

State of New York Court of Appeals

MEMORANDUM

This memorandum is uncorrected and subject to revision before publication in the New York Reports.

No. 76
The People &c.,
Respondent,
v.
Manuel Rodriguez,
Appellant.

Stephen R. Strother, for appellant.
Valerie Figueredo, for respondent.

MEMORANDUM:

The order of the Appellate Division should be affirmed. We reject defendant's contention that the trial evidence is legally insufficient to support the conviction of grand larceny in the third degree (Penal Law § 155.35 [1]). The trial evidence established that

defendant personally opened a bank account in his name, supplying two forms of identification, his home address, his date of birth, and his social security number. The next day, defendant enabled the deposit of a forged check for \$11,340 into his newly-created account by providing his debit card and Personal Identification Number (PIN) to an accomplice who made the deposit. The day after the deposit, a Saturday, defendant withdrew a total of \$11,000 from his account through an irregular series of withdrawals at three different bank branches in incremental amounts designed to evade further approval or reporting requirements.¹ Surveillance video capturing defendant's withdrawals was obtained for two of the transactions. Collectively, this evidence permitted an inference that defendant orchestrated a three-day scheme by which he arranged the deposit of a forged check—into an account apparently created for the sole purpose of housing the stolen funds—and then immediately withdrew the proceeds. Viewing the evidence in the light most favorable to the prosecution (People v Danielson, 9 NY3d 342, 349 [2007]), a jury could logically conclude that the People sustained their burden of proof, even in the absence of any evidence directly connecting defendant to the theft of the check itself.

Contrary to defendant's assertion, the asportation of the stolen property had not "ceased before defendant's involvement" (People v Robinson, 60 NY2d 982, 984 [1983]). Rather, the evidence supports an inference that defendant arranged and implemented a scheme to acquire the proceeds of a forged check by, among other things, opening an

¹ Because the forged check was drawn on an account at the same bank where defendant opened his account, the proceeds of the check became available within 24 hours rather than two to ten days later.

account and supplying the requisite information to enable an accomplice to deposit the forged check into defendant’s account. Moreover, given the nature of defendant’s scheme, the asportation of the stolen property was still ongoing when defendant withdrew the money from his account; there was no clear break, prolonged lapse of time, or other “intervening circumstance[]” between the theft of the check and defendant’s subsequent withdrawals (id.). Defendant may not evade liability for larcenous conduct merely because the stolen funds were funneled through his bank account.²

* * * * *

Order affirmed, in a memorandum. Chief Judge DiFiore and Judges Rivera, Stein, Fahey, Garcia, Wilson and Feinman concur.

Decided October 24, 2019

² We reject defendant’s related challenge to the trial court’s instructions to the jury. The jury charge, viewed in totality, properly instructed the jury on the elements of third-degree larceny such that there was “no significant risk of confusion” (People v Lewie, 17 NY3d 348, 363 [2011]).