

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1054

KA 06-02131

PRESENT: SMITH, J.P., CENTRA, FAHEY, CARNI, AND PINE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DANIEL F. MANGES, DEFENDANT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (DREW R. DUBRIN OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL C. GREEN, DISTRICT ATTORNEY, ROCHESTER (NICOLE M. FANTIGROSSI OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Monroe County Court (Frank P. Geraci, Jr., J.), rendered March 15, 2006. The judgment convicted defendant, upon a jury verdict, of criminal possession of a forged instrument in the second degree and attempted grand larceny in the third degree.

It is hereby ORDERED that the judgment so appealed from is unanimously reversed on the law, the indictment is dismissed, and the matter is remitted to Monroe County Court for proceedings pursuant to CPL 470.45.

Memorandum: Defendant appeals from a judgment convicting him, upon a jury verdict, of criminal possession of a forged instrument in the second degree (Penal Law § 170.25) and attempted grand larceny in the third degree (§§ 110.00, 155.35). We agree with defendant that County Court erred in admitting in evidence a printout of electronic data that was displayed on a computer screen when defendant presented a check, the allegedly forged instrument, to a bank teller. The People failed to establish that the printout falls within the business records exception to the hearsay rule (see CPLR 4518 [a]), which applies here (see CPL 60.10). The People presented no evidence that the data displayed on the computer screen, resulting in the printout, was entered in the regular course of business at the time of the transaction (see CPLR 4518 [a]). Indeed, the bank teller who identified the computer screen printout testified that "anyone [at the bank] can sit down at a computer and enter information." Because the computer screen printout was the only evidence establishing the identity of the purported true account owner upon which the check was drawn, we conclude that the evidence is legally insufficient to support the conviction (see generally *People v Bleakley*, 69 NY2d 490, 495). In the absence of the printout, the People failed to establish an essential element of the crime of criminal possession of a forged

instrument, i.e., defendant's knowledge that the check presented to the bank teller was forged (see *People v Johnson*, 65 NY2d 556, 560, rearg denied 66 NY2d 759; cf. *People v Shabazz*, 226 AD2d 290, lv denied 88 NY2d 994) and, thus, they also failed to establish an essential element of the remaining crime of attempted grand larceny in the third degree, i.e., that the property was stolen.

Entered: November 13, 2009

Patricia L. Morgan
Clerk of the Court