

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

CHARLES R. NELSON

APPELLANT

VS.

NO. 2008-KA-1614-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE ISSUE

- I. THE STATE PRESENTED LEGALLY SUFFICIENT EVIDENCE TO SUPPORT THE JURY'S VERDICTS.

STATEMENT OF FACTS

Christine and Derek Thompson, owners of Thompson Management Services, Inc., discovered that two unauthorized checks had been written on their business accounts. T. 55. The checks were made payable to Larry Turner, whom the Thompsons did not know, and cashed at Wal-Mart. T. 22, 31. The Thompsons kept the checks locked in a desk drawer in their office, which they also kept locked. T. 59.

Sometime after the two stolen checks had been cashed at Wal-Mart, Larry Turner was arrested for attempting to cash a stolen check at Supervalu. T. 103. Turner was in the passenger seat of a vehicle in the Supervalu parking lot when arrested. T. 99. The driver, Charles Nelson, was not arrested at that time. T. 99. While in custody, Turner was questioned about forged checks he cashed

at Wal-Mart. T. 31. He admitted to cashing the checks, but did not know the name of the individual who gave him the checks. Tuner, however, picked Nelson out of a photo line-up as the man who gave him the checks. T. 48. Turner also identified Nelson in court as the man who gave him the checks to cash. T. 80, 84.

Nelson was subsequently tried and convicted by a Washington County Circuit Court jury of two counts of uttering a forgery and two counts of conspiracy to commit the crime of uttering a forgery.

SUMMARY OF ARGUMENT

The State provided legally sufficient evidence to support the jury's verdicts. Nelson complains that only Turner's testimony established the conspiracy charge. However, because Turner's testimony was not improbable or self-contradictory, it sufficiently established the necessary elements of the crime of conspiracy. Nelson's complaint that he did not physically go in Wal-Mart and cash the stolen and forged checks is also without merit. Nelson was indicted for uttering a forgery by acting in concert with Turner, and the jury was so instructed. The evidence clearly established that Nelson acted in concert with Turner in uttering a forgery.

ARGUMENT

I. THE STATE PRESENTED LEGALLY SUFFICIENT EVIDENCE TO SUPPORT THE JURY'S VERDICTS.

Evidence is legally sufficient to sustain a conviction when any rational juror could have found that the State proved the essential elements of the crime charged beyond a reasonable doubt. *Bush v. State*, 895 So.2d 836, 843 (¶16) (Miss. 2005). The reviewing court accepts as true all evidence which supports the guilty verdict, and the State is given the benefit of all reasonable inferences that may be drawn from the evidence. *Wash v. State*, 931 So.2d 672, 673 (¶5) (Miss. Ct. App. 2006).

To secure a conviction for the crime of conspiracy, the State must prove that two or more persons conspired to commit a crime. Miss. Code Ann. 97-1-1. No overt act in furtherance of the conspiracy must be proven because the crime of conspiracy is complete upon formation of the agreement to commit a crime. *Vickers v. State*, 994 So.2d 200, 212 (¶39) (Miss. Ct. App. 2008). “The agreement need not be formal or express, but may be inferred from the circumstances, particularly by declarations, acts and conduct of the alleged conspirators.” *Id.* (quoting *Brown v. State*, 796 So.2d 223, 226(¶10) (Miss. 2001)). The State proves a *prima facie* case of conspiracy by showing that “the conspirators recognized that they entered into a common plan and knowingly intended to further the plan’s common purpose.” *Dear v. State*, 960 So.2d 542, 546 (¶16) (Miss. Ct. App. 2006).

Turner testified that Nelson told Turner that he obtained the checks from the company he worked for and did not have identification to cash the checks, so if he could put them in Turner’s name, he would pay Turner to cash the check. T. 76. Nelson gave Turner \$150 after cashing each check. T. 80-51. Nelson indicated that he agreed to participate in the illegal activity because he was

on crack and needed the money. T. 76. Turner's testimony made out a *prima facie* case of conspiracy, which was not rebutted by Nelson. Because Nelson's testimony was not improbable, self-contradictory, or impeached it provided a sufficient basis for the jury's verdicts of guilty on both conspiracy charges. *Durbin v. State*, 924 So.2d 562, 564 (¶10) (Miss. Ct. App. 2005).

To sustain a conviction for uttering a forgery, the State must prove (1) that the defendant published or uttered as true (2) a forged, altered, or counterfeit instrument, (3) knowing the instrument to be forged, altered, or counterfeited, (4) with the intent to defraud. *Duhart v. State*, 927 So.2d 768, 775 (¶15) (Miss. Ct. App. 2006) (citing Miss. Code Ann. §97-21-59). On appeal, Nelson focuses on the first element because he did not personally go into Wal-Mart and cash the checks. Although Nelson did not tender the forged check to the Wal-Mart employee, he designed a to cash the stolen and forged checks, entered into an agreement with Turner to cash the stolen and forged checks, and encouraged and assisted Turner in cashing the stolen and forged checks. Accordingly, although Nelson did not physically go in Wal-Mart and cash the checks, he is guilty of uttering a forgery as a principal because he acted in concert with Turner and acted as an accessory before the fact. *Ross v. State*, 914 So.2d 814, 816 (¶11) (Miss. Ct. App. 2005); *Vaughn v. State*, 712 So.2d 721, 724 (¶11) (Miss. 1998). The jury was fully instructed on the concept of acting in concert. C.P. 101.

Nelson also claims that the State failed to present evidence that he stole or forged the checks in question. Mrs. Thompson testified that the stolen checks were kept in a locked officer drawer in a locked office. T. 58-59. She testified that only she and her husband were authorized signatories on the Thompson Management account and that the Thompsons and Sharon Carter were the only authorized signatories on the County Housing account. T. 57. The Thompsons testified that they print their checks with a computer program, and the forged checks appeared to have been filled out

by a typewriter. T. 56-57, 91. The Thompsons testified that the signature on the stolen and forged checks was not their signature. T. 57, 92. They further testified that they had not given Nelson any company checks, nor did he have permission otherwise to use company checks. T. 73. Turner testified that the checks Nelson gave him to cash had already been filled out and signed. T. 82-83.

“It is well settled that either unexplained or unsatisfactorily explained possession of a forged instrument by the defendant is *prima facie* evidence that he either committed the forgery himself, or procured another to do so.” *Cannady v. State*, 855 So.2d 1000, 1003 (¶9) (Miss. Ct. App. 2003) (quoting *Rowland v. State*, 531 So.2d 627, 630 (Miss. 1988)). Nelson exercised his constitutional right to not testify. However, Nelson also failed to rebut the State’s *prima facie* case that he committed the forgery. Additionally, this Court has stated, “[T]he inference of participation in the crime drawn from possession of the fruits of the crime is to be judged like any other inference, that is, on the strength of that inference in the light of the facts of each particular case.” *Miles v. State*, 864 So.2d 963, 967 (¶14) (Miss. Ct. App. 2003) (quoting *Shields v. State*, 702 So.2d 380, 382 (Miss. 1997)). This Court also listed the following factors to consider in determining the strength of the inference of participation in the crime of uttering a forgery by possession of a forged instrument.

1. The temporal proximity of the possession to the crime to be inferred;
2. The number or percentage of the fruits of the crime possessed;
3. The nature of the possession in terms of whether there is an attempt at concealment or any other evidence of guilty knowledge;
4. Whether an explanation is given and whether that explanation is plausible or demonstrably false.

Id. It is unknown exactly when and how the checks were stolen, but the evidence showed that Nelson gave the checks to Turner already filled out and signed immediately prior to Turner cashing them. As to the number of fruits of the crime possessed, each of the two forged checks for which Nelson was indicted were in Nelson’s possession, and Nelson had given Turner a third check to cash.

Turner was arrested upon cashing the third stolen check. The nature of Nelson's possession of the checks clearly evidenced his guilty knowledge. The Thompsons testified that they had not given Nelson the checks. Nelson approached a complete stranger to cash the checks, and paid him a total of \$300 to cash two checks. Nelson waited outside while he sent Turner into Wal-Mart to do his bidding. Nelson declined to give an explanation as to how he came to possess the stolen and forged checks. Viewing the evidence in the light most favorable to the prosecution, it is evident that a rational trier of fact could have found that the State proved the essential elements of the crime charged beyond a reasonable doubt.

CERTIFICATE OF SERVICE

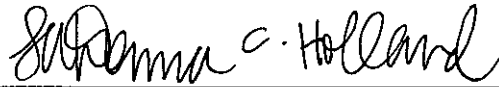
I, La Donna C. Holland, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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