

NO. 34727-0

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

ERIC W. DOWNING, APPELLANT

FILED
COURT OF APPEALS
DIVISION II
06 DEC 21 PM 2:25
STATE OF WASHINGTON
BY ~~W. J. LARKIN~~

Appeal from the Superior Court of Pierce County
The Honorable James Orlando
The Honorable Thomas Larkin

No. 05-8-00219-8

BRIEF OF RESPONDENT

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

1. Did the State present sufficient evidence for a rational fact finder to conclude that defendant was guilty of forgery?

B. STATEMENT OF THE CASE.

1. Procedure

On February 8, 2005, the State charged Eric Williams Downing, hereinafter “defendant” with one count of forgery under Pierce County Juvenile Court cause number 05-8-00219-8. CP¹ 1.

The case was assigned to the Honorable James Orlando. RP 2. On February 21, 2006, the court held a fact-finding hearing, where the judge found defendant guilty as charged. RP 94-95. The court entered findings of fact and conclusions of law. CP 4-6; see Appendix A. In its findings of fact, the court found that defendant asked his sister to fill out his name because her handwriting was more legible than his, and then defendant gave the bank teller a false reason as to why the check he presented to the teller was completed with different inks. Id. The court concluded that these facts were sufficient to prove defendant acted with the intent to defraud or injure the bank. Id. The court imposed six months of

¹ Citations to Clerk’s Papers will be to “CP.” Citations to the verbatim report of proceedings for trial will be to “RP,” and citations to non-trial transcripts will be to “RP” followed by the date of the hearing.

supervision and 20 hours of community service, together with the standard fees and restitution of \$92.25. CP 9-15; RP (03/21/06) 8-9.

Defendant filed a timely notice of appeal from his judgment and sentence. CP 22.

2. Facts

On January 24, 2005, defendant went to a Keybank and presented a check for \$800.00 to the teller to cash. RP 35-39. The bank teller noticed that the “pay to the order of” line was in a different ink than the rest of the check. RP 37. She also thought it unusual that the “for” line said “payday,” and the amount was an even number. RP 38. In the teller’s experience, paychecks indicate the dates of the pay cycle and are not issued in even amounts. RP 38.

Defendant gave the teller two pieces of identification; his passport and his Rogers High School student ID card. RP 39. He also supplied his thumbprint. RP 39. When the teller asked defendant about the difference in the ink appearing on the check, defendant told her that his friend’s girlfriend wrote defendant’s name on the check. RP 39. He also told her that the check was not his, but it was his friend’s paycheck. RP 40.

The teller informed defendant that she would have to get her manager’s approval to cash the check, and defendant left the building to get his friend. RP 40-41. The bank manager called the Keybank branch

that issued the check and discovered that the check had been stolen. RP 40.

City of Puyallup police officer Brian Vaughn responded to the bank's report of defendant's attempt to cash the stolen check. RP 46-47. When he arrived at the bank, Officer Vaughn spoke to the bank teller and was presented with the stolen check. RP 47. Using the phone number written on the back of the check, Officer Vaughn called defendant and spoke to him about the incident. RP 52.

Defendant testified that on January 5, 2005, his neighbor, Randy Donahue asked defendant to cash a check for him because he did not have proper identification. RP 72. Defendant asked his mother for permission first, and then agreed to cash the check. RP 72. Defendant testified that he was concerned because Mr. Donahue's name was not on the check, but Mr. Donahue and another friend took defendant to the bank, where defendant presented the check, gave identification, signed the check, and cashed it. RP 73-74. The teller cashed the check and defendant left the bank and gave the cash to Mr. Donahue. RP 75.

Defendant also testified that Mr. Donahue asked him to cash another check on January 24, 2005. RP 75-76. When the teller questioned the check, defendant got Mr. Donahue. RP 77. When the bank refused to cash the check, defendant and Mr. Donahue left the bank. RP 78.

Defendant testified that he did not know that the checks were bad until after he and Mr. Donahue left the bank, and that he called the police

when he found out. RP 81, 83. However, defendant later admitted that it was the police who contacted him. RP 84. Defendant also testified that he saw that Mr. Donahue had written in defendant's name, but then stated that when Mr. Donahue arrived at defendant's house, the check was blank and Mr. Donahue wrote in defendant's name. RP 84. Finally, defendant admitted that his 14-year-old sister wrote his name in the "pay to the order of" line on the check. RP 84-85, 88. Defendant admitted that his sister wrote his name for both checks, and that they had her write in the name because he and Mr. Donahue have bad handwriting. RP 85, 87.

Defendant also gave conflicting testimony regarding whether or not his mother knew that defendant's sister filled out his name. RP 87.

Defendant first testified that his mother did not know that his sister wrote in his name, but then stated that he had told her. RP 87.

Defendant's mother testified that defendant had spoken to her before agreeing to cash the checks, and she told him it would be a good idea for him to learn "life skills." RP 65. Mrs. Downing informed the court that defendant was impressionable, had dyslexia, and characterized him as a "follower," rather than a "leader." RP 67-68.

C. ARGUMENT.

1. THE STATE PRESENTED SUFFICIENT EVIDENCE FOR A RATIONAL FACT FINDER TO CONCLUDE THAT DEFENDANT WAS GUILTY OF FORGERY AS CHARGED.

Due process requires that the State bear the burden of proving each and every element of the crime charged beyond a reasonable doubt. State v. McCullum, 98 Wn.2d 484, 488, 656 P.2d 1064 (1983). The applicable standard of review is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Joy, 121 Wn.2d 333, 338, 851 P.2d 654 (1993). Also, a challenge to the sufficiency of the evidence admits the truth of the State's evidence and any reasonable inferences from it. State v. Barrington, 52 Wn. App. 478, 484, 761 P.2d 632 (1987), review denied, 111 Wn.2d 1033 (1988) (citing State v. Holbrook, 66 Wn.2d 278, 401 P.2d 971 (1965)). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

The court must give deference to the trier of fact, who resolves conflicting testimony, evaluates the credibility of witnesses, and generally weighs the persuasiveness of the evidence. State v. Walton, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992). In considering this evidence, “[c]redibility determinations are for the trier of fact and cannot be

reviewed upon appeal.” State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990) (citing State v. Casbeer, 48 Wn. App. 539, 542, 740 P.2d 335, review denied, 109 Wn.2d 1008 (1987)). Because the written record of a proceeding is an inadequate basis on which to decide issues based on witness credibility, “great deference . . . is to be given the trial court’s factual findings. It, alone, has had the opportunity to view the witness’ demeanor and to judge his veracity.” State v. Cord, 103 Wn.2d 361, 367, 693 P.2d 81 (1985) (citations omitted). Therefore, when the State has produced evidence of all the elements of a crime, the decision of the trier of fact should be upheld.

An appellate court reviews only those findings to which error has been assigned; unchallenged findings of fact are verities upon appeal. State v. Hill, 123 Wn.2d 641, 644, 647, 870 P.2d 313 (1994). As to challenged factual findings, the court reviews the record to see if there is substantial evidence to support the challenged facts; if there is, then those findings are also binding upon the appellate court. Id. Substantial evidence exists when there is a sufficient quantity of evidence to persuade a fair-minded, rational person of the truth of the finding. Id. The trial court’s conclusions of law are reviewed de novo. State v. Mendez, 137 Wn.2d 208, 214, 970 P.2d 722 (1999).

Under RCW 9A.60.020(1)(b), a person is guilty of forgery if, with intent to injure or defraud, he possesses, utters, offers, disposes of, or puts off as true a written instrument which he knows to be forged. Forgery

requires the making, completing, or altering of a written instrument. State v. Baldwin, Wn. App. 631, 641, 45 P.3d 1093 (2002).

Defendant assigns error to the court's Finding of Fact VI, specifically the last sentence which reads, "when asked by [the bank teller], Downing gave a false reason as to why the check was completed with different ink." See Appellant's Opening Brief at 1.

Defendant did not testify regarding his conversation with Ms. Canzler. See RP 77. However, Ms. Canzler testified that when she asked defendant about the different inks on the check, defendant told her that his friend's girlfriend wrote his name in. RP 39. Clearly, the court found Ms. Canzler's testimony credible. See CP 4-6. Defendant testified at trial that he had his sister write his name on the check. RP 85.

Because credibility determinations are for the trier of fact, Ms. Canzler's testimony represented substantial evidence to support the court's finding that defendant gave Ms. Canzler a false reason for there being two different inks on the check. Defendant's misrepresentation was relevant because the court could infer that defendant knew it was wrong to have someone else fill out his name. By telling Ms. Canzler that his friend's girlfriend completed the check, rather than his own sister, defendant directed the wrongdoing away from himself or his sister. Taken in the light most favorable to the State, defendant's behavior in lying to Ms. Canzler is sufficient evidence for a reasonable fact finder to infer that defendant intended to injure or defraud the bank.

The court's findings of fact support the legal conclusion that defendant intended defraud or injure when he presented the forged check to the bank.

The State also presented sufficient evidence to prove that defendant acted with the knowledge that the check was forged. Defendant admitted that his 14-year-old sister had no connection to the company who owned the checking account and he had her fill out his name on the check because she had better handwriting. RP 87. When he asked his sister to put his name on the check and she did so, defendant made, completed, and altered a written instrument. When he attempted to cash the check, defendant knew that his sister filled out his name. There can be no doubt that defendant knew the check was forged.

Finally, despite defendant's contention, the court's oral ruling that, "to have the younger sister put Eric's name on it when he knew she had no connection to this business whatsoever, that's forgery," was not a conviction of an uncharged offense. RP 94. A defendant's knowledge that an instrument was forged is an element of forgery. See RCW 9A.60.020(1)(b). The court's oral ruling was a specific finding that defendant knew or had reason to know that the check was, in fact, forged because it had been completed or altered by a person without the authority to do so.

D. CONCLUSION.

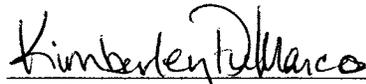
For the reasons stated above, the State respectfully requests this court to affirm the trial court's judgment.

DATED: DECEMBER 21, 2006

GERALD A. HORNE
Pierce County
Prosecuting Attorney



MICHELLE HYER
Deputy Prosecuting Attorney
WSB # 32724



Kimberley DeMarco
Rule 9 Intern

Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

12/21/06 [Signature]
Date Signature

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BY [Signature] DEPUTY

APPENDIX “A”

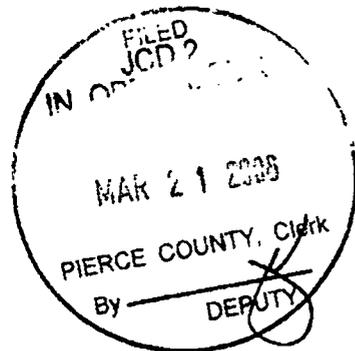
Findings of Fact and Conclusions of Law

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05-8-00219-8 25157710 FNCL 03-21-06



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE
JUVENILE COURT

STATE OF WASHINGTON,
Plaintiff,
vs.
ERIC WILLIAMS DOWNING
D.O.B.: 11/01/88
JUVIS#: 917281-R020
Respondent.

CAUSE NO. 05-8-00219-8

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

THIS MATTER having come on before the Honorable James R. Orlando, Judge of the above entitled court, for trial on February 21, 2006, upon an information charging the respondent with FORGERY; the respondent having been present and represented by SCOTT MESSINGER and the State being represented by Deputy Prosecuting Attorney SUE L. SHOLIN, and the court having observed the demeanor and heard the testimony of the witnesses and having considered the arguments of counsel and being duly advised in all matters, the Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

I.

That ERIC WILLIAMS DOWNING, age 17, is a juvenile, being born on 11/01/88

II.

LLLL
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1
2 That on February 8, 2005, an Information was filed charging the respondent with

3 FORGERY.
4

5 III.

6 That all relevant events occurred in Pierce County, Washington.

7 IV.

8 That on or about January 24, 2005, DOWNING possessed check number 6621 for the
9 account of Jim Robinson Enterprises, LLC.
10

11 V.

12 The check was made out to DOWNING in the amount of \$800.00. The check had
13 been given to DOWNING by his teen neighbor, Randy Donahue, so that DOWNING could
14 cash it using his identification.

15 VI.

16 DOWNING presented the check to bank teller Trish Canzler at Key Bank, seeking to
17 cash the check. DOWNING knew the check had been completed by his younger sister who
18 had written his name on the payee line at his request. DOWNING had asked her to complete
19 the check for him because her handwriting was more legible than his. If Canzler had not
20 noted defects on the check, such as that the check was completed with different inks,
21 DOWNING would have again received \$800.00 cash from Robinson's business account as
22 he had a few days earlier. When asked by Canzler, DOWNING gave a false reason as to
23 why the check was completed with different inks.
24

25 VII.
26

27
28
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1
2 DOWNING did not know Jim Robinson, nor did Robinson know DOWNING or
3 Donahue. Robinson did not issue the check to, or authorize the use of it by, either
4 DOWNING or Donahue. Robinson testified that the check was stolen.
5

6 From the foregoing Findings of Fact, the Court makes the following Conclusions of
7 Law.

8 CONCLUSIONS OF LAW

9 I.

10 That the Court has jurisdiction of the parties and subject matter.
11

12 II.

13 That ERIC WILLIAMS DOWNING is guilty beyond a reasonable doubt of the crime
14 of FORGERY in that, on 01/24/05, in Washington, he possessed, offered or put off as true a
15 written instrument, check number 6621 drawn on the account of Jim Robinson Enterprises,
16 LLC, with the intent to defraud or injure and knowing the check was forged.
17

18 DONE IN OPEN COURT this 21 day of March, 2006.

19
20 Presented by:

21 [Signature]
22 Deputy Prosecuting Attorney
23 WSB# 21333

24 Approved as to Form:

25 [Signature]
26 Attorney for Respondent
27 WSB# 33776
28

sls

[Signature]
JUDGE JAMES R. ORLANDO
FILED
JCD 2
IN OPEN COURT
MAR 21 2006
PIERCE COUNTY, Clerk
By [Signature] DEPUTY

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