

No. 1-14-0026

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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. 12 CR 9172
)	
EMMETT MARSHALL,)	Honorable
)	Noreen Love,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE REYES delivered the judgment of the court.
Justices Gordon and Lampkin concurred in the judgment.

O R D E R

¶ 1 **Held:** We reverse defendant's conviction for false personation of an attorney where the evidence did not show that defendant's conduct was for the purposes of compensation or consideration. We vacate the order assessing fines to defendant.

¶ 2 Following a bench trial, defendant Emmett Marshall was convicted of false personation of an attorney and sentenced to 24 months' probation and 240 hours' community service. On appeal, defendant contends the State failed to prove his guilt beyond a reasonable doubt where no evidence established that he received compensation or consideration for representing to a

detective that he was an attorney. Defendant further contends that he should receive a \$5-per-day credit for two days spent in custody before posting bail, applicable against his fines. We reverse defendant's conviction.

¶ 3 At trial, Detective Brandon DuCray testified that in March 2012, he investigated an individual named Adam Jackson in a financial case. Jackson did not return DuCray's phone calls but DuCray received a call from defendant on April 11, 2012. Defendant stated he was "representing Jackson as his attorney." DuCray told defendant that an individual named Tonya Scott alleged that Jackson had taken \$10,000 from her.¹ Defendant offered to provide documents that would prove the existence of a contract and show the investigation involved a civil matter and not a crime. Defendant said he would bring the paperwork to police headquarters when he visited the Maywood courthouse on April 16, 2012, but he did not appear that day. Two days later, DuCray called defendant and arranged to meet him on April 20, 2012. When defendant arrived at headquarters, DuCray asked for his Attorney Registration and Disciplinary Commission (ARDC) card. Defendant said that he left the card at home but provided his Cook County attorney's identification card. He produced a limited power of attorney form, a tax levy form, a client profile for Tonya Scott, and a letter from TCF Bank regarding a frozen account. DuCray called Director Jack Steed, an attorney for the Cook County Sheriff's Police Department, and asked him to review the documents. When Steed arrived, defendant greeted him by name and Steed said "I thought you were disbarred." Defendant stated he was "disbarred about a week ago." DuCray and another detective then took defendant to an interview room where they read

¹ On the record, her name is spelled "Tonia." In exhibits entered into evidence, however, the spelling is "Tonya."

his *Miranda* rights. Defendant told them that he learned he was disbarred from communications received on March 21 and March 25. Defendant stated that he came to the police station to present paperwork on behalf of a licensed attorney named Jason Bell. According to DuCray, defendant had not previously indicated he was working out of Bell's office. Later that day, DuCray called Bell to verify defendant's statements. DuCray did not know whether defendant received compensation for his services.

¶ 4 Steed testified that on April 20, 2012, a detective told him that he was meeting with defendant, who Steed had met and knew was disbarred. That day, Steed was called to a meeting between defendant, DuCray, and another detective. Steed and defendant greeted each other by name. He asked whether defendant knew he was disbarred and defendant said that he "found out about a week or so ago."

¶ 5 The State published a certification from the ARDC showing that defendant was disbarred effective March 19, 2012. The certification was entered into evidence, along with defendant's Cook County attorney identification card and the documents he tendered to DuCray.

¶ 6 The defense called Jason Bell, who testified that he was a sole practitioner and did not have a staff. Bell knew defendant for approximately four years, considered him a friend, and described their relationship as casual, collegial, social, and professional. Defendant did "a little bit of legal research" for him regarding a mechanics lien a few months before trial, which required no more than 6 to 10 hours of work. When Bell's friend Jackson asked him to review a contract, he referred the task to defendant because he "knew that Mr. Marshall was out of work." Bell represented Jackson "to a certain degree" and was familiar with a transaction between

Jackson and Scott but was not involved. Bell spoke with DuCray regarding a contract, but denied that he was asked to speak in person about the transaction between Jackson and Scott. Bell did not know that DuCray asked defendant for paperwork, but was aware that in April 2012 defendant was disbarred.

¶ 7 Defendant testified that he was disbarred on March 21, 2012 after practicing law in Illinois for about 27 years. He was unemployed at the time of trial. Defendant had a "working relationship" with Bell, who resolved his cases after he was disbarred. As Bell did not have a car, defendant would drive him to court each morning. At some point, defendant picked up papers from Jackson that "were basically a contract" between him and a person named Latoya or LaTonia. Defendant initially testified that Jackson gave defendant's phone number to DuCray, who called him and requested the papers. Later, defendant stated that he did not know how DuCray obtained his number but that DuCray called on defendant's cell phone and not at Bell's office. Defendant told DuCray that he was disbarred but was assisting Bell, and asked him to specify what documents he needed. He left several voicemail messages for DuCray between April 16, 2012 and April 20, 2012. Eventually, defendant went to DuCray's office, where he told the person at the front door that he came "to deliver some papers." He denied that he was asked for his ARDC card. Defendant met with DuCray and another detective, tendered the documents and read their headings, and asked for copies. Defendant denied that his name or Bell's name appeared in the paperwork or that he generated the client profile. When DuCray asked for identification, defendant provided his attorney building pass and said he did not have an ARDC card. Defendant was then left alone for 5 to 10 minutes, after which time Steed entered with the

detectives. Defendant greeted Steed, whom he had tried cases with and sometimes saw in the building. Steed asked if he knew he was disbarred. Defendant answered affirmatively and explained that he "was from Jason Bell's office who [*sic*] represented Mr. Adams." Defendant said that no one called Bell at that time. Defendant denied receiving money for delivering the papers and denied ever receiving money from Jackson. Defendant also denied that Steed was involved in his disbarment.

¶ 8 The State recalled Steed, who testified that he was chair of the hearing panel that disbarred defendant.

¶ 9 At the close of trial, the court found that defendant represented to DuCray that he was Jackson's attorney and knew he was disbarred when he provided his attorney identification card. The court noted that defendant "clearly misrepresented information from the stand" by denying Steed's role in his disbarment. The court further stated:

"You are saying when you show someone identification that you are authorized to practice law in the state of Illinois. That's what the statute reads. Not that he actually practiced law.

Well, if you hold yourself out as an attorney and say I want to come and talk to you so that I can in some way get the criminal investigation to go away, well, that is practicing law because that's what lawyers do.

The consideration for that is that the criminal investigation goes away and that way my client doesn't have to worry about that, and they'll just proceed civilly."

¶ 10 The court found defendant guilty of false personation of an attorney and sentenced him to 24 months' probation and 240 hours' community service. Defendant filed a motion for a new trial and a motion to reconsider. At the hearing, defense counsel argued that no evidence established that defendant received compensation or consideration for his conduct. The court denied the motion without comment.

¶ 11 Defendant first contends that he did not falsely personate an attorney where a required element of the offense is that false representations be made in exchange for compensation or consideration. Defendant contends that no evidence established that he received compensation for his conduct, but rather, the evidence affirmatively refuted the existence of payment. Defendant further contends that the trial court erred in finding that he personated an attorney to obtain consideration from DuCray, where the offense instead requires evidence of false personation and consideration in the context of a contractual attorney-client relationship.

¶ 12 The standard of review on a challenge to the sufficiency of the evidence is whether, after reviewing 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. Martin*, 2011 IL 109102, ¶ 15. On review, all reasonable inferences are drawn in favor of the State. *Id.* Circumstantial evidence, or proof of facts and circumstances from which the trier of fact may infer other facts which usually and reasonably follow from human experience, is sufficient to sustain a conviction if such evidence provides proof beyond a reasonable doubt of the elements of the crime charged. *People v. Magnafichi*, 9 Ill. 2d 169, 173-74 (1956) (reversing due to insufficient circumstantial evidence); *People v. Moore*, 394 Ill. App. 3d 361, 364 (2009) (citing

People v. Hall, 194 Ill. 2d 305, 330 (2000)). The reviewing court will not retry the defendant or substitute its judgment for that of the trier of fact on questions involving the weight of the evidence, conflicts in the testimony, or the credibility of witnesses. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011); *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). A defendant's conviction will be reversed only if the evidence is so improbable or unsatisfactory that there remains a reasonable doubt of the defendant's guilt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 225 (2009).

¶ 13 A person commits false personation of an attorney where he knowingly and falsely represents himself to be "[a]n attorney authorized to practice law for purposes of compensation or consideration." 720 ILCS 5/17-2(b)(1) (West 2010). To sustain a conviction, the State must establish that (1) the defendant represented that he was an attorney authorized to practice law for the purposes of compensation or consideration, (2) the defendant's representation was false, and (3) the defendant knew his representation was false. *People v. Harris*, 394 Ill. App. 3d 28, 32-33 (2009). On appeal, defendant only contests whether the evidence shows that he received compensation or consideration for his actions.

¶ 14 Factors showing that a defendant personated an attorney for purposes of compensation or consideration include evidence the defendant described himself as an attorney, provided legal services, sent invoices, and accepted payment. *Id.* at 33. In *Harris*, this court found that these factors, taken together, were sufficient to sustain a conviction where the defendant falsely represented to a client that he was authorized to practice law. *Id.* Our decision did not consider whether a conviction could be sustained on evidence that a defendant personated an attorney to a non-client in exchange for consideration, but noted that the statute broadly intended to protect

the public and the courts from individuals who falsely represent their authority to practice law for purposes of compensation. *Id.* at 32.

¶ 15 Turning to the present case, we find the evidence and reasonable inferences from the evidence were not sufficient to establish that defendant personated an attorney for purposes of compensation or consideration. No direct evidence showing compensation or consideration was presented at trial. To the contrary, defendant denied receiving money for delivering the papers to the police station and denied ever receiving money from Jackson. DuCray did not know whether defendant was compensated, and Bell made no mention of taking payment from Jackson or tendering payment to defendant. The circumstantial evidence was similarly deficient. The testimony showed that defendant became involved with Jackson through their common friend, Bell, who defendant drove to court each morning to resolve his remaining cases after being disbarred. Bell used defendant for 6 to 10 hours of legal research a few months before trial and referred him Jackson's contract for review because defendant was unemployed. At some point, defendant picked up papers from Jackson, spoke with DuCray, and brought the papers to the police station. Even in the light most favorable to the State, the past exchange of favors between defendant and Bell is insufficient evidence from which to infer that, in this instance, defendant received compensation or consideration for representing himself as Jackson's attorney. *People v. Davis*, 278 Ill. App. 3d 532, 540 (1996) ("If an alleged inference does not have a chain of factual evidentiary antecedents, then within the purview of the law it is not a reasonable inference but is instead mere speculation."). Moreover, we cannot say that DuCray's consent in ending the criminal investigation would represent compensation or consideration to defendant, as this

benefit would accrue to Jackson. With no direct evidence that defendant received compensation or consideration, and insufficient circumstantial evidence to support that inference, defendant's conviction must be reversed. *People v. Delp*, 85 Ill. App. 3d 463, 467 (1980) (reversing where circumstantial evidence was "not of such a nature as to produce a reasonable and moral certainty that a crime was committed.").

¶ 16 In light of our decision to reverse defendant's conviction, we also vacate the fines and fees order.

¶ 17 For the foregoing reasons, defendant's conviction for false personation of an attorney is reversed.

¶ 18 Reversed.