No. 1-09-1244

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

SIXTH DIVISION
FEBRUARY 10, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 09 CR 672
	)	
LOUIS SMITH,	)	Honorable
	)	Brian K. Flaherty,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE ROBERT E. GORDON delivered the judgment of the court.
Presiding Justice Garcia and Justice Cahill concurred in the judgment.

O R D E R

HELD: The State presented sufficient evidence to corroborate defendant's confession to forgery, and therefore proved defendant guilty of the offense beyond a reasonable doubt. The judgment was affirmed, and certain monetary assessments were vacated.

Following a bench trial, defendant Louis Smith was found guilty of forgery and sentenced to two years' probation. On

appeal, defendant contends that he was not proven guilty of the offense beyond a reasonable doubt because there was no evidence, apart from his confession, to support the *corpus delicti* of the offense and the State failed to prove he had the intent to defraud. He also challenges the imposition of certain fines and fees. We affirm, with corrections to the fines, fees, and costs order.

Defendant was arrested after depositing two suspect checks into his Bank Financial business account, entitled Federal Financial Assistance Corporation. Defendant was subsequently charged with forgery.

Counts 1 and 2 alleged that, on January 18, 2008, defendant, with intent to defraud, knowingly made or altered and then delivered check number 2207. Check number 2207 was issued on the account of "EHNS Investment Group," drawn on Great Lakes Bank, and made payable for $1,850 to "Federal Financial Assistance Corporation." Counts 3 and 4 alleged that on the same day, defendant, with intent to defraud, knowingly made or altered and then delivered check number 1976. Check number 1976 was issued on the account of "Complete Remodeling Inc.," drawn on Washington Mutual Bank, and made payable for $2,781.53 to "Federal Financial Assistance Corporation." The counts alleged that defendant knew the checks were not made by the companies cited and that they were apparently capable of defrauding Bank Financial.

The evidence at trial revealed that defendant had opened his "Federal Financial Assistance Corporation" account at Bank Financial in December 2007 with a $500 deposit. Within a week, however, he had cashed checks worth $400 out of his account. After a service fee, he was left with a very low balance.

Such was the status of his bank account when he deposited the allegedly fraudulent checks described above in January 2008. Defendant deposited check number 1976 into Bank Financial's Olympia Fields ATM, and within an hour, deposited check number 2207 into Bank Financial's nearby Hazel Crest ATM. The greater part of the State's evidence related to Bank Financial's discovery of check number 2207 at the Hazel Crest ATM. The State also presented evidence of defendant's confession to police regarding the deposits; however, his written confession related solely to check number 1976.

Bank Financial manager Sylvia Tinoco testified that on January 25, 2008, several days after defendant's deposits, she opened the bank's Hazel Crest location, then collected the ATM and night deposits. She testified that, based on her experience at the bank, defendant's check number 2207 appeared "completely fake," like one of the checks sold at Staples or Office Max. Neither the font, the bold-face type, nor the "childlike" signature on the check appeared legitimate. She stated that checks bearing childlike signatures "tend to be fraudulent."

Tinoco then verified that defendant, the owner of the check, was a Bank Financial account holder under the business name, Federal Financial Assistance Corporation. She noted that the recently opened account had a very small balance prior to the deposit and also discovered that, within an hour of the Hazel Crest deposit, the deposit of check number 1976 had been made at Bank Financial's nearby Olympia Fields location.

Tinoco identified the suspect check, number 2207, at trial. It was payable to the order of "FSA [*sic*] Corp" in the amount of $1,850 and drawn on the account of EHNS Investment Group, which did not have an account with Bank Financial. The check was endorsed by defendant's company, Federal Financial Assistance Corp.

Greg Lindgren, Bank Financial's regional vice president, testified that on January 25, 2008, Tinoco reported a possibly fraudulent deposit. Lindgren was then presented with check number 2207, which he testified looked "somewhat suspect," thus requiring further review of defendant's account history. Lindgren testified that as he reviewed the history, he "immediately identified the pattern as very consistent with *** forgery attempts, fraudulent accounts," which Lindgren had encountered with some frequency during his employment. Lindgren testified that depositing two separate checks at neighboring ATMs within an hour was "very suspicious."

Lindgren stated on cross-examination that he had reviewed a video record of both ATM deposits, and they were made by the same person. Lindgren also stated that the fraud control department at the bank had informed him that both checks, which he identified at trial, were written on "closed accounts" from other banks.

Defendant was subsequently arrested. Hazel Crest Police Detective Michael Watson testified that, after advising defendant of his *Miranda* rights, defendant stated that "he was at home and he created the checks on his computer" and did so "all the time." Defendant admitted that he had passed the two checks at Bank Financial by depositing one in Hazel Crest and the other in Olympia Fields and, further, that he did not work for the two companies in whose names he created the checks. Detective Watson then reduced the statement to a written summary, which defendant read and signed. The statement read, in relevant part:

> "On or about January 19, 2008, I was at home and generated a fraudulent check on my computer for $2,781.53 [check number 1976]. I made the check payable to a company I created named Federal Financial Assistance Corporation which I owned. I used a company name Computer

> [*sic*] Remodeling Incorporated as the issuer of the check.
>
> On January 21, 2008, at about 6:00 p.m. I deposited the check at a Bank Financial ATM machine in Hazel Crest. I was aware that the check was fraudulent ***."

On cross-examination, Detective Watson stated that he "chose" the word fraudulent and conveyed to defendant that it meant a "bad check."

Defendant moved for a directed finding. He argued that there was no evidence that either EHNS (check number 2207) or Complete Remodeling Corp. (check number 1976) had *not* given permission to defendant to use their names on the checks. Defendant argued that, absent testimony from the companies, the "State has not presented a prima facie case." Counsel further argued that defendant's statement consisted of "legal conclusions without any support as to what [Detective Watson] meant." Counsel alluded to the fact that defendant did not himself use the word "fraudulent" in his written statement to describe his acts.

The State responded that it was not required to prove the identity of the company defendant intended to defraud. The State

argued that defendant's statement and the testimony were sufficient, and the trial court agreed.

In rejecting defendant's motion, the trial court stated that it found the testimony of the State's witnesses credible and defendant's statement "pretty powerful evidence" of the fraudulent acts. The court noted that the words in defendant's written statement were "commonly used" and "commonly understood," and "I will leave it at that."

Defendant rested without presenting evidence. Without providing a basis for its ruling, the trial court found defendant guilty of Counts 3 and 4, relating to check number 1976. The court, however, found the evidence insufficient to sustain defendant's conviction of forgery on Counts 1 and 2, relating to check number 2207. Defendant filed a motion for a new trial, which was denied. Defendant was sentenced to two years' probation.

Defendant now challenges the sufficiency of the evidence to sustain his conviction on appeal. In assessing the sufficiency of evidence, the relevant question is whether, considering the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Jackson*, 232 Ill. 2d 246, 280 (2009). We will reverse a conviction only where the evidence, taken as a whole, is so unreasonable, improbable, or

unsatisfactory as to justify reasonable doubt of defendant's guilt. *Jackson*, 232 Ill. 2d at 280-81.

The elements of forgery include: (1) a document apparently capable of defrauding another; (2) a making or altering of such document by defendant in a manner that it purports to have been made by another; (3) knowledge by defendant that it has been made; (4) knowing delivery of the document; and (5) intent to defraud. 720 ILCS 5/17-3(a) (West 2008); *People v. De Filippo*, 235 Ill. 2d 377, 382-83 (2009). Intent to defraud may be inferred from the circumstances of the transaction. *People v. Hunter*, 331 Ill. App. 3d 1017, 1026 (2002). If the forged document is delivered, then the intent to defraud will be presumed. *Hunter*, 331 Ill. App. 3d at 1026.

Defendant contends that he was not proven guilty of the offense beyond a reasonable doubt because there was no evidence, apart from his confession, to support the *corpus delicti* of the offense.

In Illinois, the State must prove beyond a reasonable doubt, that a crime occurred, the "*corpus delicti*," and that the crime was committed by the person charged. *People v. Sargent*, No. 108689, slip op. at 13 (Ill. Nov. 18, 2010). While a defendant's confession may be integral to proving the *corpus delicti*, the prosecution must also adduce corroborating evidence independent of the defendant's own statement. *Sargent*, No. 108689, slip op.

at 13. That is, proof of the *corpus delicti* may not rest exclusively on a defendant's extrajudicial confession, admission, or other statement. *Sargent*, No. 108689, slip op. at 13. Although the corroboration requirement demands that there be some evidence, independent of the confession, tending to show the crime did occur, that evidence need not, by itself, prove the existence of the crime beyond a reasonable doubt. *Sargent*, No. 108689, slip op. at 13.

We conclude that the corroboration requirement was met in this case. The evidence at trial showed that defendant deposited suspect check number 2207 at Bank Financial's Hazel Crest ATM. This prompted a review of defendant's account history, which revealed that within an hour defendant also had deposited check number 1976 into his then low-balance account at the neighboring Olympia Fields ATM. Bank vice president Lindgren testified that as he reviewed the account history, he "immediately identified the pattern as very consistent with *** forgery attempts, fraudulent accounts," and further, that the two deposits were "very suspicious." According to Lindgren, a video revealed that the deposits were made by the same individual, and the fraud control department confirmed that the checks were written on "closed accounts" from other banks. While this evidence alone may have been insufficient to prove defendant guilty of forgery,

the evidence combined with defendant's confession proved defendant guilty of the offense.

That is, the evidence showed defendant knowingly created a check purporting to be made by Complete Remodeling, Inc., which was payable to defendant's company in the amount of $2,781.53, and thus was apparently capable of defrauding Bank Financial. Given his confession and delivery of the check, defendant clearly had the intent to defraud the bank. Viewed in the light most favorable to the State, the evidence presented at trial was not so improbable or unsatisfactory that it created a reasonable doubt as to defendant's guilt. See *Jackson*, 232 Ill. 2d at 280-81.

We find this to be the case even though defendant's confession, that he delivered check number 1976 to the Hazel Crest location, was at odds with the testimony of Tinoco and Lindgren, that check number 1976 was delivered to the Olympia Fields location. We view that as a minor inconsistency, insufficient to raise a reasonable doubt. See *People v. Leak*, 398 Ill. App. 3d 798, 818 (2010). Defendant admitted depositing two created checks into the neighboring ATMs, and his written statement specifically referenced check number 1976 as to the amount and the payor. Whether it was the Hazel Crest or Olympia Fields ATM location, is immaterial where the evidence shows that

he did indeed deliver the fraudulent check with the requisite intent to defraud.

Defendant nevertheless argues that the evidence was insufficient to prove intent to defraud because, according to Detective Watson's testimony, defendant merely admitted that he passed a "bad check." Defendant argues this is not the same as "fraudulent," the word the Detective used in the written statement. Defendant's argument is patently meritless. "Fraudulent" is a commonly understood word. Given his admission that he created checks issued by companies for which he did not work and to a company he himself created, again, his intent to defraud was clear.

Defendant further argues that the trial court, in finding defendant guilty, considered inadmissible hearsay evidence that the checks were drawn on closed accounts. We also find this claim of error meritless. Defendant, himself, elicited this evidence from Lindgren during cross-examination. Defendant cannot now claim error where he not only failed to object to the error, but elicited it himself. See People v. Bush, 214 Ill. 2d 318, 332-33 (2005) (a defendant who procures, invites, or acquiesces in the admission of evidence, cannot contest its admission on appeal).

Defendant next challenges the imposition of certain monetary penalties. Defendant contends, and the State correctly concedes,

that the following monetary penalties were improperly assessed because they are not related to his conviction of forgery: a $5 court system fee for individuals who violate the Illinois Vehicle Code or a similar local provision (55 ILCS 5/5-1101(a) (West 2008)); a $25 court supervision fee for individuals who violate the Illinois Vehicle Code or a similar local provision (625 ILCS 5/16-104c (West 2008)); and a $20 serious traffic violation fee (625 ILCS 5/16-104d (West 2008)). Accordingly, we vacate these monetary penalties.

Defendant also contends that he was improperly assessed the $10 Arrestee's Medical Costs Fund fee because there is no evidence that he was injured, or that the county incurred medical expenses for him, while he was in the custody of the county (730 ILCS 125/17 (West 2008)). Although the State concedes that this fee should not apply, we disagree. In *People v. Jones*, 397 Ill. App. 3d 651 (2009), this court considered this exact issue and concluded that a convicted defendant should be assessed the $10 fee even if he did not incur any medical expenses while under arrest. *Jones*, 397 Ill. App. 3d at 663. The court reasoned that the statutory language does not place conditions on the right of the county to the fee. *Jones*, 397 Ill. App. 3d at 662. The court further reasoned that, under the statute, the Fund functions as a medical insurance policy for the defendant while in custody and thereby benefits him even when he does not require

medical services. *Jones*, 397 Ill. App. 3d at 662; see also *People v. Coleman*, No. 1-09-0067 (September 24, 2010); *People v. Hubbard*, 404 Ill. App. 3d 100, 105-106 (2010). We therefore reject defendant's argument and the State's concession in the matter.

Finally, defendant contends that he was entitled to $5-per-day credit for three days of time spent in presentencing custody. See 725 ILCS 5/110-14 (West 2008). He requests that the credit be applied against the $10 mental health court fine, $5 youth diversion/peer court fine, $5 drug court fine (55 ILCS 5/5-1101(d-5),(e),(f) (West 2008)).

The State concedes, and we agree, that defendant is entitled to $15 credit against the mental health court, youth diversion/peer court, and drug court fines. See *Jones*, 397 Ill. App. 3d at 663-64; see also *People v. Paige*, 378 Ill. App. 3d 95, 102 (2007) (mental health court and the youth diversion/peer charges are characterized as fines).

Based on the foregoing, we vacate the $5 court system fee, the $25 court supervision fee, and the $20 serious traffic violation fee. We apply defendant's presentencing credit against the $15 in fines specified above, and we order the clerk of the circuit court to amend the fines, fees, costs order to reflect a total owed of $620. We affirm the judgment in all other respects.

Affirmed; fines, fees, and costs order corrected.