

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

Court of General Sessions
Hon. Keith Kelly, Circuit Court Judge

Appellate Case No. 2017-000277

THE STATE,

Respondent,

v.

ROBERT KEITH MOSS,

Appellant.

**AMENDED
INITIAL BRIEF OF RESPONDENT**

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STATEMENT OF ISSUE ON APPEAL

I.

Whether the trial court properly denied Appellant's motion for a directed verdict on forgery charges where the State presented evidence that Appellant uttered two checks, each bearing a forged signature, false driver's license number, and false reason for payment.

STATEMENT OF THE CASE

A Spartanburg County Grand Jury indicted Appellant for two counts of forgery in an amount less than ten thousand dollars. Appellant proceeded to jury trial on February 8th, 2017, before the Honorable R. Keith Kelly. Daniel McDonald, Esquire, and Charles Snyder, Esquire, represented Appellant. Assistant Solicitors Blythe Walters and Russell Ghent represented Respondent (the State). At the close of the State's case, Appellant moved for a directed verdict. Judge Kelly denied the motion. After a two day trial, the jury convicted Appellant on both counts. He was sentenced to five years' incarceration for each count, to be served concurrently. Appellant filed a timely Notice of Appeal, and subsequently submitted an Initial Brief of Appellant. This Initial Brief of Respondent now follows.

STATEMENT OF FACTS

Jitendra Patel testified he is the owner of a convenience store located at 8047 Asheville Highway in Spartanburg County. Tr. 78. Between the dates of January 15th and January 19th, 2016, while Patel was working the register, Appellant came into the store and cashed two checks drawn on Justin Boyce's checking account. Tr. 80, ll. 1-11. One check was written for \$849, the other for \$1,100. Exhibits 5-6.¹ The checks were made payable to Appellant. Exhibits 5-6. Boyce's name, signed in cursive, appeared on the signature line. Exhibits 5-6. "Painting" was written on the "for" line of each check. Exhibits 5-6. Patel testified that he had known Appellant for around twenty years, that Appellant was a painter by trade, and that Appellant frequently cashed checks at his business. Tr. 78-80. Because Patel knew Appellant, he did not require him to produce a driver's license. Tr. 86. The two checks were subsequently returned from Mr. Patel's bank for insufficient funds. Tr. 86. Patel contacted Appellant regarding the checks, and Appellant told him he would talk with Boyce and return the money. Tr. 86. However, Appellant never reimbursed Patel. Tr. 86.

Justin Boyce testified the checks belonged to him. He brought the checks with him on January 13th, 2016, while visiting an acquaintance named Ashley Parris at a residence in North Carolina. Tr. 106-109. Also present at the residence were Ashley's mother (Shannon), Ashley's friend (Taylor), the homeowner (Brenda), and Appellant. Tr. 106, ll. 21-23. Boyce testified left the checks in an unattended book bag at the residence while he and Ashley left the residence to run an errand for fifteen to twenty minutes. Tr. 108, l. 21-Tr. 109, l. 7. Boyce did not see Ashley again after that night. Tr. 107. The two checks at issue were posted to his account on January 19th, 2016. Tr. 112. When Boyce saw the checks posted, he went to his bank to contest

¹ The court reporter erroneously indexed State's exhibit 6 as check number 1098. State's exhibit 6 is a copy of check number 1096.

the charges. Tr. 105, ll. 5-6. He then reported the matter to the Police. Tr. 105, ll. 8-9. Boyce testified he did not write or sign the checks, nor did he authorize Appellant or anyone else to write or sign on his behalf. Tr. 128, ll. 12-16. He also testified that Appellant never did any painting for him. Tr. 120, ll. 16-18.

Deputy Dana Reaves from the Spartanburg County Sheriff's Office took the initial complaint from Justin Boyce on January 20th, 2016. Tr. 91. Reaves testified that Boyce brought copies of the disputed checks with him to the police station. Tr. 92. Two different driver's license numbers appeared on the checks. Tr. 93, ll. 15-17. Reaves entered the driver's license numbers from the two checks into the South Carolina Department of Motor Vehicles (DMV) database and neither number was on file with the DMV. Tr. 93, ll. 7-17. Marie Wearing, an employee of the DMV, testified that Appellant possessed a valid South Carolina driver's license. Tr. 147. Appellant's actual license number did not match the license number on either of the checks in question. Exhibits 5-6.

Appellant did not contest the fact that he uttered the checks. Tr. 152, l. 16. Rather, Appellant called witnesses who testified that Boyce authorized Appellant to cash the checks. Ashley Parris testified Boyce authorized her mother and friend Taylor to write the checks in exchange for drugs, and Appellant cashed the checks and brought the drugs to Boyce. Tr. 158-159. Taylor Sadowsky testified to the same facts. Tr. 168-169. Parris' testimony seemed to suggest that Boyce was too intoxicated to write the checks on his own. Tr. 159, ll. 3-4. Appellant did not testify.

ARGUMENT

The trial court properly denied Appellant's motion for a directed verdict on forgery charges because the State presented evidence that Appellant uttered two checks, each bearing a forged signature, false driver's license number, and false reason for payment.

Appellant argues the trial court erred by denying his motion for a directed verdict, claiming the State did not present substantial circumstantial evidence of fraudulent intent and criminal knowledge. However, the State presented direct evidence that Appellant presented two checks indicating he did work for Boyce, when he did not; that Appellant used false driver's license numbers; and that Boyce did not sign or issue the checks. This evidence, viewed in the light most favorable to the State, is sufficient to prove the elements of forgery to a rational juror beyond a reasonable doubt.

“When ruling on a motion for a directed verdict, the trial court is concerned only with the existence of evidence, not its weight. A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. When reviewing a denial of a directed verdict, an appellate court views the evidence and all reasonable inferences in the light most favorable to the State. If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, this Court must find the case was properly submitted to the jury.” *State v. Weston*, 367 S.C. 279, 292-293, 625 S.E.2d 641, 648 (2006) (citing *State v. Cherry*, 361 S.C. 588, 591-592, 606 S.E.2d 475, 477-478 (2004)). In ruling on a directed verdict motion where the State relies on circumstantial evidence, the trial court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt. *State v. Bennett*, 415 S.C. 232, 237, 781 S.E.2d 352, 354 (2016). On an appeal from the trial court's denial of a motion for a directed verdict, the appellate court

may only reverse the trial court if there is no evidence to support the trial court's ruling. *State v. Gaster*, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002).

Section 16-13-10(A)(2) of the South Carolina code makes it unlawful for a person to “utter or publish as true any false, forged, or counterfeited writing or instrument of writing.” In order to constitute forgery by uttering or publishing a forged instrument of writing, three important factors are requisite: (1) It must be uttered or published as true and genuine; (2) It must be known by the party uttering or publishing it as false, forged, or counterfeited; (3) It must be with intent to prejudice, damage, or defraud another person. *State v. Wescott*, 316 S.C. 473, 477, 450 S.E.2d 598, 601 (Ct. App. 1994). It is not necessary that the person uttering the document be the same person who altered it; knowingly passing the forged document is sufficient. *State v. Berry*, 76 S.C. 86, 56 S.E. 662, 664 (1907).

“Intent to defraud means an intention to deceive another person, and to induce such other person, in reliance upon such deception, to assume, create, transfer, alter or terminate a right, obligation or power with reference to property.” *State v. Lee-Grigg*, 374 S.C. 388, 402, 649 S.E.2d 41, 48 (Ct. App. 2007) (citing *Black's Law Dictionary*, 423 (6th ed.1990)). Intent is a question of fact and is ordinarily for jury determination. *State v. Tuckness*, 257 S.C. 295, 299, 185 S.E.2d 607, 608 (1971). “Intent is seldom susceptible to proof by direct evidence and must ordinarily be proven by circumstantial evidence, that is, by facts and circumstances from which intent may be inferred.” *Id.*

The State presented direct, uncontested evidence that Appellant uttered the checks in question. Justin Boyce testified that he did not write the checks, that the signature on the checks was not his, and that he did not authorize anyone else to write the checks. The checks contained patently false information, including two different false driver's license numbers and a false

reason for payment. The jury could infer from these facts alone that Appellant knew that the checks were forged. *See State v. Berry*, 76 S.C. 86, 56 S.E.662, 663 (1907) (“The circumstances brought out in the testimony and relied on by the state to sustain the conviction were that defendant actually received the money on the check from the Enterprise Bank after representing that the signature of D. M. McIver was genuine, when, in fact, the signature was forged... In view of these circumstances, it could not be said that there was no evidence to support the verdict.”); *State v. Murray*, 72 S.C. 508, 52 S.E. 189, 191 (1905) (utterance of a writing with patent irregularities may create “at least a reasonable inference from these facts that the defendant knew the writing was forged.”); *see also State v. Sanders*, 251 S.C. 431, 436, 163 S.E. 2d 220, 223 (1968) (“There was therefore testimony that the defendant forged the name of W. Manning Harris to the check in question and that he presented it to the liquor store dealer as genuine. Such constituted ample evidence to sustain defendant's conviction of the crime of forgery and the trial judge properly so held.”).

The State presented additional circumstantial evidence to prove criminal knowledge and fraudulent intent. Because Patel knew Appellant, he did not require him to produce a driver's license. Combined with the use of false driver's license numbers, this evidence supports a finding that Appellant cashed the checks at Patel's store in order to avoid leaving physical evidence of identification because he knew that what he was doing was illegal. “As a general rule, any guilty act, conduct, or statements on the part of the accused are admissible as some evidence of consciousness of guilt.” *State v. McDowell*, 266 S.C. 508, 515, 224 S.E.2d 889, 892 (1976). Furthermore, Patel knew Appellant was a painter by trade. A rational juror could find that Appellant tried to make the checks appear to be payment for work done because this would not appear suspicious to Patel. Such deceitful conduct is strong evidence of fraudulent intent.

See State v. Fuller, 1 Bay 245, 1 S.C.L. 245 (1792) (“The verdict finds the *uttering, knowing of the forgery*. The facts which constitute the offence, are here found. The intent is only matter of circumstance, which naturally follows and springs out of the facts. No other than a *fraudulent* intent, can be inferred, when a man makes or passes a false deed, as and for a true one.”) (emphasis in original).

The State presented sufficient evidence to meet the elements of forgery and the trial court properly submitted the case to the jury.

CONCLUSION

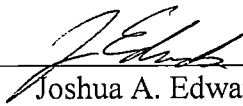
For the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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December 28, 2017

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions
R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2017-000277

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SC Court of Appeals

THE STATE,

Respondent,

v.


ROBERT KEITH MOSS,

Appellant.

PROOF OF SERVICE

I, Anne Mueller, certify that I have served the within Amended Initial Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to Taylor D. Gilliam, Esquire, S.C. Commission on Indigent Defense, Division of Appellate Defense, Post Office Box 11589, Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 4th day of December, 2017.


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ALAN WILSON
ATTORNEY GENERAL

December 28, 2017

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SC Court of Appeals

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S.C. Commission on Indigent Defense
Division of Appellate Defense
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Columbia, SC 29211

Re: State v. Robert Keith Moss
Appellate Case No. 2017-000277

Dear Mr. Gilliam:

I am enclosing two (2) copies of the Amended Initial Brief of Respondent in the above-referenced case.

Sincerely,

Joshua A. Edwards
Assistant Attorney General
Bar # 101188

JAE/ab
Enclosures

~~cc: Honorable Jenny A. Kitchings (original and one enclosed)~~
Victim Advocacy Division