

Original

NO. 36545-2-II

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

STATE OF WASHINGTON,

Respondent,

v.

SCOTT HAYNES,

Appellant.

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DIVISION TWO
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ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KITSAP COUNTY

The Honorable Theodore Spearman, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The state failed to prove beyond a reasonable doubt that Mr. Haynes knew that the bills in his wallet were counterfeit.

Issue Presented on Appeal

Did the state fail to prove beyond a reasonable doubt that Mr. Haynes knew that the bills in his wallet were counterfeit?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

On June 26, 2007, Scott James Haynes was charged by amended information with was one count of forgery in violation of RCW 9A.60.020(1), one count of bail jumping in violation of RCW 9A.76.170, and one count of theft in the third degree in violation of RCW 9A.56.050 and .020. CP 6.1 Mr. Haynes was tried by a jury, the honorable Judge Theodore Spearman presiding. Mr. Haynes was convicted as charged. CP 44-45. This timely appeal follows. CP 57.

2. SUBSTANTIVE FACTS

a. Forgery

Mr. Haynes purchased jewelry at the Silverdale Target store on January 22, 2006. RP 30, 31. Using a camera security staff Justin Oстераas

¹ CP refers to the clerk's papers designated from Kitsap County Superior Court Cause

observed the bills Haynes used and believed that they were counterfeit. RP 31-32. Osteraas observed Mr. Haynes make another transaction at the jewelry counter, but did not observe a transaction at the electronics counter. RP 35. Mr. Haynes grabbed a handful of CD's and left the store. RP 31-32. The jewelry counter transactions were observed on film. Id.

Osteraas collected counterfeit bills from the electronics cashier and from the jewelry cashier. RP 34, 39. Osteraas could not identify who used the bills at the electronics counter but the bills matched those found at the jewelry cashier RP 39. Officer Eric Stevens from the Kitsap County Sheriff's department responded to Target on January 22, 2006 and saw Mr. Haynes in his vehicle at the Target store. RP 42. Stevens asked Mr. Haynes if he had purchased items at Target to which Haynes responded "yes" and produced receipts. Mr. Haynes admitted to stealing the CD's. RP 44.

Officer Stevens removed counterfeit twenty dollar bills and fifty dollar bills from Mr. Haynes wallet. RP 45, 53. All of the serial numbers for the twenty dollar bills were the same and all of the serial numbers for the fifty dollar bills were the same. RP 46. Stevens testified that the bills did not feel like real money, but he admitted that he had no training in identifying counterfeit money. RP 46, 49.

b. Bail Jumping

Mary Allen the supervisor for the Kitsap County Clerk's testified that clerk's are trained to take note of what occurs in the court room. RP 77. Ms. Allen never saw Mr. Haynes before and does not know if was in Court on January 23, 2006 or February 27, 2007. RP 75-76. Ms. Allen reviewed court documents and testified that according to the clerk's minutes, the judge orally and in writing advised Mr. Haynes of his future court dates. RP 64-65, 74. Ms. Allen does not know if Mr. Haynes actually received a copy of the court's order indicating his future court dates or if he was orally informed of those court dates. RP 73-74. Ms. Allen also does not know if the clerk's minutes are accurate. RP 77.

C. ARGUMENT

1. THE STATE FAILED TO PROVE THE
ESSENTIAL ELEMENT OF INTENT IN THE
CHARGE OF FORGERY

In order to convict a defendant of a charged crime, the State bears the burden of producing evidence sufficient to prove every element of the offense beyond a reasonable doubt. In re Winship, 397 U.S. 358, 363, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970); State v. Baeza, 100 Wn.2d 487, 490, 670 P.2d 646 (1983). A conviction unsupported by sufficient evidence violates a

defendant's constitutional right to due process. U.S. Const. amend. 14;² Jackson v. Virginia, 443 U.S. 307, 319, 61 L. Ed. 2d 560, 99 S. Ct. 2781 (1979); Seattle v. Slack, 113 Wn.2d 850, 859, 784 P.2d 494 (1989).

In considering a claim of insufficiency of the evidence, an appellate court must determine "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." Jackson v. Virginia, 443 U.S. at 323; State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980).

The forgery statute RCW 9A.060.020, provides in part:

(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, disposes of, or puts off as true a written instrument which he **knows** to be forged.

(Emphasis added) RCW 9A.60.020(1).

At issue in Haynes' case is the lack of evidence that he knew the bills he used were forged. Under subsection (a), for Haynes to have intended to

²The Fourteenth Amendment provides that no person shall be deprived of life, liberty, or property without due process of law. U.S. Const. amend. 14.

injure or defraud, he had to know that the bills were forged; and under subsection (b) for Haynes' possession of the forged bills to be a criminal act he had to know that the bills were forged.

The evidence established that Haynes made two purchases at Target with forged bills and he had additional forged bills in his wallet. Haynes did not admit to knowing the bills were forged, but he did admit to stealing several CD's. This is insufficient to establish that Haynes knew the bills were forged. Evidence is only sufficient if it is adequate to justify a rational trier of fact's finding of guilt beyond a reasonable doubt. State v. Simmons, 113 Wn. App. 29, 33, 51 P.3d 828 (2002) citing, State v. Ortega-Martinez, 124 Wn.2d 702, 708, 881 P.2d 231 (1994).

In Simmons, the defendant possessed a one dollar bill that had been altered to appear as though it was a twenty dollar bill by taping the corners of a twenty dollar bill on to the one dollar bill. While in jail on other charges, the person in charge of processing property noticed that the bill was altered. Simmons denied knowing that the bill was altered but later conceded that he had intended to defraud but maintained that he did not intend to injure. State v. Simmons, 113 Wn. App. at 33. The Court ultimately held that if evidence supported intent to defraud then it also supported intent to injure because the words were used in the "same sense". *Id.*

In State v. Scoby, 117 Wn.2d 55, 810 P.2d 1358 (1991), a case also involving an altered \$1 bill to appear as though it was a \$20 bill, the defendant passed the altered bill off at a gas station to buy gas. The attendant did not initially look at the bill but as soon as she did she realized that it was altered. Scoby unsuccessfully argued that the altered bill was not a “written instrument and that there was insufficient evidence that he knew the bill was altered. Scoby was not charged with altering the bill himself. Scoby, 117 Wn.2d at 61-62. The Court without much conviction held that because the jury “might have reasonably inferred that the alteration of the bill was so obvious” Scoby too must have known the bill was altered. Id.

The instant case is distinguishable from both Simmons and Scoby. Unlike in Simmons, Haynes never admitted to knowing the bills were altered and unlike in Scoby, there was no evidence that the alterations in the bills were immediately obvious. In Haynes’ case, there was no evidence that the cashiers failed to look at the bills; rather a security person testified that the cashiers were supposed to work fast. Osteraas suspected the bills were altered but did not know until after close examination. Similarly, the officer who arrested Haynes, who admitted to not being an expert simply testified that the paper did not feel right. Neither the officer nor Osteraas testified that the alterations were “obvious”. RP 46, 49. The bills used here were not cut

and pasted together but were single congruous representations. These facts distinguish Haynes case from Simmons and Scoby and render the evidence insufficient to establish beyond a reasonable doubt that Haynes knew the bills were altered. This Court should reverse the conviction for forgery and dismiss with prejudice.

D. CONCLUSION

Mr. Haynes respectfully requests this Court: reverse his forgery conviction and dismiss with prejudice for insufficient evidence that Mr. Haynes intended to commit the crime of forgery.

DATED this 8th day of January 2008.

Respectfully submitted,

LISE ELLNER
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Attorney for Appellant

I, Lise Ellner, a person over the age of 18 years of age, served the Pierce County prosecutor's office 930 Tacoma Ave. S. Rm. 946, Tacoma, WA 98402 and James Haynes DOC# 734524 Clallam Bay Corrections 1830 Eagle Crest Way Clallam Bay, WA 98326 January 8, 2008.. Service was made by depositing in the mails of the United States of America, properly stamped and addressed.

Signature

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STATE OF WASHINGTON
BY: [unclear]
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