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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS,) | Appeal from the Circuit Court |
| Plaintiff-Appellee,) | of Du Page County. |
| v.) | |
| CHRISTOPHER KNIGHT,) | No. 06-CF-2088 |
| Defendant-Appellant.) | Honorable |
| | Blanche H. Fawell, |
| | Judge, Presiding. |

JUSTICE ZENOFF delivered the judgment of the court.
Justices Schostok and Hudson concurred in the judgment.

ORDER

Held: (1) Where the State proved beyond a reasonable doubt that defendant signed a sales receipt while purporting to be another, defendant's conviction of forgery was affirmed; and (2) where the State presented no evidence that the Indiana driver's license found in defendant's possession was fraudulent, defendant's conviction of possession of a fraudulent driver's license was reversed.

¶ 1 Following a jury trial, defendant, Christopher Knight, was convicted of forgery (720 ILCS 5/17-3(a)(2) (West 2006)) and possession of a fraudulent driver's license (625 ILCS 5/6-301.2(b)(1)¹

¹Defendant was indicted under section 6-301.2(b)(3) of the Illinois Vehicle Code (625 ILCS 5/6-301.2(b)(3) (West 2006)), which describes the offense of possession of a fraudulent driver's

(West 2006)). He was sentenced to an extended term of six years' imprisonment on the forgery conviction and an extended term of four years' imprisonment on the conviction of possession of a fraudulent driver's license, to run concurrently. Defendant argues on appeal that the State failed to prove him guilty beyond a reasonable doubt and that the trial court erred in imposing an extended-term sentence on the conviction of possession of a fraudulent driver's license. For the following reasons, we affirm in part and reverse in part.

¶ 2

BACKGROUND

¶ 3 On August 17, 2006, the grand jury returned an eight-count indictment against defendant alleging that he committed the offenses of forgery, possession of a fraudulent driver's license, unlawful use of a credit card (720 ILCS 250/8(i) (West 2006)), and theft (720 ILCS 5/16-1(a)(2) (West 2006)). The State nol-prossed five of the eight counts before trial. A jury trial commenced on March 9, 2010, on the remaining counts—count I, alleging forgery, in that, with the intent to defraud, defendant knowingly delivered a document apparently capable of defrauding another, in that it was purported to have been made by another (720 ILCS 5/17-3(a)(2) (West 2006)); count III, alleging possession of a fraudulent driver's license; and count IV, alleging forgery, in that, with the intent to defraud, defendant made a document apparently capable of defrauding another, in that it was purported to have been made by another (720 ILCS 5/17-3(a)(1) (West 2006)).

license with the intent to commit, among other things, credit card fraud. Prior to trial, the State was granted leave to strike the language “with the intent to commit credit card fraud,” and the court and the parties noted that this did not “change anything.” Although they effectively proceeded under section 6-301.2(b)(1) of the Vehicle Code (knowing possession of a fraudulent driver's license), the indictment was not amended, and the sentencing order still recited section 6-301.2(b)(3).

¶ 4 The State presented the testimony of two witnesses that revealed the following. At approximately 4:20 p.m. on July 23, 2006, defendant went to the Montblanc store in the Oakbrook Center in Oak Brook, Illinois. Teresa Eyre, a regional director at Montblanc, assisted defendant in selecting a ball point pen and a fountain pen from the “Starwalker” collection. The total cost of the pens was \$679.46. Defendant gave Eyre a Capital One Platinum Visa credit card to pay for the purchase. Eyre recalled that the card had a distinctive “Froot Loops” brand cereal design. When Eyre laughed about the design, defendant told her that his children had helped him choose it. The name Anthony Frank Jackson was embossed on the front of the card. Defendant signed the sales receipt Anthony Jackson. Eyre asked defendant for identification pursuant to Montblanc’s policy at the time. Defendant produced an Indiana driver’s license bearing his photograph and the name Anthony Jackson. Eyre confirmed that the signature on the driver’s license matched the signature on the sales receipt and wrote the driver’s license number on the receipt. She did not compare the signature on the receipt to the signature on the back of the credit card. Defendant left the store with his purchase.

¶ 5 At about 4:40 p.m. the same day, Officer Robert Christopherson of the Oak Brook police department responded to a dispatch to the Sears store in the Oakbrook Center regarding an unrelated incident. Shortly thereafter, Christopherson took defendant into custody and conducted a search of his person. Christopherson found a Capital One Platinum Visa credit card with a “Froot Loops” design, embossed with the name Anthony Frank Jackson on the front, and the signature of Michael Carter on the back; three other credit cards issued in the name of Anthony Frank Jackson; an Indiana driver’s license bearing the name of Anthony Jackson with defendant’s photo and a South Bend, Indiana, address; and a Montblanc receipt for two pens totaling \$679.46, with the Indiana driver’s

license number written thereon. Christopherson did not find the Montblanc pens on defendant's person.

¶ 6 Later, at the Oak Brook police department, Christopherson completed a written inventory of defendant's property. When Christopherson told defendant to sign the inventory, defendant signed his name, Christopher Knight, and indicated his current address as in Chicago. Christopherson did not tell defendant what name to sign. Christopherson later telephoned the Montblanc store and confirmed the transaction represented by the receipt he retrieved from defendant. Christopherson did not take defendant to the Montblanc store, and he conducted no line-up.

¶ 7 The State rested, and defendant moved for a directed verdict. After hearing argument, the court denied the motion. Defendant did not testify or otherwise present evidence.²

¶ 8 The jury found defendant guilty on all three counts. The trial court ruled that count I, forgery—delivered (720 ILCS 5/17-3(a)(2) (West 2006)) merged with count IV, forgery—made (720 ILCS 5/17-3(a)(1) (West 2006)). The court denied defendant's motion for a new trial. The court sentenced defendant to an extended term of six years' imprisonment on the forgery conviction and an extended term of four years' imprisonment on the conviction of possession of a fraudulent driver's license, to run concurrently. Following the court's denial of defendant's motion to reconsider sentence, defendant timely appealed.

²In his cross-examination of Officer Christopherson, defense counsel showed portions of a DVD, identified as defendant's exhibit 1, containing a video of defendant in the Sears store before and after his arrest. The DVD did not go back with the jury during its deliberations but was preserved by the court as part of the record.

¶ 9

ANALYSIS

¶ 10 Defendant first argues that the State failed to prove him guilty beyond a reasonable doubt of forgery and possession of a fraudulent driver's license. A defendant's conviction will not be set aside "unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *People v. Collins*, 106 Ill. 2d 237, 261 (1985). It is not the function of the reviewing court to retry the defendant. *Collins*, 106 Ill. 2d at 261. Rather, "the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (Emphasis in original.) *Collins*, 106 Ill. 2d at 261 (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). The trier of fact must assess the credibility of the witnesses and the weight of their testimony, resolve conflicts in the evidence, and draw reasonable inferences from that evidence. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). This court will not substitute its judgment for that of the trier of fact on these matters. *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001); *People v. Martin*, 408 Ill. App. 3d 891, 894 (2011). "We will not reverse a conviction unless the evidence is so unreasonable, improbable or unsatisfactory that it raises a reasonable doubt of defendant's guilt." *People v. Evans*, 209 Ill. 2d 194, 209 (2004).

¶ 11 To sustain defendant's forgery conviction, the State was required to prove the following elements: "(1) a document apparently capable of defrauding another; (2) a making or altering of such document by one person in such manner that it purports to have been made by another; (3) knowledge by defendant that it has been thus made; (4) knowing delivery of the document; and (5) intent to defraud." (Internal quotation marks omitted.) *People v. Hockaday*, 93 Ill. 2d 279, 282 (1982). Defendant contends that the State failed to prove the second element because the evidence established that he signed the Montblanc sales receipt using an alias, Anthony Jackson. Thus,

according to defendant, he was not purporting to be another but merely purporting to be himself by another name. Defendant maintains that his possession of the Indiana driver's license and four credit cards in the name of Anthony Jackson substantiates the conclusion that Anthony Jackson was his alias. In support of his position, defendant relies on *People v. Kelley*, 129 Ill. App. 3d 920 (1985), and *People v. Kollman*, 33 Ill. App. 3d 629 (1975).

¶ 12 An alias is “another name by which a person is known and identified.” *Kelley*, 129 Ill. App. 3d at 922. When a person signs a document using his own alias, he has made “a document which merely purports to have been made by himself, since he has used a name by which he is known and identified.” *Kelley*, 129 Ill. App. 3d at 922. In *Kelley*, the defendant entered a negotiated plea agreement and was sentenced to probation. The trial court later revoked probation, accepting the State's argument that the defendant had forged the probation certificate by signing his alias. The appellate court reversed. *Kelley*, 129 Ill. App. 3d at 921. After determining that the certificate was not a document capable of defrauding another, the court held that the State failed to prove that the defendant signed the certificate in such a manner that he purported to be another. *Kelley*, 129 Ill. App. 3d at 921-22. This was so because the defendant was charged and convicted under his alias, and the record indicated that he was also known to others by his alias. *Kelley*, 129 Ill. App. 3d at 923.

¶ 13 In *Kollman*, the appellate court reversed the defendant's forgery conviction entered upon her guilty plea because the State failed to present a sufficient factual basis that the check at issue was purported to have been made by another. *Kollman*, 33 Ill. App. 3d at 632-33. The record demonstrated that the defendant used as her own name the last name of the man with whom she was living, that she had asked friends and relatives to call her by that name, and that she received her paychecks and had a bank account under that name. *Kollman*, 33 Ill. App. 3d at 630-32.

¶ 14 Unlike *Kelley* and *Kollman*, in the instant case, there was no evidence that defendant had established an alias. Nothing in the record indicated that he was known to anyone as Anthony Jackson. That defendant possessed credit cards and an Indiana driver's license in that name does not establish that he was known to others by that name. A rational trier of fact could have found from all of the evidence that defendant was purporting to be another. On the inventory sheet that defendant signed at the police station, he indicated that his name and address were different from what appeared on the Indiana driver's license. Moreover, the "Froot Loops" credit card itself was suspicious. Although it contained the name Anthony Jackson on the front, it bore the signature Michael Carter on the back. Taken in its entirety, the evidence supports the inference that defendant was purporting to be someone other than himself when he signed the name Anthony Jackson. Accordingly, because a rational trier of fact could have found that defendant purported to be another when he signed the Montblanc sales receipt, the State proved him guilty beyond a reasonable doubt of forgery. See *Martin*, 408 Ill. App. 3d at 894 (it is the function of the trier of fact to weigh the evidence, resolve any conflicts in the evidence, and draw reasonable inferences from the evidence).

¶ 15 The parties discuss at length the case of *People v. Varellas*, 138 Ill. App. 3d 820 (1985). We agree with defendant that *Varellas* is distinguishable on its facts because the defendant there admitted that he had used the false name of Monterusso as part of a check cashing scheme, and the real Monterusso testified that he had lost his wallet and did not know the defendant. *Varellas*, 138 Ill. App. 3d at 822-23. However, *Varellas* does not stand for the proposition that a forgery conviction cannot be sustained unless the State proves the existence of the real person whom the defendant purported to be. Rather, the court in *Varellas* simply recited the evidence that supported the trial court's finding that the defendant had committed a forgery. Indeed, the "another" of section 17-3(a) can be a fictitious person. *People v. Eston*, 49 Ill. App. 3d 747, 749-50 (1977) (citing *People*

v. Bell, 23 Ill. App. 3d 227 (1974) (abstract of op.)). Thus, notwithstanding defendant's assertion to the contrary, the State was not required to prove that another Anthony Jackson actually existed. Neither was the State required to prove that defendant lacked authority to sign the name Anthony Jackson. See *Eston*, 49 Ill. App. 3d at 749 (rejecting the defendant's argument that lack of authority to sign was an element to be proved to sustain forgery conviction).

¶ 16 Defendant next contends that the State failed to prove him guilty beyond a reasonable doubt of possession of a fraudulent driver's license. The State responds that, although defendant frames his argument in terms of sufficiency of the evidence, he is essentially arguing that the jury instructions were erroneous. According to the State, because defendant neither objected to the jury instructions nor raised the issue in his posttrial motion, defendant has forfeited review of the issue. We disagree with the State's characterization of defendant's argument. In both his opening and reply brief, defendant clearly argues that the State failed to prove him guilty beyond a reasonable doubt of possession of a fraudulent driver's license because there was no evidence that the Indiana driver's license did not have a computerized number and file created by the appropriate Indiana licensing agency.

¶ 17 In making his sufficiency-of-the-evidence argument, defendant specifically relied on the statutory definition of a fraudulent driver's license. Section 6-301.2(b)(1) of the Illinois Vehicle Code provides that it is a violation of the Vehicle Code to knowingly possess a fraudulent driver's license. 625 ILCS 5/6-301.2(b)(1) (West 2006). Section 1-123.4 of the Vehicle Code defines a "fraudulent driver's license" as "[a]ny license *** that purports to be an official driver's license *** for which a computerized number and file have not been created by the Secretary of State or other official driver's license agency in another jurisdiction." 625 ILCS 5/1-123.4 (West 2006). It is clear from this language that the State was required to prove both that the license purported to be an

official license and that a computerized number and file had not been created for it by the Indiana licensing agency. Defendant maintains that the State presented no evidence with respect to the second element. We agree.

¶ 18 Christopherson testified that the Indiana driver's license looked "legit," but he was not familiar with the method used by Indiana to issue licenses. Otherwise, no evidence even touched on how the license was created or obtained. The record is completely devoid of any reference to whether the appropriate Indiana licensing authority had created a computerized number and file for the license. Indeed, the State's closing argument disavowed any burden of proof regarding the creation of the license:

"This defendant somehow and we don't have to show you how the defendant obtained or made this driver's license. Somehow he has this. And just merely being in possession of it, is the crime itself. We don't have to show the defendant made it. We don't have to show where it came from or how he got it. Merely that the defendant possessed this, it's not in his actual name of Christopher Knight, and it's the defendant's photograph. That's all we have to show."

Additionally, in its rebuttal closing argument, the State asserted, "This card has been issued to Anthony Jackson, not Christopher Knight. This is a fraudulent driver's license." Not only did the State fail to present evidence as to whether the appropriate Indiana licensing agency had created a computerized number and file for the license found in defendant's possession, but the State also misstated the law in its closing arguments. Perhaps if the State had elected to charge defendant with possession of a fictitious driver's license under section 6-301.1 of the Vehicle Code (625 ILCS 5/6-301.1 (West 2006)) (proscribing the possession of a driver's license for which a computerized number and file have been created, but either false information was used to obtain the license or the

license was physically altered to contain false information), its statement at closing would have been accurate. Accordingly, defendant's conviction of possession of a fraudulent driver's license is reversed. Because the reversal is premised on insufficient evidence, a retrial is barred by double jeopardy. See *People v. Olivera*, 164 Ill. 2d 382, 393 (1995) ("Under the double jeopardy clause of the United States Constitution, a second, or successive, trial is prohibited for the purpose of allowing the State another opportunity to present evidence it failed to present at the previous trial.").

¶ 19 Defendant finally argues that the trial court erred in sentencing him to an extended-term sentence on the conviction of possession of a fraudulent driver's license. Given our holding reversing that conviction, we need not address this contention.

¶ 20 For the foregoing reasons, we affirm that portion of the judgment of the circuit court of Du Page County convicting defendant of forgery and sentencing him to six years' imprisonment. We reverse that portion of the judgment convicting him of possession of a fraudulent driver's license and vacate his concurrent sentence for that crime of four years' imprisonment.

¶ 21 Affirmed in part and reversed in part.