

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

State of North Dakota,)	
)	
Plaintiff and Appellee,)	
vs.)	Supreme Ct. No. 20210175
)	
Emile Dargbeh,)	Dist. Ct. No. 09-2020-CR-3402
)	
Defendant and Appellant.)	

APPELLEE'S BRIEF

Appeal from the Criminal Judgment
Entered on May 26, 2021
East Central Judicial District, Cass County, North Dakota
The Honorable John Irby, Presiding

ORAL ARGUMENT REQUESTED

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[¶ 3] STATEMENT OF ISSUES

[¶ 4] I. Whether the district court abused its discretion when admitting evidence of an uncharged check.

[¶ 5] II. Whether sufficient evidence existed for a jury to find the defendant guilty.

[¶ 6] STATEMENT OF CASE

[¶ 7] Emile Dargbeh appeals from the criminal judgment entered on May 26, 2021. The jury found Dargbeh guilty of two counts of forgery under N.D.C.C. § 12.1-24-01. Dargbeh filed a notice of appeal on June 24, 2021. Dargbeh contends the district court abused its discretion by allowing evidence of a third forged check to be presented to the jury. Dargbeh further claims the evidence was insufficient to prove the essential elements of forgery.

[¶ 8] The State asserts evidence of the third forged check is admissible because it does not constitute N.D.R.Ev. 404(b) evidence; rather, it is evidence of activity in furtherance of the same criminal activity. Alternatively, the State contends the district court properly admitted the evidence under N.D.R.Ev. 404(b) because the three-pronged test was satisfied. Furthermore, the State asserts sufficient evidence existed to sustain the convictions.

[¶ 9] STATEMENT OF FACTS

[¶ 10] During the State's opening statement the prosecution stated:

And while you hear testimony of a larger forgery ring, we are here solely to look at Emile Dargbeh's participation in this operation. A total of three checks were cashed with Emile Dargbeh's name. He's only charged with the two checks that you previously heard about, because for those two checks, he is on video. The transactions occurring on March 21st, 2020, and April 6th, 2020, have the defendant on camera committing forgery.

(Tr. Vol. I 14:6-13.) The defense objected on the record as to the third check that was not charged. (Tr. Vol. I 17:24-25; 18; 19; 20:1-18.) The State responded, indicating the purpose behind introducing evidence of the third check and why the State believed it was admissible. (Tr. Vol. I 20:20-25; 21; 22:1-6.) The district court preliminarily overruled the objection depending on how the evidence was used. (Tr. Vol. I 22:7-25; 23:1-12.)

[¶ 11] Detective Dane Ronning investigated fraudulent checks passed on Dacotah Paper's account. (Tr. Vol. I 84:12-25; 86:1-23.) The investigation uncovered a loss of approximately \$63,000. (Tr. Vol. I 86:8-10.) Detective Ronning testified approximately 26 people were involved in the fraudulent checks on Dacotah Paper's account. (Tr. Vol. I 86:11-13.) Kent Christianson, the Vice President of Accounting for Dacotah Paper, testified there were approximately 30 forged checks passed through the account. (Tr. Vol. I 28:5-9; 31:9-11.) Detective Ronning stated the forged checks started getting passed in March 2020. (Tr. Vol. I 86:25; 87:1.) Detective Ronning further explained the bulk of the forged checks were passed within the first month or two. (Tr. Vol. I 87:4-7.)

[¶ 12] Detective Ronning explained to the jury why he considered the Dacotah Paper fraudulent checks to be a large-scale forgery ring. (Tr. Vol. I 87:24-25; 88; 89:1-17.) Detective Ronning testified he believed Toki Agamiri to be the leader of this forgery ring. (Tr. Vol. I 111:8-19.) Detective Ronning further testified, in his experience, a single person or a couple of people would print the checks and then they would use other people to help cash the checks. (Tr. Vol. I 88:18-25; 89:1-3.) The individuals who cashed the checks were able to keep some of the money, while the person who printed the check would keep the rest. (Tr. Vol. I 89:4-17.)

[¶ 13] Detective Ronning explained how his investigation led to Emile Dargbeh. (Tr. Vol. I 89:18-20.) Dargbeh passed three checks on three separate dates. (Tr. Vol. I 89:21-24.) Detective Ronning testified he contacted Gate City Bank to locate video surveillance. (Tr. Vol. I 90:9-21.) Two of the three checks were cashed at the Gate City Bank located inside of Hornbacher's in Cass County, North Dakota. (Tr. Vol. I 90:17-21; 91:3-10.)

[¶ 14] Video surveillance showed Emile Dargbeh enter Hornbacher's on March 21, 2020 with Toki Agamiri. (Tr. Vol. I 102:17-25; 103.) Detective Ronning identified a third person in the group as Arnes Dargbeh. (Tr. Vol. I 103:8-9.) Detective Ronning confirmed both Toki Agamiri and Arnes Dargbeh were involved in the forgery ring as well. (Tr. Vol. I 103:3-18.) The video shows Emile Dargbeh at the Gate City Bank counter completing a transaction. (Tr. Vol. I 104:14-21.) It

is during this transaction that Emile Dargbeh passes the check identified as Exhibit 1. (Tr. Vol. I 105:21-25.)

[¶ 15] Exhibit 1 is a check passed by Emile Dargbeh on March 21, 2021. (Tr. Vol. I 92:16-17; 93:22-25; 94:1-10.) The check is written out to Emile Dargbeh in the amount of 2,180 dollars. (Tr. Vol. I 92:15-18; 95:5-6.) Exhibit 1 was received into evidence without objection. (Tr. Vol. I 93:3-10.)

[¶ 16] Video surveillance showed Emile Dargbeh enter the same Hornbacher's on April 6, 2020. (Tr. Vol. I 105:6-9.) He is alone during this trip and throughout his transaction at Gate City Bank. (Tr. Vol. I 105:9-20.) During this transaction, Emile Dargbeh passes the check identified as Exhibit 2. (Tr. Vol. I 105:21-25.)

[¶ 17] Exhibit 2 is a check passed by Emile Dargbeh on April 6, 2021. (Tr. Vol. I 92:18-20.) The check is written out to Emile Dargbeh in the amount of \$1,954.73. (Tr. Vol. I 96:3-6.) Exhibit 2 was received into evidence without objection. (Tr. Vol. I 93:3-10.)

[¶ 18] Exhibit 3 is a check that was passed and written to the name of Emile Dargbeh. (Tr. Vol. I 92:15-16.) Detective Ronning testified exhibit 3 was a true and accurate depiction of one of the three checks he investigated regarding Dargbeh. (Tr. Vol. I 92:23-25; 93:1-2.) Detective Ronning testified to the check having the date, time, place it was cashed, who it was made out to, and the signature on the back. (Tr. Vol. I 96:18-25; 97:1-4.) Detective Ronning confirmed the check was written out for 1,974 dollars and it was successfully cashed. (Tr. Vol. I 97:5-9.)

Detective Ronning also explained that the three checks were nearly identical and nearly identical to the other checks passed in the Dacotah Paper forgery ring. (Tr. Vol. I 97:13-25; 98:1-17.) Defense counsel objected to this exhibit under Rule 404 and 403. (Tr. Vol. I 92:3-7.) The district court overruled the objection and received exhibit 2. (Tr. Vol. I 93:8-16.)

[¶ 19] Kent Christianson from Dacotah Paper and Ronda Hahn from Starion Bank testified as to what steps they took when the fraudulent checks were discovered. (Tr. Vol. I 27:5-25; 28; 29:1-12; 39:9-25; 40; 41:1-13.) Both Christianson and Hahn confirmed the three checks were forged. (Tr. Vol. I 30:15-25; 31:1-5; 42:22-24.) Christianson testified Dargbeh never worked for Dacotah Paper and Dacotah Paper never wrote a check out to Dargbeh. (Tr. Vol. I 29:13-22.)

[¶ 20] Tesa Larson Roper testified Gateway Chevrolet rented Dargbeh a 2020 blue Altima with a North Dakota license plate 167-CKJ. (Tr. Vol. I 49:16-17; 51:14-17; 53:15-19.) The rental agreement, marked as Exhibit 4, was admitted into evidence. (Tr. Vol. I 52:8-15.) Andrew Miller testified Corwin rented Dargbeh a gray or silver Jeep Cherokee. (Tr. Vol. I 70:12-20.) Miller testified the rental agreement for the vehicle was for March 31- April 6, 2020. (Tr. Vol. I 70:14-15.) Detective Ronning testified both vehicles were used during the commission of cashing other forged checks during the time they were rented to Dargbeh. (Tr. Vol. I 109:23-25; 110; 111:1-3.)

[¶ 21] The defense argued in their closing while there was testimony and some evidence about a third check that Dargbeh was not charged with passing that forged check. (Tr. Vol. II 77:22-25; 78:1-2.) In its rebuttal, the State indicates the vehicles and third check were merely additional information to help the jury understand that Dargbeh was not just duped by his friend, but rather that he was involved as a willing participant in the forgery scheme. (Tr. Vol. II 90:4-9.) The jury convicted on both counts of forgery.

[¶ 22] **STANDARD OF REVIEW**

[¶ 23] “The district court exercises broad discretion in determining whether to admit or exclude evidence, and its determination will be reversed on appeal only for an abuse of discretion.” State v. Doppler, 2013 ND 54, ¶ 7, 828 N.W.2d 502 (quoting State v. Chisholm, 2012 ND 147, ¶ 10, 818 N.W.2d 707). “A district court abuses its discretion in evidentiary rulings when it acts arbitrarily, capriciously, or unreasonably, or it misinterprets or misapplies the law.” Id. “An abuse of discretion by the district court is never assumed, and the burden is on the party seeking relief affirmatively to establish it.” State v. Schmidkunz, 2006 ND 192, ¶ 15, 721 N.W.2d 387 (quoting Nesvig v. Nesvig, 2006 ND 66, ¶ 12, 712 N.W.2d 299).

[¶ 24] The North Dakota Supreme Court’s standard of review is well-established for a challenge to the sufficiency of evidence supporting a jury’s verdict:

In reviewing the sufficiency of the evidence to convict, we look only to the evidence most favorable to the verdict and the reasonable inferences therefrom to see if there is substantial evidence to warrant a conviction. A conviction rests upon insufficient evidence only when no rational fact finder could have found the defendant guilty beyond

a reasonable doubt after viewing the evidence in a light most favorable to the prosecution and giving the prosecution the benefit of all inferences reasonably to be drawn in its favor.

State v. Johnson, 2021 ND 161, ¶ 7 (citing State v. Spillum, 2021 ND 25, ¶ 6, 954 N.W.2d 673).

[¶ 25] **LAW AND ARGUMENT**

[¶ 26] Dargbeh argues the district court abused its discretion by admitting evidence of a third forged check under N.D.R.Ev. 404 and 403. Dargbeh also argues there was insufficient evidence to support the guilty verdicts. The State disagrees.

[¶ 27] I. **The district court did not abuse its discretion by admitting evidence of an uncharged check.**

A

[¶ 28] Evidence of the third check does not constitute N.D.R.Ev. 404(b) evidence; rather, it is evidence of activity in furtherance of the same criminal activity.

[¶ 29] Rule 404(b) “is a rule of inclusion, meaning that evidence offered for permissible purposes is presumed admissible absent a contrary determination.” United States v. Walker, 428 F.3d 1165, 1169 (8th Cir. 2005). The rule “only excludes evidence of other acts and crimes committed by the defendant when they are *independent* of the charged crime, and do not fit into the rule’s exceptions.” State v. Alvarado, 2008 ND 203, ¶ 10, 757 N.W.2d 570 (quoting State v. Christensen, 1997 ND 57, ¶ 8, 561 N.W.2d 631). Prior acts that are part of the same course of conduct are not excluded under 404(b). In addition, prior acts evidence is

admissible to provide “a more complete story of the crime by putting it in context of happenings near in time and place.” State v. Gaede, 2007 ND 125, ¶¶ 26-28, 736 N.W.2d 418 (quoting State v. Biby, 366 N.W.2d 460, 463 (N.D. 1985)).

[¶ 30] The North Dakota Supreme Court has previously addressed this issue. In State v. Paul, this Court concluded prior acts of sexual abuse were not independent acts but evidence of activity in furtherance of the same criminal activity. 2009 ND 120, ¶ 25, 769 N.W.2d 416. In State v. Alvarado, this Court determined evidence of prior acts of domestic violence committed by the defendant in a felonious restraint case were not independent acts but were evidence of activity in furtherance of the same criminal activity and the evidence was not 404(b) evidence. 2008 ND 203, 757 N.W.2d 570. In State v. Christensen, this Court ruled evidence of prior non-criminal acts of physical contact between the victim and the defendant was not a Rule 404(b) issue. 1997 ND 57, ¶ 8, 561 N.W.2d 631. In Steinbach v. State, the district court found testimony about prior drinking, arguing, and physical violence was not prior bad acts evidence prohibited by N.D.R.Ev. 404(b), but instead admissible evidence of the pattern of the same activity between the same people. 2015 ND 34, ¶¶ 16-17, 859 N.W.2d 1. This Court indicated the prior acts occurred within months of the charged crime, the acts and charged crime involved the same individuals, and the testimony showed a pattern of conduct between the parties leading up to the crime, concluding the evidence was admissible because it provided a clearer picture of the relationship between the parties and helped provide a more complete story of the crime. Id. at ¶ 19.

[¶ 31] Likewise, Courts of Appeal cases “have firmly established that crimes or acts which are ‘inextricably intertwined’ with the charged crime are not extrinsic and Rule 404(b) does not apply.” United States v. O'Dell, 204 F.3d 829, 833 (8th Cir. 2000). Accord United States v. Lebedev, 932 F.3d 40, 52 (2d Cir. 2019) (recognizing that “Rule 404(b) does not encompass acts that ‘arose out of the same transaction or series of transactions as the charged offense,’ are ‘inextricably intertwined with the evidence regarding the charged offense,’ or are ‘necessary to complete the story of the crime on trial’”); United States v. Loftis, 843 F.3d 1173, 1177 (9th Cir. 2016) (explaining that the “inextricably intertwined” doctrine “applies when the acts in question are so interwoven with the charged offense that they should not be treated as other crimes or acts for purposes of Rule 404(b)”); United States v. Luster, 480 F.3d 551, 556 (7th Cir. 2007) (“Acts that are ‘inextricably intertwined’ with the crime on trial are admissible in this circuit because they lie outside the purview of the Rule 404(b) character/propensity prohibition, the logic being that Rule 404(b) only applies to ‘other’ crimes, wrongs, or acts, not acts directly related to (i.e., ‘inextricably intertwined’ with) the crime on trial.”); United States v. Kennedy, 32 F.3d 876, 885 (4th Cir. 1994) (“It is well-established, however, that the mere fact that the evidence involved activities occurring before the charged time frame of the conspiracy does not automatically transform that evidence into ‘other crimes’ evidence”); United States v. Torres, 685 F.2d 921, 924 (5th Cir. 1982) (“An act is not extrinsic, and Rule 404(b) is not

implicated, where the evidence of that act and the evidence of the crime charged are inextricably intertwined”).

[¶ 32] Moreover, “evidence of uncharged criminal activity is admissible to provide the jury with a complete story of the crime on trial, to complete what would otherwise be a chronological or conceptual void in the story of the crime, or to explain the circumstances surrounding the charged crime.” United States v. Spaeni, 60 F.3d 313, 316 (7th Cir. 1995). See also United States v. Kennedy, 32 F.3d 876, 885 (4th Cir. 1994) (noting that evidence of uncharged conduct is not “other crimes” evidence under 404(b) if it was part of the same series of transactions as the charged offense or if it is needed to provide a complete story of the charged offense).

[¶ 33] Here, the defendant’s acts, the three separate cashed checks involve the same course of conduct and the same victim. Evidence of the uncharged forged check is not 404(b) evidence, but rather activity that is inextricably intertwined with the two charged forged checks. To argue the uncharged forged check is independent of the charged crimes and not part of the same series of transactions as the charged offenses would create an absurd result. Furthermore, the evidence of the third check provided a complete story of the crime. Therefore, the district court did not abuse its discretion by admitting evidence of the third forged check.

B

[¶ 34] Even if this Court agrees the evidence falls under N.D.R.Ev. 404(b), the evidence was still admissible. North Dakota Rule of Evidence 404(b)(1) provides “[e]vidence of a crime, wrong, or other act is not admissible to prove a

person's character in order to show that on a particular occasion the person acted in accordance with the character." However, the Rule provides such evidence "may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." N.D.R.Ev. 404(b)(2).

[¶ 35] In determining the admissibility of 404(b) evidence, a three-part test is applied. State v. Gaede, 2007 ND 125, ¶ 26, 736 N.W.2d 418. First, "the court must look to the purpose for which the evidence is introduced." Id. Second, "the evidence of the prior act or acts must be substantially reliable or clear and convincing." Id. Third, "in criminal cases, there must be proof of the crime charged which permits the trier of fact to establish the defendant's guilt or innocence independently on the evidence presented, without consideration of the evidence of the prior acts." Id. The final prong of the test "may usually be satisfied with a cautionary instruction about the evidence's admissibility and its use for a limited purpose." Id. This three-part test is not the end of the analysis because the court must also consider whether the probative value of the evidence would outweigh any prejudicial effect that it may have. Id.

[¶ 36] Here, evidence of the third check was admitted to show the defendant's knowledge. Knowledge the checks were forged and knowledge that there was a greater scheme existing. The defense raised the objection prior to the State putting on any evidence. After the objection and response, the district court indicated it was overruling the objection "bearing in mind how it's used." (Tr. Vol. I 22:21-25.)

The district court further explained:

[Y]ou can't argue, well, if he did this one, he did the other one. You know, and that's, of course, not a proper use of it. But to establish that there was, in fact, a scheme and that he was aware of it, I think that's an appropriate use of that.

(Tr. Vol. I 22:21-25; 23:1-2.) Evidence under N.D.R.Ev. 404(b) is admissible to prove motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. The district court found the evidence was admissible for the purpose of proving knowledge.

[¶ 37] The second part of the three-part test is whether the evidence is substantially reliable or clear and convincing. The defense asked specifically if the district court was finding the evidence was substantially reliable or clear and convincing. (Tr. Vol. I 23:4-6.) The district court stated:

I'll have to – I haven't seen the check yet so – but if it's printed – you know, you wouldn't have it if it didn't have a signature that you believe matches or on paper that looks similar or whatever to compare that. So if that is, in fact, the case and foundation for it's laid, then it would be sufficiently reliable.

(Tr. Vol. I 23:7-12.) Christianson, Hahn, and Detective Ronning testified to the similarities of the forged checks; including the serial numbers, dates passed, and value amounts. Exhibits 1-3 were each written out to Emile Dargbeh. The State laid foundation for all three checks. The district court admitted each check into evidence. Detective Ronning then provided additional information regarding the similar signatures of each of the checks. Proper foundation was laid and testimony regarding the similarities was provided prior to the defense's second objection.

Therefore, as the district court had indicated in the initial objection, evidence of the third check was sufficiently reliable when it was admitted.

[¶ 38] The third prong of the three-part test is whether there's proof of the crime charged which permits the jury to establish guilty or innocence independently on the evidence presented, without consideration of the evidence of the prior acts. Here, there was no instruction about the third check's admissibility or limited use given or requested. If this Court decides the district court misapplied the law by not vocalizing the third prong of the test or because no instruction was given, the error was harmless. "If evidence is admitted in error, 'this Court will consider the entire record and decide in light of all the evidence whether the error was so prejudicial the defendant's rights were affected and a different decision would have occurred absent the error.'" State v. Foster, 2019 ND 28, ¶ 9, 921 N.W.2d 454 (quoting State v. Azure, 2017 ND 195, ¶ 22, 899 N.W.2d 294). The defense argued in their closing while there was testimony and some evidence about a third check that Dargbeh was not charged with passing that forged check. In its rebuttal, the State indicates the vehicles and third check were merely additional information to help the jury understand that Dargbeh was not just duped by his friend, but rather that he was involved as a willing participant in the forgery scheme. There was sufficient evidence to prove guilt independent of the third check.

[¶ 39] The evidence satisfies the N.D.R.Ev. 404(b) three-step analysis. The district court did not abuse its discretion by admitting evidence of the third check.

Even if the district court erred by not providing a limiting instruction, it was harmless error.

C

[¶ 40] The defendant's acts are also admissible under N.D.R.Ev. 403. The North Dakota Supreme Court has cautioned that although N.D.R.Ev. 403 "gives a trial court the power to exclude relevant evidence for any of the reasons stated in the rule, that power should be sparingly exercised." State v. Zimmerman, 524 N.W.2d 111, 115 (N.D. 1994). In general, "any doubt about the existence of unfair prejudice, confusion of issues, misleading, undue delay, or waste of time, should be resolved in favor of admitting the evidence, taking necessary precautions by way of contemporaneous instructions to the jury followed by additional admonition in the charge." Id. Thus, "[t]he greater the degree of relevance, the greater the showing of unfair prejudice that will be required to exclude the evidence." Id. It is important to note that N.D.R.Ev. 403 does not pertain to evidence that is simply prejudicial; rather, "[t]he rule is directed to *unfairly* prejudicial evidence." Id. at 116 (emphasis added). The Court recognizes that "[n]o verdict could be obtained without prejudicial evidence." Id.

[¶ 41] Here, the probative value of the evidence outweighed any possible prejudicial effect. Evidence of the third check was additional information, provided to show the jury the defendant knew the checks were forged and knew of the forgery scheme. The evidence provided a more complete story of the crime. The defense's

objection based on N.D.R.Ev. 403 was overruled by the district court and the evidence was properly admitted.

[¶ 42] II. Sufficient evidence exists to support the convictions.

[¶ 43] Dargbeh argues the evidence at trial was insufficient to support convictions for forgery.

When considering a challenge to sufficiency of the evidence, [the North Dakota Supreme Court] views the evidence and all reasonable inferences that may be drawn therefrom in the light most favorable to the verdict to decide whether a reasonable fact finder could have found the defendant guilty beyond a reasonable doubt.

State v. Norton, 2019 ND 191, ¶ 14, 930 N.W.2d 635 (quoting State v. Wangstad, 2018 ND 217, ¶ 23, 917 N.W.2d 515).

[¶ 44] In order to sustain a conviction for the offense of forgery on count 1, the State was required to prove: (1) on or about March 21, 2020, in Cass County, North Dakota, the Defendant, Emile Dargbeh, knowingly and falsely made, completed, or altered a writing or knowingly uttered or possessed a forged or counterfeited writing; (2) Pursuant to a scheme to defraud another or others of money or property of value in excess of one thousand dollars; and (3) the Defendant, Emile Dargbeh, acted with intent to deceive or harm the government or another person or knowingly facilitated that deception or harm by another. (Tr. Vol. II 65:21-25; 66:1-6.)

[¶ 45] In order to sustain a conviction for the offense of forgery on count 2, the State was required to prove: (1) on or about April 6, 2020, in Cass County, North Dakota, the Defendant, Emile Dargbeh, knowingly and falsely made, completed, or

altered a writing or knowingly uttered or possessed a forged or counterfeited writing; (2) Pursuant to a scheme to defraud another or others of money or property of value in excess of one thousand dollars; and (3) the Defendant, Emile Dargbeh, acted with intent to deceive or harm the government or another person or knowingly facilitated that deception or harm by another. (Tr. Vol. II 66:15-25; 67:1.)

[¶ 46] In this case, there was no dispute as to the dates, place, or defendant in either count. There was also no dispute that the defendant knowingly uttered or possessed a writing. There was no dispute the checks were made out for a value in excess of one thousand dollars. The only dispute as to essential element (1) was whether the defendant knew the checks were forged. For essential element (2), the dispute was whether the defendant uttered or possessed the check pursuant to a scheme to defraud another of money or property. Essential element (3) was in dispute.

[¶ 47] The State provided evidence showing the defendant did not work at Dacotah Paper, had no legitimate reason to receive a check from the company typed out in the defendant's name, and the company confirmed the check was forged. The State pointed out the value of the checks in the short amount of time. Testimony showed the defendant with other participants of the forgery ring during one of the transactions with the forged check. The State provided evidence showing the defendant rented two separate vehicles and the vehicles were used during the rented time to pass other forged checks. Testimony regarding the larger forgery ring or scheme was provided through multiple witnesses. The State pointed out how

Dacotah Paper and Starion Bank were deceived and harmed by the actions of the defendant. The State argued totality of the circumstances proved intent.

[¶ 48] When viewing the evidence and all reasonable inferences that may be drawn therefrom in the light most favorable to the verdict, and assuming the jury believed all evidence supporting a guilty verdict and disbelieved any evidence to the contrary, a reasonable fact finder could have found the defendant guilty beyond a reasonable doubt on both counts of forgery. Therefore, the evidence was sufficient to convict the defendant on both counts.

[¶ 49] **CONCLUSION**

[¶ 50] The district court did not abuse its discretion by admitting evidence of the third uncharged check. Furthermore, there was sufficient evidence to sustain the jury's verdicts of guilt. Therefore, the State requests this Court affirm the criminal judgment entered on May 26, 2021. The State requests oral argument in this matter in order to aid the Court.

[¶ 51] Respectfully submitted September 23, 2021.

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[¶52] CERTIFICATE OF COMPLIANCE

[¶ 53] I hereby certify that this brief complies with N.D.R.App.P. 32(a)(8).

The page count is 22 pages.

[¶ 54] Dated September 23, 2021.

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[¶ 55] CERTIFICATE OF SERVICE

[¶ 56] A true and correct copy of the foregoing document was sent by e-mail on September 23, 2021, to Leah Carlson at lcarlson@ohnstadlaw.com.

SheraLynn Ternes, #08412