

2012 IL App (1st) 101724-U

THIRD DIVISION
March 21, 2012

No. 1-10-1724

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
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 09 C6 60184
)	
WENDY LIPSCOMB,)	Honorable
)	Brian K. Flaherty,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE STEELE delivered the judgment of the court.
Justices Neville and Murphy concurred in the judgment.

ORDER

- ¶ 1 *Held:* Judgment entered on defendant's conviction for forgery affirmed over her challenge to the sufficiency of the evidence and claim of ineffective assistance of trial counsel.
- ¶ 2 Following a bench trial, defendant Wendy Lipscomb was found guilty of six counts of forgery. The court then merged those convictions and sentenced her to two years' probation. On appeal, defendant contends that she was not proved guilty of forgery beyond a reasonable doubt because the State failed to establish her intent to defraud and the trial court gave undue weight to

her apology. She also claims that trial counsel was ineffective for failing to object to the State's inadequate foundation for lay witness testimony regarding signature similarities.

¶ 3 The record shows, in relevant part, that defendant was charged with six counts of forgery after making presentment of a check in the amount of \$600, payable to herself, at a TCF Bank branch at 127th Street and Western Avenue, in Blue Island, Illinois. The check was drawn on the TCF Bank account of Felesia Denise Chapman without her authority.

¶ 4 At trial, Chapman testified that she opened a checking and savings account at a TCF Bank branch inside the Jewel grocery store at 63rd Street and Western Avenue, ordered checks for that account which were never received, and eventually received a telephone call regarding the account on November 25, 2008. When shown the check in question, Chapman denied writing it, disavowed the signature, and observed that her signed name was misspelled.

Chapman further testified that she did not know defendant or an Eric Chapman, had never seen defendant before, and never gave anyone permission to use her checking account.

¶ 5 Shay Johnson testified that on November 25, 2008, she was an assistant branch manager for TCF Bank at 127th Street and Western Avenue, in Blue Island. That day, defendant came into the branch about 3 p.m. and attempted to cash a check made out for between \$600 and \$650. She explained that bank policy required that a non-customer, such as defendant, must either be escorted to a "branch that is up north" or open an account when cashing a check over \$250.

Defendant chose the latter option and presented Johnson with her identification, along with the check in question. After Johnson observed that the signatures of the drawer and endorser were similar and that the check number was 1001, she contacted Chapman and called police.

¶ 6 Blue Island detective Jason Slattery testified that on November 25, 2008, he and Officer Cirullo conducted an interview with defendant. After advising her of her *Miranda* rights, defendant gave them a signed statement in which she explained that at 11:32 p.m. on November

24, 2008, her friend Eric Chapman visited her house and gave her a blank check numbered 1001 from the TCF Bank account of Felesia Chapman. He told her to get her car out of the Harvey Police Department impound and to get "some things" for her daughter Nadia. She accepted the check, wrote it out to herself in the sum of \$600, and "signed the check front and back," which Eric had told her was "okay" to do. She then went to a TCF Bank branch inside a Jewel in Blue Island. Defendant noted, "I take full responsibility for my actions. I did this because I needed the money for my daughter. I am truly sorry for what I did. This will never happen again."

¶ 7 On cross-examination, Detective Slattery confirmed that defendant said in her statement that she signed the front and back of the check, but that she did not say that she signed Chapman's name on the front of the check. He then stated that the check had defendant's signature on both the front and back.

¶ 8 For the defense, Blue Island police officer Anthony Cirullo testified that on November 25, 2008, he took defendant into custody at a TCF Bank, then transported her to the Blue Island police station where she was interviewed by a detective in his presence. During the interview, defendant stated that she had received the check from Eric Chapman.

¶ 9 Defendant testified that on November 25, 2008, she went to a TCF Bank in Blue Island to cash a check, approached a teller, and signed the back of the check before handing it over. The teller informed her that the check amount was too large to cash and provided her with a brochure directing her to another branch. Alternatively, the teller told defendant that she could cash the check if she opened an account at their branch. Defendant agreed to the latter option, then followed the teller to an office where "a Mexican lady" took her check and identification, gave her papers to read, and asked her for some personal information. Defendant testified that she never met Johnson, who only came into the office once, and that police eventually arrived.

¶ 10 Defendant further testified that she received the check in question from her good friend Eric, whom she had known for about seven months, when he came over her house on the night of "the 24th." She had Eric over her house about twice a week, but she did not know his last name and only had his phone number. Eric would give her money when he could. After she spoke with him over the phone about her car being impounded, he offered to help her out and came over to "get a drink and just sit back and kick it." He told defendant that he had asked his mother for money to help her out, and that his mother had given him the check in question, which already had Chapman's signature on it. Defendant asked him if \$600 would be too much; he responded "no." She then "filled out the front" of the check, and they "had a drink, watched a movie, and I got up the next morning."

¶ 11 When defendant eventually spoke with police at the Blue Island police station, she told them Eric's last name was "Chapman" because she assumed he had the same last name as his mother, Felesia Chapman, and the only thing the officers said to her about Eric Chapman was that "I need to meet better people, and that they were single." When asked about her statement to police that the check was blank, defendant testified, "I told them that there – they already knew her signature was on there in the first place, but other than that, it was blank." Since the incident occurred, she has spoken with Eric on the phone and told him what happened, but they "got into it, so I don't want to be around him no more."

¶ 12 In announcing its findings, the trial court made the following remarks:

"The thing that really bothers me about her statement is that she's apologizing in the statement, and I want to know what she's sorry for.

I know she told me today what she's sorry for, but it makes no sense. If somebody's like well, I am sorry I did this, and she's asking for mercy. I won't do this again. Won't do what again?

If she's as innocent as she's claiming that she is, the statement in there, I am sorry, I won't do it again, would never ever appear in a statement. She's sorry because now she knows she's been caught. She won't do it again, and she's basically asking the Blue Island police officer or TCF, whoever, kind of give me a break, and I won't do this ever again. This is something I have never done.

I think this is certainly a circumstantial case. It also depends on the credibility of the witnesses, and I honestly don't believe a lot of what Miss Lipscomb told us today."

The court found defendant guilty of six counts of forgery, but subsequently merged those convictions and sentenced her to a single term of two years' probation.

¶ 13 In this appeal from that judgment, defendant first contends that the State failed to prove her guilty of forgery beyond a reasonable doubt. She claims that the evidence did not establish that she wrote the check in question with intent to defraud and that the trial court gave undue weight to her "equivocal apology."

¶ 14 The State responds that defendant's intent to defraud was established where she filled in the blank check of another, admitted to signing the front and back of it, and apologized for her actions. The State also asserts that the trial court fulfilled its function as trier of fact by assigning weight to defendant's apology.

¶ 15 Where, as here, defendant challenges the sufficiency of the evidence to sustain her convictions, the question for the reviewing court 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 crimes beyond a reasonable doubt. *People v. Jordan*, 218 Ill. 2d 255, 269 (2006). It is the responsibility of the trier of fact to determine the credibility of the witnesses and the weight to be given their testimony, to resolve any inconsistencies and conflicts in the evidence, and to draw reasonable inferences therefrom. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). A reviewing court will not overturn the decision of the trier of fact unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *People v. Smith*, 185 Ill. 2d 532, 542 (1999).

¶ 16 To sustain defendant's convictions of forgery in this case, the State was required to establish that defendant, with intent to defraud, knowingly made or altered a document apparently capable of defrauding another in such manner that it purported to have been made by another. 720 ILCS 5/17-3(a)(1) (West 2008). The element of intent to defraud may be inferred from the facts and circumstance of the transaction; if the forged document is delivered, such intent will be presumed. *People v. Carr*, 225 Ill. App. 3d 170, 176 (1992).

¶ 17 Initially, we disagree with the State's assertion that it can be reasonably inferred from defendant's statement that she admitted to signing Chapman's name on the check in question. Although defendant stated that she "signed the check front and back," the detective who took that statement clarified on cross-examination that defendant did not admit to signing Chapman's name. In addition, the check reflects that defendant signed her name on the payee line on the front of the check and endorsed the back of the check, which may plausibly explain her statement that she "signed the check front and back." Under these circumstances, we find no basis to infer that defendant admitted to signing Chapman's name on the check.

¶ 18 Notwithstanding, viewed in the light most favorable to the State, the evidence shows that defendant admitted to obtaining check number 1001 from the account of Felesia Chapman, filling in the payee line to herself and amount of \$600, then endorsing it, and delivering it to a TCF Bank in Blue Island for payment. Delivery of this forged check created the presumption that defendant intended to defraud Chapman. See *Carr*, 225 Ill. App. 3d at 176. That presumption of intent to defraud is further supported by the facts and circumstances of the transaction, namely, that defendant filled out a blank check drawn on the account of a person whom she had never met with a number that suggested a newly opened account.

¶ 19 As for the remaining elements of forgery, defendant's act of filling in the payee line and amount of the check was sufficient to establish that she knowingly made or altered the document in such manner that it purported to have been made by another. *People v. Spicer*, 379 Ill. App. 3d 441, 461-62 (2007). We also find it significant that defendant apologized to police and accepted "full responsibility for my actions," stating that she "did this because I needed the money for my daughter," and that it would "never happen again," thus indicating her consciousness of guilt. *People v. Grathler*, 368 Ill. App. 3d 802, 808 (2006). We therefore find that the evidence was sufficient to allow the trial court to find that defendant was proved guilty of forgery beyond a reasonable doubt. 720 ILCS 5/17-3(a)(1) (West 2008).

¶ 20 Defendant, nonetheless, claims that the State failed to establish her intent to defraud beyond a reasonable doubt where she testified that someone else gave her the check with permission to use it, never signed the front of it, and gave accurate information to the bank and waited while she believed an account was being opened. In making this claim, defendant essentially asks this court to accept her version of events and second-guess the findings of the trial court. This is not our function (*People v. Villarreal*, 198 Ill. 2d 209, 231 (2001)), and, in this respect, we find her reliance on *People v. Stewart*, 377 Ill. App. 3d 715 (2007), *United States*

v. Hill, 40 F.3d 164 (7th Cir. 1994), and *Carr* is misplaced. Defendant has extracted generalized propositions from those cases which, she argues, required contrary inferences to be drawn by the trial court; however, these overbroad statements do not account for the totality of the evidence that was before the trial court in this case. Having reviewed that evidence, we find nothing so unreasonable about the trial court's decision to require reversal of defendant's conviction. *Smith*, 185 Ill. 2d at 542.

¶ 21 Defendant also claims that the trial court gave undue weight to her "equivocal apology [which was] not necessarily indicative of guilt." Relying on *People v. Randall*, 89 Ill. App. 3d 406 (1980), she asserts that "[i]f facts are open to at least two inferences but no strong support exists as to one particular inference, treating one inference as certain and definitive would not make sense." We disagree. First, we note that the trial court, as the trier of fact, was exclusively responsible for assigning the weight to be given to defendant's apology. *Sutherland*, 223 Ill. 2d at 242. Second, contrary to defendant's assertion, if more than one inference can be drawn from the facts in a given case, a reviewing court may not disturb the judgment of the trier of fact unless it was inherently implausible or unreasonable. *People v. Marcotte*, 337 Ill. App. 3d 798, 804 (2003).

¶ 22 Here, we find nothing inherently unreasonable about the weight given to defendant's apology by the trial court, and thus have no basis for interfering with its determination. *Marcotte*, 337 Ill. App. 3d at 804. We also find *Randall*, 89 Ill. App. 3d at 409, to be distinguishable from the case at bar because, in that case, the court held defendant in contempt without the benefit of a hearing solely on the basis of one document which it perceived to be " 'patently fraudulent.' " Here, to the contrary, defendant was afforded a full trial which allowed the trial court to evaluate her apology in the context of the evidence presented therein. We therefore find defendant's claim to be without merit.

¶ 23 Defendant next contends that trial counsel was ineffective for failing to object to the "inadequate" foundation for Johnson's testimony regarding the similarity between the forged signature of Chapman and defendant's endorsement. She claims that counsel's failure to object was objectively unreasonable where Johnson was not presented as an expert and did not have any prior experience with defendant's writing. Defendant also claims she was prejudiced because Johnson's "unqualified testimony" was referred to by the State in arguing against her motion for a directed finding and in closing argument.

¶ 24 The State responds that defendant's ineffective assistance of counsel claim lacks merit because she admitted filling out the check and signing the front and back of it. The State further asserts that Johnson was not offering an opinion, but rather explaining why she contacted Chapman. The State also notes that the trial court did not mention this testimony in finding defendant guilty.

¶ 25 To establish a claim of ineffective assistance of trial counsel, defendant must first show that counsel's performance was deficient, *i.e.*, it fell below an objective standard of reasonableness. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984). Secondly, defendant must show that counsel's deficient performance resulted in prejudice to the defense, *i.e.*, a reasonable probability that, but for counsel's deficient performance, the result of the proceedings would have been different. *Strickland*, 466 U.S. at 687, 694. Both prongs of *Strickland* must be satisfied to succeed on a claim of ineffective assistance of counsel; however, where, as here, the claim can be disposed of on the ground that defendant did not suffer prejudice, the court need not consider the performance prong. *People v. Flores*, 153 Ill. 2d 264, 283-84 (1992).

¶ 26 We initially note that the record supports the State's contention that Johnson's testimony regarding the signature similarities was not given in the form of an opinion, but rather in response to what she "noticed" about the check in question so as to explain why she contacted

Chapman. That said, assuming *arguendo* that defense counsel was deficient for failing to object to this testimony, we have found that the State proved defendant guilty of forgery beyond a reasonable doubt even in the absence of evidence that she personally signed Chapman's name on the check in question. Furthermore, the trial court never referred to defendant signing Chapman's name on the check when announcing its findings, but rather, found that her testimony and version of events lacked credibility. Under these circumstances, it is not reasonably probable that a different verdict would have been reached if counsel had objected to Johnson's testimony regarding the signature (*Strickland*, 466 U.S. at 694), and defendant's ineffective assistance of counsel claim fails for lack of prejudice (*Flores*, 153 Ill. 2d at 283-84).

¶ 27 Defendant also cites a jury case, *People v. Flewellen*, 273 Ill. App. 3d 1044 (1995), which does not warrant a contrary result. In that case, counsel failed to object to the substance of a conversation between the victim and a police officer, and another conversation that the victim had with an informant. *Flewellen*, 273 Ill. App. 3d at 1051. The court found that this impermissible hearsay was "highly prejudicial" to defendant, and that the evidence against him was not so overwhelming that counsel's failure to object could not have affected the verdict. *Flewellen*, 273 Ill. App. 3d at 1051. The court also noted that defendant had testified on his own behalf and denied attacking the victim. *Flewellen*, 273 Ill. App. 3d at 1051.

¶ 28 Here, unlike *Flewellen*, Johnson merely testified to her observations regarding the check and her testimony was not hearsay. See *People v. Simms*, 143 Ill. 2d 154, 173-74 (1991). Also unlike *Flewellen*, defendant gave a signed statement to police officers regarding her part in the presentment of the check and never disputed the essential facts of the charges against her; instead, she presented additional information to show her lack of intent to defraud which the court ultimately found to be not credible. Thus, *Flewellen* is factually inapposite to the case at bar.

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¶ 29 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 30 Affirmed.