

State v. Hester

150 Wn. App. 1059 (Wash. Ct. App. 2009) · 150 Wash. App. 1059
Decided Jun 30, 2009

No. 37312-2-II.

June 30, 2009.

Appeal from a judgment of the Superior Court for Pierce County, No. 07-1-02012-0, Frederick W. Fleming, J., entered January 4, 2008.

Affirmed by unpublished opinion per Quinn-Brintnall, J., concurred in by Van Deren, C.J., and Penoyar, J.

UNPUBLISHED OPINION

QUINN-BRINTNALL, J.

Demetria Shonel Hester appeals her convictions for two counts of second degree theft and two counts of forgery, arguing that insufficient evidence supported her convictions. As the evidence was sufficient, we affirm.

FACTS

In May 2006, Hester worked as an independent contractor performing janitorial services in a bowling alley for Do Right Services. The man who hired her, Kevin Lee, did not pay her, so she filed a complaint with the Department of Labor and Industries. Lee then mailed to her two envelopes containing a total of five checks. Two checks were from Printing Control Graphics and three were from Cirque du Soleil. Before attempting to cash the checks, Hester called Lee to confirm that the checks were payment for her services and to inquire why the payors' names were neither Lee nor Do Right Services. Lee said the checks were her payment, Do Right Services had gone out of business, and he owned Printing Control Graphics and Cirque du Soleil.

On May 22, Hester went to Money Mart to cash a check from Printing Control Graphics.

Money Mart called Printing Control Graphics' financial manager, who told them the check was fraudulent. Money Mart did not tell Hester about the suspected fraud but told her that they could not cash the check because they could not verify its authenticity. Hester threw that check away. The same day, Hester went to her bank, Bank of America, and successfully cashed the second check that listed Printing Control Graphics as the payor.¹ And later that same day, Hester went to the Tacoma Mall branch of Wells Fargo and cashed one of the Cirque du Soleil checks. She did not have an account with Wells Fargo but explained that she went there because the Cirque du Soleil checks were drawn from a Wells Fargo account and she wanted cash.

¹ The State did not charge Hester for cashing the check at Bank of America because the police apparently lost the relevant evidence until trial was underway. The trial court nevertheless allowed testimony relating to that check as relevant to show Hester's knowledge that the other four checks were fraudulent.

On May 23, Hester went to two other Wells Fargo Bank branches and cashed the remaining two checks, both from Cirque du Soleil. She cashed the first one at 9:12 am at the Sixth Avenue and Union branch and the second at 9:42 am at the Westgate branch. The two branches are about 15 minutes apart. Hester testified that she went to two locations because the second check was in her car when she went to the Sixth Avenue branch, but a Wells Fargo financial crimes investigator testified that the bank considers it suspicious for a person to make more than one transaction in a day. He also explained that the bank takes extra precautions when cashing a check for a person who does not have an account with it.

The State charged Hester with second degree theft committed on May 22, 2006 (count I), two counts of forgery committed on May 22 (counts II and III), two counts of second degree theft committed on May 23, 2006 (counts IV and V), and two counts of forgery committed on May 23 (counts VI and VII). The jury found Hester guilty of the charges relating to her activities on May 23, 2006 — two counts of second degree theft and two counts of forgery (counts IV through VII) — but acquitted on the charges relating to her activities on the previous day. Because Hester was a first-time offender, the trial court did not impose a term of confinement but instead sentenced her to 240 hours of community service and 12 months of community custody.

Hester appeals.

ANALYSIS

Hester's sole argument on appeal is that the evidence is insufficient to support her four convictions. We disagree.

To determine whether sufficient evidence supports a conviction, "[t]he standard of review is whether, after viewing the evidence in a light most favorable to the State, any rational trier of fact could have found the essential elements of the charged crime beyond a reasonable doubt." *State v. Rempel*, 114 Wn.2d 77, 82, 785 P.2d 1134 (1990) (citing *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980)). Further, the reviewing court need not be convinced of the defendant's guilt beyond a reasonable doubt, but only that substantial evidence supports the State's case. *State v. Fiser*, 99 Wn. App. 714, 718, 995 P.2d 107, review denied, 141 Wn.2d 1023 (2000). A claim of insufficiency admits the truth of the State's evidence and all reasonable inferences drawn therefrom. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). We treat circumstantial evidence and direct evidence as equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). Credibility determinations are reserved solely for the trier of fact and are not subject to review. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

Hester first argues that insufficient evidence supports her two second degree theft convictions. For that crime, the State had to prove that, on May 23, she "wrongfully obtain[ed] or exert[ed] unauthorized control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services" and the property or services were worth between \$250 and \$1,500. [RCW 9A.56.020\(1\)\(a\)](#); former [RCW 9A.56.040](#) (1995). Hester argues only that there was no evidence that she wrongfully obtained the two checks, but the jury was instructed that it could convict her if she either "wrongfully obtained *or* exerted unauthorized control" over the checks. Clerk's Papers at 62-63 (emphasis added). A rational jury could believe that Hester realized the checks were fraudulent after Money Mart declined to cash one check and she threw it away, and then, on the date for which she was convicted, she cashed the checks at two different Wells Fargo bank branches within 30 minutes because she knew those checks were fraudulent. This evidence supports the jury's finding that Hester exerted unauthorized control over the checks because she retained them and cashed them after learning that they were fraudulent and she intended to deprive the bank of the checks' value. The evidence is sufficient as a matter of law and we affirm.

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 pursuant to [RCW 2.06.040](#), it is so ordered.

VAN DEREN, C.J. and PENOYAR, J., concur.

