

No. 1-11-2878

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. 10 CR 16086
)	
HENRY WILSON,)	Honorable
)	Lawrence Flood,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Lampkin and Reyes concurred in the judgment.

ORDER

¶ 1 *Held:* Evidence was sufficient to sustain defendant's conviction of forgery based on deposit of forged check; admission of prior conviction was harmless error and trial counsel was not ineffective for failing to object to it; the trial court did not abuse its discretion in prohibiting defendant from questioning witnesses regarding his actions after the check was deposited.

¶ 2 On March 25, 2010, defendant Henry Wilson deposited a check in the amount of \$508.98, made payable to Yolanda Martin by the office of the Illinois State Treasurer, into his personal Chase Bank account. Following a bench trial, defendant was found guilty of forgery based on this transaction, and was sentenced to 24 months' probation. On appeal, defendant argues: (1) the State failed to prove him guilty beyond a reasonable doubt; (2) the trial court erred in allowing the State to impeach him with a prior conviction and, alternatively; (3) that trial counsel was ineffective for failing to object to this impeachment evidence. Defendant also argues the trial court erred in preventing defense counsel from questioning witnesses regarding his voluntary restitution to Chase

No. 1-11-2878

Bank. We affirm.

¶ 3 Background

¶ 4 The bench trial was conducted on May 17, 2011, and the following evidence was presented.

¶ 5 Yolanda Martin had resided at 1817 West 77th Street, in Chicago for over 7 years. Ms. Martin received a bimonthly check in the amount of \$508.98 from the office of the Illinois State Treasurer (treasurer's office). The checks were delivered by mail to her address on the 5th and 19th of each month. On April 5, 2010, Ms. Martin discovered that she had not received her anticipated check. Ms. Martin called the treasurer's office and was informed that the check had been mailed.

¶ 6 Ms. Martin identified People's exhibit number 1 as the April 5 check she had never received. The check bore her name and address on 77th Street. Ms. Martin did not know defendant and had not given him permission to take the check and deposit it into his personal account.

¶ 7 Jerry Phillips testified that he investigates financial crimes for the United States Postal Service. In April 2010, he received a call from Ms. Martin about her missing check. Inspector Phillips later discovered that Ms. Martin's address had been changed to 5818 South Carpenter Street, rear apartment, Chicago, through the United States Postal Service online change-of-address system. He learned from the treasurer's office that Ms. Martin's missing check had been sent to the Carpenter Street address and cashed at Chase Bank. Ms. Martin informed Inspector Phillips that she had not requested the change of address. Inspector Phillips identified People's exhibit number 2 as a printout of the form which changed Ms. Martin's address.

¶ 8 Inspector Phillips contacted Chase Bank and requested information regarding the person who had cashed the check. Chase Bank provided Inspector Phillips with defendant's account information and surveillance photographs that had been taken of defendant at the Chase Bank ATM located at 87th and Halsted Streets where he deposited the check and withdrew cash. Inspector Phillips compared the surveillance photographs with defendant's driver's license picture, then contacted Chicago police detective Sandy Byrant.

¶ 9 Defendant subsequently was arrested on August 25, 2010. After defendant had been given his *Miranda* rights, he made certain statements to Inspector Phillips. A woman, known only to defendant as "Tonya," asked him to cash a check for her. Tonya could not cash the check because she did not have a checking account, but she knew that defendant had one. Tonya endorsed the check with Ms. Martin's name. Defendant then endorsed the check himself and deposited it at a Chase Bank ATM located at 87th and Halsted Streets. Defendant then withdrew \$300 at the ATM, which he described as "a pattern of mine." After being shown a photograph of Latonya Gray, defendant identified the photo as being the woman he knew as Tonya. Defendant identified a copy of a check as the one he had endorsed and deposited. Defendant also identified a surveillance photograph of himself depositing the check at the ATM. Defendant did not know Yolanda Martin. Defendant knew there was something wrong with the check, but did not know what it was. He was not aware that Tonya was not the owner of the check at the time she endorsed it. Tonya lived at 5818 South Carpenter Street in the rear apartment.

¶ 10 Detective Bryant testified that she spoke with defendant in August 2010. At that time defendant stated he did not know the check was fraudulent, that he did have his "doubts" about the check and that he did not know Tonya's last name.

¶ 11 Defendant testified at trial that "[e]very other day or so," he goes to the Chase Bank branch at 87th and Halsted Streets. Approximately one week before he deposited the check at issue into his account, he had done some mechanical work on Tonya's car at her Carpenter Street residence. Defendant asked Tonya to pay for the services. On March 25, 2010, Tonya and defendant went to the Chase Bank ATM to deposit the check. Defendant noticed it was made out to Yolanda Martin. Defendant deposited the check because he thought Tonya's name may actually be Yolanda Martin. However, he had never heard Tonya referred to by that name. Defendant also noticed that the address on the check was not Tonya's Carpenter Street address, but an address on 77th Street. Defendant endorsed the check in his own name and deposited it into his Chase Bank account. When

No. 1-11-2878

the check cleared, defendant kept \$90—which Tonya owed him for his work on her car—then he gave her the rest of the money. Defendant denied telling anyone that he thought the check was fraudulent, but that the conflicting information printed on the check did raise some doubts. After he deposited the check, defendant was contacted by Chase Bank. When defense counsel inquired as to what defendant did based on that communication from Chase Bank, the State objected. The trial court sustained the objection finding the question was related to defendant's activity after the transaction which was the basis of the forgery charge.

¶ 12 When defendant met with Detective Bryant and Inspector Phillips, he learned that Tonya was not Yolanda Martin. He then informed them that Tonya, and not Ms. Martin, had given him the check.

¶ 13 In rebuttal, without objection, the State introduced evidence that defendant had been convicted of possession of a controlled substance in 2000 (case number 00 CR 1250) and sentenced to probation, which was terminated satisfactorily on June 7, 2002.

¶ 14 The trial court found defendant guilty of forgery. In doing so, the trial court noted: defendant knew the check was written to Yolanda Martin; observed Tonya endorse the check as Yolanda Martin; and, despite his doubts and suspicions, and without asking any questions regarding the check, he deposited it and received a portion of the proceeds. The trial court ruled it was "certainly clear" that the State proved defendant guilty of forgery beyond a reasonable doubt.

¶ 15 Defendant filed a motion for a new trial which the trial court denied. The trial court sentenced defendant to 24 months' felony probation. This timely appeal followed.

¶ 16 Discussion

¶ 17 Defendant first argues the State failed to prove him guilty of forgery beyond a reasonable doubt because the State failed to establish he had knowledge of the fraud and intended to defraud Ms. Martin or Chase Bank. Defendant contends his behavior indicates no consciousness of guilt. He made no attempt to conceal his identity, deposited the check at a bank he frequents, and did not

flee. Defendant also argues the address on the check could have been Tonya's previous address or business address. Defendant maintains the State proved, at most, that he behaved recklessly in depositing the check.

¶ 18 When a defendant challenges the sufficiency of the evidence to sustain his conviction, a reviewing court must determine whether all of the evidence, when viewed in a light most favorable to the prosecution, would cause a rational trier of fact to conclude the essential elements of the offense have been proven beyond a reasonable doubt. *People v. Hunter*, 331 Ill. App. 3d 1017, 1025 (2002). A criminal conviction will be reversed only if the evidence is so unsatisfactory or improbable, it leaves a reasonable doubt of defendant's guilt. *People v. Wiley*, 165 Ill. 2d 259, 297 (1995).

¶ 19 To sustain defendant's conviction of forgery, the State was obligated to prove defendant, with intent to defraud, knowingly issued or delivered a false or altered document knowing it to have been thus made or altered. 720 ILCS 5/17-3(a)(1), (2) (West 2005). "A person knows, or acts knowingly or with knowledge of *** [t]he nature or attendant circumstances of his or her conduct, described by the statute defining the offense, when he or she is consciously aware that his or her conduct is of that nature or that those circumstances exist. Knowledge of a material fact includes awareness of the substantial probability that the fact exists." 720 ILCS 5/4-5(a) (West 2010). "By its very nature, 'knowledge' is ordinarily proved by circumstantial evidence, rather than direct proof." *In re Keith C.*, 378 Ill. App. 3d 252, 260 (2007) (citing *People v. Nash*, 282 Ill. App. 3d 982, 985 (1996)).

¶ 20 Defendant admitted that he endorsed and deposited in to his personal account a check made out to Yolanda Martin and listing Ms. Martin's address on 77th Street, Chicago. The check was endorsed by Tonya, a woman he knew to live on Carpenter Street in Chicago. Defendant informed the investigating personnel that he had "doubts" about the check Tonya had asked him to cash, and knew something was "wrong" with it when he endorsed and deposited it. Defendant also testified that "red flags" were raised in his mind when he observed Tonya endorsing the check with the name,

Yolanda Martin, and the address printed on the check was not where Tonya resided. Viewed in the light most favorable to the prosecution (*People v. Campbell*, 146 Ill. 2d 363, 374 (1992)), the evidence clearly established defendant was aware of the substantial probability that the check's endorsement was fraudulent, and that he knew it was fraudulent when he deposited the check into his Chase Bank account.

¶ 21 In reaching this conclusion, we find *People v. Cohen*, 343 Ill. 437 (1931)—cited by defendant—factually inapposite¹. In *Cohen*, the check in question was drawn on an account in the name of "Homer Bros" and was signed "Homer Bros," which was the regular practice of that corporation. Louis Homer testified that he alone was authorized to endorse checks for the corporation and testified that he did not endorse the check in question. The defendant, however, testified that George Homer endorsed the check. *Id.* at 441-42. There was no evidence that this George Homer was not one of the Homer Brothers used in the title of the corporation, or that this George Homer was not connected to the corporation. *Id.* at 442. In addition, the check was made out to Charles Cohen, a name which the defendant had used in his bootlegging business. *Id.* at 440. Under these circumstances, a reasonable theory of innocence arose where the check was made out to the defendant under one of his known names, and by someone who claimed to be a Homer brother. Here, by contrast, the check was not made out to defendant and not made out to Tonya. Defendant acknowledged the presence of "red flags" where the name and address on the check were completely different from the name and address he had for Tonya and he, nonetheless, endorsed it and presented it to the bank.

¶ 22 Defendant next argues the trial court erred in admitting as impeachment his prior conviction for possession of a controlled substance, in contradiction of *People v. Montgomery*, 47 Ill. 2d 510 (1971). In *Montgomery*, our supreme court held that evidence of a prior conviction for impeachment

¹We also observe that defendant cites to a Minnesota case. However, foreign jurisdictions have no precedential value in this court. *People v. Reatherford*, 345 Ill. App. 3d 327, 340 (2003).

purposes is inadmissible if a period of more than 10 years has elapsed from the date of conviction or release from confinement, whichever comes later. *Id.* at 516. Defendant acknowledges his forfeiture of this issue because he failed to raise it below, but seeks review of the issue as plain error. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). The plain error doctrine allows a reviewing court to consider an unpreserved error where: (1) a clear or obvious error occurred and the evidence was so closely balanced, that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error; and (2) a clear or obvious error occurred, and that error is so serious, that it affected the fairness of defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). Under either prong, we must determine if there was error.

¶ 23 The record shows that defendant was convicted of possession of a controlled substance on January 25, 2000, and sentenced to probation, which was terminated on June 7, 2002. Because defendant was sentenced to probation, the date of conviction controls for purposes of *Montgomery*. *People v. Warmak*, 83 Ill. 2d 112, 123-24 (1980). Thus, defendant's prior conviction fell outside of the time parameters set forth in *Montgomery*, and the court erred in allowing evidence of this conviction to be used for impeachment. That determination, however, does not end our inquiry. Under the plain error doctrine, we must determine whether there was reversible error because without reversible error, there can be no plain error. *People v. Naylor*, 229 Ill. 2d 584, 602 (2008).

¶ 24 Defendant first argues that under the first prong of the plain error doctrine, the evidence in this case was closely balanced where it rested almost entirely on his credibility. We disagree.

¶ 25 We find the evidence in this case was not closely balanced. Rather, it clearly showed that defendant knew the check was made to Yolanda Martin, but endorsed by Tonya. He knew Tonya's address was different than the one listed on the check. He expressed that he had doubts about the authenticity of Tonya's signature to Inspector Phillips and Detective Bryant. Defendant also testified that "red flags" were raised when Tonya endorsed a name other than the one he knew her's to be.

¶ 26 In this respect, this case is distinguishable from *People v. Naylor*, 229 Ill. 2d 584 (2008), cited by defendant, where plain error was found where the evidence was closely balanced, and the outcome turned on which version of the facts were believed. By contrast, as explained above, the evidence here was not closely balanced and did not depend solely on the credibility of the witnesses. There was no dispute that defendant endorsed and deposited a check made out to Ms. Martin. There was no dispute that Tonya endorsed the check by signing the check as Yolanda Martin. Defendant testified that Tonya's endorsement of the check raised "red flags" as to its authenticity.

¶ 27 Defendant further argues that the second prong of plain error applies here because the admission of the prior conviction offended the integrity of the judicial process. Generally, automatic reversal under the second prong of the plain error doctrine "is required only when an error is deemed 'structural.'" *People v. Thompson*, 238 Ill. 2d 598, 608 (2010). "An error is typically designated as structural only if it necessarily renders a criminal trial fundamentally unfair or an unreliable means of determining guilt or innocence." *Id.* at 609. "The Supreme Court has recognized an error as structural only in a very limited class of cases." *Id.* The claimed error here does not fall into the class of recognized structural errors. Nonetheless, we conclude that the admission of defendant's prior conviction did not deny him a fair trial where there is no indication in the record that the trial court relied on the prior conviction in reaching its decision. *People v. Steele*, 124 Ill. App. 3d 761, 769 (1984). In announcing its finding of guilty at the close of evidence, the trial court noted the prior relationship between defendant and Tonya and defendant's misgivings about the authenticity of the check. The court also recalled the testimony of Inspector Phillips and Detective Bryant regarding defendant's statements that he had doubts about the check but, nevertheless, deposited the check. The trial court made no reference to the prior conviction. On this record, we find that defendant failed to show that the error rose to the level of plain error to excuse defendant's forfeiture of this issue.

¶ 28 In the alternative, defendant argues that trial counsel was ineffective for failing to object to

the prior conviction based on the time parameters of *Montgomery*. To establish ineffective assistance of counsel, defendant must establish both that his attorney's performance fell below an objective standard of reasonableness, and but for that deficient performance, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668 (1984). Both prongs of *Strickland* must be satisfied to succeed on a claim of ineffective assistance of counsel. *People v. Flores*, 153 Ill. 2d 264, 283-84 (1992). Here, we find defendant did not meet the prejudice prong.

¶ 29 As explained above, the evidence in this case was not closely balanced, and the trial court did not rely on or refer to the prior conviction in announcing its decision. Thus, defendant sustained no prejudice from counsel's failure to object to the prior conviction, and his claim of ineffective assistance of trial counsel fails.

¶ 30 In reaching this conclusion, we find defendant's reliance on *People v. Sanchez*, 404 Ill. App. 3d 15 (2010) misplaced. In *Sanchez*, there was prejudice in admitting the defendant's prior conviction which was more than 10 years old. The prejudice was demonstrated by the court's express reliance on the prior conviction in making its credibility determination and in announcing its decision. *Sanchez*, 404 Ill. App. 3d at 18. Here, defendant's prior conviction was no longer viable for impeachment purposes, however, there is no indication that the court relied upon it in entering its findings.

¶ 31 Defendant next argues the trial court erred by repeatedly preventing counsel from questioning the witnesses about his "voluntary restitution" to Chase Bank. Defendant maintains this line of questioning was relevant to his knowledge of the alteration of the check and the intent to defraud. The trial court's decision to admit evidence, is reviewed for an abuse of discretion. *People v. Williams*, 267 Ill. App. 3d 82, 87 (1994). We find none here. Forgery is complete when the making or delivery of the check takes place (*People v. Cundiff*, 16 Ill. App. 3d 267, 272 (1973)), and the intent to defraud must be present when the check is issued, drawn, made or delivered. *People v. Bormet*, 142 Ill. App. 3d 422, 426 (1986). It is immaterial as to the proof of forgery and to the intent

No. 1-11-2878

to defraud whether payment or restitution is subsequently made. *Cundiff*, 16 Ill. App. 3d at 272; *Bormet*, 142 Ill. App. 3d at 426. Thus, any actions by defendant after the forgery to rectify the wrong are irrelevant. *Cundiff*, 16 Ill. App. 3d at 271-72; *People v. Cruz*, 162 Ill. 2d 314, 371-72 (1994). We find no abuse of discretion by the court in sustaining the State's objection to questions regarding defendant's actions after issuing and delivering the fraudulent check.

¶ 32

Conclusion

¶ 33 In sum, we conclude the State proved defendant guilty of forgery beyond a reasonable doubt, that the admission of defendant's prior conviction was harmless error, that counsel was not ineffective for failing to object to the admission of the prior conviction, and that the trial court did not abuse its discretion in prohibiting questioning regarding any restitution made by defendant.

¶ 34 Affirmed.