**Affirmed and Opinion filed November 8, 2001.**

**In The**

# Fourteenth Court of Appeals

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**NO. 14-00-01093-CR**

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**HERBERT LAWS, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 262nd District Court**
**Harris County, Texas**
**Trial Court Cause No. 833,326**

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## O P I N I O N

Appellant Herbert Laws was convicted by a jury of the felony offense of forgery. He pleaded true to two enhancement paragraphs and the jury assessed punishment at eight years of confinement in the Institutional Division of the Texas Department of Criminal Justice. On appeal, appellant contends that the evidence was legally and factually insufficient to prove beyond a reasonable doubt that he intended to defraud or harm any person as required under section 32.21(b) of the Texas Penal Code. We affirm.

## FACTS

The following facts were developed at appellant's trial. On January 7, 2000, appellant went to a branch of Bank United in Houston to open a business checking account. While appellant was in line, another man approached him, handed him what appeared to be cash, and left. Appellant then met with Mary Yolanda Croucher, a loan officer, to open the account. He initially asked to open a "doing business under an assumed name (DBA)" account, but did not have the proper documentation. Consequently, he asked to open a personal account. In connection with opening the account, appellant handed Croucher a check from Reliant Energy–HL&P made payable to him in the amount of $150,000.

Croucher testified that she found appellant's request to open a personal account unusual in that normally, if the bank and customer cannot agree on the proper documentation to open a "DBA" account, a different type of business account is opened, rather than a personal account. Croucher also became suspicious because appellant appeared nervous, and was continually looking around. She also noted that, while in her office, he continued nervously repositioning his body to the left and right and looked uncomfortable. He also asked for permission to use the restroom twice, which Croucher thought was unusual. Nevertheless, Croucher took the $150,000 check and prepared the necessary paperwork to open the account. She explained to appellant that no funds could be withdrawn from the account for nine business days.

Because Croucher felt uncomfortable about the transaction, she and the bank teller called Reliant Energy to confirm the check was valid. They were unable to confirm the validity of the check while appellant was at the bank, so he was given a receipt for the deposit and left. Croucher and the teller later learned from Reliant Energy that the check was indeed invalid. The real check had been issued to Electric Power Research Institute. The bank flagged the account to alert tellers if anyone attempted to withdraw money from the account.

Five days later, on January 12, 2000, appellant came to the bank's drive-through window with two acquaintances, and attempted to withdraw $500. Cecil Turner, the senior security coordinator with Reliant Energy was contacted,[1] and he in turn contacted Detective Dennis Domages of the Houston Police Department Forgery Detail. Based on the information provided by Turner, Domages requested that police officers be sent to the bank. The officers arrived at the bank and arrested appellant and one of his acquaintances, while the other got away.

At trial, Turner testified that Reliant Energy did not authorize the payment of $150,000 to appellant, and had no relationship with appellant of any kind. Turner confirmed that appellant had been cooperative the one time he contacted him about the incident. Detective Domages testified that he went to the bank at the time the arrests were made, and questioned several people there, including appellant. He stated that appellant did not appear surprised by the arrest; rather, he appeared resigned to the situation. Domages also testified that appellant was cooperative in his investigation, gave a statement, and informed Domages that he was homeless. At the conclusion of Domages' testimony, the State rested. Appellant's counsel moved for a directed verdict, which was denied.

Appellant then took the stand as the sole defense witness. He testified that, prior to the events in question, he was living in a homeless shelter and doing carpentry work for a church adjacent to the shelter. While working at the church, an acquaintance, Terrence Tidwell, admired his carpentry work and suggested that he knew some people that would help appellant start his own business. Tidwell got appellant a haircut and a suit, and took him to get DBA documentation for the business. After that, Tidwell drove appellant to a parking lot where they met with two well-dressed men who said that they were with Reliant Energy in California and gave appellant the check made out to him for $150,000. Appellant testified that he did not know anything about Reliant Energy. He said that Tidwell told him

[1] Cecil Turner testified that he received a call from a bank employee that the person who had passed the counterfeit check the week before was there trying to withdraw $5,000. The amount was actually $500.

the men were from California and wanted to invest in appellant's business. The men did not speak to appellant.

Appellant testified that he took the check to Bank United on January 7, 2000, and that Tidwell came with him, gave him some cash, and told him to open a business account. Appellant also admitted that he opened the account and deposited the check. He stated that he assumed that if there was something wrong with the check the bank personnel would tell him. He also stated that Tidwell and Anthony Bush encouraged appellant to attempt to withdraw $500 from the account five days later, and confirmed that he, Tidwell, and Bush, went to the bank's drive-through window on January 12, 2000 to make the withdrawal. When the teller at the drive-through window asked appellant to wait, Tidwell and Bush became nervous and wanted to leave, but appellant refused to leave because he wanted to find out about the check. Appellant got out of the car and stood at the drive-through window as Tidwell and Bush drove away. Several minutes later, Tidwell and Bush returned and again attempted to get appellant to leave, but he stated that he had put his identification and social security card in the window and was not leaving until he was told whether the check was good. The police then arrived and arrested appellant and Bush. Tidwell fled.

On cross-examination, appellant initially stated that he had known Tidwell for about a year, but then admitted that he and Tidwell had been in trouble for illegal dumping in 1997. When the prosecutor asked if, in regard to receiving the $150,000 check, this was the first time that he and Tidwell had engaged in "this kind of activity," appellant replied "that's right." The prosecutor then elicited testimony that appellant and Tidwell had engaged in conduct similar to that alleged at trial shortly before committing the charged offense.[2] Specifically, appellant admitted that in November 1999, he and Tidwell got a post office box and DBA documentation in connection with opening an account at a Bank of America branch. After appellant opened the Bank of America account, he deposited a check from

[2] Evidence relating to this line of testimony was marked and used in the prosecutor's examination of appellant, but apparently was never admitted and does not appear in the record.

Tidwell that was made out to him. The check was originally made out to another individual, but appellant denied any knowledge that the check was stolen. Appellant and Tidwell subsequently made withdrawals from the Bank of America account.

Appellant then admitted that, as they had done before, he and Tidwell opened a post office box and got a DBA for the purpose of opening the account at Bank United. Appellant initially asserted that he did not know the $150,000 check made out to him was forged, but later admitted that the circumstances surrounding the check were such that a reasonable person would question whether a check for $150,000 should belong to him. Appellant further admitted that he questioned whether the check was good at the time he deposited it, and wanted to find out if something was wrong with the check when he returned to the bank to withdraw the $500.[3]

The jury subsequently convicted Appellant and sentenced him to eight years. At the punishment stage, appellant entered a plea of true to two enhancement paragraphs. The jury found the enhancement paragraphs true and assessed punishment at confinement for eight years in the Institutional Division of the Texas Department of Corrections. This appeal followed.

## KNOWLEDGE OF FORGERY

Appellant contends on appeal that the evidence is legally and factually insufficient to sustain his conviction because the State failed to prove beyond a reasonable doubt that he intended to defraud or harm any person as required by section 32.21(b) of the Texas Penal Code. The gravamen of appellant's argument is that the State presented no evidence that he knew that the check at issue had been altered or forged.

### 1. Legal Sufficiency

[3] Appellant also admitted to convictions for the felony offenses of delivery of a controlled substance in 1996 and possession of a controlled substance in 1998. The prosecutor also asked if appellant had been convicted of theft in 1990, but appellant testified that he could not remember whether he had ever been convicted of theft or not.

We review challenges to the legal sufficiency of the evidence to determine "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, 61 LED.2d 560 (1979). Whether evidence is legally sufficient is a question of law. *Clewis v. State*, 922 S.W.2d 126, 132 (Tex. Crim. App. 1996). A determination that the evidence is "legally insufficient" means that the case should never have been submitted to the jury. *Id.* at 132-33. The standard is the same in both direct and circumstantial evidence cases. *Geesa v. State*, 820 S.W.2d 154, 162 (Tex. Crim. App. 1991) *overruled on other grounds, Paulson v. State*, 28 S.W.3d 570 (Tex. Crim. App. 2000).

Under section 32.21 of the Texas Penal Code, the State was required to prove beyond a reasonable doubt that Appellant forged[4] a writing with intent to defraud or harm another. TEX. PEN. CODE ANN. § 32.21(b) (Vernon 1994). Stated differently, the State was required to prove beyond a reasonable doubt that Appellant (1) with intent to defraud or harm another, (2) passed, (3) a writing, (4) that purported to be the act of another, and (5) that other person did not authorize the act. *Williams v. State*, 688 S.W.2d 486, 488 (Tex. Crim. App. 1985); *see also* TEX. PEN. CODE ANN. § 32.21(a) (Vernon 1994 & Supp. 2001).

The element of intent to defraud or harm may be established by circumstantial evidence. *Williams*, 688 S.W.2d at 488. Proof of intent to defraud is also derivative of other

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[4] Section 32.21 of the Texas Penal Code defines "forge" as the following:

(A) to alter, make, complete, execute, or authenticate any writing so that it purports: (i) to be the act of another who did not authorize that act; (ii) to have been executed at a time or place or in a numbered sequence other than was in fact the case; or (iii) to be a copy of an original when no such original existed;

(B) to issue, transfer, register the transfer of, pass, publish, or otherwise utter a writing that is forged within the meaning of Paragraph (A); or

(C) to possess a writing that is forged within the meaning of Paragraph (A) with intent to utter it in a manner specified in Paragraph (B).

TEX. PEN. CODE ANN. § 32.21(a) (Vernon 1994 & Supp. 2001).

elements. In the case of forgery, the culpable mental state requires proof of knowledge that the check is forged. *Id.* If the State proves that an actor has knowledge that a particular check is forged, proof of intent to defraud is inferred. *Id*. A finding of such knowledge generally requires evidence of at least "suspicious circumstances" showing that the defendant knowingly passed the forged check. *Griffin v. State*, 908 S.W.2d 624, 627 (Tex. App.—Beaumont 1995, no pet.).

Appellant contends, correctly, that the mere presentation or passing of a forged check is not sufficient to prove intent. *Solis v. State*, 611 S.W.2d 433 (Tex. Crim. App. 1981); *Pfleging v. State*, 572 S.W.2d 517 (Tex. Crim. App. 1977); *Stuebgen v. State*, 547 S.W.2d 29 (Tex. Crim. App. 1977). Further, appellant contends that there is no evidence that he made any statements from which it could be inferred that he knew the instrument he passed was forged, and his behavior corroborates the lack of intent. Therefore, appellant argues, there was no reasonable basis upon which the jury could have relied in finding that he knew that the check was forged or that he intended to harm or deceive another with its presentment.

The evidence established that Reliant Energy did not make out the check to appellant, and that Reliant Energy had no relationship of any kind with appellant. Appellant admitted that he took the check to the Bank United on January 7, 2000, presented it for deposit, and attempted to withdraw $500 from the account five days later. In addition, the evidence established sufficient "suspicious circumstances" from which the jury could reasonably infer the requisite intent. Among the suspicious circumstances the jury could consider were appellant's nervousness and unusual behavior while opening the Bank United account, his attempt to withdraw $500 from the account before the 9-day waiting period had expired, and his lack of surprise and "resigned" demeanor when he was arrested.

Additional suspicious circumstances were also supplied by appellant's own testimony. Appellant testified that, while homeless, two well-dressed men from California who stated they were with Reliant Energy gave him a $150.000 check while standing in a

parking lot, and he believed that the men were giving him the money to start a business. On cross-examination, appellant admitted that, based on the surrounding circumstances, it would be reasonable to question whether such a check belonged to him. He also admitted that he wanted to find out if the check was good when he attempted to withdraw money from the Bank United account. In addition, the State presented evidence that appellant had previously engaged in a nearly identical scheme with Tidwell only two months earlier.

Viewed in the light most favorable to the verdict, we find that this evidence is legally sufficient to sustain appellant's conviction for forgery.

**2. Factual Sufficiency**

Appellant also contends that the evidence is, nevertheless, factually insufficient to support the jury's finding of guilt. In reviewing factual sufficiency challenges, appellate courts must determine "whether a neutral review of all the evidence, both for and against the finding, demonstrates that the proof of guilt is so obviously weak as to undermine confidence in the jury's determination, or the proof of guilt, although adequate if taken alone, is greatly outweighed by contrary proof." *Johnson v. State*, 23 S.W.3d 1, 11 (Tex. Crim. App. 2000). That is, a factual sufficiency review dictates that the evidence be viewed in a neutral light, favoring neither party. *Clewis*, 922 S.W.2d at 134. In this neutral light, the appellate court reviews the jury's weighing of the evidence and is authorized to disagree with the jury's determination. *Id*. at 133. Evidence is factually insufficient if, (1) it is so weak as to be clearly wrong and manifestly unjust; or (2) the adverse finding is against the great weight and preponderance of the available evidence. *Johnson*, 23 S.W.3d at 11. The *Johnson* Court reaffirmed the requirement that "due deference must be accorded the fact finder's determinations, particularly those determinations concerning the weight and credibility of the evidence." *Id*. at 9.

In support of appellant's argument, he stresses his testimony that he legitimately believed the check was an investment to help him start his own business. He also points to

the following evidence to corroborate his lack of intent: (1) he gave his correct name when he opened the account; (2) no one at the bank warned him that there might be something wrong with the check; (3) he cooperated with investigators; and (4) he did not attempt to flee when the police officers arrived. None of this evidence is sufficient to render the jury's verdict clearly wrong and unjust.

With regard to appellant's testimony about his belief that the check was genuine, he admitted on cross-examination that it would be reasonable to question whether such a check should be made out to him, and he questioned whether the check was good. The State also impeached appellant with the fact that he had known Tidwell longer than he originally admitted and his prior criminal history. Further, the state's evidence that appellant had engaged in a similar scheme with Tidwell only two months earlier supports the jury's conclusion that appellant had the requisite intent. The jury is permitted to believe or disbelieve any part of a witness' testimony, including a defendant. *Jones v. State*, 984 S.W.2d 254, 258 (Tex. Crim. App. 1998). We will not disturb the jury's credibility finding. *Id.*

Likewise, the additional evidence appellant relies on does not compel us to reverse the jury's verdict. Giving his true identity at the time he deposited the check is not corroborative of lack of intent because the check was made out to him; therefore, the only way to deposit it would be to identify himself as the individual whose name was on the check. That no one at the bank indicated there was anything wrong with the check when he deposited it is similarly not persuasive, because the loan officer, Croucher, explained that she was unable to confirm the validity of the check with Reliant Energy while appellant was at the bank. The fact that appellant did not flee when the police arrived at the drive-through window on January 12 is explained by appellant's statement that he refused to leave because he had given his identification and social security card to the teller – attempted flight in that circumstance might have been temporarily successful, but ultimately futile. Finally, appellant's cooperation with investigators, while laudable, is an insufficient basis upon

which to overturn the jury's verdict, particularly in light of the evidence discussed above that supports the jury's verdict.

We affirm the appellant's conviction.

/s/ Wanda McKee Fowler
Justice

Judgment rendered and Opinion filed November 8, 2001.

Panel consists of Chief Justice Brister and Justices Fowler and Seymore.

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