

NO. 42117-8-II

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

STATE OF WASHINGTON, RESPONDENT

v.

TERESA CROSS, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Stephanie Arend

No. 10-1-00456-6

Response Brief

MARK LINDQUIST
Prosecuting Attorney

By
Melody Crick
Deputy Prosecuting Attorney
WSB # 35453

930 Tacoma Avenue South
Room 946
Tacoma, WA 98402
PH: (253) 798-7400

Table of Contents

A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR. 1

1. Was sufficient evidence presented at trial for the jury to find defendant knew the check was falsely made where the check was written in at least three different fonts, was sent from California, drawn on a Utah account, and defendant refused to deposit it into her own account? 1

2. Was sufficient evidence presented at trial that defendant intended to commit a crime where she brought a clearly forged check into a bank branch to cash? 1

B. STATEMENT OF THE CASE. 1

1. Procedure 1

2. Facts 2

C. ARGUMENT. 6

1. THE STATE PRESENTED SUFFICIENT EVIDENCE TO SUPPORT THE JURY'S FINDING THAT DEFENDANT WAS GUILTY OF BOTH IDENTITY THEFT IN THE FIRST DEGREE AND FORGERY. 6

D. CONCLUSION. 13

Table of Authorities

State Cases

<i>State v. Caliguri</i> , 99 Wn.2d 501, 506, 664 P.2d 466 (1983).....	12
<i>State v. Camarillo</i> , 115 Wn.2d 60, 71, 794 P.2d 850 (1990)	7, 10
<i>State v. Carlson</i> , 143 Wn. App. 507, 520, 178 P.3d 371 (2008).....	8
<i>State v. Green</i> , 94 Wn.2d 216, 221, 616 P.2d 628 (1980).....	6
<i>State v. Ladely</i> , 82 Wn.2d 172, 175, 509 P.2d 658 (1973).....	8
<i>State v. Lubers</i> , 81 Wn. App 614, 619, 915 P.2d 1157 (1996)	6, 7
<i>State v. Rangel-Reyes</i> , 119 Wn. App. 494, 499, 81 P.3d 157 (2003)	6
<i>State v. Reynolds</i> , 51 Wn.2d 830, 833, 322 P.2d 356 (1958).....	7
<i>State v. Ridgley</i> , 141 Wn. App. 771, 782, 174 P.3d 105 (2007).....	8
<i>State v. Salinas</i> , 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).....	6
<i>State v. Scoby</i> , 117 Wn.2d 55, 61–62, 810 P.2d 1358, 815 P.2d 1362 (1991).....	8
<i>State v. Shelton</i> , 71 Wn.2d 838, 839, 431 P.2d 201 (1967)	12
<i>State v. Stearns</i> , 61 Wn. App. 224, 228, 810 P.2d 41 (1991)	8
<i>State v. Theroff</i> , 25 Wn. App. 590, 593, 608 P.2d 1254 (1980)	6
<i>State v. Warfield</i> , 119 Wn. App. 871, 80 P.3d 625 (2003).....	8
<i>State v. Young</i> , Wn.2d 613, 618, 574 P.2d 1171 (1978).....	7

Statutes

RCW 9A.08.010(1)(a)	12
RCW 9A.08.010(1)(b)	8

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

1. Was sufficient evidence presented at trial for the jury to find defendant knew the check was falsely made where the check was written in at least three different fonts, was sent from California, drawn on a Utah account, and defendant refused to deposit it into her own account?

2. Was sufficient evidence presented at trial that defendant intended to commit a crime where she brought a clearly forged check into a bank branch to cash?

B. STATEMENT OF THE CASE.

1. Procedure

On January 29, 2010, the State charged defendant, Teresa Cross, with one count of identity theft in the second degree, and one count of forgery. CP 1-2. On December 7, 2010 the court heard pretrial motions and a CrR 3.5 hearing. The court requested defendant write a memo detailing why each of her proposed exhibits were relevant and admissible. Defendant filed this memorandum with the court. CP 110-114. After reviewing the memorandum and hearing argument, the court excluded all of the exhibits which postdated the charged crime, but ruled that the other exhibits were admissible if defendant was able to have them properly authenticated at trial. RP 108-110.

On December 8, 2010, the case proceeded to a jury trial, presided over by the Honorable Stephanie Arend. On December 9, 2010, the jury found defendant guilty on both counts. CP 145-46. On April 22, 2011, the court sentenced defendant to two months for identity theft and 60 days for forgery. CP 255-266. The court ordered that the time be served concurrently, and on electronic home monitoring. *Id.*

Defendant entered a timely notice of appeal on May 19, 2011.

2. Facts

Belinda DeLeon is a teller at the Wells Fargo Bank Puyallup South Hill branch. RP 135. On January 27, 2010, defendant came into the branch and asked to cash a check. RP 204-05. The check was drawn on the account of Robert and Elizabeth Ragamus, and was made payable to defendant. RP 138. The check was written for \$2,850.75. *Id.* The Ragamuses address is in Utah. *Id.* Because defendant was not a customer of Wells Fargo, in order to cash the check she was required to give two forms of identification and put her thumb print on the back of the check. RP 204.

Jocelyn Jones¹ is the service manager at the same Wells Fargo branch. RP 126. She is the direct supervisor for all of the tellers at the branch. RP 126, 200. Ms. DeLeon asked Ms. Jones to look at the check defendant asked to cash because she suspected it was forged. RP 135-36,

¹ Ms. Jones uses her maiden name, Jocelyn Palmer, at work. Some of the testimony at trial refers to her by that name. The State will use her legal name in this brief.

204-05. The check was drawn on a personal account, but was larger than a normal personal check. RP 139, 204. The check was computer generated, rather than hand written, and had been printed in “three or four different fonts,” and the font sizes were inconsistent. RP 138-39. The memo line on the check was filled in with “No. 118,” which did not make sense to Ms. Jones. RP 139.

Ms. Jones spoke with defendant in order to verify the check. RP 136. Ms. Jones asked defendant if she knew the person who had given her the check. RP 136. Defendant said she did. RP 136. After Ms. Jones asked more questions about how defendant knew the account holders, defendant told Ms. Jones that she did not know the account holder. RP 136. Ms. Jones told defendant she was going to call the account holders to verify the check. RP 141. She called the account holders, using the phone number listed in the account information in the computer system. RP 140. She called using the account information in the computer files because it would be easy for someone who is not the account holder to verify the check if they called the number on a check that was in fact fraudulent. RP 140. Ms. Jones spoke with Ms. Ragamus, who gave her Mr. Ragamus’ cell phone number. RP 139-40. Ms. Jones called Mr. Ragamus as well. RP 140. Neither of the two account holders authorized the check, or knew defendant. RP 142.

As soon as Ms. Jones told defendant she was going to call the Ragamuses, defendant also called a phone number and told Ms. Jones she was going to call the Ragamuses. RP 141. Defendant scrolled through her contact list, and called a number already in her phone. RP 141. Defendant was not within eyesight of the check, and could not have dialed the number by looking at its face. RP 141. Defendant told Ms. Jones that she was on the phone with Mr. Ragamus at the same time that Ms. Jones was able to contact him. RP 140-41.

After speaking with the Ragamuses, and learning that neither had authorized the check, Ms. Jones told defendant that she was going to finish the check verification process, and asked that she wait in the lobby so that the teller could help other customers in the meantime. RP 143. Ms. Jones told defendant this in order to stall her while the police came. RP 143. Defendant took a seat in the lobby, and Ms. Jones called 911. RP 142-43. Officer Bourbon of the Puyallup Police Department arrived a few minutes after Ms. Jones placed the call. RP 144.

Upon arriving at the bank, Officer Bourbon walked to where defendant was seated in the lobby. RP 168. Officer Bourbon introduced himself, and told defendant he was with the Puyallup Police Department. RP 168. Defendant “hung her head and said ‘oh, no.’” RP 168. Officer Bourbon read defendant her *Miranda* warnings, and then asked her if she knew why he was there. RP 170. Defendant told the officer that she had been in an internet relationship with a man for about a month, and that

man had asked her to send him some money. RP 170. She told the officer she had never met the man. RP 170. She told the officer that the man's name was John Lauren, and that he always called from a private number, so she did not have the ability to call him. RP 170. Defendant believed that John Lauren lived in Florida. RP 170. She also told the officer that she had received the check in the mail that morning, and wanted to see if the check was legitimate. RP 173. Defendant also told the officer that she had copied the information from the check down, and left it in her car. RP 175.

Defendant testified that she had been in an online relationship with John Lauren, and that the two communicated almost exclusively over instant message. RP 223-24. She did not have a phone number to call him, and she had only spoken to him on three occasions for five to ten minutes. RP 247-48. Mr. Lauren asked to borrow money from defendant, who told him she was unemployed and did not have any money to send him. RP 255. Defendant testified that Mr. Lauren then sent her a check, and asked her to deposit it in her account and send a check from her account to his son. RP 261. Defendant received the check on January 27, 2012, and attempted to cash it the same morning. RP 258, 262.

Defendant testified that she did not deposit the check into her account because the account actually belonged to her mother, and she did not want the check to cause her mother problems. RP 271.

C. ARGUMENT.

1. THE STATE PRESENTED SUFFICIENT EVIDENCE TO SUPPORT THE JURY'S FINDING THAT DEFENDANT WAS GUILTY OF BOTH IDENTITY THEFT IN THE FIRST DEGREE AND FORGERY.

In determining whether the evidence presented at trial was sufficient to support a guilty verdict, the question is whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt after viewing the evidence in the light most favorable to the State. *State v. Rangel-Reyes*, 119 Wn. App. 494, 499, 81 P.3d 157 (2003); *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). Any reasonable inferences from the evidence must be interpreted most strongly against defendant in favor of the State. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Challenging a verdict based on insufficiency of the evidence admits all evidence presented by the State and any reasonable inferences as true. *State v. Theroff*, 25 Wn. App. 590, 593, 608 P.2d 1254 (1980). Circumstantial evidence is no less reliable than direct evidence. *State v. Lubers*, 81 Wn. App 614, 619, 915 P.2d 1157 (1996). When there is a conflict in the evidence or testimony, the trier of

fact to determine which is credible. *Id.* (See also *State v. Young*, Wn.2d 613, 618, 574 P.2d 1171 (1978); *State v. Reynolds*, 51 Wn.2d 830, 833, 322 P.2d 356 (1958)). Determinations of credibility are not reviewable on appeal. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

- a. Sufficient evidence was presented at trial to support the jury's finding that defendant was guilty of forgery.

In order to convict defendant of forgery, the jury had to find that:

- (1) That on or about the 27th of January 2010, the defendant:
 - (a) Falsely made or completed or altered a written instrument;
 - OR
 - (b) Possessed or offered or disposed of or put off as true a written instrument which had been falsely made, completed or altered; and
- (2) The defendant knew the instrument had been falsely made, completed or altered; and
- (3) The defendant acted with the intent to injure or defraud; and
- (4) That the acts occurred in the State of Washington.

CP 123-144, instruction 12. Defendant challenges only the sufficiency of the evidence to prove defendant knew the instrument to be forged. Brief of Respondent at 1, 18.

A person acts knowingly when “[s]he is aware of a fact, facts, or circumstances or result described by a statute defining an offense; or [s]he has information which would lead a reasonable [person] 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), *see also State v. Carlson*, 143 Wn. App. 507, 520, 178 P.3d 371 (2008). Proof of the higher mental state of intent is sufficient to prove knowledge, a lower mental state in the hierarchy. *State v. Ridgley*, 141 Wn. App. 771, 782, 174 P.3d 105 (2007). “Knowledge may be inferred when the defendant’s conduct indicates the requisite knowledge as a matter of logical probability.” *State v. Warfield*, 119 Wn. App. 871, 80 P.3d 625 (2003), *quoting State v. Stearns*, 61 Wn. App. 224, 228, 810 P.2d 41 (1991). Although possession [of a forged instrument] alone is not sufficient to prove guilty knowledge, possession together with slight corroborating evidence of knowledge may be sufficient. *State v. Scoby*, 117 Wn.2d 55, 61–62, 810 P.2d 1358, 815 P.2d 1362 (1991). Giving a false explanation or one that is improbable in addition to the possession of another’s financial information is evidence of guilty knowledge. *State v. Ladely*, 82 Wn.2d 172, 175, 509 P.2d 658 (1973).

Here, defendant was trying to cash a check that was “odd looking.” RP 138. Two bank employees immediately noticed the check was “completely out of pattern... for a normal consumer check.” RP 135-36. The check was written “inconsistently,” with letters in three or four different fonts, and sizes. RP 139. The check was larger than a typical

personal check, and the memo line said "No. 118." RP 139. A reasonable person would have known that the check was forged given its readily apparent abnormalities.

Defendant testified that she had been involved romantically over the internet with a man who she had never met, and who never gave her a phone number to contact him. RP 224. This man then asked her multiple times for money, and then told her that he was having a friend mail her a check, and that she should cash it and send the money to him. RP 227. This man told her he lived in Florida. RP 248. Defendant received the check via UPS in an envelope with a San Jose, California return address. RP 266. The check belonged to Mr. and Ms. Rugamases, and had their address in Utah listed on its face. RP 267. A reasonable person under these circumstances would have known the check was fraudulent given that the sender was in California, the check was written on a Utah account, and the man she had never met who was supposed to receive the money said he was in Florida. Moreover, defendant's possession of the check combined with the explanation she gave permits the jury to draw the conclusion that she knew that the check was forged. Defendant's explanation was that a man living in Florida who she had never met, who would not give her any contact information for himself, and to whom she had spoken only briefly on the phone had decided he needed her to cash a friend's check for him and send his son the money. RP 261. She further explained that this man had repeatedly asked her to send him money

beginning shortly after they began talking, and shortly thereafter sent her a check for \$2,850.75 drawn on a Utah account, postmarked in California, and asked that she deposit the check in her account. RP 138, 170, 261, 266. The jury's determination of credibility is not reviewable on appeal. *Camarillo*, 115 Wn.2d at 71. Defendant's implausible story compounded with her possession of the forged check is sufficient for the jury to determine that she knew the check was forged.

Additionally, the defendant's conduct shows that she knew the check was forged. Defendant testified that she had gone to the bank to verify the validity of the check. RP 264. Despite just wanting to verify that the check would clear, defendant told the bank teller that she wanted to cash the check, and went through the steps to do so. RP 205. When the bank manager told her that she was going to call the bank account holder to verify the check and looked in her computer terminal for the phone number, defendant told her the phone number was on the check. RP 187. When the teller told defendant she was going to call the number in the system, defendant immediately scrolled through her phone and called a number listed there, telling the manager she was speaking to the account holder. RP 237. When Officer Bourbon arrived at the bank, and contacted defendant, she "hung her head and said, 'oh, no.'" The jury could infer from defendant's actions that she knew the check was forged, and wanted to stop the bank employee from calling the actual account holder, and direct her to someone who could verify the check instead. The

jury could also infer that it was her knowledge that the check was forged and that she had been caught which made defendant hang her head when she was approached by the police officer. The evidence presented at trial was sufficient to support the jury's finding that defendant knew the check was falsely made or altered, and defendant was guilty of forgery.

- a. Sufficient evidence was presented at trial for the jury to find that defendant was guilty of identity theft in the second degree.

In order to find defendant guilty of identity theft in the second degree, the jury was required to find that:

- (1) On or about the 27th day of January, 2010, the defendant knowingly obtained, possessed, or transferred or used a means of identification or financial information of another person, living or dead;
- (2) That defendant acted with the intent to commit or aid or abet any crime;
- (3) That the defendant obtained credit, money, goods, services or anything else that is \$1500 or less in value from the acts described in element (1) or did not obtain credit, money, goods, services or other item of value; and
- (4) That any of these acts occurred in the State of Washington.

CP 123-144, instruction 6. Defendant only challenges the sufficiency of

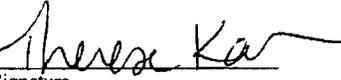
the evidence to prove that defendant intended to commit a crime. Brief of Respondent at 1, 17.

Under RCW 9A.08.010(1)(a) “A person acts intentionally when he acts with the objective or purpose to accomplish a result which constitutes a crime.” In order to determine whether defendant intended to commit any crime, the trier of fact may infer that she intended for the natural and probable consequences of her actions to occur. *State v. Caliguri*, 99 Wn.2d 501, 506, 664 P.2d 466 (1983). Additionally, “intent may be inferred from circumstantial evidence.” *Id.* (citing *State v. Shelton*, 71 Wn.2d 838, 839, 431 P.2d 201 (1967)).

Here, the defendant possessed a check drawn on the Utah bank account of a person she did not know. RP 136. That check was mailed to her in an envelope postmarked in California. RP 266. Defendant told Officer Bourbon that she had brought the check to the bank to see if it was legitimate, however defendant did not ask the teller to verify the check. RP 173, 205. Defendant presented the check to the teller and asked to cash it. RP 205. Defendant also had the account holders’ names, address and banking information on a piece of paper in her car. RP 175. Defendant claimed she copied down the account holders’ names, address and phone number along with the bank account routing and account numbers, and kept that information in her car while she attempted to cash the check. RP 269. Defendant testified that she kept this information in case she needed to put the money back into the account. RP 233. If she were going to put

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.

2-7-12 
Date Signature

PIERCE COUNTY PROSECUTOR

February 07, 2012 - 11:47 AM

Transmittal Letter

Document Uploaded: 421178-Respondent's Brief.pdf

Case Name: St. v. Cross

Court of Appeals Case Number: 42117-8

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

- Designation of Clerk's Papers Supplemental Designation of Clerk's Papers
- Statement of Arrangements
- Motion: _____
- Answer/Reply to Motion: _____
- Brief: Respondent's
- Statement of Additional Authorities
- Cost Bill
- Objection to Cost Bill
- Affidavit
- Letter
- Copy of Verbatim Report of Proceedings - No. of Volumes: _____
Hearing Date(s): _____
- Personal Restraint Petition (PRP)
- Response to Personal Restraint Petition
- Reply to Response to Personal Restraint Petition
- Other: _____

Sender Name: Therese M Kahn - Email: tnichol@co.pierce.wa.us

A copy of this document has been emailed to the following addresses:
bghershman@aol.com