2012 IL App (2d) 120001-U
No. 2-12-0001
Order filed September 11, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Du Page County.
Plaintiff-Appellee,	)	
v.	)	No. 09-CF-713
STEVEN D. GUSTAFSON,	)	Honorable John J. Kinsella,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Schostok concurred in the judgment.

ORDER

Held: The State proved defendant guilty beyond a reasonable doubt of two counts of forgery where he made documents (check stubs) with "different provisions" from the corresponding checks and where his intent to defraud (given the multiple instances) could be inferred; the State, however, failed to prove defendant guilty of two other counts of forgery where he was authorized to sign the checks at issue.

¶ 1 Following a bench trial, defendant, Steven D. Gustafson, was found guilty of four counts of forgery (720 ILCS 5/17-3(a)(1) (West 2004)). The trial court sentenced defendant to 42 months' imprisonment and ordered defendant to pay $101,523.09 in restitution. Defendant timely appealed.

Defendant contends that the State failed to prove his guilt beyond a reasonable doubt. For the reasons that follow, we affirm in part and reverse in part.

¶ 2 I. BACKGROUND

¶ 3 On April 21, 2009, defendant was indicted on one count of theft (720 ILCS 5/16-1(a)(1) (West 2002)), six counts of forgery (720 ILCS 5/17-3(a)(1) (West 2004)), three counts of financial institution fraud (720 ILCS 5/16H-25(2) (West 2004)), and two counts of continuing financial crimes enterprise (720 ILCS 5/16H-50 (West 2004)), arising out of the issuance of checks from a law firm Interest on Lawyer Trust Account (IOLTA). Before trial, the trial court granted defendant's motion to dismiss the theft count, finding it barred by the statute of limitations. On January 13, 2011, defendant was indicted on an additional two counts of misappropriation of financial institution property (720 ILCS 5/16H-15 (West 2006)). Following a bench trial, defendant was found guilty of six counts of forgery and not guilty of the remaining charges. Defendant filed a motion for a new trial, arguing that the evidence was legally and factually insufficient to support a finding of guilt beyond a reasonable doubt. The trial court granted the motion as to two of the forgery counts and entered a finding of not guilty, but the court denied the motion with respect to the other four counts. Defendant appeals the finding of guilt as to the remaining forgery charges: counts II, IV, VI, and VII.

¶ 4 Counts II and IV of the indictment each charged defendant with forgery in that "defendant with the intent to defraud, knowingly made a document capable of defrauding another, in that it was purported to have been made with different provisions." The "document" that formed the basis of the forgery in counts II and IV was a check stub. Counts VI and VII each charged defendant with forgery in that "defendant, with the intent to defraud, knowingly made a document apparently capable of defrauding another, in that it was purported to have been issued by the authority of one

who did not give such authority, being James, Gustafson & Thompson, Ltd." The "document" that formed the basis of the forgery in counts VI and VII was a check drawn on Harris Bank and made payable to Northern Trust Bank.

¶ 5 The following relevant evidence was presented at the bench trial. Larry L. Thompson, an attorney, testified that, from September 1998 through February 2006, he was a partner and shareholder of the law firm James, Gustafson & Thompson, Ltd. (the Firm). According to Thompson, defendant was also a partner and shareholder, along with three others. Defendant was the managing partner and oversaw the Firm's finances. Mary Eyre was the Firm's bookkeeper.

¶ 6 Thompson testified that the Firm had four bank accounts. The bank account at issue in this case was with Harris Bank and was designated as the Firm's IOLTA account. The account was set up in accordance with Attorney Registration and Disciplinary Commission (ARDC) rules and was used to hold funds belonging to clients, such as retainers (for fees to be earned or costs expended). If a client had a retainer on file and was billed for fees, the fees would be transferred from the IOLTA account to a general checking account, and the transfer would be reflected on the Firm's records.

¶ 7 According to Thompson, the pages in the checkbook for the IOLTA account each contained four checks with attached check stubs. The information written on the check stubs was supposed to correspond with the checks as written. Periodically, Eyre would review the check stubs and make appropriate entries on the ledgers that were kept for each client that had funds on deposit in the IOLTA account. Thompson testified that ARDC rules required attorneys to maintain such records when they had multiple clients with funds in the IOLTA account. While the ARDC might not have required the keeping of check stubs, it did require the keeping of accurate records.

¶ 8 Concerning count II, the State introduced as evidence a copy of check 7078, which had been written from the IOLTA account for $25,000, and a copy of check stub 7078. The parties stipulated that check 7078 was written by defendant and made payable to an Edward Jones account, which was accessible to defendant as the trustee for the Norman A. and Tillie M. Wheeler Revocable Trust. "NTB FL" was handwritten on the check stub after the typewritten word "To." "Freeman" was handwritten on the check stub after the typewritten word "For." "25000-" was handwritten on the check stub after the typewritten words "This Check." The parties stipulated that defendant's former secretary would testify that "NTB FL" and "Freeman" were written in defendant's handwriting and that "25000-" was written in Eyre's handwriting. Thompson testified that the Wheelers and the Freemans were clients of the Firm concerning unrelated matters.

¶ 9 Concerning count IV, the State introduced as evidence a copy of check 6734 written from the IOLTA account for $2,648.09 and a copy of check stub 6734. The parties stipulated that check 6734 was written by defendant and made payable to an American Express account. The parties further stipulated that the American Express account was in the name of the Firm and that defendant was an authorized cardholder on the account. Check stub 6734 contained the handwritten words "American Funds" after the typewritten word "To" and the handwritten words "Kagianas Estate" after the typewritten word "For." Kagianas Estate was a client of defendant when the check was written. The parties further stipulated that defendant's former secretary would testify that the handwriting on the check stub was defendant's.

¶ 10 As to count VI, the State introduced as evidence a copy of check 7038, which was written from the IOLTA account for $35,000. The parties stipulated that the check was payable to a Northern Trust Bank account, which was in defendant's name.

¶ 11 As to count VII, the State introduced as evidence a copy of check 6975, which was written from the IOLTA account for $35,875. The parties stipulated that the check was payable to a Northern Trust Bank account, which was in defendant's name.

¶ 12 II. ANALYSIS

¶ 13 Defendant argues that he was not proved guilty beyond a reasonable doubt of forgery. We review claims of insufficient evidence to determine " '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.) *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). Sections 17-3(a), (b), (c) of the Criminal Code of 1961 (the Code) (720 ILCS 5/17-3(a), (b), (c) (West 2004)) provides as follows:

> "(a) A person commits forgery when, with intent to defraud, he knowingly:
>
> (1) makes or alters any document apparently capable of defrauding another in such manner that it purports to have been made by another or at another time, or with different provisions, or by authority of one who did not give such authority; ***
>
> * * *
>
> (b) An intent to defraud means an intention to cause another to assume, create, transfer, alter or terminate any right, obligation or power with reference to any person or property. As used in this Section, 'document' includes, but is not limited to, any document, representation, or image produced manually, electronically, or by computer.

(c) A document apparently capable of defrauding another includes, but is not limited to, one by which any right, obligation or power with reference to any person or property may be created, transferred, altered or terminated. ***"

¶ 14 Defendant argues that, with respect to counts II and IV, there was no evidence presented that defendant changed any information on a check stub such that the check stub was "purport[ed] to have been made *** with different provisions" (720 ILCS 5/17-3(a)(1) (West 2004)) from the actual original check stub. Further, defendant maintains that his alleged conduct does not meet the elements of forgery since writing false information on a check stub, even with the intent to defraud, does not constitute forgery. In addition, defendant argues that there was no evidence presented that defendant used the money for his personal benefit.

¶ 15 In support of his argument, defendant relies on the plain language of the forgery statute, this court's decision in *People v. De Filippo*, 387 Ill. App. 3d 322 (2008), and the supreme court's decision in *People v. De Filippo*, 235 Ill. 2d 377 (2009), affirming our decision. In *De Filippo*, the defendant, in an attempt to earn additional pension credit, prepared and delivered a letter in which he stated that he had been deputized in 1981; he had actually been deputized in 1984. During a subsequent investigation, he faxed a version of that letter. The faxed version was missing two sentences. There was no question that the defendant included the false information in the letter with an intent to defraud and that it resulted in Lake County erroneously paying out an additional $300,000 to the defendant for his pension. The defendant was found guilty of two counts of forgery.

¶ 16 On appeal to this court, the defendant argued that he was not proved guilty beyond a reasonable doubt of forgery under section 17-3 of the Code. *De Filippo*, 387 Ill. App. 3d at 331. In response, the State maintained that its proof did not have to comply with the statutory language,

specifically, that it was not required to prove that the letters purported to have been made by someone else, at another time, with different provisions, or by authority of someone who did not give such authority. According to the State, the committee comments to section 17-3 of the Code established that the elements necessary to prove forgery were only "that a person made a false document capable of defrauding another, with the intent to defraud." *De Filippo*, 387 Ill. App. 3d at 334. We rejected the State's argument. We then reviewed the evidence to determine whether it established beyond a reasonable doubt that the "letter purported to have been made (1) by another person, (2) at another time, (3) with different provisions, or (4) by authority of one who did not give such authority." *De Filippo*, 387 Ill. App. 3d at 337. We held that it did not and reversed the defendant's convictions.

¶ 17 The supreme court agreed with our holding as to the requisite elements of forgery. The *De Filippo* court then considered whether the letters signed by the defendant fell within the statutory definition of forgery. The court held that, notwithstanding the false information contained in the original letter or the omission of two sentences from the faxed version, the letter did not purport to have been made " 'by another, at another time, or with different provisions, or by authority of one who did not give such authority'[.]" *De Filippo*, 235 Ill. 2d at 384-85 (quoting 720 ILCS 5/17-3(a)(1) (West 2002)). Thus, the court held that the defendant was not proved guilty beyond a reasonable doubt of forgery and affirmed our decision.

¶ 18 *De Filippo* certainly supports defendant's argument that the mere writing of false information on a document, without more, does not support a finding of forgery. However, the State maintains that *De Filippo* is distinguishable, because here "the false information on the check stubs purported to be different from the information recorded on the corresponding check." Thus the question seems

to be whether the check and the corresponding check stub are one "document" for purposes of the forgery statute. We conclude that they are. This conclusion finds support in *People v. East-West University, Inc.*, 163 Ill. App. 3d 44 (1987), a case we discussed in *De Fillipo*.

¶ 19 In *East-West University, Inc.*, the defendants were charged with forgery in that, with the intent to defraud, they made documents capable of defrauding another in that the documents purported to have been made with different provisions. The documents at issue consisted of certain documentation that was required for students to receive various educational grant funds. The defendants allegedly included names of individuals on the documents even though they knew that the individuals were not entitled to said funds. The defendants argued that the conduct alleged did not constitute forgery. The court disagreed, stating:

> "Essentially, indictments in the case at bar alleged that defendants falsified enrollment and registration data at East-West University in order to obtain educational grant funds for persons who were not entitled to them. We experience no difficulty in concluding that this conduct, if proved, constitutes forgery, which as been succinctly defined as 'a false *making* or alteration of an instrument which is apparently capable of defrauding another and *made* or altered with an intent to defraud.' " (Emphasis in original.) *East-West University, Inc.*, 163 Ill. App. 3d at 48 (quoting *People v. Young*, 19 Ill. App. 3d 455, 457 (1974)).

In discussing this holding in *De Filippo*, we specifically noted that "the documents [at issue in *East-West University, Inc.*] could have been capable of defrauding another in that they purported to have been made with different provisions, *i.e.*, listing people on the certifications and registration data who did not qualify for grants, *in that way changing the certifications and data from the originals.*" (Emphasis added.) *De Filippo*, 387 Ill. App. 3d at 338. Thus, we found that the letter in *De Filippo*

was distinguishable, because there the "defendant was not alleged to have changed any original document." *De Filippo*, 387 Ill. App. 3d at 338. Here, as in *East-West University, Inc.*, defendant did more than just write false information on a check stub. Defendant wrote false information on the check stub, in such a way that it effectively changed the information contained on the original check. Viewing the checks and the stubs as the same (or, at the very least, intrinsically related) documents, it is clear that the check stub purported to have been made with a different provision from the actual check.

¶ 20 Having found that the check stub and the check should be treated as one document for purposes of the forgery statute, we need not consider defendant's argument that the check stubs cannot form the basis of the forgery charges. Further, we reject defendant's argument that the State failed to prove his intent to defraud, because it failed to prove that defendant used the money for his own benefit. Given the multiple instances (refuting any claim of an isolated mistake), his intent to defraud can be inferred. See *People v. Hunter*, 331 Ill. App. 3d 1017, 1026 (2002). Therefore, we find that the State proved defendant guilty beyond a reasonable doubt of forgery as alleged in counts II and IV.

¶ 21 With respect to the checks at issue in counts VI and VII, defendant argues that there was no evidence presented that the checks were made "by authority of one who did not give such authority" (720 ILCS 5/17-3(a)(1) (West 2004)). Defendant's argument is based solely from the evidence that he was an authorized signatory on the bank account and was authorized by the law firm to write and sign checks from the account.

¶ 22 In support of his argument, defendant relies on *People v. Lindquist*, 97 Ill. App. 3d 894 (1981), which, he argues, is directly on point. There, the defendant was the executor of an estate

and, as such, had authority to draw checks on the estate's bank account. The defendant improperly drew a check on estate funds for his own purposes and was found guilty of forgery. The Third District reversed on appeal, stating:

> "Suffice it to say that the defendant was executor of the estate. He had authority to draw checks on the estate account. The People argue that the defendant committed forgery because he did not have authority to withdraw funds for his own purposes. Of course he lacked authority to withdraw funds for his own purposes. It was wrong for him to do so. However, it was not assault and battery, rape, or indecent liberties. Neither was it forgery." *Lindquist*, 97 Ill. App. 3d at 895.

¶ 23 In response, the State asserts that "*Lindquist* provides little guidance for application" and argues that, where a defendant exceeds his authority, he is capable of committing forgery. In support, the State relies primarily on *Young*, a case decided prior to *Lindquist*. We find *Young* distinguishable. There, the defendant was charged with forgery for issuing a stock certificate without authority of the corporation. The defendant's conviction was affirmed on appeal. The reviewing court found that the defendant's authority to sign stock certificates did not negate a basis for the forgery conviction "if such was done without authority being given–here, by the corporation." *Young*, 19 Ill. App. 3d at 460. *Young* is clearly distinguishable, because there it was the corporation, not the defendant, that had the authority to issue stock. Thus, when the defendant signed the stock certificates, and effectively issued a stock certificate, he did so "without authority." Here, there was no question that defendant was authorized to sign the checks at issue.

¶ 24 The State's reliance on *People v. Mau*, 377 Ill. 199 (1941), and *People v. Murrah*, 255 Ill. App. 3d 742 (1993), is misplaced. According to the State, under *Mau*, "[a]n offender may be guilty

of a false making of an instrument although he signs and executes it in his own name." The forgery statute applicable in *Mau* provided that whosoever shall " 'falsely make, alter, forge or counterfeit any record or other authentic matter of a public nature' " shall be guilty of forgery. *Mau*, 377 Ill. at 206 (quoting Ill. Rev. Stat. 1941, ch 38, ¶ 277). The court held that the defendant, an agent of the city, subjected himself to a forgery prosecution when "he made [a] false special assessment disbursement sheet he was not authorized to make, with intent to defraud the city, knowing that it was a false record, although authentic in the sense that he was the person authorized to make special assessment disbursement sheets." *Mau*, 377 Ill. at 207. Thus, under the statute, notwithstanding the defendant's authority, he was still subject to a forgery prosecution. *Mau* is clearly inapplicable because the statutory language at issue is different. In *Murrah*, the defendant was charged with adding his name to a company's credit card account despite having no authority to do so. In *Murrah*, unlike here, there was no question that the defendant had no authority to add his name to receive credit. Here, as in *Lindquist*, while defendant was not authorized to use the money for his own purposes, that fact does not make his actions forgery. Thus, we reverse his convictions of count VI and VII.

¶ 25 III. CONCLUSION

¶ 26 In light of the foregoing, the judgment of the circuit court of Du Page County is affirmed in part and reversed in part.

¶ 27 Affirmed in part and reversed in part.