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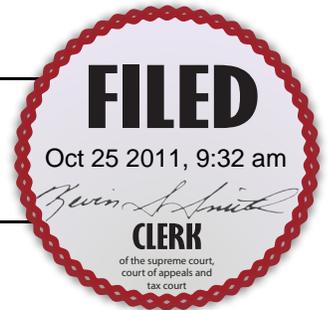
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**IN THE  
COURT OF APPEALS OF INDIANA**

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JONATHAN JONES, )  
 )  
Appellant-Defendant, )  
 )  
vs. )  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

No. 49A02-1102-CR-60

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Robert R. Altice, Jr., Judge  
The Honorable Amy J. Barbar, Magistrate  
Cause No. 49G02-1004-FC-23686

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**October 25, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**MAY, Judge**

Jonathan Jones appeals his convictions of Class C felony forgery<sup>1</sup> and two counts of Class D felony theft.<sup>2</sup> He raises three issues for our review:

1. Whether the State presented sufficient evidence to prove the element of intent for Jones' forgery and theft convictions; and
2. Whether Jones' convictions of both forgery and theft subjected him to double jeopardy.

We affirm in part and reverse in part.

### **FACTS AND PROCEDURAL HISTORY**

In December 2009, Jones and his girlfriend, Heather Fischer, moved in with Fischer's uncle, Wayne West. The couple paid West \$75 per week in rent, and Fischer cleaned the house to "pitch in." (Tr. at 12.) In February 2010, West noticed money missing from his wallet and coins missing from a money jug in his home. He suspected Fischer and Jones stole the money, and on February 18, he told Fischer and Jones they had to move out.

On February 25, West discovered two of his bank accounts were missing money. West obtained copies of six checks that he had not written, but that had been cashed on his accounts. Three were written to Jones, and three were written to Fischer.<sup>3</sup> West contacted the police and provided them copies of the checks. While the police were at West's house,

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<sup>1</sup> Ind. Code § 35-43-5-2(b).

<sup>2</sup> Ind. Code § 35-33-4-2(a).

<sup>3</sup> Fischer wrote all six checks and the three payable to Jones she gave to Jones for him to cash.

Jones and Fischer arrived. They admitted stealing money and indicated they would pay it back.

The State charged Jones with three crimes and, for reasons not apparent from the record, all three crimes were based on Jones' actions with just one of West's checks. The State charged one count of Class C felony forgery based on Jones' possession of a forged instrument, one count of Class D theft alleging Jones deprived West of the use of the check, and one count of Class D felony theft alleging Jones deprived West and Chase Bank of the use of the \$108 Jones obtained by cashing the check. After a bench trial, Jones was convicted of all charges.

## **DISCUSSION AND DECISION**

### 1. Sufficiency of Evidence

When reviewing sufficiency of evidence to support a conviction, we consider only the probative evidence and reasonable inferences supporting the trial court's decision. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). It is the fact-finder's role, and not ours, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. *Id.* To preserve this structure, when confronted with conflicting evidence, we consider it most favorably to the trial court's ruling. *Id.* We affirm a conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. *Id.* It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence; rather, the evidence is sufficient if an inference reasonably may be

drawn from it to support the trial court's decision. *Id.* at 147.

To prove Jones committed Class C felony forgery, the State was required to prove that he, “with intent to defraud, ma[de], utter[ed], or possesse[d] a written instrument in such a manner that it purports 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 authority.” Ind. Code § 35-43-5-2(b). Knowledge a written instrument is false is not an element of the crime of forgery. *Wendling v. State*, 465 N.E.2d 169, 170 (Ind. 1984).

“An intent to defraud involves an intent to deceive and thereby work a reliance and an injury” “[T]here must be a potential benefit to the maker or potential injury to the defrauded party.” Because intent is a mental state, the fact-finder often must “resort to the reasonable inferences based upon an examination of the surrounding circumstance to determine” whether – from the person’s conduct and the natural consequences therefrom – there is a showing or inference of the requisite criminal intent.

*Diallo v. State*, 928 N.E.2d 250, 252-3 (Ind. Ct. App. 2010) (internal citations omitted).

To prove Jones committed Class D felony theft, the State was required to prove he “knowingly or intentionally exert[ed] unauthorized control over property of another person, with intent to deprive the other person of any part of its value or use.” Ind. Code § 35-33-4-2(a). The State asserted Jones committed theft by depriving West of the use of his check and by depriving West and Chase bank the use of \$108.

It is undisputed that Jones possessed a check drawn on West’s account but written by Fischer. Nevertheless, Jones asserts he did not have either the “intent to defraud” required for forgery or the “intent to deprive” required for theft because he did not know Fischer had

forged West's signature on the check. Intent may be proven by circumstantial evidence alone, and it is well established that knowledge and intent may be inferred from the facts and circumstances of each case. *Lykins v. State*, 726 N.E.2d 1265, 1270-71 (Ind. Ct. App. 2001).

The State is not required to prove intent by direct and positive evidence. *Id.*

At trial, Fischer testified she told Jones that West paid her \$108 for cleaning the house and that West made the check out to Jones because she did not have her identification. Fischer claimed Jones did not know the check was forged. However, the State presented evidence Fischer and Jones cashed checks at the same Checksmart six times in the two weeks between February 11 and 25, 2010. The State argued:

If you look at those exhibits, Judge, you will see that Heather Fischer cashed a check on February 11<sup>th</sup>, Jonathan [sic] Jones cashed one on February 12<sup>th</sup>, Heather Fischer cashed one on February 13<sup>th</sup>, Jonathan [sic] Jones cashed one on February 18<sup>th</sup>, Heather Fischer cashed one on February 20<sup>th</sup>, and then Jonathan [sic] Jones cashed one on February 25<sup>th</sup>. They are alternating each time, taking turns going into the Checksmart, so it's not to make this too obvious. Taking turns being the one to actually go in and present the check. Uh, this is a couple, Judge, this a — Mr. Jones at that time probably knows Heather Fischer as well as anyone in the world. He knows that she has I.D. I am sure that she uses her I.D. for all kinds of other purposes. It's not believable; it's not reasonable to think she could lie to him and get him to cash three checks over the course of two weeks because she didn't have I.D. He would know better than that. He would also know better than to believe that Wayne West had wrote [sic] her not \$108 dollars worth of checks, Judge, but \$606 dollars worth of checks in two weeks for cleaning a house he was living in. It's not as though he never saw this house and wasn't aware of all the this [sic] work was going on. He is coming home to that house every day. And knows that during the course of that two weeks, she was no [sic] doing \$600 dollars worth of work there at that residence where he was living with her and with the victim. That arrangement doesn't even make any sense when you consider that they testified, they're paying him rent every two weeks. Why are

they just exchanging checks? Why isn't she just earning their rent by cleaning the house?

(Tr. at 49-50.)

The State presented evidence that Jones and Fischer had developed an alternating pattern of cashing West's checks, that Jones and Fischer paid rent to West, that West never offered to pay Fischer money for cleaning the house, and that the reason Fischer allegedly gave Jones for why West made the check out to Jones lacked credibility. This evidence indicates Jones knew West had not written the checks and permits an inference that Jones intended to defraud West and to deprive West of his property. Jones' argument is an invitation for us to reweigh the evidence, which we cannot do. *See Drane*, 867 N.E.2d at 146. Accordingly, we affirm Jones' convictions of Class C felony forgery and Class D felony theft.

2. Double Jeopardy

Article 1, Section 14 of the Indiana Constitution provides that "no person shall be put in jeopardy twice for the same offense." Two or more offenses are the same if, "with respect to either the statutory elements of the challenged crimes or the actual evidence used to convict, the essential elements of one challenged offense also establish the essential elements of another challenged offense." *Richardson v. State*, 717 N.E.2d 32, 49 (Ind. 1999). Double jeopardy may also be proven when there is a "reasonable probability that the evidentiary facts used by the fact finder to establish the essential elements of one offense may also have been

used to establish the essential elements of the second offense.” *Id.* at 53.

To support his argument he was subjected to double jeopardy, Jones cites *Williams v. State*, 892 N.E.2d 666, 669 (Ind. Ct. App. 2008), *trans. denied*, in which we held Williams’ convictions of forgery and attempted theft subjected her to double jeopardy. The only evidence of Williams’ alleged forgery and attempted theft was “the fact that Williams presented the stolen and fraudulent check to Old National.” *Id.* The State presented no evidence “whatsoever that would tie Ms. Williams[,] besides the fact she had this check later on[,] to the theft from Ms. Ranger’s car.” *Id.* Similarly, in the case before us there is evidence Jones had an opportunity to take the check from West. But the State presented no evidence that Jones took the check. To prove forgery, the State presented evidence Jones possessed West’s check that he received from Fischer. The State used Jones’ possession of the same check to prove Jones exerted control over West’s check, which control was required to prove theft. Thus, like *Williams*, we conclude Jones’ convictions of both forgery and theft based on his possession of the same check subjected him to double jeopardy. *See id.* Accordingly, we reverse Jones’ conviction of theft of West’s check. *See Richardson*, 717 N.E.2d at 55 (“Because both convictions therefore cannot stand, we vacate the conviction with the less severe penal consequences.”).<sup>4</sup>

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<sup>4</sup> Jones also argues his two theft convictions violate the single larceny rule. As we reverse one of his theft convictions on double jeopardy grounds, we need not address this issue.

## CONCLUSION

The State presented sufficient evidence to convict Jones of Class C felony forgery and one count of Class D felony theft. Because the State used the same evidence to convict Jones of forgery and a second count of theft, the convictions for both counts violate the double jeopardy clause of Article I, Section 14 of the Indiana Constitution. Accordingly, we affirm Jones' forgery conviction and the theft conviction involving West's money; we reverse Jones' theft conviction involving West's check.

Affirmed in part, and reversed in part.

RILEY, J., and NAJAM, J., concur.