IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

JANUARY 1996 SESSION

FILED

September 13, 1996

Cecil W. Crowson
Appellate Court Clerk

STATE OF TENNESSEE, Appellee,

v.

WILLIAM S. DEDMON, Appellant.

No. 01C01-9506-CC-00209

Rutherford County

Hon. James K. Clayton, Jr., Judge

(Forgery)

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OPINION FILED:____________________

AFFIRMED

Joseph M. Tipton
Judge

O P I N I O N

The defendant, William S. Dedmon, was convicted by a jury in the Rutherford County Criminal Court for forgery, a Class D felony. As a Range I, standard offender, he was sentenced to a minimum term of two years to be served on probation. In this appeal as of right, the defendant contends that (1) the evidence was insufficient to support his conviction, and (2) the trial court erred in admitting four savings withdrawal slips into evidence. We conclude that the evidence was sufficient and that the trial court did not commit error.

The offense for which the defendant was convicted involved the forgery of a check in the amount of $1,200.00 drawn from a CD savings account of his eighty-one-year-old grandmother, Alma Dunn, on May 20, 1993. The signature of "Wm. G. Dedmon" appeared on the check and a withdrawal slip. William Gordon Dedmon, Jr., son of Alma Dunn and the father of the defendant, was authorized to make withdrawals from Dunn's account. The indictment charged the defendant with the forgery of the check and not the withdrawal slip. At trial, the defendant did not present any proof.

Regina Moore, Vice President of Cavalry Bank, testified that a joint savings account had been opened in 1980 in the name of Robert J. Dunn and Alma Dunn, husband and wife. At the time of the offense, Robert J. Dunn was no longer a party to the account and William Gordon Dedmon, Jr., who had power of attorney to act on behalf of Alma Dunn, was added to the account. Moore also explained the banking procedures used by the bank associated with deposits and withdrawals. In order for a person to be authorized to withdraw funds, either (1) his or her signature must be on a signature card for the account and a withdrawal slip presented to the bank, or (2) a withdrawal application must be signed by the customer from whose account funds are

being withdrawn and presented to the bank along with a withdrawal slip. The name of William Gordon Dedmon, Jr., appeared on the signature card.

Moore also testified that a withdrawal slip with the name "William G. Dedmon" was presented to the bank and a check payable to Alma Dunn and William Gordon Dedmon, Jr. was issued on May 20, 1993. The check was endorsed with a signature of the name "Wm. G. Dedmon" and was cashed by Sherry Bowen, a teller at Cavalry Bank, on May 20, 1993. In October 1993, William Gordon Dedmon notified the bank of the forgery. Moore compared the signatures on the withdrawal slip and the check to the signature on the signature card and expressed the opinion at trial that the signatures were not the same. The bank refunded the money to the account.

Moore stated that on other occasions, the defendant had withdrawn money from the account with the consent of Alma Dunn. Two withdrawal applications dated April 14, 1993, in the amounts of $1,000.00 and $6,000.00, were signed by Alma Dunn. Three withdrawal slips were presented along with the withdrawal applications by the defendant: (1) $1,000.00 on April 14, 1993, (2) $1,000.00 on May 12, 1993, and (3) $5,000.00 on May 12, 1993. The defendant signed his name as "Wm. S. Dedmon" on each withdrawal slip. On cross-examination, Moore stated that she did not personally know who signed the savings withdrawal or the check. On redirect examination, she explained that it was normal banking procedure not to check each signature against the signature cards.

The teller who cashed the $1,200.00 check, Sherry Bowen, testified that she cashed the check believing that the person was William Gordon Dedmon. She stated that normally she would have checked the signature card before cashing a check but was not required to do so when the check came from another department within the bank. She said that the policy that she followed was to obtain prior approval from her

supervisor before cashing a check greater than $500. She did not recall requesting identification. Bowen was recalled as a witness and testified that she was unsure whether the defendant cashed the check but she recognized him as a customer of the bank.

Cynthia Pruitt, an officer and customer service representative at Cavalry Bank, testified that she recognized the defendant and William Gordon Dedmon, Jr., from earlier banking transactions. She stated that on May 20, 1993, the defendant obtained a withdrawal slip provided by the bank and signed the name "Wm. G. Dedmon" in her presence. She then issued the $1,200.00 check payable to "Alma V. Dunn/William Gordon Dedmon, Jr., POA" and gave it to the defendant. She explained that it was normal procedure to authorize payment by a check without comparing the signature to the signature card when a withdrawal slip is signed with the name of a person that also appears on the account. She also believed that the signature on the back of the check did not match Dedmon's signature on the signature card and that the endorsement resembled the defendant's signatures on the three withdrawal slips. On cross-examination, Pruitt said that she did not specifically remember giving the check to the defendant but did recall "dealing with him several different times." She also did not see him endorse the check. She stated that she filled out the withdrawal slips for the defendant except for his signature.

William G. Dedmon, the defendant's father, testified that he was added to Alma Dunn's checking and savings account for him to pay her bills. In October 1993, Dedmon discovered the forgery of the $1,200.00 check when the CD savings account matured. He became suspicious when he noticed that $19,500.00 had been withdrawn in five years. Dedmon brought charges against the defendant after he was "unable to talk to [the defendant] about taking the money from the account and ha[d] not seen him for about a week." He said that the signature on the check was not his and that he

never gave the defendant permission to withdraw money from the account. He also testified that Dunn was “afraid that she would run out of money in the bank account . . . and wouldn’t have money for [the defendant].” At the time of the offense, the defendant was living with Dunn. On cross-examination, Dedmon acknowledged that Dunn had signed a withdrawal application on two occasions and that the defendant was authorized to withdraw funds on three occasions in the amounts indicated on the applications. He stated that Dunn did not know anything about the $1,200.00 check and had told him that the defendant did not have her permission to withdraw funds in that amount. He also testified that she did not want him to bring charges against the defendant. Dedmon explained on redirect examination that Dunn did not want the defendant to work because she was afraid that he might get “dirty” or “hurt” himself and because she wanted to take care of him. According to Dedmon, the defendant had never worked and was unemployed at the time of the offense. Dedmon testified that he was living with Dunn in October 1993 and that she was bedridden from that time up until her death on April 15, 1994. The jury convicted the defendant upon the foregoing proof.

I

The defendant contends that the evidence is insufficient to support his conviction because the state did not prove the elements of the offense beyond a reasonable doubt. He asserts that a reasonable doubt exists because the state relied on circumstantial evidence. Forging a writing with the intent to defraud or harm another constitutes forgery. T.C.A. § 39-14-114. Forgery requires a person to “[a]lter, make, complete, execute or authenticate any writing so that it purports to ... [b]e the act of another who did not authorize that act . . . .” T.C.A. § 39-14-114(b)(1)(A)(i).

Our standard of review when the sufficiency of the evidence is questioned on appeal is "whether, after viewing the evidence in the light most favorable to the

prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979). This means that we may not reweigh the evidence, but must presume that the jury has resolved all conflicts in the testimony and drawn all reasonable inferences from the evidence in favor of the state. See State v. Sheffield, 676 S.W.2d 542, 547 (Tenn. 1984); State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978).

The defendant argues that his conviction for forgery was based solely upon circumstantial evidence. He further claims that the state failed to present proof sufficient to identify the defendant as the forger. For circumstantial evidence to constitute the sole basis for a conviction the facts must be "so closely interwoven and connected that the finger of guilt is pointed unerringly at the defendant and the defendant alone." State v. Crawford, 225 Tenn. 478, 484, 470 S.W.2d 610, 613 (Tenn. 1971). The evidence must be both consistent with the defendant's guilt and inconsistent with the defendant's innocence, exclude all other reasonable theories except that of guilt, and establish the defendant's guilt so as to convince the mind beyond a reasonable doubt that he or she committed the crime. Patterson v. State, 4 Tenn. Crim. App. 657, 661, 475 S.W.2d 201, 203 (Tenn. Crim. App. 1971).

When viewed in the light most favorable to the state, the evidence presented at the defendant’s trial supports the jury verdict. The defendant’s father, William Gordon Dedmon, testified that the signatures on the withdrawal slip and the check were not his. Moore and Pruitt also testified that they believed the signature on the check to be a forgery. The defendant, who was unemployed and living with Dunn at the time of the offense, had withdrawn money from Dunn’s account on earlier occasions and thus was aware of the banking procedures. Although Pruitt could not specifically recall giving the defendant the check, she stated that the defendant did sign the

withdrawal slip in her presence. The withdrawal slip was endorsed "Wm. G. Dedmon." The signature was similar to the endorsement on the check. Further, the signature resembled the defendant's signature, "Wm. S. Dedmon," on the three other withdrawal slips used for the withdrawals authorized by Dunn.

Pruitt testified that she handled the transactions involving the earlier withdrawals of money through the defendant's use of withdrawal applications and slips. A review of the signatures on the forged check and related withdrawal slip reflects such similarity that one can easily infer that both were written by the same author, i.e, the defendant. See Tenn. R. Evid. 901(b)(3) (the trier of fact is entitled to compare the writings relative to identity of the author). Under the foregoing circumstances, any rational trier of fact could find beyond a reasonable doubt that the signature of "Wm. G. Dedmon" was a forgery for which the defendant is criminally responsible.

II

Next, the defendant argues that the trial court erred in allowing into evidence the three withdrawal slips for which the defendant was authorized to make withdrawals and the $1,200.00 withdrawal slip relating to the check in issue. Given the record before us, it is somewhat unclear as to the specifics of the defendant's contentions. The defendant apparently claims that the four withdrawal slips should have been excluded because (1) the probative value for identification purposes is substantially outweighed by the danger of unfair prejudice under Tenn. R. Evid. 403; and (2) the signatures on the withdrawal slips that were used for handwriting exemplars by the state were "too suggestive to provide a reliable identification of the defendant's signature."

The admissibility of evidence is a matter within the trial court's discretion and will not be reversed on appeal absent a clear abuse of discretion. State v. Harris,

839 S.W.2d 54, 66 (Tenn. 1992), cert. denied, 113 S. Ct. 1368 (1993). Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Tenn. R. Evid. 401. In other words, evidence is relevant if it helps the jury to resolve a factual issue.

In the present case, the three withdrawal slips for earlier authorized transactions are relevant to show the defendant's knowledge of the banking procedures associated with Dunn's account. All four withdrawal slips are helpful to prove the identify of the author of the signature on the check. Further, the withdrawal slip in the amount of $1,200.00 is relevant to show that the defendant was in possession of the check and had the opportunity to cash it. The forgery of the withdrawal slip is also relevant to show the defendant's criminal intent to commit forgery of the $1,200.00 check.

The defendant asserts that the use of the withdrawal slips as handwriting exemplars unfairly prejudiced him because of the possibility of misidentification. He claims that the comparison of signatures on the $1,200.00 check and the three withdrawal slips by Pruitt[1] was unreliable because only three withdrawal slips were used for the comparison. A nonexpert may testify to the genuineness of handwriting if the person is familiar with the handwriting and the familiarity was not acquired for purposes of litigation. Tenn. R. Evid. 901(b)(2). One method a person can become familiar with another's handwriting is by "do[ing] business with him, thereby gaining familiarity with signatures that are in all likelihood genuine." State v. Chestnut, 643 S.W.2d 343, 347 (Tenn. Crim. App. 1982). However, only the trier of fact or an expert witness may make comparisons of handwriting specimens that have been properly authenticated. Tenn.

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[1] Although the defendant cited to Pruitt's testimony in the record, he argues in his brief that Moore compared the withdrawal slips to the signature on the check and expressed the opinion that the signatures were similar.

R. Evid. 901(b)(3). Pruitt, who had nineteen years of experience with Cavalry Bank, handled the earlier transactions involving the authorized withdrawals. She compared the signatures on the withdrawal slips to the signature on the $1,200.00 check and expressed the opinion that the signatures were similar. At trial, the defendant made no objection to the comparison made by Pruitt and has thus waived any error. See State v. Sutton, 562 S.W.2d 820, 825 (Tenn. 1978); Tenn. R. Evid. 103(a)(1); T.R.A.P. 36(a).

In any event, though, we note that the jury, as the trier of fact, was entitled to compare the signatures on the writings and draw any inferences, and therefore, Pruitt's testimony that the signatures were similar was nothing more than what was obvious to the jury on the documents' face. Though other handwriting samples could have been obtained from the defendant, we conclude that the trial court did not abuse its discretion in finding that the withdrawal slips were relevant to show identity. Because their probative value is not substantially outweighed by any unfair prejudicial effects, the trial court properly admitted the withdrawal slips pursuant to Tenn. R. Evid. 403.

The defendant's argument that the signatures on the withdrawal slips were too suggestive to provide a reliable identification of the defendant's signature on the check is misplaced. A claim that evidence is unduly suggestive so as to increase the likelihood of misidentification is more appropriate when dealing with eyewitness identification. See Simmons v. United States, 390 U.S. 377, 384, 88 S. Ct. 967, 971 (1968); Sloan v. State, 584 S.W.2d 461, 466 (Tenn. Crim. App. 1978). Thus, we find no error.

The defendant also contends that the withdrawal slip for $1,200.00 was inadmissible as evidence of other bad acts whose probative value is outweighed by the danger of unfair prejudice. See Tenn. R. Evid. 404(b). He claims that the introduction of the forged withdrawal slip for which he was not indicted unfairly prejudiced him

because of the implication that the defendant also forged the check. Under Tenn. R. Evid. 404(b), evidence of other crimes or acts that are independent of the offenses on trial are generally prohibited in "recognition that such evidence easily results in a jury improperly convicting a defendant for his or her bad character or apparent propensity or disposition to commit a crime regardless of the strength of the evidence concerning the offense on trial." State v. Rickman, 876 S.W.2d 824, 828 (Tenn. 1994). However, Rule 404(b) does allow such evidence when it is relevant to a litigated issue, such as, identity, intent or rebuttal of accident or mistake, and its probative value is not outweighed by the danger of unfair prejudice. See State v. Parton, 694 S.W.2d 299, 303 (Tenn. 1985); State v. Hooten, 735 S.W.2d 823 (Tenn. Crim. App. 1987).

The trial court's stated reason for admitting the $1,200.00 was its relevance to identity, a key issue in the trial. We agree. Pruitt testified that the defendant signed the slip and received the check. The signature on the withdrawal slip resembles the signature on the check, providing the inference that the defendant was the person who signed both writings. Because the probative value was not outweighed by the danger of any unfair prejudice, we hold that the trial court did not abuse its discretion in admitting this withdrawal slip.

In consideration of the foregoing and the record as a whole, the judgment of conviction is affirmed.

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Joseph M. Tipton, Judge

CONCUR:

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Gary R. Wade, Judge

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Paul G. Summers, Judge