

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAQUANA MCKALPAIN,

Defendant-Appellant.

UNPUBLISHED

February 4, 2010

No. 286722

Wayne Circuit Court

LC No. 07-014040-FH

Before: Stephens, P.J., and Cavanagh and Owens, JJ.

PER CURIAM.

Defendant was convicted in a bench trial of three counts of uttering and publishing, MCL 750.249. Defendant was sentenced to five years' probation and ordered to pay \$19,451.00 in restitution. Defendant appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole issue on appeal is that there was insufficient evidence to support her convictions of uttering and publishing. We disagree. When analyzing a claim based on insufficient evidence, this Court reviews the record de novo. *People v Mayhew*, 236 Mich App 112, 132; 600 NW2d 370 (1999). This Court reviews the evidence in a light most favorable to the prosecutor and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Cline*, 276 Mich App 634, 642; 741 NW2d 563 (2007). This same standard applies to review of a bench trial as to review of a jury trial. *People v Kanaan*, 278 Mich App 594, 618; 751 NW2d 57 (2008).

Defendant claims on appeal that there was insufficient evidence at trial to show either that defendant knew that the instruments were false or that she had the intent to defraud. There was no direct evidence presented at trial that the signatures on the checks at issue were false, forged, or counterfeit. Moreover, defendant's failure to gain permission from her aunt and grandfather is not sufficient to show knowledge on the part of defendant that the instruments were false or to show an intent to defraud. Finally, defendant argues that the frequency and amount of the checks does not indicate an intent to defraud or knowledge that the checks were forged, false, or counterfeit.

The elements of uttering and publishing are: (1) knowledge on the part of the defendant that the instrument was false; (2) an intent to defraud; and (3) presentation of the forged instrument for payment. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). To

be a false document for the purposes of uttering and publishing, an instrument itself need not be forged. *People v Aguwa*, 245 Mich App 1, 5; 626 NW2d 176 (2001). A legally valid instrument acquired by deceptive means is still false and is “proscribed by the uttering and publishing statute.” *Id.* at 4-5. A defendant's intent may be inferred from circumstantial evidence, such as from the defendant's words or from the act, *means*, or *manner* used to commit the offenses. *Hawkins*, *supra* at 458 (emphasis added).

The real issue on appeal is whether the circumstantial evidence here is enough to prove knowledge that the checks were false and intent to defraud on the part of defendant. Circumstantial evidence and reasonable inferences drawn from it may be sufficient to demonstrate the elements of a crime. *People v Bulmer*, 256 Mich App 33, 37-38; 662 NW2d 117 (2003). Moreover, when state of mind is at issue, such as knowledge and intent, minimal circumstantial evidence is sufficient. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). Even when the case is based on circumstantial evidence, “a prosecutor need not negate every reasonable theory consistent with innocence, but must submit evidence sufficient to convince a reasonable jury in the face of whatever contradictory evidence the defendant may provide.” *People v Konrad*, 449 Mich 263, 273 n 6; 536 NW2d 517 (1995).

This case suffers from the fact that the purported drawer of the forged checks, Cassie McClendon, died prior to the arrest of defendant. As a result, there exists little direct evidence that defendant forged the checks at issue. Circumstantial evidence does indicate that: (1) Cassie was having difficulty with her memory, (2) defendant was told by her aunt, Theresa Clayton, that she could not obtain money to fix Cassie’s roof without consulting her grandfather, Cleophus Clayton, which she did not do, (3) she was not given permission to write checks by Cleophus, (4) defendant potentially had access to a mislaid check book, and (5) a number of checks were written to defendant, in a short period of time, endorsed by her and deposited into her personal account. Furthermore, the notations on the front of the checks indicated the checks were to be used to pay for groceries and bills but the evidence on record only shows that the checks were deposited into defendant’s account, not that they were used for the indicated purposes. In this case, although the evidence is entirely circumstantial, a rational trier of fact could determine beyond a reasonable doubt that defendant forged checks (or acquired the checks by false means) she knew were false with intent to defraud and presented the checks for payment. Therefore, there was sufficient evidence to convict defendant of uttering and publishing.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Donald S. Owens