NOTICE
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2017 IL App (4th) 150017-U

NO. 4-15-0017

Order filed May 24, 2017

Modified upon denial of rehearing July 31, 2017

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Sangamon County
SAMMIE McCLINTON,	)	No. 13CF1214
Defendant-Appellant.	)	
	)	Honorable
	)	Rudolph M. Braud, Jr.,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Appleton and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court reversed, concluding the trial court failed to substantially comply with Illinois Supreme Court Rule 401(a) (eff. July 1, 1984).

¶ 2 Following a bench trial in August 2014, the trial court found defendant, Sammie McClinton, guilty of two counts of forgery, both Class 3 felonies (720 ILCS 5/17-3(a)(2), (d)(1) (West 2012)). In October 2014, the court sentenced defendant to two concurrent terms of four years in prison.

¶ 3 On appeal, defendant argues (1) the State failed to prove him guilty beyond a reasonable doubt and (2) he is entitled to a new trial because the trial court failed to correctly admonish him as to the waiver of counsel. Because we agree with defendant's second argument, we reverse and remand with directions.

¶ 4 I. BACKGROUND

¶ 5 On December 20, 2013, the State charged defendant, by complaint, with two counts of forgery, both Class 3 felonies (720 ILCS 5/17-3(a)(2), (d)(1) (West 2012)). On June 3, 2014, at defendant's first appearance, the trial court provided defendant a copy of the complaint and advised him of the nature of the charges and possible penalties. The court appointed the public defender's office to represent defendant.

¶ 6 On June 12, 2014, the trial court conducted a preliminary hearing, finding probable cause to believe defendant committed the charged offenses. Defendant's appointed counsel waived a formal reading of the charges and possible penalties. Defendant entered a plea of not guilty and requested a jury trial.

¶ 7 At a hearing on July 7, 2014, defendant requested to proceed *pro se*. After a brief exchange, the trial court discharged the assistant public defender, and the following colloquy occurred:

"[ASSISTANT STATE'S ATTORNEY]: Your Honor, there are a variety of admonishments that the defendant—

THE COURT: Oh, we're going to have to go through them all. Absolutely.

[ASSISTANT STATE'S ATTORNEY]: —before going *pro se*. I would suggest, maybe, setting this for status tomorrow.

THE COURT: How about we set it for status on Friday, [July 11, 2014,] at 10:30?"

¶ 8 The court then advised defendant as follows:

"The nutshell is this, you have to understand that you are entitled to have counsel. You're going to waive it. You're going to go [*pro se*]. You have a right to jury trial. The fact that you understand what a jury trial is. The fact that you have a

right to confront all the State's witnesses and make a statement and testify, if you choose. We're going to go through all of that on Friday, and I'll give you a date certain in a couple weeks for a bench trial, if that's your pleasure."

¶ 9 At the status hearing on July 11, 2014, defendant appeared *pro se*. The trial court requested the State provide defendant with a copy of *People v. Williams*, 277 Ill. App. 3d 1053, 661 N.E.2d 1186 (1996), stating, "[i]t goes through all the required admonitions I have to give to you prior to you proceeding [*pro se*]." Thereafter, referring to *Williams*, the court went through each "admonition" listed in *Williams*, and defendant indicated his understanding of each "admonition." The court then placed defendant under oath, and defendant swore (1) he had been advised of his right to counsel, (2) the court had "gone through every admonition in *** [*Williams*]," and (3) he had a right to a jury trial. The trial court did not admonish defendant of the nature of the charges or the possible penalties.

¶ 10 At the August 19, 2014, bench trial, the State presented its evidence. Aaron Gantt testified in late June or early July 2013, his bank card was declined while attempting to get gas. He checked his bank balance online and noticed he was missing $500. Gantt contacted the fraud department of U.S. Bank, which advised him two checks had been cashed, totaling $500. Gantt testified he was in the process of moving from a rental house in Springfield to his parents' home in Sherman. He returned to the rental house and discovered the lock on the back door had been "jimmied or broken." Gantt found his checkbook in a fishbowl on the kitchen table. He had one check remaining in the book, check No. 1089. Gantt went to a U.S. Bank branch in Springfield, and a bank employee confirmed the checks cashed were check Nos. 1087 and 1088. The State showed Gantt People's exhibit Nos. 1 and 2, which Gantt identified as his checks, Nos. 1087 and 1088. Gantt acknowledged his name was written on the checks' signature lines, but he

testified it was not his signature and he did not write the checks. Gantt did not recognize defendant and had not provided him with the authority to cash the checks.

¶ 11 Carla Anderson, a bank teller at U.S. Bank, testified on July 2, 2013, a noncustomer, later identified as defendant, came into Anderson's branch on North Grand Avenue in Springfield and presented a $200 check to be cashed (later identified as Gantt's check No. 1087) made out to defendant. Defendant provided identification and his thumbprint, and Anderson provided defendant cash in the amount of the check, less a $5 service fee. Wanda Willett, also a bank teller at U.S. Bank, testified on July 3, 2013, a noncustomer, later identified as defendant, came into Willett's branch on Fifth Street in Springfield and presented a $300 check to be cashed (later identified as Gantt's check No. 1088) made out to defendant. Defendant again provided identification and his thumbprint, and Willett provided defendant cash in the amount of the check, less a $5 service fee.

¶ 12 Sara Jett, a sergeant with the Springfield police department, testified she was initially assigned to investigate "a burglary to a residence [where] there were checks removed" and cashed. Jett testified she took the information from the checks and viewed still photographs taken from various surveillance cameras located in the two different branches of U.S. Bank. According to Jett, the state identification number on the back of the checks was the same and belonged to defendant. Based on this information, defendant became a suspect.

¶ 13 Defendant did not testify or present any evidence. The trial court found defendant guilty of both counts of forgery. On October 3, 2014, the court sentenced defendant to two concurrent four-year prison terms. On December 12, 2014, the court denied defendant's *pro se* motion to reconsider his sentence.

¶ 14 This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 A. Waiver of Counsel Admonitions

¶ 17 On appeal, defendant argues his pretrial waiver of counsel was invalid because the trial court did not provide him with the admonitions required by Illinois Supreme Court Rule 401(a) (eff. July 1, 1984) before accepting his waiver of counsel. The State argues the court substantially complied with the requirements of Rule 401(a) where the record shows the waiver was made knowingly and voluntarily and the admonishments given did not prejudice defendant's rights. We agree with defendant.

¶ 18 Defendant concedes this issue was not raised or preserved at trial, but he seeks plain-error review under the second prong of the plain-error doctrine. The plain-error doctrine bypasses forfeiture principles and allows a reviewing court to consider unpreserved error when (1) the evidence is close, regardless of the seriousness of the error; or (2) the error is serious, regardless of the closeness of the evidence. *People v. Herron*, 215 Ill. 2d 167, 186-87, 830 N.E.2d 467, 479 (2005). We review *de novo* whether the trial court complied with Rule 401(a). *People v. Bahrs*, 2013 IL App (4th) 110903, ¶ 13, 988 N.E.2d 773.

¶ 19 Illinois Supreme Court Rule 401(a) (eff. July 1, 1984) states as follows:

> "Any waiver of counsel shall be in open court. The court shall not permit a waiver of counsel by a person accused of an offense punishable by imprisonment without first, by addressing the defendant personally in open court, informing him of and determining that he understands the following:
>
> (1) the nature of the charge;

(2) the minimum and maximum sentence prescribed by law, including, when applicable, the penalty to which the defendant may be subjected because of prior convictions or consecutive sentences; and

(3) that he has a right to counsel and, if he is indigent, to have counsel appointed for him by the court."

¶ 20 In *People v. Campbell*, 224 Ill. 2d 80, 84, 862 N.E.2d 933, 936 (2006) (quoting *People v. Haynes*, 174 Ill. 2d 204, 241, 673 N.E.2d 318, 335 (1996)), our supreme court stated, "[t]he purpose of this rule is 'to ensure that a waiver of counsel is knowingly and intelligently made.' " Thus, Rule 401(a) admonishments "must be provided when the court learns the defendant has chosen to waive counsel so the defendant can consider the ramifications of his decision." *People v. Stoops*, 313 Ill. App. 3d 269, 275, 728 N.E.2d 1241, 1245 (2000). Prior admonishments, if any, are not sufficient. *Stoops*, 313 Ill. App. 3d at 275, 728 N.E.2d at 1245. "Accordingly, substantial compliance with Rule 401(a) is required for an effective waiver of counsel." *Campbell*, 224 Ill. 2d at 84, 862 N.E.2d at 936.

¶ 21 In this case, defendant made his first appearance on June 3, 2014, where he was provided with a copy of the complaint. The trial court advised defendant of the nature of the charges and informed defendant he faced Class 3 felonies, punishable by an extended term of 2 to 10 years in prison. However, the court did not advise defendant he could be subject to consecutive sentencing. See *Bahrs*, 2013 IL App (4th) 110903, ¶ 15, 988 N.E.2d 773 (trial court's understatement of the sentencing range defendant faced failed to substantially comply with Rule 401(a)). Further, contrary to the State's assertion, the record does not show any effort by the court to ascertain whether defendant understood the nature of the charges and possible penalties. The court appointed the public defender's office to represent defendant, and on June

12, 2014, defense counsel appeared with defendant and waived a formal reading of the charges and potential penalties.

¶ 22 Defendant did not move to proceed *pro se* until a hearing held on Monday, July 7, 2014. In response to defendant's oral motion, the court advised defendant he had "a right to be represented by counsel" and then, following a brief exchange, relieved defense counsel of his duties. When the assistant State's Attorney stepped forward and respectfully reminded the court about "a variety of admonishments that the defendant [must receive] before going [*pro se*]," the court assured the assistant State's Attorney it would "have to go through them all" on the following Friday. The court then summarized for defendant what he would "go through" on Friday, including defendant's right to counsel, a trial by jury, and to confront the witnesses against him.

¶ 23 At the status hearing on July 11, 2014, the trial court requested the State provide defendant with a copy of *Williams*, stating, "[i]t goes through all the required admonitions I have to give you prior to you proceeding [*pro se*]." However, unlike the admonishments pursuant to Rule 401(a), the "admonitions" set forth in *Williams*, which quoted *People v. Ward*, 208 Ill. App. 3d 1073, 1081-82, 567 N.E.2d 642, 647-48 (1991), are not "a directive for trial courts, but, rather, as matters about which it would be *desirable* for a trial court to inform defendant." (Emphasis in original.) *Williams*, 277 Ill. App. 3d at 1056-57, 661 N.E.2d at 1189. As such, it may supplement, but it does not supplant, the admonitions required by Rule 401(a).

¶ 24 Here, the trial court did not admonish defendant in accordance with Rule 401(a). It did not inform defendant of the nature of the charges or the minimum and maximum sentences defendant faced when the court learned on July 7, 2014, defendant had chosen to waive counsel. " 'The admonishments pursuant to Rule 401(a) must be provided when the court learns defendant

chooses to waive counsel so that defendant can consider the ramifications of such a decision. Prior admonishments and defendant's decision to discharge counsel do not somehow cause defendant to forgo the right to be fully informed of the ramifications of acting on his own behalf.' " *People v. Seal*, 2015 IL App (4th) 130775, ¶ 31, 38 N.E.3d 642 (quoting *People v. Langley*, 226 Ill. App. 3d 742, 750, 589 N.E.2d 824, 830 (1992)).

¶ 25 Accordingly, we reverse defendant's convictions and remand for a new trial, "before which defendant should be given the requisite admonishments and the opportunity to be represented by an attorney or to make a voluntary, knowing, and intelligent waiver of that right." *People v. Jiles*, 364 Ill. App. 3d 320, 330, 845 N.E.2d 944, 953 (2006).

¶ 26 B. Reasonable Doubt Challenge

¶ 27 Defendant also argues the State failed to prove him guilty beyond a reasonable doubt of forgery. Defendant claims the evidence failed to show he knew the checks were unlawfully made or altered when he delivered them to the bank. We disagree.

¶ 28 " 'When reviewing a challenge to the sufficiency of the evidence in a criminal case, the relevant inquiry is whether, when 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.' " *People v. Ngo*, 388 Ill. App. 3d 1048, 1052, 904 N.E.2d 98, 102 (2008) (quoting *People v. Singleton*, 367 Ill. App. 3d 182, 187, 854 N.E.2d 326, 331 (2006)). The trier of fact has the responsibility to determine the credibility of witnesses and the weight given to their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from that evidence. *People v. Jackson*, 232 Ill. 2d 246, 281, 903 N.E.2d 388, 406 (2009). "When weighing the evidence, the trier of fact is not required to disregard inferences that flow from the evidence, nor is it required to search out all possible explanations consistent with

innocence and raise them to a level of reasonable doubt." *People v. McDonald*, 168 Ill. 2d 420, 447, 660 N.E.2d 832, 843 (1995). "An inference is simply a reasonable deduction from the consideration of other facts that the fact finder may draw in its discretion, but is not mandated to draw as a matter of law." *People v. Sorrels*, 389 Ill. App. 3d 547, 551, 906 N.E.2d 788, 792 (2009). "[A] reviewing court will not reverse a criminal conviction unless the evidence is so unreasonable, improbable[,] or unsatisfactory as to create a reasonable doubt of the defendant's guilt." *People v. Rowell*, 229 Ill. 2d 82, 98, 765, 890 N.E.2d 487, 496-97 (2008).

¶ 29 The State charged defendant with forgery (720 ILCS 5/17-3(a)(2) (West 2012)). The offense of forgery consists of the following five elements: "(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." (Internal quotation marks omitted.) *People v. Hockaday*, 93 Ill. 2d 279, 282, 443 N.E.2d 566, 567 (1982); see also 720 ILCS 5/17-3(a)(2) (West 2012). Notably, defendant admits the first, second, and fourth elements were satisfied here. Defendant argues the State "failed to prove elements (3) and (5)—that [defendant] knew the checks were unlawfully made or altered, or consequently, that he intended to defraud anyone with them."

¶ 30 To be convicted of forgery, a defendant's knowledge that a check was not authentic must be clearly proved. *People v. Baylor*, 25 Ill. App. 3d 1070, 1072, 324 N.E.2d 255, 257 (1975). However, "proof must often be by circumstantial evidence." *Baylor*, 25 Ill. App. 3d at 1074, 324 N.E.2d at 258.

¶ 31 In the instant case, it is unreasonable to conclude defendant somehow innocently and unknowingly came into possession of the two fraudulent checks. Gantt discovered "in late

June, early July" 2013, his bank had cashed two checks from his checking account he did not authorize. Gantt was in the process of moving from a rental house and "went back to the house" to see "how those checks could have possibly been given or taken." Upon his return to the rental house, he found the lock on the back door had been "jimmied or broken," and check Nos. 1087 and 1088 were missing from his checkbook. His bank confirmed the checks cashed were check Nos. 1087 and 1088. Gantt acknowledged his name was written on the checks' signature lines, but he testified it was not his signature and he did not write the checks. Gantt did not recognize defendant and had not provided him with the authority to cash the checks.

¶ 32 Check No. 1087 was dated July 1, 2013, and check No. 1088 was dated July 2, 2013. Each check was made payable to defendant. Defendant cashed check No. 1087 on July 2, 2013, at the North Grand Avenue branch of U.S. Bank, and check No. 1088 on July 3, 2013, at the Fifth Street branch. Gantt had not given defendant the two checks, and defendant had no reason to receive the two checks from Gantt.

¶ 33 Contrary to defendant's argument, the circumstantial evidence did suggest defendant knew the checks were forged. Defendant cashed two checks from the account of an individual he did not know, and each check was made payable to defendant and signed by someone who was not the owner of the account. By cashing the checks, defendant knowingly committed the crime of forgery. Thus, the trial court could reasonably conclude defendant was aware the checks were illegitimate and a forgery.

¶ 34 The trial court is in the best position to determine the credibility of the witnesses and the weight to give their testimony. We give these determinations deference and will not substitute our judgment for that of the trier of fact on these issues. *People v. Brown*, 2013 IL 114196, ¶ 48, 1 N.E.3d 888. Accordingly, we conclude the evidence, when viewed in the light

most favorable to the State, is not so unsatisfactory, unreasonable, or improbable that it raises a reasonable doubt as to the defendant's guilt. *Rowell*, 229 Ill. 2d at 98, 890 N.E.2d at 496-97.

¶ 35 Although we are reversing defendant's convictions, we find the evidence was sufficient to prove defendant guilty of forgery beyond a reasonable doubt. Thus, no double-jeopardy violation will occur in the event of a new trial. *In re R.A.B.*, 197 Ill. 2d 358, 368-69, 757 N.E.2d 887, 894 (2001). Our ruling does not constitute a determination of defendant's guilt that would be binding on retrial. *People v. Naylor*, 229 Ill. 2d 584, 611, 893 N.E.2d 653, 670 (2008).

¶ 36 III. CONCLUSION

¶ 37 For the reasons stated, we reverse the trial court's judgment and remand for a new trial,"before which defendant should be given the requisite admonishments and the opportunity to be represented by an attorney or to make a voluntary, knowing, and intelligent waiver of that right." *Jiles*, 364 Ill. App. 3d at 330, 845 N.E.2d at 953. As part of our judgment, because the State successfully defended a portion of this appeal, we award the State its $50 statutory assessment against defendant as costs of this appeal. See *People v. Smith*, 133 Ill. App. 3d 613, 620, 479 N.E.2d 328, 333 (1985) (citing *People v. Nicholls*, 71 Ill. 2d 166, 178, 374 N.E.2d 194, 199 (1978)).

¶ 38 Reversed and remanded.