

2012 IL App (2d) 110825-U
No. 2-11-0825
Order filed August 30, 2012

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Lake County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 10-CF-551
)	
JACQUELINE M. FERGUSON,)	Honorable
)	George Bridges,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Zenoff and Hudson concurred in the judgment.

ORDER

Held: The State proved defendant guilty beyond a reasonable doubt of forgery: the variance between the date of the offense in the indictment and the date in the proof at trial was not fatal, so the State's evidence was not insufficient on that basis, and the State provided sufficient evidence on the substantive elements of the offense.

¶ 1 Following a bench trial, defendant, Jacqueline M. Ferguson, was found guilty of one count of forgery (720 ILCS 5/17-3(a)(2) (West 2008)). The trial court sentenced defendant to 18 months' probation, with 100 hours of community service, and imposed various conditions and monetary

assessments. Defendant timely appealed and argues that she was not proved guilty beyond a reasonable doubt of forgery. We affirm.

¶ 2

I. BACKGROUND

¶ 3 Defendant was indicted on two counts of theft (720 ILCS 5/16-1(a)(2)(A) (West 2008)), two counts of aggravated identify theft (720 ILCS 5/16G-20(a)(1), 16G-20(e)(4.2) (West 2010)), and one count of forgery (720 ILCS 5/17-3(a)(2) (West 2008)).¹ With respect to the forgery charge, the indictment alleged:

“[D]efendant, on or about JANUARY 27, 2009, *** committed the offense of FORGERY in that the said defendant, with the intent to defraud, knowingly delivered to the United States Department of Veteran Affairs, a document apparently capable of defrauding another, in that it was purported to have been made by authority of one who did not give such authority, Peter Seiler, said document being a Veterans Administration Travel Voucher, VA Form 70-3542d, in the name of Peter Jack Seiler stamped paid on January 27, 2010 and, and [sic] signed as Payee Peter Seiler knowing the document to have been thus made., [sic] in violation of 720 ILCS 5/17-3(a)(2).”

Prior to the trial, the State orally moved to amend the indictment to change both dates to January 26, 2009.

¶ 4 Testimony at trial established the following relevant facts with respect to the forgery charge. Carol Bey testified that she worked at the Federal Health Care Center (the Center) and was defendant’s supervisor. Defendant’s job duties included reimbursing veterans for expenses incurred

¹At the close of the State’s case, the court directed a verdict for defendant on the charges of aggravated identity theft and on one of the theft charges.

traveling to and from the Center. The reimbursement process included issuing travel vouchers. A voucher required two signatures for payment: one from the patient and one from staff. Defendant had authority to issue and sign vouchers. As of January 2010, defendant had worked for Bey for seven years. Bey was familiar with defendant's handwriting and identified defendant's initials on State's exhibits 2, 3, 5, 9, 10, 11, 12, 13, 14, 15, 16, and 17. Each exhibit was a travel voucher. Exhibits 2, 3, and 5 were stamped paid on November 25, 2009. Exhibits 9, 10, 11, and 12 were stamped paid on January 5, 2010. Exhibits 13, 14, and 15 were stamped paid on January 7, 2010. Exhibits 16 and 17 were stamped paid on January 27, 2010.²

¶ 5 Gloristine Gordon testified that she had worked at the Center for over 20 years. In January 2010, she worked as an agent cashier, and her responsibilities included making payments on travel vouchers. When an agent makes a payment on a travel voucher, the agent stamps the voucher with a "paid" stamp and initials over the stamp. Gordon was shown State's exhibits 2 through 17 and testified that they had all been paid. Of the vouchers shown to her, Gordon testified that she personally paid cash to defendant on vouchers identified as State's exhibits 13, 14, and 15 and that the payments were made on January 7, 2010.

¶ 6 Peter Seiler, a 69-year-old veteran, who receives services from the Center, testified that the signature appearing on State's exhibits 2 through 17, next to where his name was typed, was not his signature.

²Bey was shown State's exhibits 4, 6, 7, 8, and 23, which were also travel vouchers. She identified codefendant, Latonya Whiteside's initials on those vouchers. State's exhibits 4 through 8 were marked paid on November 11, 2009. State's exhibit 23 was marked paid on January 27, 2010.

¶ 7 In finding defendant guilty of forgery, the judge focused on State's exhibits 16 and 17. The judge stated:

“Looking at the evidence here the Court has heard from a number of witnesses who described procedures here, and the Court has specifically heard evidence regarding certain travel vouchers. Peter Seiler came in and testified that he had not signed any of the vouchers that were submitted to the Court as evidence. And specifically with respect to People's 17 and 16 it's cash on the, or noted as being paid on the 27th. That those were not his signatures. He did not give anyone authorization to sign his signature and was not there to present those vouchers.

The Court also heard from one of the cashiers, Gloria [*sic*] Gordon, who testified about the various vouchers that had been submitted as evidence and the ones that are relevant for this Court's two counts. She testified about those. She testified that those were paid and the reason she told this Court they were paid because they were stamped as being paid. She told the Court who had received those vouchers, in other words who in the cash cage had received those vouchers. She also told the Court who had presented the vouchers. And with respect to Vouchers 15, 16 and 17, Miss Gordon told this Court that those vouchers were presented by the defendant in this case, and that the cash was paid to [defendant].

And so while it is true that we did have different positions regarding how money is paid the evidence submitted in the case is that Mr. Seiler neither signed nor gave permission for anyone to write his name on Vouchers 16 and 17. Vouchers 16 and 17 were presented to Miss Gordon by the defendant in this case. These documents are not only apparently capable they were, in fact, capable of getting the clerk to pay out on these two vouchers.

As to Count 9, the offense of forgery I find that [the] State has proven the defendant is guilty beyond a reasonable doubt.”

The court found defendant not guilty of theft.

¶ 8 Following a sentencing hearing, the trial court sentenced defendant to 18 months’ probation, with 100 hours of community service, and imposed various conditions and monetary assessments.

Defendant timely appealed.

¶ 9

II. ANALYSIS

¶ 10 Defendant argues that she was not proved guilty beyond a reasonable doubt of forgery, because, contrary to the court’s finding, there was no testimony that defendant presented State’s exhibits 16 and 17 (the only vouchers paid on January 27, 2010) to Gordon on that date. The State maintains that, while the dates in the indictment may have been incorrect and while the court may have been confused about the dates when it issued its ruling, the evidence presented as to State’s exhibits 13, 14, and 15 was sufficient to support a finding of guilty beyond a reasonable doubt of forgery. We agree with the State.

¶ 11 When reviewing a challenge to the sufficiency of the evidence, the relevant question for this court is whether, after viewing 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. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *People v. Collins*, 106 Ill. 2d 237, 261 (1985). A trial court’s conviction will be reversed only “where the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant’s guilt.” *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001). The essential elements necessary to prove forgery in this case are (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. See 720 ILCS 5/17-3 (West 2008); *People v. Hunter*, 331 Ill. App. 3d 1017, 1026 (2002). “Intent to defraud may be inferred from the circumstances of the transaction and, if the forged document is delivered, then the intent to defraud will be presumed.” *Hunter*, 331 Ill. App. 3d at 1026.

¶ 12 Although not expressed as such by defendant, defendant’s argument raises more of a variance issue than a reasonable-doubt issue. Defendant notes that the dates set forth in the indictment were incorrect. Originally, the indictment provided that defendant committed the offense of forgery “on or about JANUARY 27, 2009” and that the document at issue was “stamped paid on January 27, 2010.” The State further confused the matter when it changed both dates to January 26, 2009. A review of the vouchers in evidence shows that the payment dates ranged from November 25, 2009, through January 27, 2010. None of the vouchers were paid on or about January 26, 2009. Thus, the question is whether this variance between the charging instrument and the proof at trial amounts to a fatal variance. We find that it does not.

¶ 13 “The State ‘must prove the essential elements of the charging instrument.’ ” *People v. Lattimore*, 2011 IL App (1st) 093238, ¶ 67 (quoting *People v. Rothermel*, 88 Ill. 2d 541, 544 (1982)). “For a variance between the charging instrument and the proof at trial to be fatal, the difference ‘must be material and be of such character as may mislead the defendant in making his or her defense, or expose the defendant to double jeopardy.’ ” *Id.* (quoting *People v. Maggette*, 195 Ill. 2d 336, 351 (2001)). Otherwise, “[p]roof of the precise date as alleged is unnecessary unless the allegation of a special time is an essential ingredient of the crime or the running of the period of limitation. [Citations.] *** [T]he date alleged in the indictment as the time of the commission of

the offense may thus be shown to include any time within the period prescribed by law for the prosecution of the crime.” *People v. Taylor*, 391 Ill. 11, 14 (1945); see also *People v. Alexander*, 93 Ill. 2d 73, 77 (1982) (“If there is an error in the indictment, and upon trial the proof establishes that the offense was committed on a date other than the precise date alleged, that irregularity will not constitute a fatal variance.”).

¶ 14 Here, the indictment charged defendant with the forgery of “Veterans Administration Travel Voucher, VA Form 70-3542d, in the name of Peter Jack Seiler.” Although the indictment added a specific date upon which the voucher was stamped as paid, the vouchers introduced at trial were paid on four different dates. Nevertheless, each voucher was a VA Form 70-3542d and was drawn in the name of Peter Jack Seiler. Indeed, except for the different payment dates, the vouchers were all virtually identical. Thus, we fail to see how the varying dates amount to a material difference.

¶ 15 Moreover, we have no reason to believe that defendant was not made aware of the voucher payment dates during the course of discovery, so she could not have been misled in making her defense. Defendant was certainly informed that she was being charged with forgery based on her delivery of a “Veterans Administration Travel Voucher, VA Form 70-3542d, in the name of Peter Jack Seiler,” regardless of the date paid. Further, defendant is not exposed to double jeopardy. See *People v. Jones*, 245 Ill. App. 3d 674, 677 (1993) (“If any future prosecution were attempted, prior prosecution on the same facts may be proved by resort to the record.”).

¶ 16 Having determined that there was no fatal variance, defendant’s sufficiency-of-the-evidence argument must fail. Viewing the evidence in the light most favorable to the State, a rational trier of fact could have found defendant guilty beyond a reasonable doubt of forgery based on State’s exhibits 13 through 15. The documents were capable of defrauding. Defendant had the ability and

the authority to create the vouchers. Bey, who had been defendant's supervisor for seven years, was familiar with defendant's handwriting and recognized defendant's initials on the vouchers. Seiler testified that the signatures that appeared on the vouchers by his typed name did not belong to him. Gordon testified that defendant delivered the vouchers to her and that she personally paid defendant on the vouchers when presented. The trial court could infer that defendant knowingly created State's exhibits 13 through 15 and signed Seiler's name so that she could turn in the vouchers for cash. The trial court could also presume the intent to defraud based upon the delivery of the forged documents.

¶ 17

III. CONCLUSION

¶ 18 In light of the foregoing, the judgment of the circuit court of Lake County is affirmed.

¶ 19 Affirmed.