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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2294**

State of Minnesota,
Respondent,

vs.

Darryl Lavel Moody,
Appellant.

**Filed August 26, 2013
Affirmed
Cleary, Judge**

Ramsey County District Court
File No. 62-CR-12-1378

Lori Swanson, Attorney General, St. Paul, Minnesota; and

John J. Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Cleary, Judge; and
Huspeni, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

CLEARY, Judge

Appellant challenges his conviction of offering a forged check in violation of Minn. Stat. § 609.631, subd. 3 (2010), arguing that there was insufficient evidence to establish knowledge and intent. We affirm.

FACTS

On December 18, 2011, appellant Darryl Moody received a check in the mail from Big Foot 4x4 for \$1,823.79. The next day, appellant tried to cash the check at his bank, Citizen Community Federal Bank (Citizen Bank), located inside the Wal-Mart store in Oak Park Heights. The teller at Citizen Bank informed him that he did not have sufficient funds in his account to cash the check, but that he could deposit it and the bank would give him \$200 until it cleared. The teller also suggested that appellant might be able to cash the check at the customer-service counter at Wal-Mart, which appellant tried to do. An employee at the customer-service counter told appellant that the check could not be cashed because it was not a government-issued or payroll check.

Appellant then went to Unbank, located on University and Lexington Avenues in St. Paul, to try to cash the check. The teller at Unbank asked for appellant's identification, asked him to put his thumbprint on the check, and began to process the check. Because the check was for a large amount, the teller called Big Foot 4x4 to verify it. A representative of Big Foot 4x4 informed the teller that the check was forged, and the teller called the police. After appellant had waited for the teller to process his check for about 30 minutes, St. Paul police officers arrived at the bank and arrested appellant

for offering a forged check. In February 2012, appellant was charged with offering a forged check in violation of Minn. Stat. § 609.631, subd. 3. A jury trial was held in August 2012.

St. Paul Police Officer Cara Hughes, one of the officers who responded to the Unbank teller's call, testified at trial. Officer Hughes explained that, when she arrived at Unbank, she asked appellant if he was cashing a check. When appellant answered that he was, Officer Hughes asked him where he got the check, and appellant told her that he received the check from a refund. Officer Hughes testified that appellant said he was not sure what kind of refund it was because he did "a lot of buying" on the internet.

Jason Urbanski, a sergeant with the St. Paul Police Department fraud and forgery unit, also testified at trial. Sergeant Urbanski first testified about the typical investigations that he conducts regarding check forgeries. He explained that an individual who presents a forged check wants to get it cashed immediately. The reason for cashing the check immediately is that, if the individual waited for the check to clear and did not take the money immediately, the check would be returned as invalid and the individual would not get any money.

Sergeant Urbanski next testified about an interview that he conducted with appellant on December 20, 2011. Sergeant Urbanski testified that appellant said that he had done some online shopping and received the check in the mail as a result of a sweepstakes for the shopping, but that appellant claimed he threw the envelope and other documentation accompanying the check into the garbage. Sergeant Urbanski explained that, in his experience dealing with sweepstakes scams, the individual who sends the

check usually intends to make money from it. For example, the individual may include instructions for the recipient to mail back a portion of the check for taxes. The recipient then deposits the check into his or her account and mails the requested amount back. When the check is returned as invalid, the recipient loses the amount sent. Sergeant Urbanski contrasted that type of scenario with his experience in check forgery, where an individual cashes a check right away, instead of depositing it in an account, to obtain the funds before the check comes back as invalid. Finally, Sergeant Urbanski testified that, during the interview, appellant did not say anything about a bike or motorcycle refund. Big Foot 4x4's president testified at trial that fraud had been committed upon her company in the form of secret-shopper lottery scams. She stated that the lottery scams specifically asked the victims to mail money back to the sender.

The teller at Unbank who processed appellant's check and called the police also testified at trial. The teller explained that, when she received a check for a large sum like the one appellant presented, she was required by Unbank to ask the customer why he received the check. She testified that appellant told her that he bought a motorcycle, that he did not want it and returned it, and that the check was his money back for the motorcycle.

At trial, appellant claimed that he had no idea that the check was fraudulent. He testified that he thought the check was related to a motorcycle that he had owned. He stated that his motorcycle had been stored in a repair shop located in Hudson, Wisconsin, and when he went to retrieve the motorcycle, the manager of the shop informed him that there had been a fire at the shop and that his motorcycle had been totaled. According to

appellant, the shop manager informed him that the shop's insurance only covered the shop's property and did not cover repair property. Appellant admitted on cross-examination that the fire that destroyed his motorcycle occurred in 2005 and that he received the check in 2011. He also admitted that the shop that had been storing the motorcycle was called Mondus Motor Sports, that the check came from a company called Big Foot 4x4, and that the shop manager had told him that insurance was not going to pay for the damage to his motorcycle.

Appellant testified that, during his interview with Sergeant Urbanski, he explained that he was "accustomed to receiving checks in the mail" because he did a lot of internet shopping and that he thought the check "would be from either the motorcycle" or something he "received back from the [i]nternet." Appellant testified that he shops on the internet "[m]aybe half a dozen times a month" and that he receives rebates or checks in the mail "several times a year." Appellant explained that he gave different explanations about where the check came from

because I'm accustomed to getting various checks in the mail. And usually the ones that come in the mail they say "Non-negotiable" or they say "Do not cash," so I know they're not no good [sic], so I don't cash them. But this particular check, because I didn't quite know where it came from – I had a couple [of] ideas where it possibly came from because, like I said, I get various checks in the mail. And with the logo on there, I thought it [was] from the motorcycle. I actually thought it was from my motorcycle that got burnt up. And it could also have been from, like I said, checks that I normally get in the mail from the [i]nternet, too.

Appellant later conceded that, during his interview with Sergeant Urbanski, he did not mention the motorcycle as a possible source for the check.

The court instructed the jury that, in order to find appellant guilty of offering a forged check, it must find that the state proved, beyond a reasonable doubt, the following elements: (1) that the check was forged; (2) that appellant knew the check was forged; (3) that appellant offered the forged check; and (4) that appellant offered the check with the intent to defraud. The jury found appellant guilty of offering a forged check under Minn. Stat. § 609.631, subd. 3. This appeal follows.

D E C I S I O N

“A person who, with intent to defraud, offers, or possesses with intent to offer, a forged check, whether or not it is accepted, is guilty of offering a forged check”
Minn. Stat. § 609.631, subd. 3.

Appellant argues that the circumstantial evidence was insufficient to prove beyond a reasonable doubt that he knew the check he offered was forged and that he intended to offer a forged check.

In considering a claim of insufficient evidence, this court’s review is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the jurors to reach the verdict that they did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing court must assume that “the jury believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). This is especially true when resolution of the matter depends on conflicting testimony. *State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980).

“Direct evidence as to the fact of intent is usually impossible” *State v. Bouwman*, 328 N.W.2d 703, 705 (Minn. 1982). “Intent may be proved by circumstantial evidence including the defendant’s conduct” and “may be inferred from events occurring before and after the crime.” *Davis v. State*, 595 N.W.2d 520, 525–26 (Minn. 1999). Usually, knowledge must be proved by circumstantial evidence. *State v. Mattson*, 359 N.W.2d 616, 617 (Minn. 1984).

“Convictions based on circumstantial evidence warrant particular scrutiny.” *State v. Scharmer*, 501 N.W.2d 620, 621 (Minn. 1993). Circumstantial evidence must do more than give rise to suspicion of guilt; it must point unerringly to the defendant’s guilt. *Id.* at 622. The facts and circumstances proved by the circumstantial evidence must form a complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt. *State v. Jones*, 516 N.W.2d 545, 549 (Minn. 1994). A jury, however, is in the best position to evaluate circumstantial evidence, and its verdict is entitled to due deference. *Webb*, 440 N.W.2d at 430.

Appellant first claims that both he and the state presented reasons why he would believe the check was legitimate. He contends that the state presented evidence, through Big Foot 4x4’s website and the testimony of its president, that others had been fooled by the sweepstakes scam, and therefore he was indistinguishable from many other people who fell victim to this same scam. Appellant also argues that he told the Unbank teller and testified at trial that he thought the check may have been reimbursement for his

motorcycle, and that being naïve about the check does not establish his knowledge or intent.

The state proved that appellant gave the teller at Unbank, Officer Hughes, and Sergeant Urbanski different explanations for why he received the check. He told the teller that the check was a refund for a motorcycle that he had returned; he told Office Hughes that the check was a refund from his internet shopping; and finally he told Sergeant Urbanski that the check came from a sweepstakes. Appellant offered a fourth explanation at trial, testifying that he believed the check was reimbursement for a motorcycle he owned that had been totaled in a repair-shop fire in 2005. However, appellant admitted that the check was issued from a different company and that the shop manager had informed him that insurance would not cover the damage to the motorcycle.

Further, the evidence presented at trial actually contrasted the actions of typical sweepstakes-scam victims with the actions of appellant here. Big Foot 4x4's president testified at trial that the fraud committed upon her company included secret shopper or lottery scams. She explained that victims of the lottery scams were sent a letter and a check and were asked to mail money back to the sender. Sergeant Urbanski confirmed in his testimony that victims of sweepstakes scams usually deposit the invalid checks in their accounts, mail the requested money back to the sender, and then lose their money when the check is returned as invalid. In contrast, he explained that individuals trying to collect on forged checks generally cash the checks, instead of depositing them into accounts, in order to collect the funds before the checks are returned as invalid. Sergeant Urbanski also testified that an individual presenting a fraudulent check normally tries to

get the check cashed immediately. This testimony was consistent with appellant's behavior; the day after receiving the check, appellant tried to cash it at three different locations. He refused to deposit the check at his bank and take \$200 cash until it cleared.

Appellant claims that he has received similar checks in the mail in the past and that he was just not sure why he received the check. However, we assume that the jury believed the state's witnesses and disbelieved any evidence to the contrary. *Moore*, 438 N.W.2d at 108. If appellant really was naïve about the origin of the check, as he claims, a reasonable conclusion would be that he would have indicated that he was not sure where the check came from, instead of offering a different explanation every time he was asked.

Because the circumstances proved do not support any reasonable, rational inference inconsistent with guilt, there was sufficient evidence to demonstrate appellant's knowledge and intent to offer a forged check.

Appellant also argues that his behavior leading up to and after he offered the forged check negates his knowledge. He claims that, because he presented his driver's license and did not flee the bank, he demonstrated his clear conscience in attempting to cash the check. To support this argument, appellant relies only on an unpublished opinion issued by this court holding that a defendant's use of fake identification and decision to leave a bank can demonstrate his knowledge and intent to offer a forged check. Unpublished opinions are of limited value in deciding an appeal. *See* Minn. Stat. § 480A.08, subd. 3(c) (2012) (stating that “[u]npublished opinions of the Court of Appeals are not precedential”) (emphasis added). Additionally, appellant fails to provide

any authority to support his inverse conclusion that acceding to the request of the teller to present his identification and remaining at the bank to receive the check funds demonstrate a lack of knowledge or intent to offer a forged check. As discussed above, the circumstances proved do not support any reasonable, rational inference inconsistent with guilt, and appellant's argument is unpersuasive. *See State v. Ostrem*, 535 N.W.2d 916, 923 (Minn. 1995) (“[P]ossibilities of innocence do not require reversal . . . so long as the evidence taken as a whole makes such theories seem unreasonable.”).

Affirmed.