

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

No. 27841-7-III

Respondent,

Division Three

v.

DARLENE LORRAYNE BROWN,

UNPUBLISHED OPINION

Appellant.

Brown, J. — Darlene L. Brown appeals her forgery conviction, contending the charging document fails to set forth all the necessary elements of the offense of forgery. We disagree, and affirm.

FACTS

Ms. Brown and Douglas Bates were in a relationship for about five years. In August 2007, while the couple was having problems, Ms. Brown went to Basin Department Store in Kennewick and used a check to pay off her lay-away balance. The check belonged to Mr. Bates, but a clerk saw Ms. Brown sign the check, “Doug Bates.” Report of Proceedings at 72. The clerk was familiar with Ms. Brown and knew she had been in a relationship with Mr. Bates, so she accepted the check.

Later, Mr. Bates saw that an unauthorized check, number 7061, was cashed on his bank account. He went to Basin Department Store to investigate. The clerk told Mr. Bates that Ms. Brown had cashed the check.

The State charged Ms. Brown with forgery. The information states Ms. Brown, “with intent to injure or defraud, did falsely make, complete, alter or did possess, utter, offer, dispose of or put off as true a written instrument described as follows: 7061; 8/10/07; \$107.05; Douglas Bates.” Clerk’s Papers (CP) at 44. On the same day, the State filed a motion for arrest/detention, stating Ms. Brown paid the department store, “using one of her ex-boyfriend’s checks. She forged his name in front of the cashier. She did not have permission to use them. . . . The check was written out in the amount of \$107.05.” CP at 43.

The case proceeded to trial without an objection to the sufficiency of the charging document. The jury found Ms. Brown guilty as charged. She appealed.

ANALYSIS

The issue is whether Ms. Brown was denied her constitutional right to notice of the charges against her. She contends the information was constitutionally inadequate because it failed to specify what type of written instrument she allegedly forged.

All essential elements of the charged crime, both statutory and nonstatutory, must be included in the charging document so that the defendant is given fair notice of the charges against him or her and can prepare an adequate defense. *State v. Kjorsvik*, 117 Wn.2d 93, 101-02, 812 P.2d 86 (1991). A charging document is

constitutionally inadequate if it does not contain the essential elements. *City of Auburn v. Brooke*, 119 Wn.2d 623, 636, 836 P.2d 212 (1992). Because Ms. Brown challenges the sufficiency of the information after the verdict, we construe the charging language more liberally and in favor of the document's validity. *Kjorsvik*, 117 Wn.2d at 102.

We apply the two-prong test specified in *Kjorsvik*: (1) do the necessary facts appear in any form or, by fair construction, can they be found in the charging document and, if so, (2) can the defendant show that he or she was actually prejudiced by the inartful language? *Id.* at 105-06.

Here, the document provided all essential elements of the crime of forgery. "A person is guilty of forgery if, with intent to injure or defraud: (a) He falsely makes, completes, or alters a written instrument or; (b) He possesses, utters, offers, disposes of, or puts off as true a written instrument which he knows to be forged." RCW 9A.60.020(1). The information states Ms. Brown, "with intent to injure or defraud, did falsely make, complete, alter or did possess, utter, offer, dispose of or put off as true a written instrument described as follows: 7061; 8/10/07; \$107.05; Douglas Bates." CP at 44. The State filed, on the same day as the information, a motion for arrest/detention, which states that Ms. Brown paid the department store, "using one of her ex-boyfriend's checks. She forged his name in front of the cashier. She did not have permission to use them. . . . The check was written out in the amount of \$107.05." CP at 43. Ms. Brown contends the charging document must identify the type of written instrument. But, no legal authority supports this argument. Even so, the information lists the written

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instrument number, the date, amount, and check's owner. Construing the charging language liberally and in favor of the document's validity, the information adequately notified Ms. Brown of the charge against her. *Kjorsvik*, 117 Wn.2d at 105-06.

Ms. Brown fails to establish the second *Kjorsvik* prong because she points to no prejudice resulting from the language used in the information. Because Ms. Brown had notice of the charge against her and was fully able to prepare an adequate defense, she was not prejudiced. Accordingly, Ms. Brown was not denied her constitutional right to notice of the charges against her.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Brown, J.

WE CONCUR:

Sweeney, J.

Korsmo, J.