IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	No. 65465-9-I
Respondent,	)	
	)	DIVISION ONE
v.	)	
	)	
TYSON JACOB SPRING,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	FILED: February 13, 2012

Spearman, J. — A jury convicted Tyson Spring of eight counts of theft in the first degree and four counts of forgery, for acts related to his attempts to keep his automobile consignment dealership open. He claims on appeal that the evidence is insufficient to sustain seven of the theft convictions and two of the forgery convictions. He also claims he was denied the following constitutional rights: (1) to present a defense (because of the trial court's exclusion of certain expert testimony) and (2) to equal protection (because he was charged with the general felony offense instead of the more specific misdemeanor offense). We reject Spring's arguments and affirm.

FACTS

Spring founded Auto Gallery of Seattle (AGS) as a luxury automobile consignment dealership in early 2003. AGS accepted cars on consignment from car owners under an agreement that the proceeds of the sale would be shared

on a pre-arranged basis. In 2005, AGS began experiencing financial difficulties. In order to keep the business afloat, Spring retained the proceeds from the sales of consigned cars and failed to notify the owners of the sales. He also failed to pay a bank loan made to AGS. Finally, he signed the names of two consignors to certain documents without authorization and used these documents to obtain title to the cars and transfer ownership.

The basis for one of the eventual charges against Spring involved a loan for the purchase of a BMW located in Germany. American Marine Bank (AMB) loaned AGS $68,000 on December 21, 2005 to finance the purchase. Spring signed the loan as an individual guarantor. As security for the loan, AMB retained the certificate of origin for the BMW. A certificate of origin is necessary for the purchaser of a new car to obtain title. The loan was due on March 31, 2006. On April 1, 2006, one day after the loan was supposed to be repaid, Spring contacted Christine Christoff, a commercial lender for AMB, and said he had a buyer for the car and a sale was imminent. They agreed to a loan extension of two months and agreed to meet to sign the loan extension documents, have Spring pay the extra interest that would accrue on the extension, and have Christoff inspect the vehicle.

Christoff went to AGS on April 26. Spring was not present, but he had left a check for the amount of interest due on the extension. An AGS employee told

Christoff that the BMW was being detailed at another location and was not available for inspection. At this point Christoff became concerned that something was amiss. Spring went to Christoff's office several days later to return the signed loan extension documents. Christoff asked Spring if he had already sold the car without paying the bank, which he denied.

Spring had actually sold the BMW on March 13, 2006 for $86,950. Spring never paid off AMB's loan in full, even though the proceeds from the sale exceeded the principal amount of the loan by nearly $19,000. Instead, he made an interest payment of $2200.16 in April 2006, an extension fee payment of $133.33, and a payment of $250. AMB exercised its right of offset to close Spring's bank account and applied the $5200 balance to the loan. Spring made no other payments to AMB. He admitted at trial that he extended the loan for the sole purpose of stalling the bank.

In another series of acts–these forming the basis of theft charges–Spring retained proceeds due to consignor Candice Oneida, who consigned her BMW with AGS in January 2006.[1] The agreed minimum sales price was $53,000, though Oneida owed Watermark Credit Union roughly $57,500 on the vehicle. Shortly after leaving her BMW with AGS, Oneida moved to New York. Initially,

[1] Spring was alleged to have committed similar acts against several consignors but because his arguments apply across the board, we will discuss the facts in one situation for representative purposes.

she attempted to get updates from Spring by email and telephone, but Spring did not respond. As time went on, Oneida attempted to contact Spring more frequently. She eventually succeeded in contacting him in April 2006. Spring claimed a potential buyer would be coming in to look at the car the next weekend.

On June 12, 2006, Marc Rousso, who had actually purchased Oneida's BMW from AGS in January 2006, contacted Oneida. He wanted to know why Watermark would not release the title to the BMW. Oneida explained to Rousso that Watermark still held the title because the loan had not been paid off. Oneida immediately contacted the police. She testified that she stopped making payments on the car because she "could not afford the loan on a car [she] didn't have". Watermark obtained the car through litigation and sold it at a wholesale rate. After the car was sold, Oneida still owed $24,500 on the loan.

Finally, in events forming the basis for two of the forgery counts, Spring signed consignor Mark Horne's signature on an "Odometer Disclosure/Title Extension Statement Release of Title by Registered Owner" form and on an "Affidavit of Loss Release of Interest" form and then signed his own name certifying that Horne's signature was authentic. Spring used the documents to obtain title to Horne's car and transfer ownership to the purchaser, Roy Robinson Chevrolet. Horne testified that he had lost title to the car he had

consigned to AGS and that he did sign some documents Spring sent him in order to obtain the title. Although Horne returned the signed documents, because AGS had closed before they were delivered, the documents were lost. Horne testified that the signatures on both forms that Spring had used were not his and that he did not authorize anyone to sign the forms on his behalf. He also testified that neither of the documents he signed released his interest in the car, nor did he intend to do so.

Based on the foregoing acts and similar acts involving other individuals, the State charged Spring as follows:

> Thirteen counts of theft in the first degree (Counts 4, 6, 9, 11, 12, and 13[2] alleged theft by color and aid of deception; Counts 1-3, 5, 7-8, and 10 alleged theft by unauthorized control; Count 12 alleged theft by both means)
>
> Four counts of forgery (counts 14-17)

The theft by unauthorized control counts were based on Spring's acts in selling cars taken on consignment and retaining the proceeds. The theft by deception counts were based on his selling cars taken on consignment and then failing to transfer title to the buyers. The forgery counts were for conduct related to odometer disclosure and release of interest documents.

The trial court dismissed Counts 6 and 12 at the close of the State's case.

[2] Court 13 was originally charged as theft by deception and by unauthorized control but was submitted to the jury only on the former ground. Count 12 referenced similar conduct with an entity called EuroSpecExotic but the charge was dismissed at the close of the State's case.

A jury convicted Spring of all seven counts of theft by unauthorized control in the first degree; one count of theft by deception in the first degree, based on his failure to repay the loan to AMB; and all four counts of forgery. The jury acquitted Spring of three counts of theft by deception. Spring was given a sentence at the low end of the standard range on each count of conviction. Specifically, 43 months of imprisonment on the counts for theft in the first degree and 22 months of imprisonment for the forgery counts, all sentences to run concurrently. Spring appeals all of the theft convictions and two of the forgery convictions.

DISCUSSION

Spring challenges the sufficiency of the evidence on the seven theft convictions based on unauthorized control and two of the forgery convictions. He also claims he was denied (1) his constitutional right to present a defense by the trial court's exclusion of expert testimony and (2) his constitutional right to equal protection because he was charged with the general felony offense instead of the more specific misdemeanor offense. We conclude that the evidence supports the convictions and that his remaining claims lack merit.

Sufficiency of the Evidence

On a challenge to the sufficiency of the evidence, we must decide whether, viewing the evidence in a light most favorable to the State, any rational

trier of fact could have found all the essential elements of the crime beyond a reasonable doubt. Jackson v. Commonwealth of Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L.Ed.2d 560 (1979); State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). The elements of a crime may be established by direct or circumstantial evidence, one being no more or less valuable than the other. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). We must draw all reasonable inferences in favor of the State. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). A claim of insufficiency of the evidence admits the truth of the State's evidence and all inferences that can reasonably be drawn therefrom. Id. "Credibility determinations are for the trier of fact and cannot be reviewed on appeal." State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). We defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and persuasiveness of the evidence. State v. Walton, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992).

Theft by Unauthorized Control

To convict Spring of theft in the first degree by unauthorized control, the State had to prove the following elements for each of the seven counts: (1) that during a period of time intervening between [date range specific to each incident],[3] Spring exerted unauthorized control over the property of [named

[3] For purposes of this appeal the dates are irrelevant.

consignor] or the value thereof; (2) that the property exceeded $1,500 in value; (3) that Spring intended to deprive the other person of the property; (4) that Spring's acts were part of a common scheme or plan, a continuing course of conduct, and a continuing criminal impulse; (5) that one of Spring's acts of exerting unauthorized control took place after January 6, 2006;[4] and (6) that any of the acts occurred in the State of Washington.

Spring argues there was insufficient evidence of "intent to deprive." App. Brief at 10-12. He contends that because he testified that he intended to stall for time and compensate the consignors with interest in the future, the evidence is insufficient to prove that he intended to permanently deprive the consignors of their property. App. Brief at 11-12. However, the "intent to deprive" element of theft does not require an intent to deprive permanently. State v. Komok, 113 Wn.2d 810, 816-17, 783 P.2d 1061 (1989). Nor did the jury instructions—which Spring does not appeal—require an intent to permanently deprive. Spring's testimony that he used the money from the sale of the consignors' cars to help keep AGS afloat instead of paying the consignors in a timely manner is sufficient to support the jury's finding that he acted with intent to deprive. Moreover, the jury heard Spring's testimony as to his intent and was entitled to believe or not believe it. See Walton, 64 Wn. App. at 415-16.

[4] This element was omitted from the jury instructions for Counts 5, 7, 8, and 10. The distinction is irrelevant to this appeal.

Spring also contends that the evidence is insufficient to prove that he intended to deprive the consignors of their property because they voluntarily entered into consignment agreements with him. But the voluntariness of the consignment agreements and the voluntariness with which the consignors entrusted the cars to the care of AGS is irrelevant to whether Spring acted with intent to deprive. The issue, instead, is whether he acted with intent when he retained the proceeds from the sale of the automobiles for his own purposes. In light of Spring's own testimony, the evidence is sufficient to establish this element.

Forgery

To convict Spring of forgery as charged in Count 14, the State was required to prove: (1) that on or about April 20, 2006, Spring offered or put off as true a written instrument, to-wit, a Department of Licensing (DOL) form "Odometer Disclosure/Title Extension Statement Release of Title by Registered Owner," bearing the purported signature of "Mark B. Horne," which had been falsely made, completed or altered; (2) that Spring knew that the instrument had been falsely made, completed, or altered; (3) that Spring acted with intent to injure or defraud; and (4) that this act occurred in the State of Washington. Count 15 had the same elements except the instrument involved was a DOL form "Affidavit of Loss Release of Interest." The documents involved in these

charges were submitted by Spring to Roy Robinson Chevrolet and Subaru when he sold Horne's car to that dealership. Roy Robinson submitted these documents to the DOL for filing when it sold the car to a customer.

Spring claims that the evidence was insufficient to prove that he intended to injure or defraud Mark Horne because, in his view, the evidence showed that he believed he was acting on Horne's behalf, as Horne's agent. Spring compares his actions to those of the defendant in State v. Soderholm, 68 Wn. App. 363, 842 P.2d 1039 (1993).

In Soderholm, the defendant was hired by the Johnstons to build several buildings. Id. at 366. In order to obtain building permits, Soderholm signed Mr. Johnston's name on the permit application. He was convicted of forgery. Id. at 369. At trial, Soderholm argued that Mrs. Johnston authorized him to sign a property owner's affidavit in order to obtain a building permit and that she asked Soderholm to handle the permit issue because she "knew nothing about it and because [her] husband was going to be gone so much." Id. at 373-74. However, this court upheld Soderholm's conviction, finding that "a rational trier of fact could have found that Soderholm acted without authority in signing Mr. Johnston's name to the owner affidavit" because he was not given specific authority to sign the document and he had not requested such authority. Id. Furthermore, Soderholm could not have been impliedly authorized to sign the

document because the affidavit falsely represented to the county that the owners would be performing all of the work. Id. at 374-75. We held that there was no evidence that the Johnstons authorized Soderholm to make a false representation on their behalf. Id. at 375.

Spring contends that here, the evidence that Horne signed and mailed the documents back to him supports his claim that Horne authorized him to sign the documents. However, as in Soderholm, Horne testified that he did not authorize Spring to sign any documents on his behalf and there was no evidence that Spring requested such authority. Nor was there evidence that Horne requested Spring to handle the lost title issue on his behalf. Moreover, Horne testified that the documents he signed and mailed to Spring differed in significant respects from those signed by Spring. While Spring testified that the documents he sent to Horne released Horne's interest in the car, Horne disagreed. Based on this evidence, the jury could have concluded that Horne did not authorize Spring to sign the documents or that even if he did, the documents Spring signed were not those Horne authorized.

Spring also contends the evidence was insufficient to establish that he acted with intent to injure or defraud Horne. He testified that he signed the documents only for the purpose of expediting the sale of Horne's vehicle. He claimed that the buyer was threatening to unwind the deal and that Horne had

already mailed the documents to AGS. Thus, Spring's only intention was to complete the transaction on Horne's behalf. But there was evidence that the documents signed by Horne and those Spring signed purportedly on Horne's behalf differed in significant respects. There was also evidence supporting the inference that the forged documents helped Spring stall Horne and use the money that properly belonged to Horne to help keep AGS afloat. This, among other evidence, was sufficient to support the jury's finding that Spring acted with intent to injure or defraud.

Right to Present a Defense

Spring claims the trial court violated his constitutional right to present a defense by refusing to admit the expert opinion testimony of his previous attorney, David Smith. Spring first argues that Smith's testimony would have presented a defense to the theft by deception charges in Counts 4, 9, and 11. We do not address this argument, because Spring was acquitted of these charges by the jury.

Spring next argues that Smith should have been allowed to testify about the UCC's impact on the AMB loan, which would have been relevant to Count 13. But this issue was not preserved for appeal. ER 103(a)(2) prohibits a party from challenging a trial court's ruling on the admission of evidence unless "'the substance of the evidence was made known to the court by offer….'" Hensrude

v. Sloss, 150 Wn. App. 853, 860, 209 P.3d 543 (2009). An offer of proof must "communicate to the trial court the substance of the evidence in question so as to make clear to the trial court what is being offered in proof, and why the offer should be admitted over the opponent's objections, so the court may make an informed ruling." Adcox v. Children's Orthopedic Hosp. and Medical Center, 123 Wn.2d 15, 26-27, 864 P.2d 921 (1993) (quoting State v. Ray, 116 Wn.2d 531, 539, 806 P.2d 1220 (1991)). The offer must also create an adequate record for review. Estate of Bordon v. State, Department of Corrections, 122 Wn. App. 227, 246, 95 P.3d 764 (2004).

Spring points to only one place in the record where defense counsel discussed Smith's expert testimony in relation to the charges involving AMB: "The funny thing there was discussion with Mr. [sic] Christoff from American Marine Bank. They could file a UCC in order to protect their security interest. The UCC transcends this whole case, your Honor, with regard to the commercial transactions." This statement failed to inform the trial court of the substance of the testimony Smith was prepared to give on the AMB transaction. Additionally, the statement failed to create an adequate record for review.

Concurrent Statutes

Spring's last claim is that his equal protection rights were violated because he was charged with the more general felony of forgery rather than the

specific misdemeanor of signing odometer statements or title documents as a buyer's agent under RCW 46.70.180(12)(b). We review issues of statutory construction, including whether statutes are concurrent, de novo. State v. Conte, 159 Wn.2d 797, 803, 154 P.3d 194 (2007). When a defendant's conduct is proscribed by a general statute and a specific statute, the "general-specific" rule of statutory construction requires the defendant be prosecuted under the specific statute only. Id. Statutes are concurrent if "the general statute will be violated in each instance where the special statute has been violated." State v. Shriner, 101 Wn.2d 576, 580, 681 P.2d 237 (1984). A determination of whether two statutes are concurrent is based on the elements of the statutes. State v. Wilson, 158 Wn. App. 305, 314, 242 P.3d 19 (2010).

The forgery statute and RCW 46.70.180(12)(b) are not concurrent statutes. A person is guilty of forgery if, "with intent to injure or defraud: (a) He or she falsely makes, completes, or alters a written instrument or; (b) He or she possesses, utters, offers, disposes of, or puts off as true a written instrument which he or she knows to be forged." RCW 9A.60.020(1). RCW 46.70.180(12)(b) states:

> Each of the following acts or practices is unlawful:
> …
> (12) For a buyer's agent, acting directly or through a subsidiary, to pay to or to receive from any motor vehicle dealer any compensation, fee, gratuity, or reward in connection with the purchase, sale, or lease of a new motor vehicle. In addition, it is

> unlawful for any buyer's agent to engage in any of the following acts on behalf of or in the name of the consumer:
> …
> (b) Signing any vehicle purchase orders, sales contracts, leases, odometer statements, or title documents, or having the name of the buyer's agent appear on the vehicle purchase order, sales contract, lease, or title….

RCW 46.70.180(12)(b). The forgery statute requires that a defendant act with "intent to injure or defraud." RCW 46.70.180(12)(b) has no intent requirement. Thus, a person could violate the latter without violating the forgery statute.

Affirmed.

Spearman, J.

WE CONCUR:

Leach, A.C.J.

Dwyer, J.