STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED January 6, 2009
v	No. 281532 Crawford Circuit Court
MICHAEL ANTHONY LEES, Defendant-Appellant.	LC No. 06-002470-FH

Before: Murray, P.J., and Markey and Wilder, JJ.

PER CURIAM.

Defendant appeals as of right from his jury conviction of one count of forgery of an instrument, MCL 750.248.[1] We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Complainant testified that he received three cleared checks from his checkbook that he knew to be forgeries. All three checks were made out to and endorsed by defendant, complainant's former employee. However, complainant testified that he was certain that he did not make any of the checks out to defendant, and that the maker signatures were not in his handwriting. Complainant alleged that defendant must have stolen the checks from his checkbook register, which complainant always left in his work truck.

Defendant maintained that the checks in question were actually paychecks that complainant had filled out and given to defendant as compensation for his services. Defendant alleged that complainant fabricated the forgery theory because he (defendant) terminated his employment with complainant without notice, in the middle of a large project.

On appeal, defendant first argues that the prosecution failed to present sufficient evidence to support his conviction. We disagree.

"When reviewing a claim regarding the sufficiency of the evidence, this Court examines the evidence in a light most favorable to the prosecution to determine if a rational jury could find

[1] The jury acquitted defendant of two other counts of the same charge.

that the essential elements of the offense were proved beyond a reasonable doubt." *People v Joseph*, 237 Mich App 18, 20; 601 NW2d 882 (1999). In conducting its examination, this Court must make all reasonable inferences and decide all credibility issues in support of the jury's verdict. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). "Witness credibility and the weight accorded to evidence is a question for the jury" and will not be disturbed by this Court. *People v McGhee*, 268 Mich App 600, 624; 709 NW2d 595 (2005).

The elements of forgery of an instrument are that: (1) the document in question was forged; (2) the defendant forged the document; and (3) when the defendant did so, he intended to defraud or cheat someone. MCL 750.248; see also CJI2d 28.1.

Complainant testified that he did not write out or sign the check as maker. This testimony, if believed by the jury, established the first element of the charged offense, i.e., that the check in question was forged.[2] *McGhee, supra*. Moreover, the testimony of an expert in the field of handwriting analysis that there were indications that the maker signature on the front of the check was not that of complainant also supported a finding that the check was forged.

The check in question was endorsed with defendant's name and bore defendant's personal identification number. This evidence was sufficient to establish the second element of the charged offense because it allowed the jury to make the reasonable inference that defendant forged the check. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999).

It is undisputed that the questioned check was cashed. The circumstantial evidence that defendant wrote out and endorsed the check supported an inference that defendant then cashed the check. A defendant's state of mind can be sufficiently proven by minimal circumstantial evidence. *Id*. The act of cashing a forged check would indicate the intent to defraud or cheat the person to whom the check belonged.

In sum, viewing the evidence in the light most favorable to the prosecution, a jury could reasonably conclude that all essential elements of the crime of forgery were proved beyond a reasonable doubt. Defendant is not entitled to relief on this issue.

Defendant next argues that he was denied the effective assistance of counsel at trial when counsel failed to object to the admission of testimony from an expert in the field of handwriting analysis. We disagree.

To demonstrate ineffective assistance of counsel, a defendant must show that defense counsel's performance at trial "fell below an objective standard of reasonableness," and that the error was so prejudicial that it effectively denied defendant a fair trial. *People v Toma*, 462 Mich 281, 302; 613 NW2d 694 (2000). The defendant must overcome the strong presumption that defense counsel's conduct was based on sound trial strategy. *Id.* In addition, defendant must

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[2] The jury was instructed that a "forgery" included any act that falsely made an instrument appear to be what it was not. See CJI2d 28.1(3).

show that, but for defense counsel's errors, there is a reasonable probability that the result of the proceedings would have been different. *Id.* at 302-303.

Detective Lieutenant Thomas Riley, a Document Examiner with the Michigan State Police, testified as an expert. Defendant does not dispute Riley's qualifications as an expert witness, but rather claims that his testimony was inadmissible under MRE 702, MRE 402, and MRE 403 because Riley admitted that his findings were inconclusive. Defendant argues that expert testimony regarding inconclusive findings cannot assist the trier of fact. We disagree.

Under MRE 702, trial courts are required to act as the gatekeepers of expert testimony. *People v Yost*, 278 Mich App 341, 393-394; 749 NW2d 753 (2008). This gatekeeper function is within a court's discretion as long as the trial judge does not abandon the obligation or perform the function inadequately. *Gilbert v DaimlerChrysler Corp*, 470 Mich 749, 780; 685 NW2d 391 (2004). The role is also flexible, in that it does not require a court to search for "absolute truth" or to admit only "uncontested evidence." *Chapin v A & L Parts, Inc*, 274 Mich App 122, 127; 732 NW2d 578 (2007). Thus, a "trial court does not abuse its discretion by nevertheless admitting [an] expert opinion, as long as the opinion is rationally derived from a sound foundation." *Id.*

Defendant has offered no evidence and no authority to support a claim that Riley based his opinion on an unsound foundation. Riley had been qualified as an expert witness in 54 prior cases, and his testimony was based on handwriting analysis techniques that have been accepted in the Michigan law enforcement community as a valid form of scientific examination.

Expert testimony "must assist the jury in understanding the evidence or the factual issues, and the witness must have sufficient qualifications 'as to make it appear that his opinion or inference will probably aid the trier in the search for truth.'" *People v Smith*, 425 Mich 98, 106; 387 NW2d 814 (1986), quoting McCormick, Evidence (3d ed), § 13, p 33. There must also be a "'common sense inquiry whether the untrained layman would be qualified to determine intelligently and to the best possible degree the particular issue without enlightenment from those having specialized understanding of the subject involved in the dispute.'" *Smith*, *supra* at 106, quoting Ladd, Expert Testimony, 5 Van L R 414, 418 (1952).

An untrained layman would require assistance from an expert in order to determine the issue of exactly whose handwriting was on the questioned check. Moreover, just because evidence is "inconclusive" does not mean that it is of no assistance to the trier of fact. Rather, it merely means that the evidence does not lead to a "definite result." *See* Black's Law Dictionary (8th ed, 2004) (defining "inconclusive" as "not leading to a conclusion or definite result."). Riley's testimony was not simply that his findings were inconclusive. Instead, he stated that there were indications that the signature on the front of the questioned check did not belong to complainant, and that the signature on the back of the questioned check did belong to defendant. Riley merely qualified these findings as not being conclusive. The jury was entitled to determine how much weight to give to Riley's testimony. *McGhee*, *supra* at 624.

For that reason as well, defendant's argument that Riley's testimony is also inadmissible under MRE 402 and MRE 403 is equally without merit. The testimony was relevant and not unduly confusing or misleading.

Defendant's argument that Riley's testimony was inadmissible has no merit; thus, any objection defense counsel would have made to the introduction of Riley as an expert witness would have been futile. "Counsel is not ineffective for failing to make a futile objection." *People v Thomas*, 260 Mich App 450, 457; 678 NW2d 631 (2004).

Affirmed.

/s/ Christopher M. Murray
/s/ Jane E. Markey
/s/ Kurtis T. Wilder