Affirmed and Opinion filed April 13, 2000.

In The

Fourteenth Court of Appeals

NO. 14-99-00374-CR

ROLLIE ANDRE LOTT, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 183rd District Court
Harris County, Texas
Trial Court Cause No. 754,091

O P I N I O N

A jury found appellant, Rollie Andre Lott, guilty of the offense of forgery and assessed punishment at two years' confinement in the Texas Department of Corrections—State Jail Division and a $5,000 fine. In three points of error, appellant complains that: (1) the trial court erred in admitting a copy of the forged check; (2) the evidence was legally insufficient; and (3) the evidence was factually insufficient. We affirm.

FACTS

On May 20, 1997, appellant went to Mossy Oldsmobile - Nissan to order an automobile part, which required payment in advance. As payment for the part, appellant passed a check in the name of the complainant, David Jeske. Jeske testified that he did not write the check in question, nor did he authorize anyone else to do so.

ADMISSIBILITY OF DUPLICATE

In his first point of error, appellant contends the trial court committed reversible error in admitting into evidence a copy of the forged check. Specifically, he argues the State failed to give a proper explanation for failing to produce the original check.

Texas Rule of Evidence 1002 requires the production of the original writing in order to prove the contents of a writing. *See* TEX. R. EVID. 1002. A duplicate, however, may be admitted under an exception to the requirement of producing the original writing. *See* TEX. R. EVID. 1003. "A duplicate is admissible to the same extent as an original unless (1) a question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original." TEX. R. EVID. 1003. A duplicate is a counterpart of the original produced by some technique that accurately reproduces the original. *See* TEX. R. EVID. 1001(d).

In this case, the original forged check had been misplaced and could not be found by the State. In lieu of the original, the State offered a copy of the forged check into evidence. The copy was properly admitted under the exception created by Rule 1003 if (1) it was an exact duplicate of the original, (2) no question was raised as to its authenticity, and (3) it would not be unfair to admit the duplicate in lieu of the original. *See Englund v. State*, 946 S.W.2d 64, 69 (Tex. Crim. App. 1997). After a thorough review of the record, we find the copy of the check was properly admitted under rule 1003.

First, Kent Soudelier, a parts salesman at Mossy, testified that the copy of the check offered by the State was identical to, and matched exactly, a copy he made of the original check. We find this testimony sufficient to establish the copy of the check offered by the State as exhibit one was a duplicate of the original. Second, we find no evidence in the record that the authenticity of the duplicate was called into question. In fact, appellant concedes in his brief that the copy of the forged check in State's exhibit one "was a copy of the [original] check." Third, we see no reason, nor does appellant assert any reason, why it would be unfair to admit a copy of the forged check in lieu of the original.

Appellant contends that Rule 1004(a) of the Texas Rules of Evidence requires the proponent of the evidence to prove it did not lose or destroy the original in bad faith. Rule 1004(a) governs the admissibility of other evidence of the contents of a writing, recording, or photograph. The State did not introduce other evidence of the contents of the check. The State introduced a duplicate of the check, which is governed by Rule 1003. Rule 1003 does not require the proponent of a duplicate to show that he acted in good faith. We therefore find that State's exhibit one was a duplicate of the original forged check and was admissible to the same extent as the original pursuant to Texas Rule of Evidence 1003. Appellant's first point of error is overruled.

LEGAL AND FACTUAL SUFFICIENCY

In his second and third points of error, appellant challenges the legal and factual sufficiency of the evidence.

In conducting a legal sufficiency review of the evidence, an appellate court must view the evidence in the light most favorable to the verdict and determine if any rational fact finder could have found the crime's essential elements to have been proved beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307, 319 (1979). The reviewing court will examine the entire body of evidence; if any evidence establishes guilt beyond a

reasonable doubt, and the fact finder believes that evidence, the appellate court may not reverse the fact finder's verdict on grounds of legal insufficiency. *See id.*

In reviewing the factual sufficiency of the evidence, we view "all the evidence without the prism of 'in the light most favorable to the prosecution' and set aside the verdict only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust." *Clewis v. State*, 922 S.W.2d 126, 134 (Tex. Crim. App. 1996). An appellate court is authorized to disagree with the jury's determination, even if probative evidence exists that supports the verdict. *See Jones v. State*, 944 S.W.2d 642, 647 (Tex. Crim. App. 1996). However, a factual sufficiency review must be appropriately deferential so as to avoid substituting our own judgment for that of the fact finder. *See id.* Accordingly, we are only authorized to set aside a jury's finding in instances where it is "manifestly unjust," "shocks the conscience," or "clearly demonstrates bias." *See id.*

Appellant bases his insufficiency claims on the State's failure to introduce the original forged check into evidence. To prove the offense of forgery, the State must show that appellant, with intent to defraud or harm another, passed a writing that purports to be an act of another person, which the other person did not authorize. *See* TEX. PEN. CODE ANN. § 32.21 (Vernon 1994). The elements of forgery do not require production of an original writing. In addressing appellant's first point of error, we have already held that the copy of the forged check was admissible to the same extent as the original check. Thus, the copy of the forged check was legally sufficient evidence to prove the element requiring proof of a writing.[1] Appellant's second point of error is overruled.

---

[1] While not specifically raised in appellant's brief, in the interest of justice, we have examined the record and determined that the evidence adduced at trial was legally sufficient to prove the remaining elements of forgery. The intent to defraud or harm can be inferred from the surrounding circumstances. *See Diggs v. State*, 928 S.W.2d 756, 758 (Tex. App.—Houston [14th Dist.] 1996, pet. ref'd). Here, intent to defraud or harm can be inferred from appellant's act of drafting a check upon Jeske's account to effect a purchase without Jeske's permission. The testimony of Soudelier that appellant tendered a check drawn in the name of Jeske, coupled with Jeske's testimony that he did not write the check or authorize anyone to

(continued...)

With regard to appellant's factual sufficiency challenge, appellant presented no evidence in his defense. He relies primarily on the fact that the check was a duplicate and should not have been admitted. The test for factual sufficiency is whether the jury's finding of guilt was so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *Clewis*, 922 S.W.2d at 129. Under this standard, we cannot conclude that in light of the foregoing evidence, the finding of guilt was clearly wrong or unjust. Consequently, we hold the evidence is factually sufficient to support the jury's verdict. Appellant's third point of error is overruled.

The judgment of the trial court is affirmed.

/s/ Leslie Brock Yates
Justice

Judgment rendered and Opinion filed April 13, 2000.

Panel consists of Justices Yates, Fowler and Edelman.

Do Not Publish — TEX. R. APP. P. 47.3(b).

[1] (...continued)
write it for him establishes that appellant passed a check that purported to be the act of another person who did not authorize the act. *See Choice v. State*, 883 S.W.2d 325, 329 (Tex. App.—Tyler 1994, no pet.).