**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A11-675**

State of Minnesota,
Respondent,

vs.

James Robert Portwood,
Appellant.

**Filed February 21, 2012**
**Affirmed**
**Bjorkman, Judge**

Mower County District Court
File No. 50-CR-10-946

Lori Swanson, Attorney General, Kimberly R. Parker, Assistant Attorney General, St. Paul, Minnesota; and

Kristen Nelsen, Mower County Attorney, Austin, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Theodora Gaïtas, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Schellhas, Judge; and Bjorkman, Judge.

**U N P U B L I S H E D  O P I N I O N**

**BJORKMAN**, Judge

Appellant challenges his conviction of check forgery, arguing that he is entitled to a new trial because of the admission of improper testimony about his character and prior

bad acts. Because we conclude that the challenged testimony is not reasonably likely to have affected the jury's verdict, we affirm.

## FACTS

Appellant James Robert Portwood and complainant, F.P., have been friends for about five years. For much of that time, appellant lived in F.P.'s home and did odd jobs for F.P. In exchange, F.P. paid him wages, gave him food, and occasionally gave or loaned him money. Appellant moved out when F.P. moved into a senior-living facility. F.P. loaned appellant money to cover his rent for January and February 2010 but did not give appellant money after that point.

In the spring of 2010, F.P. discovered two checks on his electronic bank statement that he did not recognize—a $300 check dated February 25, 2010, and a $200 check dated March 2, 2010. F.P. reported the situation to the police and his bank, which produced surveillance images of appellant cashing the two checks. F.P. testified that he did not give the checks to appellant and that he recognized the handwriting on the checks as appellant's. Appellant testified that F.P. signed the two checks and gave them to appellant to fill out and cash for himself.

The jury found appellant guilty of forging checks amounting to not less than $250 but not more than $2,500. This appeal follows.

## D E C I S I O N

Appellant argues that he is entitled to a new trial because the district court violated Minn. R. Evid. 404 by admitting spontaneous and unobjected-to testimony that

(1) appellant is "slippery,"[1] (2) appellant was frequently drunk, (3) appellant drunkenly threatened to kill F.P., (4) F.P. repeatedly bailed appellant out of jail, and (5) appellant had a previous booking photograph. Where, as here, an appellant failed to object to the evidence at trial on the grounds advocated on appeal, the plain-error test applies. *Montanaro v. State*, 802 N.W.2d 726, 732 (Minn. 2011). In applying the plain-error test, we will reverse only if the district court (1) committed an error, (2) that was plain, (3) that affected the defendant's substantial rights, and (4) that seriously affects the fairness, integrity, or public reputation of judicial proceedings. *Id.* "[I]f we find that any one of the [plain-error] requirements is not satisfied, we need not address any of the others." *Id.* That is the case here.

We need not address whether the district court plainly erred in admitting the challenged testimony because it is not reasonably likely that the testimony affected the jury's guilty verdict. *See id.* (defining the third prong of the plain-error test). First, the challenged testimony was a short and insignificant part of the trial, comprising a total of about 1 page in a 96-page trial transcript. The prosecutor did not dwell on or repeat the testimony, nor did he allude to it during his closing argument. Second, none of the challenged testimony suggests that appellant had committed any acts similar to forgery, the crime for which he was found guilty. Third, appellant himself testified that F.P. had bailed him out of jail, indicating to the jury that he had been charged with prior offenses.

[1] Appellant made no rule 404 objection to this testimony, though he objected that it was hearsay, non-responsive, and irrelevant. The district court sustained the objection that it was non-responsive and instructed the jury to disregard the testimony.

And finally, the other evidence against appellant was overwhelming. *See State v. Prtine*, 784 N.W.2d 303, 314 (Minn. 2010) ("To determine if the error was prejudicial, we evaluate the strength of the evidence against the defendant . . . ."). The state provided surveillance images of appellant cashing the two checks; showed that the handwriting and style of the checks were markedly different from those on one of F.P.'s authentic checks;[2] presented F.P.'s testimony that he recognized the handwriting on the two checks as appellant's handwriting and not his own; and presented testimony that appellant was alone in a room with F.P.'s checks shortly before the checks were written. The prosecution's key witness, F.P., testified coherently and consistently, with the exception that he misstated the years in which some irrelevant events occurred. By contrast, appellant's testimony—that F.P. gave him the signed checks to fill out and cash—was inconsistent with his two previous statements to law enforcement and was belied by the striking difference between the signatures on the two checks and the signature on the authentic check. On this record, we conclude that any evidentiary error did not affect appellant's substantial rights.

**Affirmed.**

[2] Most notably, the signatures on the forged checks are neat and upright, whereas the signature on the authentic check is messy and slanted; the spelled-out dollar amounts are printed on the forged checks, whereas the dollar amount is cursive and followed by a long line on the authentic check; and the formats of the dates and numeric dollar amounts are different between the forged and authentic checks.