

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jacob Josiah Mills,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

March 30, 2023

Court of Appeals Case No.
22A-CR-2660

Appeal from the Vanderburgh
Circuit Court

The Honorable Kelli E. Fink,
Magistrate

Trial Court Cause No.
82C01-2203-F6-1389

Memorandum Decision by Judge Pyle

Chief Judge Altice and Judge Riley concur.

Pyle, Judge.

Statement of the Case

[1] Jacob Josiah Mills (“Mills”) appeals, following a jury trial, his convictions for Level 6 felony forgery¹ and Level 6 felony attempted theft.² Mills argues that there was insufficient evidence to support his convictions. Concluding that the evidence was sufficient, we affirm the trial court’s judgment.³

[2] We affirm.

Issue

Whether there is sufficient evidence to support Mills’ convictions.

Facts

[3] The facts most favorable to the verdict follow. On December 28, 2021, Mills went into a First Bank (“the Bank”) branch in Vanderburgh County and presented a check to the teller. The check, which purported to have been written from the account of West Industries, was made payable to Jacob Josiah Mills in the amount of \$2,988.11. The check also contained a signature purporting to be the signature of the owner of West Industries, Derek Moore (“Moore”). West Industries, which has four employees and is in the steel

¹ IND. CODE § 35-43-5-2.

² I.C. §§ 35-43-4-2; 35-41-5-1.

³ We note that the trial court’s sentencing order and the abstract of the judgment indicate, under the heading of “Disposition,” that Mills’ convictions were the result of a plea agreement. (App. Vol. 2 at 18, 121, 124). We instruct the trial court to correct the sentencing order and abstract of judgment to correctly reflect that his convictions were the result of a jury verdict.

business, did its banking with the Bank. Mills endorsed the back of the check and presented it to the teller to cash it. The Bank scanned a copy of Mills' identification card.

[4] The Bank had established a practice with West Industries, which generally wrote checks to corporations or businesses, where the Bank would call the company if an individual tried to cash a check from West Industries or if the check exceeded a certain amount. The teller also thought that the check that Mills had presented “looked suspicious[.]” (Tr. Vol. 2 at 15). The paper of the check was of a different quality and color than West Industries' usual checks. Additionally, Moore's signature was “way off[.]” and the font in the “pay to the order of” section was different than that used by West Industries' checks. (Tr. Vol. 2 at 16). Also, the check number on the check had already been used on another check that had been issued a few days prior.

[5] The Bank called West Industries to verify the authenticity of the check. Moore informed the Bank that he had not authorized the check. The Bank told Moore that the individual who was trying to cash the check “was becoming impatient” and “was stating that he needed to get going[.]” (Tr. Vol. 2 at 17). Once the Bank told Mills that it was not going to cash the check, “he left abruptly” and left the check with the teller. (Tr. Vol. 2 at 17). Thereafter, Moore called the police to report the incident.

[6] Two detectives with the Evansville Police Department's financial crimes unit then began an investigation. The detectives obtained the check, the scanned

copy of Mills' identification card, and surveillance video from the Bank. In February 2022, the detectives interviewed Mills about the check. Mills told the detectives that he had gotten the check from a "black woman in her late 50's and a younger adult light skinned black male" after Mills had done some construction renovation work for them. (Tr. Vol. 2 at 30). Mills told the detectives that, two to three weeks prior, these two individuals had approached him in a homeless shelter and had asked him to do some drywall and siding work. Mills stated that he was "a jack of all trades" and had worked alone on several jobsites for them during the past few weeks. (Tr. Vol. 2 at 31). Mills stated that the young male would pick Mills up at the shelter, take him to the jobsites, and then drop Mills off at the end of the day.

- [7] When the detectives asked Mills to provide more information about the two individuals, he was unable to give their names or addresses. Mills stated that he had stayed in contact with the two individuals by phone. Mills further stated that he no longer had his phone because the younger male had driven off with Mills' backpack and phone on the day that Mills had tried to cash the check. Mills told the detectives that the two individuals were not affiliated with a company and that he had worked for them in "an under the table type arrangement[.]" (Tr. Vol. 2 at 32). Mills stated that he had previously cashed, without any problems, a \$1,700 check that he had received from the two unknown individuals. Mills, however, was unable to tell the detectives what date he had cashed that prior check or at what bank branch he had done so.

[8] For the check at issue, Mills told the detectives that he had asked the two individuals to pay him \$2,000 for the work he had done and that they had given him a check for \$2,988.11. He could not explain why the check was made for more than he had requested but stated that it must have been a bonus. Mills stated that the younger male had driven him to the Bank and had parked in an adjacent parking lot. According to Mills, when the Bank had refused to cash the check, Mills had told the teller that he needed to get back to his jobsite. Mills told the detectives that when he had left the bank, the young male had no longer been in the adjacent parking lot. Mills stated that he had started walking back to the jobsite but then instead had gone to a Walmart and had then taken a bus back downtown. Mills told the detectives that he had not seen the two individuals since that December day.

[9] Mills also was unable to give an address for any of the jobsites at which he stated that he had worked. He told the detectives that, on the day that he had tried to cash the check at issue, the jobsite where he had worked was a red brick house around the Burkhardt and Washington area. One of the detectives pulled up Google street view to try to have Mills identify the directions to the house at which he claimed to have done drywall work. The detective later went to the house that Mills had indicated and saw that the brick house was white and not red. The detective investigated the color of the house and determined that the brick house indicated by Mills had been white for over two years.

[10] The State charged Mills with Level 6 felony forgery and Level 6 felony attempted theft. The trial court held a one-day jury trial in September 2022.

The State presented testimony from Moore and the two detectives. The jury heard the facts as set forth above and saw the surveillance video. The video showed that Mills, while standing at the teller window, had his cell phone in his shirt breast pocket and that he had checked his cell phone several times. Additionally, Moore testified that if the Bank would have cashed the check presented by Mills and followed all its protocol, then Moore would have suffered the loss and would have been “on the hook for the payment[.]” (Tr. Vol. 2 at 17). During the cross examination of one of the detectives, Mills asked the detective if it was a “common scheme” for an individual to ask a homeless person to cash a check for the individual with the expectation that the homeless person would be given a certain amount of money from the cashed check and then give the remainder of the cashed check to the individual. (Tr. Vol. 2 at 40). The detective confirmed that that practice could happen and that the detectives had investigated to verify that Mills was not a part of such a scheme. The detective also testified that such a scheme was not at issue because the two individuals had not asked Mills for any money from the cashed check. During closing arguments, the State and Mills argued that the case “all boil[ed] down” to Mills’ intent. (Tr. Vol. 2 at 62, 68).

[11] The jury found Mills guilty as charged. The trial court imposed a sentence of 547 days on each of Mills’ convictions and ordered them to be served concurrently to each other.

[12] Mills now appeals.

Decision

- [13] Mills argues that the evidence was insufficient to support his forgery and attempted theft convictions. Our standard of review for sufficiency of the evidence claims is well settled. We “consider only the probative evidence and reasonable inferences *supporting* the verdict.” *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007) (emphasis in original). We do not reweigh the evidence or judge witness credibility. *Id.* We will affirm the conviction unless no reasonable fact finder could find the elements of the crime proven beyond a reasonable doubt. *Id.* at 146-47. The evidence is sufficient if an inference may be reasonably drawn from it to support the verdict. *Id.* at 147.
- [14] The forgery statute, INDIANA CODE § 35-43-5-2, provides that “[a] person who, with intent to defraud, makes, utters, or possesses a written instrument in such a manner that it purports to have been made . . . by authority of one who did not give authority[.]” I.C. § 35-43-5-2(b)(4). Thus, to convict Mills of Level 6 felony forgery as charged, the State was required to prove beyond a reasonable doubt that Mills, with an intent to defraud, made, uttered, or possessed a written instrument in such a manner that it purported to have been made by the authority of Moore, who had not given authority. *See* I.C. § 35-43-5-2 (b)(4).
- [15] The theft statute, INDIANA CODE § 35-43-4-2, provides that “[a] person who knowingly or intentionally exerts unauthorized control over property of another person, with intent to deprive the other person of any part of its value or use, commits theft, a Class A misdemeanor.” I.C. § 35-43-4-2(a). The offense is a

Level 6 felony if “the value of the property is at least seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000)[.]” I.C. § 35-43-4-2(a)(1)(A). The attempt statute, INDIANA CODE § 35-41-5-1, provides that “[a] person attempts to commit a crime when, acting with the culpability required for commission of the crime, the person engages in conduct that constitutes a substantial step toward commission of the crime.” I.C. § 35-41-5-1(a). Therefore, to convict Mills of attempted theft as charged, the State needed to prove beyond a reasonable doubt that Mills engaged in conduct that constituted a substantial step toward exerting unauthorized control over Moore or the Bank’s property with intent to deprive them of any part of its value or use. I.C. §§ 35-43-4-2(a)(1)(A); 35-41-5-1(a).

[16] Mills does not dispute that the check was a fake check and had not been authorized by Moore. Instead, Mills asserts that the evidence is insufficient to prove that he had the necessary intent for forgery and attempted theft. Specifically, he contends that the State failed to present evidence that he had the intent to defraud and the intent to deprive Moore or the Bank of their property by presenting the fake check to the teller. We disagree.

[17] “A defendant’s intent may be proven by circumstantial evidence.” *Peterson v. State*, 187 N.E.3d 305, 309 (Ind. Ct. App. 2022) (cleaned up). “Intent can be inferred from a defendant’s conduct and the natural and usual sequence to which such conduct logically and reasonably points.” *Id.* (cleaned up). “Intent to defraud may be proven by circumstantial evidence which will often include the general conduct of the defendant when presenting the instrument for

acceptance.” *Miller v. State*, 693 N.E.2d 602, 604 (Ind. Ct. App. 1998) (citing *Wendling v. State*, 465 N.E.2d 169, 170 (Ind. 1984)). Our Court has explained that for an intent to defraud there must be “a potential benefit to the maker or potential injury to the defrauded party.” *Diallo v. State*, 928 N.E.2d 250, 253 (Ind. Ct. App. 2010) (cleaned up). “Because intent is a mental state, the fact-finder often must resort to the reasonable inferences based upon an examination of the surrounding circumstances to determine whether—from the person’s conduct and the natural consequences therefrom—there is a showing or inference of the requisite criminal intent.” *Id.* (cleaned up).

- [18] Here, the evidence and reasonable inferences most favorable to the convictions reveal that Mills presented the teller with a check for almost \$3,000 that had been made payable to Mills and that purported to have been from West Industries. Mills sought to have the teller cash the check, and he indicated that it was for drywall work that he had done. Moore testified that Mills had never worked for West Industries, which was in the steel business, and that if the Bank would have cashed the check presented by Mills, then Moore would have suffered a loss. When the teller noticed that the check was suspicious, she called West Industries to verify the authenticity of the check. As the teller was on the phone with Moore, the teller noted that Mills “was becoming i[m]patient” and “stating that he needed to get going[.]” (Tr. Vol. 2 at 17). Mills also checked his cell phone several times. Once the Bank told Mills that it was not going to cash the check, “he left abruptly” without the check. (Tr. Vol. 2 at 17). Mills told the police that he left the Bank so that he could get back to

his jobsite, but he did not go there and instead went to a store and then took a bus downtown. Additionally, Mills had told the detectives that he no longer had a cell phone because, when he went into the Bank to cash the check, he had left his phone in the car of the younger male who then drove off with it.

[19] Mills' argument that he lacked the necessary intent is nothing more than a request to reweigh the evidence. He made that argument to the jury, and it found him guilty as charged of Level 6 felony forgery and Level 6 felony attempted theft. We will not reweigh the evidence or second-guess the jury's conclusion. *See Drane*, 867 N.E.2d at 146. From Mills' conduct and the natural and usual sequence to which such conduct logically and reasonably pointed, the jury could have reasonably inferred that Mills had the intent to defraud and the intent to deprive Moore or the Bank of their property by presenting the fake check to the teller. Accordingly, we affirm Mills' forgery and attempted theft convictions.

[20] Affirmed.

Altice, C.J., and Riley, J., concur.