

original

NO. 36645-2-II

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

STATE OF WASHINGTON,

Respondent,

v.

SCOTT HAYNES,

Appellant.

FILED  
COURT OF APPEALS  
DIVISION II  
03 APR 24 AM 11:57  
STATE OF WASHINGTON  
BY *[Signature]*  
DEPUTY

ON APPEAL FROM THE SUPERIOR COURT OF  
KITSAP COUNTY, STATE OF WASHINGTON  
Superior Court No. 07-1-00137-7

BRIEF OF RESPONDENT

RUSSELL D. HAUGE  
Prosecuting Attorney

JEREMY A. MORRIS  
Deputy Prosecuting Attorney

614 Division Street  
Port Orchard, WA 98366  
(360) 337-7174

SERVICE

Lise Ellner  
P.O. Box 2711  
Vashon, WA 98070

This brief was served, as stated below, via U.S. Mail or the recognized system of interoffice communications. I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED April 23, 2008, Port Orchard, WA

*[Signature]*  
Original AND ONE COPY filed at the Court of Appeals, Ste. 300, 950 Broadway, Tacoma WA 98402; Copy to counsel listed at left.

**TABLE OF CONTENTS**

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ..... ii

I. COUNTERSTATEMENT OF THE ISSUES.....1

II. STATEMENT OF THE CASE.....1

III. ARGUMENT.....5

    A. VIEWING THE EVIDENCE IN A LIGHT MOST FAVORABLE TO THE STATE, THE EVIDENCE WAS SUFFICIENT TO SHOW THAT THE DEFENDANT KNEW THAT THE BILLS WERE FORGED BECAUSE THE JURY COULD HAVE REASONABLY DETERMINED THAT: (1) THE DEFECTS IN THE BILLS WERE OBVIOUS ENOUGH TO DEMONSTRATE THAT THE DEFENDANT KNEW OR SHOULD HAVE KNOWN THAT THE BILLS WERE FAKE; AND, (2) THE FACT THE DEFENDANT’S BEHAVIOR WAS UNUSUAL ENOUGH TO DRAW THE ATTENTION OF AN ASSET PROTECTION SPECIALIST DURING THE TIME FRAME WHEN THE DEFENDANT HAPPENED TO PASS NUMEROUS COUNTERFEIT BILLS WAS NOT A MERE COINCIDENCE AND LEAD TO THE REASONABLE CONCLUSION THAT THE DEFENDANT WAS ACTING UNUSUALLY BECAUSE HE WAS NERVOUS ABOUT PASSING THE BILLS THAT HE KNEW WERE FAKE. ....5

IV. CONCLUSION.....11

**TABLE OF AUTHORITIES**

**CASES**

*State v. Baeza*,  
100 Wn. 2d 487, 670 P.2d 646 (1983).....6

*State v. Camarillo*,  
115 Wn. 2d 60, 794 P.2d 850 (1990).....6

*State v. Delmarter*,  
94 Wn. 2d 634, 618 P.2d 99 (1980).....6

*State v. Green*,  
94 Wn. 2d 216, 616 P.2d 628 (1980).....6

*State v. Moles*,  
130 Wn. App. 461, 123 P.3d 132 (2005).....6

*State v. Pirtle*,  
127 Wn. 2d 628, 904 P.2d 245 (1995), .....5

*State v. Scoby*,  
117 Wn. 2d 55, 810 P.2d 1358 (1991).....6, 7, 8, 9

*State v. Walton*,  
64 Wn. App. 410, 824 P.2d 533 (1992).....6

**STATUTES**

RCW 9A.08.010(1).....7

RCW 9A.60.020 .....6

## **I. COUNTERSTATEMENT OF THE ISSUES**

1. Whether, viewing the evidence in a light most favorable to the state, the evidence was sufficient to show that the Defendant knew that the bills were forged when the jury could have reasonably determined that: (1) the defects in the bills were obvious enough to demonstrate that the Defendant knew or should have known that the bills were fake; and, (2) the fact the Defendant's behavior was unusual enough to draw the attention of an asset protection specialist during the time frame when the Defendant happened to pass numerous counterfeit bills was not a mere coincidence and lead to the reasonable conclusion that the Defendant was acting unusually because he was nervous about passing the bills that he knew were fake?

## **II. STATEMENT OF THE CASE**

### **A. PROCEDURAL HISTORY**

Scott Haynes was charged by amended information filed in Kitsap County Superior Court with forgery, bail jumping, and theft in the third degree. CP 6. Following a jury trial, the Defendant was convicted as charged, and the trial court imposed a standard range sentence. CP 44, 45. This appeal followed.

### **B. FACTS**

In early 2007, Justin Osteraas was working as an asset protection specialist at a Target store in Silverdale. RP 28-30. Part of his job was to

look for suspicious behavior in the store and to watch for theft and fraud. RP 29. On January 22, Mr. Osteraas saw the Defendant in the store and noticed that his behavior was “a little off.” RP 30-31. The Defendant caught Mr. Osteraas’s attention because he was “looking around a lot.” RP 31. Mr. Osteraas started watching the Defendant via a closed-circuit television system located in the store’s asset protection office. RP 30-31. The Defendant selected some jewelry and then went to the counter to purchase it. RP 31. Mr. Osteraas saw that the defendant paid in cash, specifically with fifty-dollar bills, and when Mr. Osteraas zoomed in on the cash he “saw that it was distorted.” RP 31. When asked what he meant by this, Mr. Osteraas explained,

Distorted, the edges of the bill, the way that it was printed on there was kind of skewed a little bit. It did not look proportional, by any means.

RP 31-32. Mr. Osteraas also testified that when he zoomed in on the money it was “rather obvious” that the bills were counterfeit. RP 37.

While Mr. Osteraas continued surveillance of the Defendant, another asset protection specialist went down to the jewelry counter and retrieved the bills. RP 32. The bills were “skewed” and both of them had identical serial numbers. RP 32.<sup>1</sup>

---

<sup>1</sup> Mr. Osteraas explained that although the cashiers are supposed to examine all large-dollar

Mr. Osteraas continued to watch the Defendant who then walked toward the door of the store. RP 32. Before exiting, the Defendant took a bag containing a number of CD's out of cart and walked out without paying for them. RP 32-33. Mr. Osteraas and the other store employee confronted the Defendant and asked him if he had a receipt for the items. RP 33. The Defendant denied knowing anything about the CDs, but produced receipts for two transactions at the jewelry counter and one at the electronics counter. RP 33. The store employees collected the money that the Defendant had presented and it consisted of seven fifty-dollar bills and two twenty-dollar bills. RP 33-34.

Deputy Sheriff Eric Stevens arrived at the Target store and contacted the Defendant in the parking lot. RP 43. The Defendant admitted that he had made three purchases and had used \$50 and \$20 bills. RP 44. The Defendant initially denied that he had shoplifted the CDs, but later admitted to Deputy Stevens that he had stolen the CDs and the CDs were eventually recovered from the Defendant's car. RP 44-45. The Defendant was arrested, and Deputy Stevens found several \$50 and \$20 bills in the Defendant's wallet. RP 45.

---

bills, in most cases the cashiers don't really check them. RP 36. He explained that this was probably due to the fact that the cashiers have "speed scores" on the registers and supposed to process transactions at a certain level to maintain a speedy checkout process and that failure to do so could cost a cashier their job. RP 37.

Deputy Stevens explained that the bills recovered from the Defendant's wallet "felt and looked the same" as the money recovered from the store and noted that the serial numbers for all of the \$50 bills (including those recovered from the store and those found in the Defendant's wallet) were identical. RP 46. The serial numbers for all of the \$20 bills also matched. RP 46. Deputy Stevens noted that the bills "didn't feel proper" and "didn't feel like real money." RP 46-47. Rather, the bills felt like regular paper and "didn't have that kind of cloth texture to them." RP 46-47. Deputy Stevens also explained that the bills did not have the appropriate security features such as the "fibers embedded in the paper" and the "strip that runs through the middle of the paper." RP 48. The bills themselves were admitted into evidence and several were published to the jury. RP 47-48.

### III. ARGUMENT

- A. **VIEWING THE EVIDENCE IN A LIGHT MOST FAVORABLE TO THE STATE, THE EVIDENCE WAS SUFFICIENT TO SHOW THAT THE DEFENDANT KNEW THAT THE BILLS WERE FORGED BECAUSE THE JURY COULD HAVE REASONABLY DETERMINED THAT: (1) THE DEFECTS IN THE BILLS WERE OBVIOUS ENOUGH TO DEMONSTRATE THAT THE DEFENDANT KNEW OR SHOULD HAVE KNOWN THAT THE BILLS WERE FAKE; AND, (2) THE FACT THE DEFENDANT'S BEHAVIOR WAS UNUSUAL ENOUGH TO DRAW THE ATTENTION OF AN ASSET PROTECTION SPECIALIST DURING THE TIME FRAME WHEN THE DEFENDANT HAPPENED TO PASS NUMEROUS COUNTERFEIT BILLS WAS NOT A MERE COINCIDENCE AND LEAD TO THE REASONABLE CONCLUSION THAT THE DEFENDANT WAS ACTING UNUSUALLY BECAUSE HE WAS NERVOUS ABOUT PASSING THE BILLS THAT HE KNEW WERE FAKE.**

The Defendant argues that there was insufficient evidence to support the forgery charge because there was insufficient evidence to show that he knew the bills were fake. App.'s Br. at 4. This claim is without merit because, viewing the evidence in a light most favorable to the State, a rational jury could have found each element of the crime beyond a reasonable doubt.

Evidence is sufficient if, taken in the light most favorable to the State, it permits a rational jury to find each element of the crime beyond a reasonable doubt. *State v. Pirtle*, 127 Wn.2d 628, 643, 904 P.2d 245 (1995),

*cert. denied*, 518 U.S. 1026 (1996); *State v. Green*, 94 Wn.2d 216, 220-21, 616 P.2d 628 (1980). A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom. *State v. Moles*, 130 Wn. App. 461, 465, 123 P.3d 132 (2005), *citing State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Circumstantial and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). Additionally, credibility determinations are for the trier of fact and are not subject to review. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). Accordingly, a reviewing court defers to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992). The relevant inquiry, therefore, 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. Scoby*, 117 Wn.2d 55, 61, 810 P.2d 1358, 1362 (1991)(emphasis in original), *citing State v. Baeza*, 100 Wn.2d 487, 490, 670 P.2d 646 (1983).

The crime of forgery is defined in RCW 9A.60.020, which provides in pertinent 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.

Furthermore, under Washington law a person knows or acts knowingly or with knowledge when he is aware of a fact, facts, or circumstances or result described by a statute defining an offense; or he has information which would lead a reasonable man in the same situation to believe that facts exist which facts are described by a statute defining an offense. RCW 9A.08.010(1)(b).<sup>2</sup>

While mere possession of a forged instrument is not sufficient to prove guilty knowledge, possession together with slight corroborating evidence can be sufficient. *State v. Scoby*, 117 Wn.2d 55, 62, 810 P.2d 1358, 1362 (1991). In *Scoby*, the defendant purchased \$2 worth of gasoline using a \$20 bill that had the corners cut off. *Scoby*, 117 Wn.2d at 56. The defendant then asked the cashier for two \$10 bills in exchange for what appeared to be another \$20 bill, and the cashier complied. *Scoby*, 117 Wn.2d at 56. As the

---

<sup>2</sup> In the present case, the trial court's instructions to the jury included WPIC 10.02, which advised the jury of this statutory definition of knowledge. CP 28 (Court's Instruction Number 10).

Defendant was leaving, the cashier realized that the bill was actually a \$1 bill with the corners of a \$20 bill pasted onto it, and the cashier then called the police. *Scoby*, 117 Wn.2d at 56. At trial, the defendant denied altering the \$1 bill and testified that he was unaware that it had been altered. *Scoby*, 117 Wn.2d at 57. On appeal, the defendant argued that the evidence presented at trial was insufficient to prove that he had known that the \$1 bill had been altered and that the only evidence suggesting that he knew the bill had been altered was the fact that he gave it to the cashier, which he claimed was insufficient on its own to prove knowledge. *Scoby*, 117 Wn.2d at 61. The defendant also argued that the alterations were not so obvious that anyone possessing the \$1 bill would notice them, and pointed out that the cashier did not immediately realize that the bill was altered. *Scoby*, 117 Wn.2d at 61.

The Washington Supreme Court, however, rejected the defendant's arguments and affirmed the conviction. *Scoby*, 117 Wn.2d at 63. The court noted that although the cashier did not immediately realize that the bill had been altered, once the cashier actually looked directly at the bill she saw the alteration immediately. *Scoby*, 117 Wn.2d at 62. In addition, the court noted that,

In any case, the jury had the opportunity to observe the altered \$1 bill, and to determine whether the alteration was obvious enough that beyond a reasonable doubt Scoby knew of the alteration.

*Scoby*, 117 Wn.2d at 62.<sup>3</sup> The court then noted that the jury could have inferred that the alteration of the \$1 bill was so obvious that it supported a finding that the defendant knew he was passing an altered \$1 bill. *Scoby*, 117 Wn.2d at 63.

As outlined above, the issue in the present case is whether there is “slight corroborating evidence” that the Defendant knew or should have known that the bills were counterfeit, and in assessing this question the evidence must be viewed in a light most favorable to the State. The record below demonstrates the presence of numerous corroborating factors that demonstrate that a rational jury could have concluded that the Defendant had the requisite guilty knowledge. First, the discrepancies with the bills were “obvious” enough that Mr. Osteraas was able to detect them while monitoring the Defendant over a closed circuit television. RP 37. Mr. Osteraas described that the bills were “distorted” and “skewed” and did not look “proportional.” RP 31-32. Similarly, Deputy Stevens noted that the bills “didn’t feel proper” and “didn’t feel like real money.” RP 46-47. Rather, the

---

<sup>3</sup> In *Scoby* the State had also argued, outside the presence of the jury) that the corners torn off the \$20 bill were identical to the corners pasted onto the altered \$1 bill, and the court noted that if the corners were identical then it was unlikely that the defendant had possessed both without being aware of the alteration. *Scoby*, 117 Wash.2d at 62. The court noted that since both bills were admitted as evidence, the jury, during its deliberations, could have concluded the corners were identical and that the match was so striking that this also suggested that the defendant knew of the alteration. *Scoby*, 117 Wash.2d at 63.

bills felt like regular paper and “didn’t have that kind of cloth texture to them.” RP 46-47. Deputy Stevens also explained that he bills did not have the appropriate security features such as “the fibers embedded in the paper” and “the strip that runs through the middle of the paper.” RP 48.

Viewing all of this evidence in a light most favorable to the State, the jury could have reasonably determined that the defects in the bills were obvious enough to demonstrate that the Defendant knew or should have known that the bills were fake.

In addition, the Defendant’s behavior further corroborated his guilty knowledge. While the Defendant was in the store Mr. Osteraas noticed that the Defendant’s behavior “was a little off” and that the Defendant was “looking around a lot.” RP 30-31. A reasonable jury could have concluded that the fact that the Defendant’s behavior was unusual enough to draw the attention of an asset protection specialist and the fact the Defendant happened to pass numerous counterfeit bills during this same time frame was not a mere coincidence. Instead, the jury could have reasonably concluded that the Defendant was acting unusually because he was nervous about passing the bills that he knew were fake. Viewing all of the evidence in light most

favorable to the State, the record sufficiently demonstrated the “slight corroborating evidence” needed to sustain the conviction.<sup>4</sup>

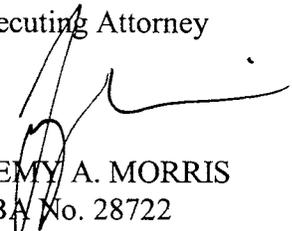
#### IV. CONCLUSION

For the foregoing reasons, the Defendant’s conviction and sentence should be affirmed.

DATED April 23, 2008.

Respectfully submitted,

RUSSELL D. HAUGE  
Prosecuting Attorney



JEREMY A. MORRIS  
WSBA No. 28722  
Deputy Prosecuting Attorney

DOCUMENT I

---

<sup>4</sup> The fact that, later in his visit to the store, the Defendant shoplifted numerous CDs only further corroborates the Defendant’s intent to defraud.