

IN THE SUPREME COURT OF THE STATE OF NEVADA

MELODYE ANN POWELL A/K/A
MELODYE ANN JONES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42323

FILED

MAY 12 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of burglary (count I), forgery (count II), and theft (count III). The district court sentenced appellant Melodye Ann Powell to a prison term of 12 to 48 months for count I, a concurrent prison term of 12 to 32 months for count II, and a consecutive prison term of 12 to 32 months for count III. The district court suspended execution of the sentences on all three counts, placing Powell on probation for a time period not to exceed 3 years.

Powell's sole contention is that the district court erred in admitting the forged check into evidence because the State failed to establish the chain of custody. Specifically, Powell contends that there was a break in the chain of custody because no trial witness had personal knowledge of the check's location for the one-year period from May 1998 to May 1999. We conclude that Powell's contention lacks merit.

This court has stated that "[i]t is not necessary to negate all possibilities of substitution or tampering with an exhibit, nor to trace its custody by placing each custodian upon the stand."¹ Rather, a proper chain of custody is established where "it is reasonably certain that no

¹Sorce v. State, 88 Nev. 350, 352, 497 P.2d 902, 903 (1972).

tampering or substitution took place, and the doubt, if any, goes to the weight of the evidence."² In instances where there is a break in the chain of custody, the State must offer evidence indicating the evidence was in "substantially the same condition as when the crime was committed."³

In this case, we conclude that the State presented sufficient evidence to establish with reasonable certainty that the check was not tampered with. Mark Mostello, the Gold Coast Collections Manager, testified that the check was cashed on May 4, 1998, and returned by the bank on May 7, 1998. After conducting a brief investigation to determine whether the check had been forged, Mostello gave the check to a Las Vegas Metropolitan Police Officer on May 11, 1998. Metro Police Officer Kim Thomas testified that in May 1999, he retrieved the check from a case file, which he received from another detective who had transferred out of forgery detail.⁴ Officer Thomas explained that, according to notations made on the case file, the check was brought in by a police officer and given to a Metro secretary; the secretary issued the check a unique identifying number and gave it to the detective in charge of the case; the check was then apparently stored in a case file inside the detective's private file cabinet, which was not accessible to the public.

²Id. at 352-53, 497 P.2d at 903.

³Collins v. State, 113 Nev. 1177, 1184, 946 P.2d 1055, 1060 (1997). (quoting United States v. Dickerson, 873 F.2d 1181, 1185 (9th Cir. 1988)).

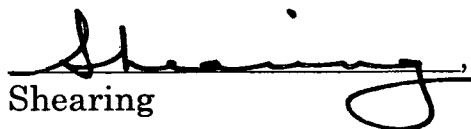
⁴The check at issue was a payroll check for \$728.96 made out to a Clark County School District employee. The check payee testified at trial that she did not know Powell and never gave her permission to cash the check. The payee also testified that, in May 1998, she informed her employer that her payroll check did not arrive by mail, as expected, and her employer stopped payment on the check.

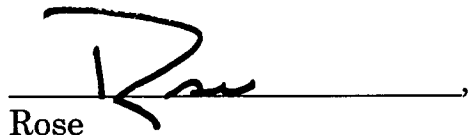
Even assuming there was a breach in the chain of custody before Officer Thomas's receipt of the case file in May 1999, we conclude that the State presented sufficient evidence that the check presented at trial was in substantially the same condition as it existed at the time it was tendered to the Gold Coast Casino. Lorraine Gerberding, the casino employee who cashed the check, identified it at trial explaining that the check bore her initials, the Gold Coast Stamp, as well as the birth date and fingerprint of the individual who had cashed it. Moreover, Gerberding identified Powell as the individual who cashed the check, and a forensics examiner testified that Powell's fingerprint was on the sticker affixed to the check. Finally, a casino surveillance video was admitted into evidence showing a woman, who apparently resembled Powell, cashing the check.

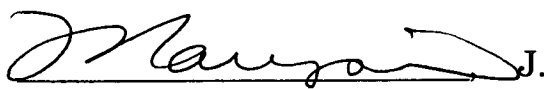
Although Powell argues that someone could have tampered with the check after it was given to Metro by affixing a different sticker bearing Powell's fingerprint, we conclude that any doubt about tampering in this case would go to the weight of the evidence, not its admissibility.

Having considered Powell's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.

 C.J.
Shearing

 J.
Rose

 J.
Maupin

cc: Hon. Kathy A. Hardcastle, Chief District Judge
Eighth Judicial District Court, Department 11
Clark County Public Defender
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk