MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Luekbra Tyrod Champion,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 29, 2021

Court of Appeals Case No. 20A-CR-1920

Appeal from the Hamilton Superior Court

The Honorable Jonathan M. Brown, Judge

Trial Court Cause No. 29D02-1908-F5-6631

Sharpnack, Senior Judge.

Statement of the Case

[1] Following a bench trial, Luekbra Champion was found guilty of fraud on a financial institution as a Level 5 felony[1] and was sentenced to 766 days in the Indiana Department of Correction (DOC), with 730 days suspended to probation. He appeals his conviction. We affirm.

Issues

[2] Champion presents the following two issues for our review:

1. Whether the State presented sufficient evidence to support his conviction; and
2. Whether the trial court violated the prohibition against double jeopardy.

Facts and Procedural History

[3] Joseph Edwards worked as an assistant manager/team leader for the Noblesville, Indiana Regions Bank branch. On July 22, 2019, one of the tellers asked Edwards to verify a check that had been presented that "didn't look right." Tr. Vol. II, p. 15. The check appeared to be issued by Stacon, a Florida based company and a Regions Bank customer, and was made out to Champion as the payee. Champion had presented identification that was issued by the state of Texas.

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[1] Ind. Code § 35-43-5-8(a)(1) (2014).

[4] Edwards attempted to verify the check by comparing it to other checks issued by Stacon[2] and noticed several inconsistencies between the prior Stacon checks and the check Champion had presented. Edwards testified that prior Stacon checks contained the company's logo as well as the Regions Bank logo. However, the check presented by Champion was "very plain in nature[,]" contained the name of the company but no logo, and was printed in a different font. *Id.* at 16. Also, the check number was inconsistent with that of authentic Stacon checks. Edwards contacted Debra Adams, Stacon's Vice President of Operations, to determine if Stacon had issued the check presented by Champion. After being informed by Adams that Stacon had not issued the check, Edwards called the police.

[5] Noblesville Patrol Officer Matthew Lohrey arrived at the bank. Officer Donlan, another Noblesville officer who was already on scene when Officer Lohrey arrived, led the investigation. Officer Donlan spoke to bank employees while Officer Lohrey remained with Champion. Champion told Officer Lohrey that he was from Texas and was traveling with his mother to Detroit, Michigan. He explained that he worked for Mantegazza SRL ("Mantegazza"), an Italian company, and that his job was to cash checks for the company and then transfer the funds to Italy. Champion provided Officer Lohrey with the name of his manager, Nico Caruso, and requested that the officers verify his employment

[2] The bank had access to an online electronic database that allowed employees to view images of checks that had been issued in the past.

with the Italian company. However, the officers did not do so. Officer Lohrey testified that no attempts were made to contact Caruso because the phone number that Champion provided to the officers could not be verified, and there was no way to verify the identity of the individual with whom they would speak. After the officers spoke with Edwards and Champion, Champion was taken into custody. Champion was calm and cooperative during his interaction with Edwards and the officers.

[6] Champion was charged with Level 5 felony fraud on a financial institution and Level 6 felony forgery. On June 5, 2020, Champion waived his right to a jury trial and requested a bench trial. The trial court granted his request on June 10, 2020.

[7] The bench trial was held on August 31, 2020, during which, Champion testified that in May or June 2019, he wanted a career change. So, he updated his resume and posted it on internet job sites. Champion stated that Mantegazza contacted him by email to discuss a position with the company as a real estate property manager.

[8] Champion testified that he exchanged several emails and phone calls with Caruso and then officially interviewed for the position. Champion understood that his duties would involve "[p]urely financial transactions"—specifically, Champion would receive forwarded payments from Mantegazza's customers and then Champion would "move the money[.]" *Id.* at 68. Champion would be paid $5,000.00 each month and, in addition, was to keep five percent of each

payment he handled. Champion stated that initially he thought the opportunity was "too good to be true" but, after exchanging additional emails with Caruso, was convinced that it was a legitimate opportunity. *Id.* at 79. Champion was hired by Mantegazza, and he signed an employment contract.

[9] Champion received his first assignment from Mantegazza in July 2019. According to Champion, he was told that a customer check from Stacon would be mailed to him, and he was instructed to cash the check, keep five percent of the overall amount of the check, and then forward the remainder of the funds to Mantegazza in Italy. Champion retrieved the check on July 20 or 21, from his Texas address. He then proceeded to drive with his mother to Detroit, stopping in Noblesville to cash the check.

[10] At the conclusion of the bench trial, Champion was found guilty as charged. At sentencing, on September 25, 2020, the trial court entered judgement of conviction as to Count 1 only—fraud on a financial institution as a Level 5 felony—but did not enter judgment of conviction on Count 2, forgery as a Level 6 felony. Instead, the court merged the forgery conviction into the fraud conviction. Champion was sentenced to 766 days executed in the DOC with 730 days suspended to probation and 36 days ordered as time served. Champion now appeals.

Discussion and Decision

I. Sufficiency of the Evidence

A. Requisite Intent

[11] Champion contends that the evidence is insufficient to sustain his conviction of Level 5 felony fraud on a financial institution, claiming that the State failed to present evidence sufficient to prove that he acted with "fraudulent intent" when he presented the check to Regions Bank. Appellant's Br. p. 11. When reviewing a challenge to the sufficiency of the evidence, we neither reweigh the evidence nor assess the credibility of witnesses. *Bailey v. State*, 979 N.E.2d 133, 135 (Ind. 2012). We view the evidence—even if conflicting—and all reasonable inferences drawn from it in a light most favorable to the conviction and affirm if there is substantial evidence of probative value supporting each element of the crime from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. *Id.*

[12] Indiana Code section 35-43-5-8(a) defines Level 5 felony fraud on a financial institution, in relevant part, as follows:

> A person who knowingly executes, or attempts to execute, a scheme or artifice:
>
> > (1) to defraud a state or federally chartered or federally insured financial institution; . . .
>
> commits a Level 5 felony.

"A person engages in conduct 'knowingly' if, when he engages in the conduct, he is aware of a high probability that he is doing so." Ind. Code § 35-41-2-2(b)

(1977). Black's Law Dictionary defines a "scheme" as "an artful plot or plan, usu. to deceive others." *Scheme*, BLACK'S LAW DICTIONARY (10th ed. 2009). It defines an "artifice" as "a clever plan or idea, esp. one intended to deceive." *Artifice*, BLACK'S LAW DICTIONARY (10th ed. 2009).

[13] Champion contends the State did not prove that he knowingly defrauded Regions Bank. He maintains that he "reasonably believed that the check was valid, and that he was acting in accordance with the terms and scope of his employment." Appellant's Br. p. 12. Thus, his conviction should be reversed because, according to Champion, "there is insufficient evidence to support the contention that [he] knowingly or intentionally sought to defraud Region's [sic] Bank[.]" *Id.* We disagree and find that there was sufficient evidence to prove beyond a reasonable doubt that Champion intended to defraud the bank.

[14] The evidence most favorable to the judgment established that despite any doubts as to the legitimacy of the employment opportunity with Mantegazza, Champion proceeded to attempt to cash a forged check at Regions Bank. The check he presented was similar to checks used by Stacon, a bank customer—however, the check Champion presented contained subtle differences from authentic Stacon checks as to logos, the printed font, and the check numbering sequence. When compared to authentic Stacon checks, the forged check was "very plain in nature" whereas the authentic Stacon checks were much more elaborate. Tr. Vol. II, p. 16. Furthermore, Champion resides in Texas, and he testified that he received the forged check at his address in Texas. Yet, he did not cash the check at a local bank. Instead, Champion drove hundreds of miles

to Indiana and attempted to cash the check at a bank located in Noblesville where he did not have an account. Champion testified that he believed his hiring by Mantegazza and Nico Caruso was a legitimate job opportunity but also conceded that the opportunity seemed "too good to be true." *Id.* at 79. Champion testified that he signed an employment agreement provided by Mantegazza and that he had, in the past, "started a couple of [his own] corporations" and hired employees, but he further testified that he did not fill out any tax or insurance forms after he was hired by Mantegazza. *Id.* at 89.

[15] While Champion's testimony and evidence was that he was duped into attempting to cash a counterfeit check by the Italian company he worked for and that he was calm and cooperative during the entire incident at the bank, the trier of fact was not required to accept his explanation. "The factfinder is obliged to determine not only whom to believe, but also what portions of conflicting testimony to believe, and is not required to believe a witness'[s] testimony even when it is uncontradicted." *Wood v. State*, 999 N.E.2d 1054, 1064 (Ind. Ct. App. 2013) (citation omitted), *trans. denied* (2014). In fact, at the conclusion of the bench trial, the trial court expressly stated that it did not find Champion's explanation credible. *See* Tr. Vol. II, p. 117.

[16] Evidence that Champion took a fraudulent check—designed to look similar to an actual Stacon check—and attempted to cash the check at a bank located hundreds of miles from his home allowed the trial court to reasonably infer that Champion knowingly attempted to execute a scheme or artifice to defraud Regions Bank. Our inquiry on appeal is whether the evidence supports the trier

of fact's determination. To conclude that insufficient evidence exists here would require us to reweigh the evidence and second-guess the trial court's assessment of the witnesses' credibility. We will not undertake this task on appeal. *See Bailey*, 979 N.E.2d at 135.

B. Mistake of Fact

[17] Champion also argues that his attempt to cash the forged check was a mistake of fact "such that he could not have possessed the requisite intent required to satisfy the intent element of [his] crime." Appellant's Br. p. 12. Indiana Code section 35-41-3-7 (1977) provides: "It is a defense that the person who engaged in the prohibited conduct was reasonably mistaken about a matter of fact, if the mistake negates the culpability required for commission of the offense." When the State has made a prima facie case of guilt, the burden is on the defendant to establish an evidentiary predicate of his mistaken belief of fact, which is such that it could create a reasonable doubt in the factfinder's mind that the defendant had acted with the requisite mental state. *Hoskins v. State*, 563 N.E.2d 571, 575 (Ind. 1990). Upon invoking mistake of fact as a defense, the burden shifts to the defendant to satisfy three elements: "(1) that the mistake be honest and reasonable; (2) that the mistake be about a matter of fact; and (3) that the mistake negate the culpability required to commit the crime." *Potter v. State*, 684 N.E.2d 1127, 1135 (Ind. 1997) (citing *Smith v. State*, 477 N.E.2d 857, 863 (Ind. 1985)).

[18] The State, however, retains the ultimate burden of proving beyond a reasonable doubt every element of the charged crime, including culpability or intent, which

would in turn entail proof that there was no reasonably held mistaken belief of fact. *Hoskins*, 563 N.E.2d at 575-76. The State may meet its burden by directly rebutting evidence, by affirmatively showing that the defendant made no such mistake, or by simply relying upon evidence from its case in chief. *Bergmann v. State*, 486 N.E.2d 653, 660 (Ind. Ct. App. 1985). Whether the defendant made a mistake of fact is a question for the trier of fact, which we review like other challenges to the sufficiency of the evidence. *Saunders v. State*, 848 N.E.2d 1117, 1121 (Ind. Ct. App. 2006), *trans. denied.*

[19] Champion maintains the State failed to put forth sufficient evidence to rebut his mistake of fact defense and to demonstrate beyond a reasonable doubt that he acted with the requisite intent to commit fraud on a financial institution. We disagree.

[20] Champion admitted that the employment opportunity Caruso presented to him seemed too good to be true. His only job duty with the Italian company would be to cash checks. Nevertheless, Champion accepted the position. Champion received the first check within one or two days of being hired by Mantegazza. Although the first check Champion received was drawn on a Florida business, it was sent to Champion from a California address, and Champion proceeded to attempt to cash the check at a Regions Bank located in Indiana when his home state was Texas.

[21] Champion told the Noblesville officers who responded to the scene that there were "red flags" regarding the employment opportunity. Tr. Vol. II, pp. 42, 79.

In his interview with the officers, he characterized himself as intelligent and a "'very smart businessman.'" Appellant's App. Vol. II, p. 49. However, he believed not only that an Italian company needed an intermediary to cash checks and then send the proceeds to the entity in Italy, but also that he would be paid a salary of $5000.00 per month plus an additional five percent of the funds he handled.

[22] It is the trier of fact's prerogative to weigh the evidence and to determine who is telling the truth. *See Bergmann*, 486 N.E.2d at 660. The trial court here was not required to believe Champion's mistake of fact defense. Champion's argument to the contrary is essentially an invitation to reweigh the evidence, which we will not do. *See Stewart v. State*, 768 N.E.2d 433, 435 (Ind. 2002). We therefore find that the State's case in chief disproved Champion's mistake of fact defense beyond a reasonable doubt, and the State presented sufficient evidence for the trial court to reasonably conclude that Champion acted with the requisite intent when he committed fraud on a financial institution.

II. Double Jeopardy

[23] Lastly, Champion claims that double jeopardy principles were violated when, at sentencing, the trial court did not vacate the forgery count but, instead, merged the count into the fraud on a financial institution count and entered judgment of conviction solely on the fraud count. We disagree.

[24] "[A] defendant's constitutional rights are violated when a court *enters judgment* twice for the same offense, but not when a defendant is simply found

guilty of a particular count." *Green v. State*, 856 N.E.2d 703, 704 (Ind. 2006) (emphasis added). As we summarized in *Kovats v. State*:

> If a trial court does not formally enter a judgment of conviction on a jury verdict of guilty, then there is no requirement that the trial court vacate the "conviction," and merger is appropriate. *Townsend v. State*, 860 N.E.2d 1268, 1270 (Ind. Ct. App. 2007) (quoting *Green v. State*, 856 N.E.2d 703, 704 (Ind. 2006))[, *trans. denied*]. However, if the trial court does enter judgment of conviction on a jury's guilty verdict, then simply merging the offenses is insufficient and vacation of the offense is required. *See id.* . . . .

982 N.E.2d 409, 414-15 (Ind. Ct. App. 2013).

[25] Here, the trial court entered judgment of conviction only on Count 1, fraud on a financial institution. Because the trial court never entered judgment of conviction on Count 2, forgery, there was no double jeopardy problem. Thus, the trial court's "merger" was sufficient to cure any double jeopardy issue. *See Kovats,* 982 N.E.2d at 415. We find no error in this regard.

Conclusion

[26] For the reasons stated, we conclude that the State presented sufficient evidence to sustain Champion's conviction, and Champion was not subjected to double jeopardy when the court merged the forgery count into the fraud on a financial institution count. The judgment of the trial court is affirmed.

[27] Affirmed.

Bradford, C.J., and May, J., concur.