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2016 IL App (3d) 140443-U

Order filed December 9, 2016

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2016

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-14-0443
MAURICE V. SARGENT,)	Circuit No. 12-CF-1273
Defendant-Appellant.)	Honorable David A. Brown, Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Presiding Justice O'Brien and Justice Wright concurred in the judgment.

ORDER

- ¶ 1 *Held:* Evidence was insufficient to establish defendant's guilt beyond a reasonable doubt of forgery in that it failed to demonstrate defendant knew the money order was false when he tendered it for payment.
- ¶ 2 Defendant, Maurice V. Sargent, was charged with forgery (720 ILCS 5/17-3(a)(2) (West 2012)) for attempting to tender a false MoneyGram money order at a local business. A jury found defendant guilty of the charged offense, and the trial court sentenced him to two years and six months in prison. On appeal, defendant contends that the State failed to prove that he knew

the money order was false and that he delivered it with the intent to defraud beyond a reasonable doubt. Because we agree that the State did not establish that defendant knowingly delivered a forged document, we reverse defendant's conviction.

¶ 3

FACTS

¶ 4

At trial, the State called three witnesses. The first witness, John Bricker, testified that in August of 2012, he was the manager of Tax Pro's of America (Tax Pro), also known as Get Er Done Financial, a check cashing facility in Peoria. Bricker stated customers can cash a check or money order at Tax Pro with photo identification. He explained that money orders have security features that are hard to counterfeit. He stated that MoneyGram money orders have a color variance on the face of the document and a "heat-seeker" mark used for authentication. Counterfeit money orders are usually "off-pink" in color, which is not the color of real money orders.

¶ 5

Bricker identified State's Exhibit 1, which was a state identification card for a "Maurice Sargent," and a piece of paper entitled "MoneyGram Money Order" in the amount of \$885 made payable to "Maurice Sargent" from "Linda Carter." The money order also had an address of "3630 Bloomfield TX 77051" on it. The names and addresses were handwritten. The phrase "ORIGINAL DOCUMENT" appeared as a white watermark in three places on the money order. It also contained a pink stop sign in the upper portion of the document above Sargent's signature.

¶ 6

Bricker testified that the money order looked similar to a MoneyGram money order, but the heat-seeker stop sign did not work. He explained that on an authentic MoneyGram order, a person can touch the stop sign and watch it fade, and then it should reappear. He testified that on the MoneyGram contained in Exhibit 1 that does not happen. He also noted that the address

appeared to be incorrect because it was a number without a street name. He did not know whether Bloomfield was a city or a street.

¶ 7 Bricker stated that he sees thousands of money orders a year and that people present forged or false checks and money orders to him on a daily basis. He has previous work experience as a MoneyGram agent and has training in how to detect forged documents. Based on his testimony, the trial court qualified Bricker as an expert in the field on MoneyGram money order. Bricker then stated that in his expert opinion, the money order in this case was a forged document.

¶ 8 Officer Jerald McKean arrived at Tax Pro on August 6, 2012, in response to a reported forgery. Bricker presented him with the false MoneyGram document and defendant's state identification card.

¶ 9 Detective Aaron Zaborac reviewed photocopies of the identification and the money order and contacted Tax Pro to make sure that an identification was made during the time of the transaction. He later interviewed defendant on December 6, 2012. During the interview, Zaborac asked defendant about presenting the money order. Defendant told him that he went to Tax Pro with a friend, whom he later identified as "Lamar." Lamar asked defendant if he had a valid ID and whether he would be willing to cash a money order for him. Lamar said he would give defendant some of the money from the money order if defendant agreed to help him. Defendant stated that he went to Tax Pro and gave the cashier the money order but "got nervous and left" because the man working there started asking him questions. Zaborac continued to question defendant about Lamar, but defendant was unable to give him any details.

¶ 10 Defendant provided a written statement that was consistent with the statement he gave in the interview. He wrote that Lamar called him one morning and asked whether defendant had a

valid state identification. Lamar then asked if defendant would cash a money order that his aunt sent him for his birthday. Defendant stated that “at the time I thought nothing of it and said I would do it. So we went to Krogers [sic] first but they didn’t cash money orders there. So we tried [sic] Shop-rite on Western and we still had no luck, so after that we tried Git-R-Done [sic] on Main Street.” Defendant waited in line and handed his photo identification and the money order to the cashier. The cashier then asked defendant, “Do you have any more of these?” Defendant panicked because he did not know what was happening. He stated that he was “so scared and shocked, [that he] ran out the door.”

¶ 11 Kanesha Smith, defendant’s girlfriend, testified that she lived with defendant and his aunt in August of 2012. Defendant’s friend, Lamar, came to the house one day and gave defendant a money order that was signed by “Linda Carter.” Defendant showed it to Smith, and she said that it looked real. She testified that she thought it looked real because she watched her father cash money orders before. She did not see anyone write on the money order. Defendant borrowed her car and left the house with Lamar.

¶ 12 Lamar Nixon testified that he first saw the money order when his sister showed it to him and asked him if it was real. The first time he looked at it, the name “Linda Carter” and the Texas address were filled in. He took it to defendant’s house to see if it was real. He handed the money order to defendant and explained that his sister wanted to know whether it was real. He did not tell defendant anything about the document; he just said that his sister wanted to know if it was real or not. Defendant took the money order and went to ask his aunt. Lamar was not in the room when defendant asked his aunt. Defendant then came downstairs with his name on the money order. He and Lamar went to Tax Pro together to try to cash it. He saw defendant walk

up to the counter and then walk away. Lamar stated that he did not know whether the money order was a false document.

¶ 13 On cross-examination, Lamar stated that he and defendant did not go to Kroger or ShopRite to try to cash the money order. He was not trying to get money; he was just trying to determine if the money order was real. Lamar admitted that he had been convicted of armed robbery in 2008.

¶ 14 Defendant testified that Lamar brought the money order to his house and said he could not find his identification. He asked defendant if he could cash it for him. He and Lamar did not discuss how much money defendant would get for helping Lamar. At that time, no one said anything about a counterfeit or fraudulent money order. Defendant had never looked at a money order up close before. There was nothing on the face of the money order that worried him. The name “Linda Carter” did not make him suspicious because Lamar told him that Lamar’s aunt gave it to him for his birthday.

¶ 15 Defendant stated that when he arrived at Tax Pro he signed his name on the money order in the parking lot. He then entered the business and waited in line. Lamar entered as well and sat down in a chair. When defendant handed the money order to the man, the man started asking him a lot of “weird questions” like, “do you got [sic] any more of these.” Defendant testified that he became nervous and left the store.

¶ 16 After leaving, he and Lamar had an argument. He was mad at Lamar because he believed Lamar knew more about the document than what he had initially told him. Defendant testified that the written statement he provided to Detective Zaborac was accurate and that he had been convicted of robbery in 2011.

¶ 17 In closing argument, the prosecutor maintained that defendant had committed forgery by delivering the money order to Tax Pro, knowing that the money order was false. During deliberations, the trial court informed the jury that the State had to prove the following propositions: (1) that defendant, or one for whose conduct he is legally responsible, knowingly issued or delivered a money order which he knew had been made or altered so that it appeared to have been made by another; (2) that defendant, or one for whose conduct he is legally responsible, did so with the intent to defraud; and (3) that the money order was apparently capable of defrauding. The jury found defendant guilty of forgery, and the trial court sentenced him to two years and six months in prison, plus one year of mandatory supervised release.

¶ 18 ANALYSIS

¶ 19 Defendant contends that the State failed to prove him guilty beyond a reasonable doubt of forgery because the evidence was insufficient to establish that he knew the money order was a false document and that he intended to defraud the cashier when he delivered it to Tax Pro.

¶ 20 A defendant's conviction will not be set aside “unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt.” *People v. Collins*, 106 Ill. 2d 237, 261 (1985). The relevant question is 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. *Id.* The State has the burden of proving beyond a reasonable doubt all of the material and essential facts constituting the crime. *People v. Weinstein*, 35 Ill. 2d 467, 470 (1966). It is the reviewing court’s duty to “not only to carefully consider the evidence but to reverse the judgment if the evidence is not sufficient to remove all reasonable doubt of the defendant’s guilt and is not sufficient to create an abiding conviction that he is guilty of the crime charged.” *People v. Ash*, 185 Ill. 2d 485, 492-93 (1984).

¶ 21 In this case, defendant was charged with forgery under section 17-3(a)(2) of the Criminal Code of 2012 (720 ILCS 5/17-3(a)(2) (West 2012)). Section 17-3(a) provides:

(a) A person commits forgery when, with intent to defraud, he or she knowingly:

(1) makes a false document or alters any document to make it false and that document is apparently capable of defrauding another; or

(2) issues or delivers such document knowing it to have been thus made or altered. 720 ILCS 5/17-3(a) (West 2012).

Thus, to convict defendant of forgery, the State had to prove beyond a reasonable doubt the following elements: (1) a false document apparently capable of defrauding another; (2) a making or altering of such document by one person in a 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. See *People v. Hockaday*, 93 Ill. 2d 279, 282 (1982).

¶ 22 A person acts “knowingly” or “with knowledge” when he is consciously aware that his conduct is of such a nature or that such circumstances exist. 720 ILCS 5/4-5(a) (West 2012).

“Knowledge of a material fact includes awareness of the substantial probability that the fact exists.” 720 ILCS 5/4-5(a) (West 2012). Merely establishing that the defendant should have known is a lesser mental state of recklessness that does not satisfy the requirements for the culpable mental state of knowledge. *People v. Nash*, 282 Ill. App. 3d 982, 986 (1996).

¶ 23 Defendant contends that the State failed to prove the third and fifth elements of forgery because the evidence failed to establish that he knew the money order had been falsely made. To prove knowledge, the State had to establish that defendant was aware of a substantial probability that the money order was a false document when he tendered it to Bricker. See *Nash*, 282 Ill. App. 3d at 986. Bricker testified that the only mark on the face of the money order that

identified the falsification of the document was the heat-sensitive stop sign. However, there was no evidence that defendant knew the heat sensitive marker indicated authenticity or knew its method of identifying counterfeit money orders. Without such knowledge, the money order appeared to be authentic. Bricker testified that the money order looked similar to a valid MoneyGram money order, and defendant and Lamar opined that it looked like a real money order before they went to Tax Pro. Although defendant and Lamar asked others about the document's legitimacy, no one informed them that the money order was false or indicated that its validity was questionable.

¶ 24 The State argues that defendant's act of fleeing Tax Pro after Bricker instructed him to sit down indicates that he had knowledge that the document was false. In *People v. Davis*, 29 Ill. 2d 127 (1963), our supreme court held that fleeing may be consistent with innocence in light of the circumstances. *Davis*, 29 Ill. 2d at 130-31. Here, defendant left Tax Pro after the document was tendered. His decision to leave after being questioned by Bricker does not demonstrate that defendant was aware of the substantial probability that the document was false at the time of delivery. While it may suggest that defendant believed the money order was a forged document when he left Tax Pro, proof of knowledge after delivery does not satisfy the third element of forgery. See 720 ILCS 5/17-3(a)(2) (West 2012). Such evidence fails to prove beyond a reasonable doubt that defendant knew the money order was counterfeit when he delivered it for payment.

¶ 25 The facts, when viewed in the light most favorable to the prosecution, do not support a reasonable inference that defendant had knowledge that the document was not valid and intended to defraud Tax Pro by presenting the MoneyGram to the cashier. Accordingly, defendant's

conviction of forgery is reversed. Because the reversal is premised on insufficient evidence, a retrial is barred by double jeopardy. See *People v. Olivera*, 164 Ill. 2d 382, 393 (1995).

¶ 26

CONCLUSION

¶ 27

The judgment convicting defendant of forgery is reversed, and his sentence is vacated.

¶ 28

Reversed; sentence vacated.