

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

K'ALIAH M. OSZMAN,

Appellant.

No. 41153-9-II

UNPUBLISHED OPINION

Quinn-Brintnall, J. — A jury found K'Aliah Oszman guilty of second degree identity theft in violation of RCW 9.35.020(3). Oszman appeals her conviction, asserting that there was insufficient evidence to prove she knew the check she attempted to cash was stolen or forged. Because sufficient evidence supports the jury's verdict finding Oszman guilty of second degree identity theft, we affirm.

FACTS

On March 18, 2010, Oszman went to Advance Cash where she handed a check she said she had received for housekeeping services, her identification, and a check cashing card to Ryan Mullins, an Advance Cash employee. The \$475 check was made out to Oszman and was embossed in the name of "The Barber Shop, Jeanne Virgin." Ex. 1. The check purported to contain Virgin's signature as the drawer of the check and had a notation that the check was for

“housekeeping.”

At trial, Virgin testified that the barbershop she owned in Westport, Washington had been burglarized and that, among other things, her business checkbook containing about 100 checks had been stolen. Virgin testified that the check in question was one of those stolen, she had never before seen or spoken to Oszman, she did not write the check, and the signature on the drawer’s line was a forgery.

Oszman admitted at trial that she attempted to cash The Barber Shop check, but contended that she was doing a favor for an acquaintance she met a week prior, Lola Savidge, who did not have any identification. Oszman claimed she was with Savidge in the car when Savidge filled out the check but did not see her write the check because she (Oszman) was vomiting. Oszman testified that she was under the influence of heroin at the time, sick, groggy, and remembered little about the incident. Oszman further testified that she handed the check, which Savidge had given her folded in half, to Mullins without looking at it. She testified that she did not know the check was stolen. Oszman also testified that she had never seen Virgin before the trial, had never heard of The Barber Shop, and that she had agreed to cash the check Savidge gave her in return for half the money realized from cashing the check, more than \$200.

Mullins testified that Advance Cash was a business that made payday loans and cashed checks for a fee. He identified Oszman as the woman who had attempted to cash The Barber Shop check on March 18. Mullins testified that when he tried to verify the check, he learned it had been stolen, contacted police, and made excuses to delay Oszman in Advance Cash until police arrived. He testified that Oszman kept trying to get his attention from the lobby by asking why he was taking so long.

On March 19, the State charged Oszman by information with one count of second degree identity theft, in violation of RCW 9.35.020(3). The jury found Oszman guilty as charged on July 7. On August 8, the trial court sentenced Oszman to 45 days confinement. Oszman timely appeals.

ANALYSIS

Oszman challenges the sufficiency of the evidence proving that she intended to commit a crime because she did not know the check was stolen or forged. Oszman contends that possession of a forged check alone is insufficient to prove guilty knowledge. Because sufficient evidence supports the jury's verdict, we affirm.

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the jury's verdict, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Kintz*, 169 Wn.2d 537, 551, 238 P.3d 470 (2010); *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). A claim of insufficiency admits the truth of the evidence and all reasonable inferences that a trier of fact can draw from that evidence. *Kintz*, 169 Wn.2d at 551 (quoting *Salinas*, 119 Wn.2d at 201). Circumstantial evidence and direct evidence are equally reliable. *Kintz*, 169 Wn.2d at 551; *State v. Thomas*, 150 Wn.2d 821, 874, 83 P.3d 970 (2004); *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). This court defers to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *Thomas*, 150 Wn.2d at 874; *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990); *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533, review denied, 119 Wn.2d 1011 (1992).

A person is guilty of second degree identity theft when he or she knowingly obtains,

possesses, uses, or transfers “a means of identification or financial information of another person, living or dead, with the intent to commit, or to aid or abet, any crime.” RCW 9.35.020(1). Although possession alone is not sufficient to prove guilty knowledge, possession together with slight corroborating evidence of knowledge may be sufficient. *State v. Scoby*, 117 Wn.2d 55, 61-62, 810 P.2d 1358, 815 P.2d 1362 (1991). Giving a false explanation or one that is improbable in addition to the possession (of another’s financial information) is evidence of guilty knowledge. *State v. Ladely*, 82 Wn.2d 172, 175, 509 P.2d 658 (1973).

Oszman relies on *Scoby* to assert that mere possession of the check is insufficient to prove knowledge that the check was stolen or forged, a fact necessary to prove her intent to commit a crime. 117 Wn.2d at 61-62. In *Scoby*, the defendant attempted to buy gasoline with a \$1 bill with the corners of a \$20 bill pasted onto it. Scoby denied knowing the bill was altered because he did not alter it himself. *Scoby*, 117 Wn.2d at 57. A jury found Scoby guilty of forgery. *Scoby*, 117 Wn.2d at 57. The Washington State Supreme Court upheld Scoby’s conviction, noting that the jury could have reasonably inferred beyond a reasonable doubt that Scoby knew he was passing an altered \$1 bill because the alteration was so obvious. *Scoby*, 117 Wn.2d at 63.

Here, Oszman attempted to cash The Barber Shop check made out to her purportedly for “housekeeping.” Mullins testified that she told him she had received the check for housekeeping services. The check had the name of Virgin’s business, Virgin’s name, address, and telephone number on the top. Virgin and Oszman both testified at trial that they did not know each other. And although Oszman testified she did not know the check was stolen, she testified she knew Savidge did not have a business called The Barber Shop, told the responding police officer that the check was compensation for cleaning for an unnamed friend, and volunteered to the officer

that there were more checks in the car.

Under these facts, any jury could reasonably infer beyond a reasonable doubt that Oszman knew the check she was cashing for Savidge was stolen or forged and that she intended to cash the stolen check to wrongfully obtain funds belonging to another. *See* RCW 9.35.020(3); *Thomas*, 150 Wn.2d at 874; *Scoby*, 117 Wn.2d at 63; *Camarillo*, 115 Wn.2d at 71. Oszman’s initial explanation for cashing the check as pay for housekeeping services she knew she had not performed is contrary to her later written statement and trial testimony that she cashed the check for Savidge. Oszman does not dispute that she possessed the check and her knowingly false “housekeeping” explanation for cashing the check is sufficient circumstantial evidence to support the jury’s guilty knowledge finding. *Ladely*, 82 Wn.2d at 175. The evidence in the record, viewed in the light most favorable to the jury’s verdict, is sufficient to permit any rational trier of fact to find Oszman knew she was trying to cash a stolen or forged check and receive funds to which she was not entitled. Accordingly, we affirm Oszman’s second degree identity theft conviction.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

QUINN-BRINTNALL, J.

We concur:

ARMSTRONG, J.

No. 41153-9-II

WORSWICK, A.C.J.