

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
) No. 46528-2018
 Plaintiff-Respondent,)
) Bingham County Case No.
 v.) CR-2017-6750
)
 GARY LEON CHAFFIN, II,)
)
 Defendant-Appellant.)
 _____)

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE SEVENTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF BINGHAM**

HONORABLE RICHARD T. ST. CLAIR
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Gary Leon Chaffin, II, appeals from the judgment of conviction entered upon the jury's verdict finding him guilty of forgery.

Statement of Facts and Course of Proceedings

Ryan and Natalie Raymond began construction of their Bingham County home in March 2017. (Tr., p.421, L.21 – p.422, L.9.¹) In July 2013, they entered into a contract with Gary Chaffin, the owner of Snake River Painting, to paint the entire house and garage, and perform all necessary prep work. (Tr., p.422, L.10 – p.424, L.14; State's Exhibit 1.) The contract provided that the Raymonds would pay \$3,570 total for the necessary materials. (State's Exhibit 1.) The contract also provided, in part: "First amount due to start: This payment is required to purchase the full paint amount for the project. All paint will be bought and stored at the project location. The only other payment that is due, in when the project is completed." (State's Exhibit 1.) Prior to signing the contract, the Raymonds also agreed that they would pay for the paint in two installments. (Tr., p.343, L.19 – p.344, L.9; State's Exhibit 2.) The Raymonds made the first payment on August 5, 2017. (Tr., p.348, L.21 – p.349, L.12; State's Exhibits 3, 4.)

¹ Citations to pages of the transcript refer to the page numbers of the PDF file "Appeal – Transcripts.pdf." This PDF file contains transcripts for both of the two days of the jury trial, and the sentencing hearing. These transcripts appear out-of-order in the PDF file (jury trial day two, sentencing hearing, then jury trial day one).

The second invoice was generated on August 11. (Tr., p.362, L.25 – p.364, L.4; State’s Exhibit 6.) The invoice contained a \$88 “price adjustment” based on Chaffin’s representation that he was able to secure a better price on some of the paint. (Tr., p.364, Ls.5-11; State’s Exhibit 6.) The invoice was accompanied by a receipt for \$3,269.18 of paint purportedly purchased from Stan’s Paint Clinic in Idaho Falls.² (Tr., p.364, Ls.12–19; State’s Exhibit 9.) When Chaffin presented this invoice and receipt to the Raymonds, he informed them that he had already purchased the paint depicted in the receipt, and that the paint would be enough to complete the work on the house. (Tr., p.9, Ls.5-8; p.363, L.25 – p.364, L.18.) Chaffin also sent an email to Mr. Raymond stating that he had “paid for the paint at Stan’s to secure the price and the better paint.” (State’s Exhibit 5.) The Raymonds paid the second invoice. (Tr., p.365, Ls.7-17; State’s Exhibit 7.) Chaffin informed the Raymonds that the project would take approximately two weeks to complete. (Tr., p.345, Ls.3-11.)

Shortly after the work began, the Raymonds became concerned about Chaffin’s lack of progress, inconsistent presence at the job site, and lack of quality of the prep work. (Tr., p.12, L.14 – p.13, L.7; p.67, Ls.15-22; p.344, Ls.20-24; p.439, Ls.12–21.) The Raymonds had other subcontractors lined up to do work who would be delayed should the paint project not be timely completed. (Tr., p.452, Ls.9-16.) The Raymonds attempted to speed up the process by performing

² Chaffin also provided the Raymonds with a receipt for a smaller amount of paint and paint supplies that he purchased for \$653.53 on August 6, 2019 from the Sherwin-Williams store in Chubbuck, one day after the Raymonds paid the first invoice. (State’s Exhibit 8.)

some of the prep work themselves (Tr., p.416, L.11 – p.417, L.6), and eventually by bringing in another painter to assist in the project (Tr., p.392, L.20 – p.393, L.21; p.451, L.20 – p.452, L.19).

Additionally, the Raymonds noticed that only a small amount of paint was present at the job site, and that no new paint was seen after the second invoice was paid and the accompanying receipt was provided. (Tr., p.344, L.20 – p.345, L.2; p.429, L.11 – p.430, L.8; p.440, L.24 – p.441, L.11.) The Raymonds felt this constituted a breach of the contract that required the paint to be stored on-site. (Tr., p.196, L.25 – p.197, L.3; State’s Exhibit 1.) On August 15, the Raymonds inquired as to the status of the paint that was depicted in the receipt. (Tr., p.360, Ls.9-20; p.430, Ls.1-16.) Chaffin responded that the paint was in his truck. (Id.) The next day, the Raymonds followed up again, and Chaffin informed them that the paint had been transported to BYU-Idaho in Rexburg for another job, and that he had no money to buy any more paint for the time being. (Tr., p.430, L.17- p.431, L.17.) In order to continue to attempt to move the project along, Mr. Raymond accompanied Chaffin on two trips to a local paint store where Mr. Raymond paid for paint himself. (Tr., p.432, Ls.4-18; State’s Exhibits 11-12.)

By the morning after the second trip to the paint store, Chaffin had removed his supplies from the job site and ceased work on the project. (Tr., p.376, Ls.8-19; p.432, Ls.19-21.) Even after this, the Raymonds were still attempting to work with Chaffin. (Tr., p.60, Ls.2-8.) Mr. Raymond offered to “call it even” with respect to the missing/unpurchased paint if Chaffin paid back \$1,888 and helped the Raymonds’ newly hired painter finish the job. (Tr., p.440, Ls.5-13.) However, Mr. Raymond and Chaffin eventually agreed to void the contract after Chaffin threatened to put a lien on the house. (Tr., p.17, Ls.3-12.)

On August 18th, Mr. Raymond contacted the sheriff's department. (Tr., p.18, Ls.2-17.) Deputy Jacob Van Orden responded to the residence and met with the Raymonds. (Tr., p.18, Ls.2-4.) After Mr. Raymond described the situation to him, Deputy Van Orden explained that he felt that the dispute was civil in nature, rather than criminal. (Tr., p.127, L.9 – p.128, L.3; p.131, Ls.14-17.) Mr. Raymond told Deputy Van Orden that he wanted Chaffin formally trespassed from the residence so he would not return. (Tr., p.128, L.4 – p.129, L.3.)

The Raymonds then began looking into the receipt that Chaffin used to accompany the second invoice. (Tr., p.415, Ls.5-19; p.441, L.12 – p.442, L.6.) Mrs. Raymond contacted Stan's Paint Clinic, who responded that the receipt provided by Chaffin was not generated by the store. (Id.) At this point, the Raymonds contacted the authorities again. (Tr., p.129, L.17 – p.131, L.2; p.140, L.18 – p.141, L.4.) An investigation commenced. (Tr., p.140, L.8 – p.154, L.20.) At the conclusion of the investigation, the state charged Chaffin with forgery and grand theft. (R., pp.63-64.)

During the subsequent jury trial, Chaffin cross-examined Mr. Raymond on his reasons for initially contacting and communicating with the sheriff's department and Deputy Van Orden. (Tr., p.18, L.2 – p.26, L.8; p.52, L.15 – p.54, L.6; p.70, L.18 – p.74, L.13.) Among other topics, and based upon Chaffin's review of Deputy Van Orden's body camera footage,³ Chaffin questioned Mr. Raymond on whether he attempted to utilize Deputy Van Orden to gain leverage in the dispute over the paint project. (Tr., p.22, L.19 – p.23, L.3; p.53, L.17 – p.54, L.6.) On re-direct, the

³ The body camera footage was played outside of the jury's presence to refresh Mr. Raymonds' recollection of his conversation with Deputy Van Orden. (Tr., p.27, L.21 – p.52, L.5.)

prosecutor asked Mr. Raymond whether, when he talked to Deputy Van Orden, he had any concerns for the safety of himself or his property. (Tr., p.56, Ls.5-6.) Chaffin objected to the question on the grounds of relevance and that it was outside the scope of his cross-examination, but the district court overruled the objection. (Tr., p.56, Ls.7-11.) Raymond then testified that his safety concerns were a major reason for contacting the police, that he had observed syringes in buckets on the property, that he was concerned about his children finding the syringes and injuring themselves, and that he wished to have the syringes disposed of properly. (Tr., p.56, Ls.15-21.)

At the conclusion of the trial, the jury found Chaffin guilty of forgery, but acquitted him of grand theft. (R., p.191.) The district court imposed a unified eight-year sentence with three years fixed, but suspended the sentence and placed Chaffin on probation for three years. (R., pp.199-203.) The court also ordered that Chaffin pay restitution to the Raymonds. (R., pp.211-212.) Chaffin timely appealed. (R., pp.215-218.)

ISSUE

Chaffin states the issue on appeal as:

Did the district court err when it allowed Mr. Raymond to testify about his safety concerns and Mr. Chaffin leaving syringes at the Raymonds' property, because the testimony was not relevant?

(Appellant's brief, p.8.)

The state rephrases the issue on appeal as:

Has Chaffin failed to demonstrate that the district court erred by overruling his objection to testimony about Raymond's safety concerns because Chaffin opened the door to such testimony?

ARGUMENT

Chaffin Has Failed To Demonstrate That The District Court Erred By Overruling Chaffin's Objection To The Testimony About Raymond's Safety Concerns Because Chaffin Opened The Door To Such Testimony

A. Introduction

Chaffin contends that the district court erred by overruling his objection to the prosecutor's re-direct examination questions regarding Mr. Raymond's reasons for contacting Deputy Van Orden. (Appellant's brief, pp.9-12.) However, a review of the record reveals that this claim fails because Chaffin's cross-examination of Mr. Raymond opened the door to such testimony.

B. Standard Of Review

Relevance is a question of law reviewed *de novo*. State v. Norton, 151 Idaho 176, 190, 254 P.3d 77, 91 (Ct. App. 2011); State v. Kralovec, 161 Idaho 569, 574, 388 P.3d 583, 588 (2017).

C. The District Court Properly Admitted Raymond's Testimony About His Reasons For Contacting Deputy Van Orden

To be admissible, evidence must be relevant. I.R.E. 401, 402. Evidence that has any tendency the existence of a fact of consequence in the case, and has any tendency to make the existence of that fact more probable than it would be without the evidence, is relevant. State v. Hocker, 115 Idaho 544, 547, 768 P.2d 807, 810 (Ct. App. 1989); I.R.E. 401. A witness's credibility is always relevant. State v. Hairston, 133 Idaho 496, 503, 988 P.2d 1170, 1177 (1999); State v. Osterhoudt, 155 Idaho 867, 874, 318 P.3d 636, 643 (Ct. App. 2013). As a result, evidence used to refute attacks on credibility is also relevant. See State v. Lankford, 162 Idaho 477, 498, 399 P.3d

804, 825 (2017) (“Having opened the door to the subject of the veracity of the State’s witnesses, the defense should not be surprised to see the prosecutor enter.” (internal quotations omitted) (citing United States v. Dorsey, 677 F.3d 944, 954 (9th Cir. 2012).)

In this case, one of Chaffin’s primary defense strategies was to portray the dispute over the painting project as civil in nature, and that Chaffin lacked any criminal intent. (See Tr., p.316, L.24 – p.327, L.17 (Chaffin’s opening statement).) In his opening statement, Chaffin also previewed his subsequent cross-examination of Mr. Raymond regarding Raymond’s initial contacting of law enforcement. Chaffin suggested that Raymond contacted the authorities for the purpose of gaining leverage in the dispute, and only after breaching the contract himself by hiring another painter. (Tr., p.321, L.10 – p.325, L.10.)

Consistent with this strategy, Chaffin extensively cross-examined Mr. Raymond on his reasons for contacting law enforcement, and the manner in which he discussed the issues with Deputy Van Orden.⁴ (Tr., p.18, L.2 – p.26, L.8; p.52, L.15 – p.54, L.6; p.70, L.18 – p.74, L.13.) Through this questioning, Chaffin accused Mr. Raymond of: (1) trying to obtain leverage in order to pressure Chaffin to settle the dispute with him; (2) telling Deputy Van Orden that he wasn’t going to let Chaffin come back and get any property left behind until this matter was resolved; (3) telling Deputy Van Orden that he had to hire someone else when Chaffin left the project, when in actuality, the other painter was brought in before Chaffin left; and (4) requesting that Deputy Van

⁴ Earlier in the trial, Chaffin also cross-examined Mrs. Raymond in a similar manner about Mr. Raymond’s conversation with Deputy Van Orden. (Tr., p.397, L.1 – p.400, L.5.) Mrs. Raymond was present for that conversation. (Id.)

Orden “scare [Chaffin] a little” in order to “[e]ncourage him to settle up.” (Id.) In other words, Chaffin attempted to attack the credibility of Mr. Raymond’s trial testimony by demonstrating that he was biased in initiating and engaging in the conversation with Deputy Van Orden.

Immediately following this questioning, the prosecutor asked Mr. Raymond, in his re-direct examination, “when you talked to Deputy Van Orden, did you have any concerns for safety of yourself or your property?” (Tr., p.56, L.5-6.) Chaffin objected to the question, “as to relevance and as to beyond the scope of the cross-examination.” (Tr., p.56, Ls.9-10.) The district court overruled the objection without further comment and without requesting argument from the parties. (Tr., p.56, L.11.)

Mr. Raymond then answered the question and testified that his concern for safety “was one of my major – also major reasons to have [Deputy Van Orden] come out.” (Tr., p.56, Ls.12-13.)

Mr. Raymond explained:

We felt like anytime, if someone wasn’t there, there could be damage done to the property. We had seen syringes in buckets. We felt the safety for our kids [sic] because they were on the site all time with us, playing around. We didn’t want to have them harmed by needles and stuff that were found on the property, so we wanted to get them disposed of properly.

(Tr., p.56, Ls.16-21.) Mr. Raymond additionally testified that he inquired to Deputy Van Orden about obtaining a restraining order against Chaffin to keep him away from the property. (Tr., p.58, Ls.6-11.)

The state did not attempt to introduce this evidence in its case-in-chief. However, after Chaffin specifically cross-examined Mr. Raymond on his motives in contacting the police and manner of providing information to Deputy Van Orden, the state was entitled to explore these

same topics in its re-direct examination of Mr. Raymond. Mr. Raymond's resulting testimony was thus relevant to rebut Chaffin's challenges to Raymond's credibility.

Even then, the prosecutor was restrained in eliciting this relevant testimony from Mr. Raymond. The prosecutor did not, for example, elicit additional related details from the conversation between Mr. Raymond and Deputy Van Orden - such as that Mr. Raymond "could tell" that Chaffin was "on meth" and was a "major drug addict;" and that Chaffin informed him that he was in possession of a handgun. (Tr., p.36, Ls.5-6; p.46, Ls.4-14.) The prosecutor instead only elicited testimony necessary to effectively rebut Chaffin's credibility attacks, as he was entitled to do.

Chaffin has failed to show that the district court erred in overruling his objection to Raymond's testimony on re-direct examination regarding his reasons for contacting the authorities. This Court must therefore affirm Chaffin's conviction for forgery.

D. Any Error Was Harmless

Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected" I.R.E. 103(a). See also I.C.R. 52 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded."). "The inquiry is whether, beyond a reasonable doubt, a rational jury would have convicted [the defendant] even without the admission of the challenged evidence." State v. Johnson, 148 Idaho 664, 669, 227 P.3d 918, 923 (2010) (citing Chapman v. California, 386 U.S. 18, 24 (1967); Neder v. United States, 527 U.S. 1, 18 (1999)).

In this case, even if the district court erred in overruling Chaffin's objection to the challenged testimony, any such error was harmless in light of the overwhelming evidence of Chaffin's guilt with respect to the charge he was convicted of, forgery, and the relative lack of prejudice associated with testimony that Raymond saw syringes in buckets around his under-construction residence.

The jury was instructed that in order to find Chaffin guilty of forgery, it must find, beyond a reasonable doubt, that Chaffin, "with the intent to defraud Ryan Raymond," "falsely made or forged or attempted to pass as true and genuine a false, altered, forged, or counterfeited writing, to-wit: a purchase receipt from Stan's Paint Clinic...knowing that the said receipt was false or forged." (R., p.181.) The jury was also instructed that an "intent to defraud" is:

An intent to deceive another person for the purpose of gaining some material advantage over that person or to induce that person to part with property or to alter that person's position to the injury or risk of the person, and to accomplish that purpose by some false statement, false representation of fact, wrongful concealment or suppression of truth, or by any other artifice or act designed to deceive.

(R., p.182.)

The state presented clear and overwhelming evidence that Chaffin committed forgery. To prove that Chaffin falsely made or forged the receipt accompanying the second invoice, the state presented extensive testimony from Hutch Gold, the owner of Stan's Paint Clinic. (Tr., p.75, L.15 – p.98, L.22.) Gold testified that he had not, to his knowledge, ever done business with Chaffin; that his search for Chaffin and Snake River Painting in the company's sales records did not reveal any past purchases; that, upon examination during the trial, the receipt presented by Chaffin was

not of the type that Stan's Paint Clinic issues; and that his store did not sell some of the products depicted on the receipt. (Tr., p.77, L.2 – p.87, L.16.)

The evidence was also overwhelming that Chaffin forged the receipt in order to defraud and deceive the Raymonds for the purpose of gaining some material advantage, to induce the Raymonds to part with property, and/or or to alter the Raymonds' position to the Raymonds' injury or risk. No other purpose was evident. The forged receipt did, in fact, induce the second invoice payment that the Raymonds believed, based on Chaffin's statements to them, was required to compensate Chaffin for paint already purchased. (Tr., p.15, Ls.12-19; p.68, Ls.11-16.)

The state also presented testimony from Joseph Denney, the manager of the Sherwin-Williams paint store in Chubbuck (Tr., p.103, Ls.5-18), who testified that while his store provided supplies for the Raymonds' project, the only paint purchases that were actually made were for a small amount of paint to cover doors; and two larger purchases that were made by Mr. Raymond himself (Tr., p.106, L.11 – p.118, L.25). The inescapable inference drawn from the evidence presented by the state was that Chaffin forged the receipt and falsely represented that he had already purchased paint for the Raymonds' project in in order to induce payment for paint that was never actually purchased. The Raymonds ultimately paid for this paint twice – once when induced by the false receipt, and again when Mr. Raymond paid for paint himself after Chaffin failed to produce any.

Additionally, the fact that Raymond was concerned for the safety of his property was already before the jury prior to the admission of the challenged testimony. In an un-objected to response to a cross-examination question regarding "how...that meeting [with Deputy Van Orden]

came about,” Raymond explained that he “was afraid that [Chaffin] might come back and vandalize or take other things from the home, so I asked [law enforcement] to keep an eye on the home and the property at the same time as they were making their rounds.” (Tr., p.18, Ls.2-14.) The new information provided by Raymond in the subsequent challenged testimony – that he found syringes in buckets – was not so prejudicial that it could have impacted the jury’s verdict in light of the evidence of Chaffin’s guilt. While this testimony was relevant to Raymond’s decision to contact the police, there was no particular evidence connecting Chaffin to the syringe. Further, there was no evidence expressly referencing any illegal drug use. On re-cross examination, Chaffin posited an innocent plausible explanation for the syringe, that he was diabetic. (Tr., p.70, L.18 – p.71, L.12.) Further, as discussed above, while Raymond was concerned enough about the syringes to contact police, he was not *so* concerned about the situation that he was unwilling to continue to attempt to work with Chaffin and obtain his assistance in completing the project. Raymond’s testimony about the syringes was thus simply not so inflammatory and prejudicial as to have impacted the jury’s verdict.

Certainly, the testimony about the syringes was not so prejudicial as to prevent a jury acquittal on the grand theft charge. A rational juror would not acquit on grand theft *despite* the admission of this challenged evidence, but convict of forgery *because of* this same evidence. Instead, in acquitting Chaffin on the grand theft charge, the jury seemingly accepted Chaffin’s argument that “the most reasonable explanation” for his actions was that to compensate for a stunted cash flow, he would “rob Peter to pay Paul,” try to “make it up down [the] line,” and that the state thus failed to prove beyond a reasonable doubt that Chaffin intended to permanently

deprive the Raymonds of any property. (Tr., p.496, Ls.8-23.) This argument effectively assumed that Chaffin produced the false receipt for the purpose of inducing the Raymonds to pay the invoice for short-term gain, i.e., committed forgery.

Even assuming the district court erred in overruling Chaffin's objection to the challenged testimony, any such error was harmless, beyond a reasonable doubt, in light of the overwhelming evidence of Chaffin's guilt and the relative lack of prejudice associated with the testimony. This Court should therefore affirm Chaffin's conviction for forgery.

CONCLUSION

The state respectfully requests that this Court affirm the judgment of conviction imposed upon the jury verdict finding Chaffin guilty of forgery.

DATED this 27th day of November, 2019.

/s/ Mark W. Olson
MARK W. OLSON
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 27th day of November, 2019, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

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/s/ Mark W. Olson
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