Marriage of Littlefield, 133 Wn.2d 39, 43, 940 P.2d 1362 (1997); State v. Rundquist, 79 Wn. App.

786, 793, 905 P.2d 922 (1995). The burden is on the appellant to prove abuse of discretion. State v. Asaeli, 150 Wn. App. 543, 573, 208 P.3d 1136 (2009) (citing State v. Wade, 138 Wn.2d 460, 464, 979 P.2d 850 (1999)).

Evidence is relevant if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” ER 401. Even if relevant, evidence may still be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. ER 403; State v. Acosta, 123 Wn. App. 424, 433, 98 P.3d 503 (2004). The trial court’s determination in balancing probative value of evidence against its prejudicial impact is reviewed for abuse of discretion. State v. Greathouse, 113 Wn. App. 889, 918, 56 P.3d 569 (2002).

The State proffered that Haro’s bank records were relevant to the element of “knowledge.” RP 89-91. The court instructed the jury that “[a] person commits the crime of forgery when, with the intent to injure or defraud, he or she possesses, offers, disposes of or puts off as true, a written instrument which he or she knows to be forged.” CP 46; WPIC 130.01. The court weighed the probative value relative to the potential for prejudice. RP 92-95, 98-99. The

court found that the records, when compared with the value of the check Haro deposited into his account, were relevant as to the element of “knowledge.” RP 95-99. The court, when presented with the defense argument that the State was introducing the records for improper character purposes, conducted further analysis under ER 404(b). RP 96-97. The court heard that the evidence was offered for a valid non-character purpose, to show that the deposit of a check totaling \$4,768.25 was totally inconsistent with other transaction history. The trial court exercised proper discretion in ordering the State to redact any “overdraft” fees or assessments. RP 94-95. The court also properly cautioned against any improper argument about Haro being indigent or impoverished. RP 94. The court properly exercised discretion in denying the defense motion to exclude Haro’s account records.

2. THERE IS OVERWHELMING EVIDENCE
SUPPORTING THE CONVICTION.

If the introduction of Haro’s account records is deemed an abuse of discretion, the evidence presented at trial establishing knowledge is overwhelming and reversal is unwarranted. When the trial court commits an evidentiary error, such error justifies reversal

if it results in prejudice. State v. Bourgeois, 133 Wn.2d 389, 403, 945 P.2d 1120 (1997). Prejudice from an evidentiary error occurs where, within reasonable probabilities, the error materially affects the outcome of the trial. Id. An error is harmless if the evidence is of minor significance compared with the overwhelming evidence as a whole or where other evidence establishes the same facts. Id.

The evidence included testimony that Haro lived at the same address that Nguyen previously resided. Nguyen's name and address were on the face of the check. In 2011 Nguyen ordered checks but never received them from the bank, that Haro was photographed at the ATM making the deposit, that the check was made payable to Haro, and that Nguyen did not know him nor did she write him a check at any time. Nguyen emphatically stated that the check was not written in her handwriting, nor was the signature hers. Haro called Detective Alspach, identifying himself by name over the telephone, shortly after she left a business card with a message asking "Mahamud Haro, please call."

The jury also had a certified copy of Haro's driver's license as well as the "signature card" associated with his bank records with which to compare the endorsement line on the back of the forged check. The introduction of the account records supported

Haro's dominion and control over the account into which the forged check was deposited, and was additional circumstantial evidence that he knew the check was unauthorized.

The account records were but one part of the trial, and they were introduced and argued properly. Even if the introduction of the records were determined to be an abuse of discretion, the evidence as a whole is overwhelming and supports the jury's verdict.

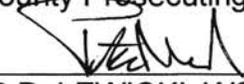
D. CONCLUSION

For the foregoing reasons, Haro's conviction should be affirmed, as the court properly admitted his account records and exercised discretion in ordering redactions to prevent potential prejudice from revealing overdraft fees. The evidence at trial was overwhelming and consistent with the jury's verdict.

DATED this 9th day of May, 2014.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 
PETER D. LEWICKI, WSBA #39273
Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

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 Rebecca Wold Bouchey, the attorney for the appellant, at Nielsen, Broman & Koch, 1908 East Madison Street, Seattle, WA 98122, containing a copy of the Brief of Respondent, in STATE V. MAHAMUD M. HARO, Cause No. 70812-1-I, 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.



PETER D. LEWICKI, WSBA# 39273
Done in Seattle, Washington

5-6-2014

Date 5/6/14

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