2011 IL App (1st) 101391-U

THIRD DIVISION
December 7, 2011

No. 1-10-1391

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. 06 CR 26929
TIFFANY BROWN,	)	
	)	
	)	Honorable
Defendant-Appellant.	)	William G. Lacy,
	)	Judge Presiding.

JUSTICE SALONE delivered the judgment of the court.
Justices Pucinski and Sterba concurred in the judgment.

ORDER

HELD: The evidence at trial was sufficient to establish defendant's guilt beyond a reasonable doubt for forgery as alleged in count I, but was insufficient to establish defendant's guilt for official misconduct. Defendant's conviction for forgery as alleged in count II and attempted theft violate the one-act, one-crime doctrine, and her conviction for forgery as alleged in count II is vacated with the mittimus corrected to reflect a single conviction for forgery (count I) and a single conviction for attempted theft. The court services fee was properly assessed.

¶ 1 Following a bench trial, defendant Tiffany Brown, a Chicago police officer, was convicted of two counts of forgery (720 ILCS 5/17-3(a)(1), (2) (West 2006)), one count of attempted theft (720 ILCS 5/16-1(A)(1) (West 2006)), and three counts of official misconduct (720 ILCS 5/33-3(b) (West 2006)) and was sentenced to two years felony probation and fifty hours of community service. On appeal, defendant contends that the State failed to prove beyond a reasonable doubt that she made or altered a counterfeit check in the amount of $1 million, or that she acted in her official capacity when she attempted to deposit the check at the Chicago Patrolman's Federal Credit Union (CPFCU). In the alternative, defendant contends that her multiple convictions violate the one act, one crime rule because they arose from the same physical act. Additionally, defendant contends that the $25 court services fee should be vacated because her convictions do not fall under one of the enumerated offenses in the statute.

¶ 2 BACKGROUND

¶ 3 Defendant was indicted on November 28, 2006, for attempting to deposit a counterfeit check in the amount of $1 million at the CPFCU. The indictment contained seven counts. Count I alleged that defendant committed the offense of forgery with the intent to defraud, and knowingly made or altered a check in the amount of $1 million, on the account of Six Flags Great America, drawn on J.P. Morgan Chase Bank, made payable to Tiffany Brown, apparently capable of defrauding another in such a manner that it purported to have been made by authority of Bryan Douglas, who did not give such authority, knowing it was not made by authority of Bryan Douglas. Count II alleged that defendant committed the offense of forgery

with the intent to defraud, and knowingly issued or delivered a check in the amount of $1 million on the account of Six Flags Great America, drawn on J.P. Morgan Chase Bank, made payable to Tiffany Brown, apparently capable of defrauding another in such a manner that it purported to have been made by authority of Bryan Douglas, who did not give such authority, knowing it was not made by authority of Bryan Douglas. Count III alleged that defendant committed the offense of attempted theft in that she took a substantial step toward the commission of theft in that she knowingly attempted to obtain or exert unauthorized control over property of the Chicago Patrolman's Federal Credit Union in the form of United States currency, of a value in excess of $500,000, and intending to deprive the Chicago Patrolman's Federal Credit Union of the use or benefit of said property by delivering a fictitious check in the amount of $1 million, and a fictitious court document. Counts IV, V and VI are each predicated on the substantive charges against defendant in counts I, II, and III, and alleged that defendant committed the offense of official misconduct in that she, being a public employee in her official capacity knowingly performed an act which she knew was forbidden by law to perform. Count VII alleged that defendant committed the offense of official misconduct in that she, being a public employee in her official capacity, knowingly performed an act which she knew she was forbidden by law to perform, and violated Article V, Rule 2 of the City of Chicago Department of Police rules and regulations which states: "prohibited acts include any action or conduct which impeded the department's efforts to achieve its policy and goals or brings discredit upon the department."

¶ 4 The trial testimony is briefly stated as follows. Defendant was called to testify on her own behalf, and stated that she was a nine-year veteran of the Chicago Police Department. She

resides with her 16-year-old son, and her two nephews aged 11 and 12 years old, who are the sons of her adopted sister Abeni Brown (Abeni). Over the last year, Abeni attempted to steal defendant's identity on three separate occasions. In 2005, Abeni forged defendant's name on an eighty-dollar check and cashed it. In 2006, Abeni rented a condominium in defendant's name. Defendant reported a third incident to the police in which Abeni wore a wig and impersonated defendant at the CPFCU and withdrew $700 from an account held jointly by defendant, Abeni, and Zenobia Brown (Zenobia).

¶ 5 Defendant testified that her mother, Zenobia told defendant that Abeni received a settlement check from Six Flags Great America (Six Flags) from a pending lawsuit. Zenobia explained that Abeni was dying, and that she wanted to distribute the settlement money to Zenobia, defendant, Abeni's two children, and a cousin Ahmad Murphy (Ahmad). Defendant testified that she was shocked, and believed that "for the first time in Abeni's life she was going to do right by her children and right by my mother and myself."

¶ 6 Zenobia gave defendant the check and a letter explaining the disbursement of funds pursuant to Abeni's settlement. The letter indicated that Susan T. Mitchell and Bernetta C. Thompson were lawyers in the case, and that the settlement was authorized by Bryan Douglas, the CEO of Six Flags. The check was payable to defendant in the amount of $1 million, and drawn on the J.P. Morgan Chase Bank and issued on the account of Six Flags. It purported to have been issued by a person named Bryan Douglas.

¶ 7 The State called Samara Galvan (Galvan) as a witness. Galvan, a bank teller at the CPFCU, testified that the defendant presented the check, deposit slip, settlement letter, and a

form of identification for purposes of making a deposit. Galvan knew defendant was a police officer because of the prior incident in which Abeni used defendant's name to withdraw money. Galvan testified that the check raised several red flags which included: three sets of numbers none of which was a nine-digit routing number that typically appears on checks; the texture of the check was abnormal; and it was quite unusual that the check was for an amount that is normally sent by a wire transfer. Galvan went to her branch manager Maria Villasenor (Villasenor) who told Galvan to accept the check and process the deposit.

¶ 8 The State called Villasenor as a witness. She testified that when Galvan initially approached her about the check, she did not notice that it was for the amount of $1 million. The next day, bank teller Jose Ramirez (Ramirez) told Villasenor that the check scanner would not process the check because the routing number was missing a digit. Villasenor then examined the check, and noticed for the first time the amount for $1 million. She testified that it did not appear to be a regular business check and she suspected that it was counterfeit. Villasenor then contacted Chase Bank and was informed that the check was in fact forged. A permanent hold was placed on defendant's account.

¶ 9 Villasenor testified that the CPFCU sent a letter to defendant to inform her that a hold was placed on her account. Upon receiving the letter, defendant called Villasenor to explain that someone from either Six Flags, Chase Bank, or a lawyer in the name of Bennetta Thompson would call to verify the authenticity of the check. However, this never occurred. Villasenor further testified that on September 11, 2006 she contacted defendant to inform her that Chase Bank dishonored the check, and that her account would be debited for the full amount.

Defendant responded that this must be the result of Six Flags filing for bankruptcy, and that she was going to have to file another lawsuit. Villasenor further testified that defendant never mentioned that Abeni was involved in the lawsuit.

¶ 10 The State called James Bedinger (Bedinger), the Chief Operating Officer for the CPFCU as the next witness. He testified that he was present for Villasenor's telephone conversation with defendant on September 11, 2006. On cross-examination, he stated that defendant was not avoiding a discussion about the check with Villasenor.

¶ 11 The State called Detective Francisco Roman of the Chicago Police Department as a witness. He testified that in the course of his investigation, he learned from Cynthia Reising, the comptroller for Six Flags, that a check was never issued to Abeni, nor was there ever a lawsuit filed or settled between Six Flags and Abeni. Furthermore, Detective Roman discovered that no one by the name of Bryan Douglas was employed by Six Flags, and the lawyers listed on the settlement letter were also fictitious. According to the Illinois Attorney Registration and Disciplinary Commission, neither Susan T. Mitchell nor Bennetta C. Thompson was licensed to practice law in the state of Illinois. During his investigation, he discovered that Abeni had two police reports filed against her, and in both cases defendant was listed as the victim. He compared the pictures of defendant and Abeni on their respective driver's licenses, and concluded that there was a great difference in their appearance. Defendant was subsequently arrested.

¶ 12 On cross-examination, detective Roman testified that he was unable to find any evidence that defendant actually created the check or the settlement letter, or that Tiffany affixed any

signatures to the documents other than her own. Furthermore, he did not find any evidence that defendant forged the signature of Bryan Douglas on the check. He stated that he was also aware that Zenobia presented a check in the amount of $2 million to another financial institution, but did not question her because it was assigned to a different detective. Detective Roman further testified that he was not aware that Ahmad presented a check in the amount of $500,000 to the Bank of America. He further stated that Abeni could not be reached for questioning.

¶ 13 The parties entered into a stipulation that if called, Cynthia Reising, the comptroller for Six Flags would testify that the check was not issued by Six Flags nor was a lawsuit filed by Abeni against Six Flags. She would further testify that the address on the check was incorrect, and it was drawn on a bank not used by Six Flags. Lastly, she would testify that Bryan Douglas was neither an employee nor an authorized signatory of Six Flags.

¶ 14 The State moved to admit exhibits 1 through 5 into evidence, and then rested its case in chief. Defendant's motion for a finding of not guilty was denied.

¶ 15 The defense called defendant's cousin Ahmad Murphy (Murphy) as a witness. Murphy testified that he was a college student when he received a call from Zenobia to inform him that Abeni was sick and wanted to give him money from a settlement. Murphy stated that he came to Chicago and Zenobia gave him a check, payable to him in the amount of $500,000. He further stated that he was shocked to receive money from Abeni because she had caused some problems for his family in the past. Murphy testified that he thought the check was real, and deposited it into his account at the Bank of America.

¶ 16 Following trial, Judge William G. Lacy found defendant guilty of all seven counts.

Defendant filed a motion for judgment of acquittal or new trial on February 25, 2010. The trial court denied the motion as to counts I-VI, and entered an acquittal on count VII for official misconduct. Defendant was then sentenced to two years probation and fifty hours of community service. This timely appeal followed.

¶ 17 DISCUSSION

¶ 18 Defendant first argues that the State failed to prove beyond a reasonable doubt that she made or altered the counterfeit check in violation of 720 ILCS 5/17-3(a)(1) under count I of the indictment. Defendant further contends that the State failed to prove beyond a reasonable doubt that she acted in her official capacity while committing the acts of forgery (counts I and II) and attempted theft (count III) in violation of 720 ILCS 5/33-3(b) under counts IV, V and VI of the indictment.

¶ 19 We review challenges to the sufficiency of the evidence for a conviction 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. *People v. Cunningham*, 212 Ill. 2d 274, 278-280 (2004). Under this standard, a reviewing court must allow all reasonable inferences from the record in favor of the prosecution. *Cunningham*, 212 Ill. 2d 274 at 278-280.

¶ 20 Section 17-3(a)(1) of the Criminal Code (720 ILCS 5/17-3(a)(1) (West 2006)) states:

> "(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 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[.]"

¶ 21 Our supreme court has long held that the key issue in forgery cases such as this is whether the evidence establishes that the endorsement was made for the purpose of, and was capable of defrauding. *People v. Epping*, 17 Ill. 2d 557, 569 (1959). Further, this court has held that a defendant 'makes or alters' an instrument, for purposes of the forgery statute, when he endorses the instrument because without the endorsement the instrument would not be apparently capable of defrauding. *People v. Connell*, 91 Ill. App. 3d 326, 334 (1980).

¶ 22 In this case, we find that the evidence was sufficient to find defendant guilty of forgery. Galvan and Villasenor testified that defendant presented the check for the purpose of making a deposit into her account. She told them that the check was from a settlement of a lawsuit against Six Flags. Detective Roman testified that the evidence did not suggest that the defendant actually created the check or the settlement letter, or that she affixed any signatures, other than her own, to the documents.

¶ 23 Defendant's testimony indicates that the check was given to her by her mother who also had information relating to the settlement. Defendant admitted to affixing her own name to the back of the check for endorsement purposes. By defendant's own admission, she endorsed and presented the instrument in question for deposit. Thus, viewing the evidence in the light most

favorable to the State, we find that defendant, by endorsing the check, made the document apparently capable of defrauding another, such that a reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Connell*, 91 Ill. App. 3d at 334.

¶ 24 We are not persuaded by defendant's contention that the reasoning in *Connell* should not apply because it is factually distinguishable. We find the distinction between defendant in *Connell*, who signed another persons name, and the defendant in this case, who signed her own name, to be without a difference. In each case, had the defendant not endorsed the check, it would not have been capable of defrauding. Thus, we apply the principles in *Connell* to the instant case and find sufficient evidence to sustain defendant's conviction. *Connell*, 91 Ill. App. 3d at 334.

¶ 25 We now address whether the State proved beyond a reasonable doubt that defendant committed the offense of official misconduct (counts IV, V & VI) through the substantive acts of forgery (count II) and attempted theft (count III) in her official capacity.

¶ 26 Section 33-3 of the Criminal Code (720 ILCS 5/33-3 (West 2006)) states:

> "A public officer or employee or special government agent commits misconduct when, in his official capacity or capacity as a special government agent, he commits any of the following acts:
>
> * * *
>
> (b) Knowingly performs an act which he knows he is forbidden by law to perform;

* * *

> A public officer or employee or special government agent convicted of violating any provision of this Section forfeits his office or employment or position as a special government agent. In addition, he commits a Class 3 felony."

¶ 27 Official misconduct, as charged in this case, occurs when a person knowingly performs an act which she knows is forbidden by law and does so in her official capacity. *People v. Brogan*, 352 Ill. App. 3d 477, 490 (2004). Having already resolved that there was sufficient evidence to support defendant's conviction for forgery, the same evidence is also sufficient to establish that defendant knowingly performed an act forbidden by law. Thus, the only relevant inquiry is whether defendant acted in her official capacity, while committing forgery. In order to obtain a conviction for this charge, the State must prove beyond a reasonable doubt that the defendant used her position or authority to further the commission of the crime. *Brogan*, 352 Ill. App. 3d at 491.

¶ 28 The record indicates that defendant went to the CPFCU for the purpose of depositing the check. The CPFCU is a bank designated for police officer's and their family members. Defendant entered the bank in her civilian attire, and never once asserted her authority as a police officer even when there appeared to be a delay in the processing of the check. The bank teller, Galvan, testified that she recognized defendant as a police officer from a previous encounter when defendant reported that her sister withdrew money from an account while using

defendant's identity. Galvan's recognition of her as a police officer, however, does not establish that defendant acted in her official capacity, where there is no indication that defendant used her authority or position to aid in depositing the check. We find no evidence in the record to establish that defendant relied on her position as a police officer to accomplish her crime. Absent such evidence, no reasonable trier of fact could conclude that defendant committed official misconduct, because there is no evidence for that requisite element of the crime charged. *People v. Steinmann*, 57 Ill. App. 3d 887, 898 (1978).

¶ 29 Given the dearth of evidence that defendant used the power attached to her position to commit forgery, we find that the State failed to prove that defendant committed the offense of official misconduct beyond a reasonable doubt and reverse defendant's convictions for counts IV, V and VI. *Steinmann*, 57 Ill. App. 3d at 898.

¶ 30 Defendant next contends that the mittimus should be corrected because her convictions for forgery, attempted theft, and official misconduct violate the one-act, one-crime doctrine because all four convictions arise from the same criminal act. We review *de novo* whether multiple convictions violate the one-act, one-crime doctrine because they are based on the same physical act. *People v. Ellis*, 401 Ill. App. 3d 727, 729 (2010). Where multiple convictions violate the one-act, one-crime doctrine, the less serious conviction must be vacated. *People v. Lee*, 213 Ill. 2d 218, 226-27 (2004).

¶ 31 Having already concluded that the State failed to prove defendant committed official misconduct beyond a reasonable doubt, we need only address whether defendant's convictions for both counts of forgery and the sole count of attempted theft violate the one-act, one-crime

doctrine. The State contends that defendant forfeited these arguments by failing to include them in their post-sentencing motion. The State further argues, in the alternative, that if the issue is not forfeited, there is no violation of the one-act, one-crime doctrine, because defendant was only sentenced on the attempted theft conviction, which was the most serious conviction. We disagree. The State's argument regarding forfeiture fails because violations of the one-act, one-crime doctrine are subject to plain error review. *People v. Harvey*, 211 Ill. 2d 368, 389 (2004).

¶ 32 Of the three remaining convictions, two counts of forgery and one count of attempted theft, we find that defendant's conviction for delivering a forged check to the CPFCU under count II, (720 ILCS 5/17-3(a)(2) (West 2006)), and defendant's conviction for attempted theft for the same act violate the one-act, one-crime doctrine. *Harvey*, 211 Ill. 2d at 389. We further find that the class 2 offense of attempted theft is the more serious offense than the class 3 offense of forgery such that defendant's conviction for forgery under count II is vacated.

¶ 33 We further find that defendant's convictions for forgery, for making the document and her conviction for attempted theft for delivering the instrument do not violate the one-act, one-crime doctrine, where the convictions result from separate physical acts, forgery in signing the check and attempted theft for delivering it. Further, neither is a lesser included offense of the other because each crime has an element distinct from the other. *People v. Miller*, 238 Ill. 2d 161, 176 (2010).

¶ 34 This court has the authority to directly order the clerk of the circuit court to make the necessary corrections to defendant's sentencing order. *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995). Accordingly, we direct the clerk of the circuit court to make changes to defendant's

mittimus to reflect one conviction for forgery (720 ILCS 5/17-3(a)(2)) and one conviction for attempted theft (702 ILCS 5/16(a)(1) as noted herein.

¶ 35 Finally, defendant contends that the $25 court services fee must be vacated because it applies only to the offenses enumerated in the statute, and because she was not convicted of one of those offenses.

¶ 36 When an issue is raised which requires us to determine the legislative intent of a statute, that issue is subject to *de novo* review. *People v. Jackson*, 2011 IL 110615, ¶12.

¶ 37 Section 5-1103 of the Counties Code (55 ILCS 5/5-1103 (West 2006)) provides in relevant part:

> "In criminal, local ordinance, county ordinance, traffic and conservation cases, such fee shall be assessed against the defendant upon a plea of guilty, stipulation of facts or findings of guilty, resulting in a judgment of conviction, or order of supervision, or sentence of probation without entry of judgment pursuant to Section 10 of the Cannabis Control Act, 1 Section 410 of the Illinois Controlled Substances Act, 2 Section 70 of the Methamphetamine Control and Community Protection Act, Section 12-4.3 of the Criminal Code of 1961, Section 10-102 of the Illinois Alcoholism and Other Drug Abuse and Dependency Act, Section 40-10 of the Alcoholism and

Other Drug Abuse and Dependency Act, or Section of the

Steroid Control Act."

¶ 38 The purpose of statutory interpretation is to give effect to the intent of the legislature. *Jackson*, 2011 IL 110615, ¶12. That intent is best determined by giving effect to the plain and ordinary meaning of the language of the statue itself. *Jackson*, 2011 IL 110615, ¶12. Where that intent is clear, we will not digress from the statute's plain meaning by reading into it exceptions, limitations, or conditions that conflict with the legislature's expressed intent. *Adair*, 406 Ill. App. 3d 133 at 144.

¶ 39 We reject defendant's interpretation of the statute as authorizing a court services fee for only those persons convicted of the enumerated offenses. The plain language of the statute permits assessment of the fee for a defendant in a criminal case resulting in a judgment of conviction. *Jackson*, 2011 IL 110615, ¶19. Thus, we find that the trial court properly assessed the $25 court services fee following defendant's convictions.

¶ 40 CONCLUSION

¶ 41 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed as to counts I, III and the assessment of the $25 court services fee. The judgment of the circuit court of Cook County is reversed as to counts II, IV, V and VI. We also order the clerk of the circuit court to correct the mittimus to reflect one conviction of attempted theft and one conviction of forgery.

¶ 42 Affirmed in part; reversed in part; mittimus corrected.