

No. 1-10-2988

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).

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of Cook County
Plaintiff-Appellee,)	
)	
v.)	08 C5 50555
)	
RONALD RYAN,)	
)	Honorable
Defendant-Appellant.)	Colleen McSweeney-Moore,
)	Judge Presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice Epstein and Justice Howse concurred in the judgment.

ORDER

¶ 1 HELD: The State proved defendant guilty beyond a reasonable doubt of deceptive practices and the trial court properly imposed the \$10 Arrestee's Medical Costs Fund Fee.

¶ 2 Following a bench trial, defendant Ronald Ryan was found guilty of deceptive practices and subsequently sentenced to a term of 24 months' probation and assessed \$655 in fines and fees. Defendant appeals, arguing that the State failed to prove him guilty beyond a reasonable doubt of deceptive practices because the evidence did not establish that he had an intent to defraud, and that the trial court improperly imposed the \$10 Arrestee's Medical Costs Fund Fee.

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The State raises an additional claim that the trial court erred in granting defendant's motion *in limine* barring the State from relying on a presumption that defendant had an intent to defraud.

¶ 3 In October 2008, defendant was charged by information with two counts of theft and one count of deceptive practices for paying his rent with a check that was returned unpaid for insufficient funds. In June 2009, defendant filed a motion *in limine* concerning the presumption of intent to defraud pursuant to section 17-1(B)(d) (720 ILCS 5/17-1(B)(d) (West 2008)). In his motion, defendant sought to have the State barred from relying on a presumption of an intent to defraud because under the statute the check must be presented for payment on at least two occasions at least seven days apart and the record indicated that the check at issue was not resubmitted for payment. At a hearing, the State agreed that the check was not presented and dishonored on at least two occasions at least seven days apart. The trial court then granted defendant's motion and held that the State may not rely on the presumption of an intent to defraud.

¶ 4 In August 2009, the State filed a motion to allow other crimes evidence, seeking to admit six additional checks that were issued in May and June 2008 and were returned unpaid for insufficient funds. The trial court granted the State's motion for the purpose of intent and absence of mistake or innocent frame of mind.

¶ 5 The trial court held a bench trial in December 2009. The following evidence was presented at trial.

¶ 6 John Gervase testified that he owned a property at 2 North Brainard in LaGrange, Illinois. The property is a gas station convenience store which Gervase leased to others. In

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February 2008, he entered into a multi-year written lease for that property with defendant. Defendant agreed to pay Gervase \$7,200 in rent per month, plus property taxes of approximately \$1,100 per month. The rent was due on the first of every month. Gervase identified a copy of the rent payment for February 2008 with the name on the account as Smokey's Catering and made out to him for \$8,252. Gervase stated that he deposited this check with his bank, Chase Bank, and shortly thereafter he received a written notification that the check was returned for insufficient funds. Gervase then went to the property and spoke with defendant. Defendant issued him a replacement check, which was honored by the bank. The rent checks for March, April and May were also deposited without any problems.

¶ 7 Gervase identified a check given to him by defendant for June rent. Gervase picked up the check from defendant on June 3, 2008. The check was made out to Gervase in the amount of \$8,330.13, from the account for Myan Industries with Washington Mutual bank. The listed address on the check was the address for the rental property in LaGrange. He deposited this check into his account and approximately a week later, he received a notice that the check was returned for insufficient funds. In court at the time of his testimony, Gervase noted that the check was stamped "non-sufficient funds." Gervase then went to the gas station property in LaGrange. He informed defendant about the returned check and showed defendant the notice. Defendant told Gervase that he needed the original check returned in order to issue Gervase a new check. Gervase did not have the original check. He contacted his bank, Chase, for the original check and was informed that the bank did not have the check. Gervase then contacted defendant's bank, Washington Mutual, and was told that the bank does not keep physical checks

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anymore. Gervase returned to the property and told defendant that he was unable to recover the original check. Gervase requested a replacement check, which defendant did not issue him.

Gervase testified that defendant never paid rent for June and he never received any additional money from defendant after that point. Gervase then spoke with the police about the situation.

On June 20, 2008, Gervase sent defendant a ten-day notice to vacate the premises. Defendant then vacated the property on June 30.

¶ 8 Todd Cherrington testified that he was employed as a branch manager for Chase Bank in LaGrange. He stated that he reviewed bank records for an account for Myan Industries. The account was started with Washington Mutual, but was acquired by Chase through a merger.

Cherrington testified about the bank records for the returned June rent check. He stated that the check was deposited on June 3, 2008, but was returned as unpaid and a notification was sent.

¶ 9 The parties entered into several stipulations. The stipulations included six checks issued by Myan Industries between May 20, 2008, and June 5, 2008, in amounts ranging from \$4.91 to \$249.58. Each of these checks were stamped as "non-sufficient funds." It was also stipulated between the parties that the account for Myan Industries was opened in February 2008, and that defendant drafted and issued checks from the account. The parties stipulated that "from May 1, 2008 through June 30, 2008, Defendant never had enough money in account number 0441-0000220321-0 in the name of Myan Industries to cover check number 1087 in the amount of \$8330.13." Defendant's balance in the Myan Industries account: on May 1, 2008, was \$3,927.29; on May 31, 2008, was \$3,794.07; on June 1, 2008, was \$3794.07; and on June 30, 2008, was -\$441." In the month of June, 14 non-sufficient funds charges and 4 overdraft charges

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were posted to defendant's Myan Industries account.

¶ 10 The State then rested its case. Defendant moved for a directed verdict. The trial court denied the motion, finding that the State had made a *prima facie* showing of the elements of the offenses. The defense submitted part of the lease as an exhibit and then rested. Following arguments, the trial court found defendant guilty of all three counts.

¶ 11 In January 2010, defendant filed a motion to reconsider finding and enter a finding of not guilty. At a hearing, the trial court granted the motion as to the two theft convictions, but denied the motion on the deceptive practices conviction. Following a hearing, the trial court sentenced defendant to 24 months of probation and imposed \$655 in fines and fees, including the \$10 Arrestee's Medical Costs Fund Fee. The court ordered restitution, but later struck this order in light of defendant's pending bankruptcy proceedings.

¶ 12 This appeal followed.

¶ 13 Defendant first argues that the State failed to prove him guilty beyond a reasonable doubt of deceptive practices because the evidence failed to show that defendant intended to defraud Gervase. The State maintains that the evidence was sufficient for a rational trier of fact to conclude beyond a reasonable doubt that defendant had committed every element of the crime of deceptive practices.

¶ 14 When this court considers a challenge to a criminal conviction based upon the sufficiency of the evidence, it is not our function to retry the defendant. *People v. Hall*, 194 Ill. 2d 305, 329-30 (2000). Rather, our inquiry is limited to "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential

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elements of the crime beyond a reasonable doubt.” (Emphasis in original.) *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); accord *People v. Cox*, 195 Ill. 2d 378, 387 (2001). It is the responsibility of the trier of fact to “fairly *** resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.” *Jackson*, 443 U.S. at 319.

¶ 15 The reviewing court must carefully examine the record evidence while bearing in mind that it was the fact finder who saw and heard the witnesses. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). Testimony may be found insufficient under the *Jackson* standard, but only where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt. *Cunningham*, 212 Ill. 2d at 280. However, the fact a judge or jury did accept testimony does not guarantee it was reasonable to do so. Reasonable people may on occasion act unreasonably. Therefore, the fact finder's decision to accept testimony is entitled to great deference but is not conclusive and does not bind the reviewing court. *Cunningham*, 212 Ill. 2d at 280. Only where the evidence is so improbable or unsatisfactory as to create reasonable doubt of the defendant's guilt will a conviction be set aside. *Hall*, 194 Ill. 2d at 330.

¶ 16 "To carry its burden in a prosecution for deceptive practices, the State must prove beyond a reasonable doubt that: (1) the defendant made, drew, issued or delivered a check, draft or order for payment; (2) the defendant obtained money or property in return; (3) the defendant knew at the time he or she tendered the check that there were insufficient funds in the account to pay the check or draft; and (4) the defendant acted with the intent to defraud." *People v. Butcher*, 257 Ill. App. 3d 1051, 1054-1055 (1994); see also 720 ILCS 5/17-1(B) (West 2008). Section 17-

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1(B)(d) specifically includes rental property as "property." 720 ILCS 5/17-1(B)(d) (West 2008).

Here, defendant contends that the State failed to prove the last element, that he acted with the intent to defraud Gervase.

¶ 17 Section 17-1(A)(iii) defines "intent to defraud" as "to act wilfully, and with the specific intent to deceive or cheat, for the purpose of causing financial loss to another, or to bring some financial gain to oneself. It is not necessary to establish that any person was actually defrauded or deceived." 720 ILCS 5/17-1(A)(iii) (West 2008).

"It is clear that the intent to defraud is an essential element of the offense of deceptive practices. It is equally clear that the intent to defraud is a mental state distinct and different from the mental state of knowledge that the check will not be paid by the depository, also required by the section. It is quite possible to possess the one mental state without the other, as when one consciously writes a check for more than the balance in one's account, intending to deposit funds to cover it, or agreeing with the payee that the latter not present it immediately but hold it as a note." *People v. Ogunsola*, 87 Ill. 2d 216, 221 (1981).

"Whether the specific intent to defraud exists is a question of fact which does not have to be proved by direct evidence. Direct evidence of this intent is rarely available, so circumstantial evidence may be sufficient to sustain a conviction." *People v. Rolston*, 113 Ill. App. 3d 727, 731 (1983). The question of whether the defendant had an intent to defraud is one for the trier of fact

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to decide based on the circumstances of the case. *Butcher*, 257 Ill. App. 3d at 1055.

¶ 18 Here, the evidence at trial established that at the time defendant drew and delivered the rent check to Gervase, he did not have sufficient funds in his bank account for the check to be honored. Further, as stipulated by the parties, defendant never had sufficient funds in his bank account between May 1 and June 30 to honor the check. Despite having insufficient funds to pay his rent, defendant delivered a check to Gervase in exchange for defendant's continued use of the gas station convenience store, which defendant continued to control until June 30.

¶ 19 Moreover, when Gervase informed defendant about the returned check, defendant offered no explanation, but instead asked for the original check before he could take any curative action. Gervase then contacted both his bank and defendant's bank to locate the original check to no avail. As the evidence established, defendant would not have been able to issue a valid check at any point and this delaying tactic by defendant indicates a specific intent to deceive Gervase while defendant continued in the benefit of operating the gas station convenience store. As defendant would have been able to quickly ascertain from his bank that the check had been returned unpaid, and to stop payment on it, the insistence on having the original returned to him before taking any curative steps is additional evidence of intent to defraud. Additionally, the parties stipulated that defendant issued 6 other checks during this period that were returned for nonsufficient funds as well as 14 nonsufficient funds charges and 4 overdraft charges were posted on defendant's account.

¶ 20 In *Butcher*, the reviewing court concluded that the trier of fact could have found an intent to defraud because the defendant never tendered a valid check for a computer, failed to return the

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computer and deposited money into different accounts while the check remained outstanding.

Butcher, 257 Ill. App. 3d at 1056. Similarly, in *People v. Shepard*, the reviewing court affirmed the defendant's conviction for deceptive practices because the defendant issued several bad checks within the period and the defendant's explanation that he was waiting to deposit funds was "hazy" and "unclear." *People v. Shepard*, 193 Ill. App. 3d 910, 915 (1990). The court in *People v. Lundblade*, found an intent to defraud, despite the defendant's assertion that he anticipated a credit from his bank, because the defendant's account had been overdrawn for over a month with no deposits to the account. *People v. Lundblade*, 95 Ill. App. 3d 474, 478 (1981).

¶ 21 After reviewing all the evidence in the light most favorable to the State, we find that a rational trier of fact could have concluded that defendant acted with an intent to defraud when he issued a rent check for \$8,330.13, and affirm defendant's conviction for deceptive practices. The trial court could have found that the fact that defendant never possessed sufficient funds to pay his June rent along with his pattern of writing checks and making purchases without sufficient funds established an intent to defraud Gervase.

¶ 22 Next, defendant contends that the assessment of the \$10 Arrestee's Medical Costs Fund Fee (730 ILCS 125/17 (West 2008)) was improper because the record provides no evidence that defendant suffered any injury during his arrest or that Cook County incurred any medical expenses relating to defendant. The State maintains that the charge was proper. We note that offense was committed in June 2008 and an amended version of section 17 became effective on August 15, 2008. Since the offense occurred prior to the effective date of the amendment, we apply the preamended version of section 17.

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The statute in effect at the time the offense was committed states, in relevant part:

“The county shall be entitled to a \$10 fee for each conviction or order of supervision for a criminal violation, other than a petty offense or business offense. The fee shall be taxed as costs to be collected from the defendant, if possible, upon conviction or entry of an order of supervision. The fee shall not be considered a part of the fine for purposes of any reduction in the fine.

All such fees collected shall be deposited by the county in a fund to be established and known as the Arrestee's Medical Costs Fund. Moneys in the Fund shall be used solely for reimbursement of costs for medical expenses relating to the arrestee while he or she is in the custody of the sheriff and administration of the Fund.”

730 ILCS 125/17 (West 2006).

¶ 23 Recently, the supreme court considered this issue in *People v. Jackson*, 2011 IL 110615. In *Jackson*, the defendants asserted that the trial court should not have imposed the medical cost assessment because they did not receive any medical services while in custody. The supreme court disagreed. "The first paragraph unequivocally mandates that the county is entitled to the medical cost assessment for each conviction. This broad language does not place any conditions on the county's right to the assessment." *Jackson*, slip op. at ¶ 13. The court noted the statutory language provided for the use of the funds to reimburse an arrestee's medical expenses "and

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administration of the Fund.' " *Jackson*, slip op. at ¶ 14. "Based on this plain language, even where an individual defendant incurred no medical expenses while in custody, a county may use the medical cost assessment to administer the fund for the benefit of all arrestees." *Jackson*, slip op. at ¶ 14.

¶ 24 The supreme court further held that the same result would be reached under either the preamended or amended version of section 17.

"The purpose of both preamended and amended section 17 is to require the warden of a county jail to furnish, and keep an accurate account of, the necessary bedding, clothing, fuel, and medical aid or services 'for all prisoners' in the warden's custody. 730 ILCS 125/17 (West 2006); 730 ILCS 125/17 (West 2008). One of the ways that a county funds this medical expense 'for all prisoners' is to collect the \$10 assessment 'for each conviction or order of supervision for a criminal violation, other than a petty offense or business offense.' 730 ILCS 125/17 (West 2006); 730 ILCS 125/17 (West 2008). Thus, the \$10 is collected from every defendant 'in order to create a fund to pay for medical expenses for all arrestees who required medical care while in custody.' *People v. Hubbard*, 404 Ill. App. 3d 100, 104 (2010). Therefore, amended section 17 is consistent with our interpretation of preamended section 17." *Jackson*, slip op. at ¶ 19.

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¶ 25 Since the supreme court has upheld the imposition of the \$10 assessment under section 17 when a defendant did not use any medical services, the \$10 assessment was properly imposed in the present case. Accordingly, we affirm the \$10 assessment against defendant.

¶ 26 Finally, the State raises an additional claim in its response brief. The State argues that the trial court erred in granting defendant's motion *in limine* to bar the State from relying on a presumption of intent to defraud. Nevertheless, the State then contends that any error by the trial court was harmless error because the evidence presented was sufficient to prove each element of deceptive practices and this court need not consider this issue. However, the State did not file a separate notice of appeal to raise this issue challenging a pretrial ruling nor does the State offer any explanation of how this court has jurisdiction to consider a pretrial ruling after a finding of guilty. "A reviewing court has an independent duty to consider issues of jurisdiction, regardless of whether either party has raised them." *People v. Smith*, 228 Ill. 2d 95, 104 (2008).

¶ 27 Supreme Court Rule 604(a)(1) provides:

“In criminal cases the State may appeal only from an order or judgment the substantive effect of which results in dismissing a charge for any of the grounds enumerated in section 114-1 of the Code of Criminal Procedure of 1963; arresting judgment because of a defective indictment, information or complaint; quashing an arrest or search warrant; suppressing evidence; decertifying a prosecution as a capital case on the grounds enumerated in section 9-1(h-5) of the Criminal Code of 1961; or finding that the

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defendant is mentally retarded after a hearing conducted pursuant to section 114-15(b) of the Code of Criminal Procedure of 1963.”

Ill. S. Ct. R. 604(a)(1) (eff. July 1, 2006).

¶ 28 "The threshold question to be considered here is whether the trial court's ruling is appealable under Rule 604(a)(1)-at all. In a criminal prosecution, the State may, under Rule 604(a)(1), obtain review of an order that suppresses evidence where the State certifies that the suppression substantially impairs the State's ability to prosecute the case." (Emphasis omitted.) *In re K.E.F.*, 235 Ill. 2d 530, 537 (2009) (citing *People v. Truitt*, 175 Ill. 2d 148, 151-52 (1997); *People v. Young*, 82 Ill. 2d 234, 247 (1980)). Generally, the State cannot appeal a motion *in limine* after they have gone to trial. See *People v. Nelson*, 377 Ill. App. 3d 1031 (2007).

Procedurally, they have failed in this regard. The State does not argue that the ruling on the motion *in limine* substantially impaired its ability to prosecute the case nor could the State make such an argument as it did prosecute defendant, who was found guilty. Further, none of the other listed grounds for an appeal by the State under Rule 604(a)(1) are applicable to the present case. Since the claim raised by the State does not fit within any of the listed grounds for review and the State failed to seek appeal prior to trial, this claim is dismissed for lack of jurisdiction

¶ 29 Based on the foregoing reasons, we affirm the defendant's conviction and the imposition of the \$10 Arrestee's Medical Costs Fund Fee.

¶ 30 Affirmed.