

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

LAQUANA MCKALPAIN,

Defendant-Appellant.

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UNPUBLISHED

February 4, 2010

No. 286722

Wayne Circuit Court

LC No. 07-014040-FH

Before: Stephens, P.J., and Cavanagh and Owens, JJ.

STEPHENS, J. (*dissenting*)

I disagree with the majority and conclude that the prosecution did not present sufficient evidence to obtain a conviction. Specifically, although I conclude that the prosecution presented sufficient evidence to establish the element of intent, I would reverse because a rational trier of fact was not permitted to find that the instruments were forged or altered and that the defendant possessed knowledge that the instruments were false.

The trial judge made specific findings in this case on each element of the offense. Regarding knowledge of falsity, She found that defendant “forged the signatures on these checks knowing that she did not have permission.” The court found that the totality of the circumstances provided proof of the intent to defraud. Ms. Cassie McClendon died prior to defendant's arrest. The bank officials provided no testimony to support the falsity of the signature on the checks. Mary Boyton, a senior process analyst at Comerica, testified about the bank’s procedures for accepting checks for deposit. She verified that several instruments were drawn on the account held by Ms. McClendon and her son to defendant. Included in those checks was a check purported to have been signed by Mr. McClendon. Another bank official, Mr. Frank Periano, senior vice-president and counsel, was questioned by the court and offered an opinion that a false signature by a check maker could go undetected. Mr. McClendon was ambivalent regarding whether the checks shown to him had been signed by his mother, offering at one point that “it looks like her signature.” Later, he stated that he was not familiar with his mother’s signature. As a result, there exists no direct evidence that defendant forged the checks at issue. The trial court noted, “I believe that the testimony said something about the signature cards were somewhat different.” While the prosecutor argued that the signatures on the checks were not the same, no witness offered this testimony and no one indicated which of the signatures were dissimilar to the never produced signature card of Ms. McClendon. In fact, Ms. Boyton, when asked about Ms. McClendon’s signature card, answered that she did not know if

there was a signature card for Ms. McClendon despite her testimony that maintenance of such cards was ordinary bank procedure.

The above-described evidence does not permit a rational trier of fact to conclude beyond a reasonable doubt that the four checks were false instruments. Consequently, the prosecution failed to establish each of the elements of the charged offense and the trial court was precluded of convicting defendant.

/s/ Cynthia Diane Stephens