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NO. 65767-4-I

IN THE COURT OF APPEALS – STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON
Respondent,

v.

DANIEL BARNHART,
Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON, FOR SKAGIT COUNTY

The Honorable Michael E. Rickert, Judge

RESPONDENT'S BRIEF

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ORIGINAL

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I. SUMMARY OF ARGUMENT

Daniel Barnhart was convicted by a jury of Unlawful Issuance of a Bank Check. Mr. Barnhart claims there was insufficient evidence to support a conviction of Unlawful Issuance of a Bank Check, claiming that not all the elements were proven, specifically intent to defraud. Mr. Barnhart took his truck to Skagit Transmission and asked Skagit Transmission to repair his transmission in his truck. Skagit Transmission provided Mr. Barnhart with not only an estimate but a final figure for the work to be completed, which was approved by Mr. Barnhart every step of the way. Skagit Transmission did the work and repaired Mr. Barnhart's transmission, even installing upgraded parts which were approved as well. At the time of completion, Mr. Barnhart did not have the funds to pay for the work that Skagit Transmission performed. Mr. Barnhart pled with Skagit Transmission to accept a post-dated check and assured Skagit Transmission that he would have the money for their services by the date on the check. Skagit Transmission reluctantly agreed, against their policy, and accepted the post-dated check. On the date that the check was dated, on the date the check was delivered, and months after the check was dated, there were insufficient funds in Mr.

Barnhart's account to cover the check. Mr. Barnhart never covered the check, nor did he pay for the services which were performed by Skagit Transmission. There was sufficient evidence to support the conviction of Unlawful Issuance of a Bank Check and it should be affirmed.

II. ISSUES PERTAINING TO ASSIGNMENT OF ERROR

Whether there was sufficient evidence to prove beyond a reasonable doubt that Mr. Barnhart was guilty of Unlawful Issuance of a Bank Check.

III. STATEMENT OF THE CASE

1. Statement of Procedural History

¹On April 16, 2009, Daniel Barnhart was charged via Information with Unlawful Issuance of a Bank Check and Forgery. CP 1-2. On July 28, 2009, an Amended Information was filed charging Mr. Barnhart with an additional charge of Bail Jumping. CP 7-8. Daniel Barnhart was charged via Second Amended Information with the following: Unlawful Issuance of a Bank Check, count 1 and Forgery, count 2. CP 16-17. It was ordered during Motions In Limine to exclude testimony of Mr. Barnhart's spouse, eliminating the

¹ The State will refer to the verbatim report of proceedings by using the date followed by "RP" and the page number. The report of proceedings in this case are as follows:

possibility of moving forward with count 2, Forgery. Mr. Barnhart was only tried on Count 1 of the Second Amended Information, Unlawful Issuance of a Bank Check. RP 3-6.

Mr. Barnhart was tried on the foregoing before the Honorable Michael E. Rickart on May 17, 2010. RP 6. Mr. Barnhart was found guilty of Unlawful Issuance of a Bank Check. CP 66-77.

Appellant's Brief was due on January 10, 2011. Mr. Barnhart filed an extension of time to file his Appellant's Brief to February 10, 2011. Mr. Barnhart's appeal is timely.

2. Statement of Facts

In August of 2008, Mr. Barnhart brought his truck into Skagit Transmission, in Burlington, Washington, to have the transmission fixed. RP 11, 17. Glen Becker, President of Skagit Transmission, verbally gave an estimate of labor in the amount of \$3,000.00 to Mr. Barnhart for his transmission to be fixed. RP 8, 11. This amount was for labor only, and any additional parts necessary would be determined after the transmission was removed and torn apart. Mr. Barnhart was agreeable to this arrangement. RP 11, 49-51.

Skagit Transmission employees had numerous discussions about the rebuild of Mr. Barnhart's transmission with Mr. Barnhart,

specifically regarding upgrade parts and pricing to be installed in Mr. Barnhart's truck transmission. RP 12-15, 46-49, 60. Mr. Barnhart specifically authorized the work as well as upgraded parts to be installed in his truck transmission. He also requested an invoice to take back to Napa, where he had previously requested those upgrades but did not get them. RP 13-14, 47-48.

During the time that Mr. Barnhart's truck was at Skagit Transmission, Mr. Barnhart was frequently in checking on the work, and continuing to authorize the work and the final estimate for the work to be completed. RP 12-15, 43, 46-49, 50-51, 57.

Upon completion of his truck transmission rebuild, Mr. Barnhart asked to pick up his truck and pay later. Skagit Transmission advised Mr. Barnhart that he would have to pay up-front to pick up his truck. RP 15-16, 53.

Mr. Barnhart pleaded with Skagit Transmission and Mr. Becker, President of Skagit Transmission, approved acceptance of a post-dated check for payment with the understanding that the check was good for the day the check was dated. RP 16, 20-21, 53-54, 57.

Mr. Barnhart gave Skagit Transmission a post-dated check for August 29, 2008, approximately two weeks after Mr. Barnhart picked up his truck from Skagit Transmission. RP 54-55. Mr. Barnhart

assured Skagit Transmission that the funds would be in the bank to cover the check on the date on the check. RP 54. The check received by Skagit Transmission from Mr. Barnhart was not good the day it was delivered to Skagit Transmission, nor was it good on the date that it was dated, August 28, 2008. RP 16. In fact, Mr. Barnhart called Skagit Transmission and asked for a couple more weeks for the check to be good and called multiple more times asking for longer delays in covering payment of the check. RP 17, 23, 55-56, 58.

Skagit Transmission waited for a couple of months before trying to cash the check, and they received it back from the bank, unable to be covered. RP 19, 56.

Mr. Barnhart did not ever bring in cash and never covered the check he provided to Skagit Transmission for work that was done by Skagit Transmission to his truck. RP 56. To this date, Mr. Barnhart has not made any attempts to pay Skagit Transmission for services they performed. RP 56.

IV. ARGUMENT

THERE WAS SUFFICIENT EVIDENCE TO PROVE BEYOND A REASONABLE DOUBT THAT MR. BARNHART WAS GUILTY OF UNLAWFULLY ISSUING A BANK CHECK.

A. The Information Is Not Defective As to the Date of Incident.

Mr. Barnhart claims that since the State alleged in the Information that the check was delivered on or about August 28, 2008, and the “to convict” jury instruction also alleged that the delivery occurred on August 28, 2008, that the State failed to prove it’s case. Mr. Barnhart cites no authority to this claim. The entire argument is a couple of sentences. “Generally, unreasoned arguments lacking citation to legal authority merit no consideration on appeal.” *State v. Johnson*, 119 Wn.2d 167, 171, 829 P.2d 1082 (1992).

Mr. Barnhart made no objection to this before or during proceedings and made no mention of it whatsoever until this appeal. This could be looked at as a scrivener’s error and should not be reversible error. This claim should be denied.

B. Evidence was sufficient to convict; Intent to Defraud Can Be Shown with a Post-Dated Check.

The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 220-22, 616 P.2d

628 (1980). When the sufficiency of the evidence is challenged in a criminal case, 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, 1074 (1992); *State v. Partin*, 88 Wn.2d 899, 567 P.2d 1136 (1977). A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068, 1074 (1992); *State v. Theroff*, 25 Wn. App. 590, 593, 608 P.2d 1254, *aff'd*, 95 Wn.2d 385, 622 P.2d 1240 (1980).

Mr. Barnhart was charged with and convicted of Unlawful Issuance of a Bank Check which is defined by RCW 9A.56.060(1) as follows: It is unlawful for any person to:

(1) Any person who shall with intent to defraud, make, or draw, or utter, or deliver to another person any check, or draft, on a bank or other depository for the payment of money, knowing at the time of such drawing, or delivery, that he or she has not sufficient funds in, or credit with the bank or other depository, to meet the check or draft, in full upon its presentation, is guilty of unlawful issuance of bank check. The word "credit" as used herein shall be construed to mean an arrangement or understanding with the bank or other depository for the payment of such check or draft, and the uttering or delivery of such a check or draft to another person without such fund or credit to meet the same shall be prima facie evidence of an intent to defraud.

The defendant's knowledge that he or she is in financial trouble and cannot perform the promise he or she has made tends to make it more probable than not that they acted with intent to deprive or defraud. *State v. Alams*, 93 Wn.App. 754, 758, 970 P.2d 367, review denied, 137 Wn.2d 1037 (1999).

'Where intent is an element of an offense, the trial court may permit a wide latitude of proof.' *Ben-Neth*, 34 Wn.App. 600, 606, 663 P.2d 156 (1983) (citing *State v. Konop*, 62 Wn.2d 715, 384 P.2d 385 (1963)). Intent to defraud may be found whether the check is payable on demand or postdated. *State v. Ethridge*, 74 Wn.2d 102, 107, 443 P.2d 536 (1968). One who induces the payee to accept a postdated check has represented to the payee that the check will be good on the date of presentation. *Id.* At 107-08.

In the same light, if a defendant knows that they are in financial trouble, and cannot perform their promise, it makes it "more probable than not that he or she acted with intent to deprive or defraud." *State v. Stanton*, 68 Wn.App. 855, 862, 845 P.2d 1365 (1993). Someone who makes out a bad check does so to accrue a benefit to themselves, not at the benefit of the payee. *State v. Bradley*, 190 Wash. 538, 547, 69 P.2d 819 (1937).

The *Boyanovsky* case is very similar to the case at hand. There, a travel agent issued postdated refund checks to pay existing debts. *State v. Boyanovsky*, 41 Wn.App. 166, 702 P.2d 1237 (1985). This travel agent expected refunds from hotels and airlines, or expected to raise the money prior to the dates on the checks that she had issued. *Boyanovsky*, 41 Wn.App. at 167.

In our case, Mr. Barnhart approved of services to be performed, and in exchange for picking up his finished truck, induced Skagit Transmission to release his truck with a promise of a post-dated check. RP 16, 53-54. Mr. Barnhart admitted financial troubles and knew that he didn't have the funds to cover the check on August 7, 2008 and merely hoped to have his house refinanced to cover the check by August 28, 2008. RP 16, 21, 56. Mr. Barnhart knew that he would not have the money to cover the check as evidenced by his calling Skagit Transmission multiple times asking for further delays in presenting the check. RP 17, 23, 55-56, 58. Mr. Barnhart finally stopped responding to Skagit Transmission's attempts to contact him. RP 56. Up to the date of the trial, there have been no attempts to pay for services performed by Skagit Transmission by Mr. Barnhart. RP 56.

Mr. Barnhart, aware of his financial difficulties, induced Skagit Transmission to accept a post-dated check, with no assurance that the money would be there to cover the check on the date it was posted for presentment. See *Boyanovsky*, 41 Wn.App. at 169-70. Mr. Barnhart's avoidance of Skagit Transmission is further evidence of his fraudulent intent. *Id.* There is enough evidence here for a trier of fact to conclude that Mr. Barnhart violated RCW 9A.56.060(1).

V. CONCLUSION

For the foregoing reasons, there was sufficient evidence to support the conviction of Mr. Barnhart of Unlawful Issuance of a Bank Check. It is the State's position that the conviction should be affirmed.

DATED this 2 day of March, 2011.

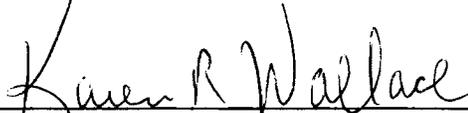
SKAGIT COUNTY PROSECUTING ATTORNEY

By: 
KAREN L. PINNELL, WSBA#35729
Deputy Prosecuting Attorney
Skagit County Prosecutor's Office #91059

DECLARATION OF DELIVERY

I, Karen R. Wallace, declare as follows:
I sent for delivery by; United States Postal Service; ABC Legal Messenger Service, a true and correct copy of the document to which this declaration is attached, to: Lila J. Silverstein, addressed as Washington Appellate Project, 1511 Third Avenue, Suite 701,

Seattle, WA 98101. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Executed at Mount Vernon, Washington this 2nd day of March, 2011.

A handwritten signature in cursive script that reads "Karen R. Wallace". The signature is written in black ink and is positioned above a horizontal line.

KAREN R. WALLACE, DECLARANT