2016 IL App (3d) 140541-U

Order filed November 14, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2016

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 13th Judicial Circuit,
	)	La Salle County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-14-0541
v.	)	Circuit No. 13-CF-489
	)	
MARK H. JOHNSON,	)	Honorable
	)	Cynthia M. Raccuglia,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justice Lytton concurred in the judgment.
Justice McDade dissented.

ORDER

¶ 1 *Held*: The State proved defendant guilty of forgery by delivery beyond a reasonable doubt. The trial court did not err when it denied defendant's request to proceed *pro se* during posttrial proceedings.

¶ 2 Following a bench trial, defendant, Mark H. Johnson, was convicted of two counts of forgery by delivery and one count of obstructing justice. Defendant appeals, arguing the State failed to prove him guilty beyond a reasonable doubt. Alternatively, defendant argues the cause

should be remanded for new posttrial proceedings because the trial court erred in denying his request to discharge counsel and proceed *pro se*. We affirm.

¶ 3 FACTS

¶ 4 The State charged defendant by supplanting indictment with two counts of forgery by delivery (720 ILCS 5/17-3(a)(2) (West 2012)) and one count of obstructing justice (720 ILCS 5/31-4(a) (West 2012)). The forgery by delivery charges alleged that on October 23, 2013, defendant had, with the intent to defraud, knowingly delivered counterfeit money to the Walmarts in Peru and Ottawa. The obstructing justice charge alleged two days later, defendant provided false identification information to a police officer at a time when defendant was being investigated for forgery by delivery.

¶ 5 At trial, Mary Krogulski testified that on October 23, 2013, she worked as a jewelry associate at the Walmart store in Peru (Peru Walmart). According to Krogulski, a couple purchased a necklace from Krogulski using cash. The man paid for the necklace with five $20 bills, five $10 bills, a $5 bill and a $1 bill. Krogulski described the man as being six feet tall and the woman as being "heavyset." Krogulski accepted the cash and the two individuals left the store. Krogulski did not identify defendant at trial as the individual who made the purchase.

¶ 6 After Krogulski put the money into the cash register, she called the store customer service manager to inspect the money because it "didn't seem right." Krogulski stated the money "stuck together" and "felt different." Krogulski described the bills as feeling like "copy paper." Krogulski did not know what her manager did with the money after taking it from Krogulski's register. On cross-examination, Krogulski explained that the police provided her with photographs of possible suspects, but Krogulski could not identify any individuals.

¶ 7 Mark Wright, an asset protection associate at the Peru Walmart, testified that he compiled a video from the events captured by the surveillance cameras focused on the jewelry counter and parking lot of the Peru Walmart on October 23, 2013.

¶ 8 Over the defense's objection, the trial court admitted the Peru Walmart surveillance video from October 23, 2013, into evidence. The video of the transaction described in Krogulski's testimony shows a man and women purchasing a necklace from Krogulski using cash. The male was wearing a dark hooded coat and white shoes. The woman was wearing a gray sweat suit with a pink hood. Surveillance footage from the parking lot shows the male leave the store prior to making the purchase, visit a white vehicle in the parking lot, and then return to the store to make the purchase. The video also shows a third individual making a cash purchase at a different register than the jewelry register. The third individual was a male who was wearing a black jacket and a black hat. The second man exited the store after his transaction and entered the same white vehicle that had previously been visited by the other male.

¶ 9 Peru police officer Jeremiah Brown testified that he spoke with Krogulski after the incident. Brown retrieved the bills collected from Krogulski's cash register. According to Brown, the money he retrieved was comprised of five $20 bills. Four of the $20 bills had the same serial number. Brown also retrieved five $10 bills, each of which had the same serial number. The bills were admitted into evidence.

¶ 10 Dawn Freeman testified that she worked as a cashier for Walmart on October 23, 2013. Freeman worked at a different Walmart location in Ottawa (Ottawa Walmart). On that day, Freeman rang up a group of three customers. According to Freeman, the first individual purchased clothing and paid with $20 bills. The second individual initially purchased grapes, then made a second transaction. The second transaction consisted of an antenna and a slow

cooker, which Freeman estimated to cost approximately $90. This person paid in cash, mostly with $20 bills. Freeman then processed a transaction with the third individual. The woman purchased a coffeemaker using $20 bills. Freeman also believed the woman used $5 bills, as well as singles. Freeman described the cash she accepted from the three individuals as "strange" because the bills looked "more darkish-green and sand papery." Freeman did not report this information to her supervisor immediately, but was approached the next day by the store's security agent, Rita Perrin, and an assistant manager regarding the money.

¶ 11 On cross-examination, Freeman stated the money she accepted throughout the day remained in her cash register when she left work. Freeman also noted that she did not know what happened to the money in her cash register when she left work that day.

¶ 12 Rita Perrin, the asset protection manager at the Ottawa Walmart, testified that she was notified the next day (October 24, 2013) by the store's accounting department that they had received money that did not "feel right." Perrin took the money in question, put it in her office, and investigated where the money came from. Perrin identified the money as coming from Freeman's cash register on October 23, 2013. Perrin collected the surveillance footage from Freeman's register on October 23, 2013. Based on the footage, Perrin concluded the money in question had come from a group of three customers (two males and one female) who made cash transactions involving several $20 bills. Perrin also collected surveillance video of the three individuals entering and leaving the store. Perrin provided the video footage, along with the money, to the Ottawa police.

¶ 13 Over the defense's objection, the October 23, 2013, surveillance footage from the Ottawa Walmart was admitted into evidence. The video shows a group of three individuals making purchases at Freeman's cash register. The video also shows the male and female enter the store

from a different entrance than the other male. Like Freeman's testimony, all three individuals made cash purchases (two males and one female). One of the males in the video is wearing a dark hooded coat and white shoes. The woman is wearing a gray sweat suit with a pink hood. The other male is wearing a black jacket and a black hat.

¶ 14 Officer Gary Johnson testified he met with Perrin on October 24, 2013. Johnson obtained money from Perrin believed to be counterfeit. In total, Johnson collected twenty-seven $20 bills and six $10 bills. The bills were admitted into evidence.

¶ 15 Detective Scott Harden testified he examined the currency Johnson retrieved from the Ottawa Walmart. Harden testified that all six of the $10 bills retrieved by Johnson had the same serial number. Of the twenty-seven $20 bills, seven bills matched the same serial number and the twenty other bills matched another serial number.

¶ 16 According to Harden, there are countermeasures that can be used by lay people to determine whether currency is legitimate or not. Those measures include the watermark that is visible when the bill is held to a light. In addition, there is a security strip embedded within a bill and there is ink that changes colors when the bill is moved in the light. Each bill also has its own unique serial number. Based on the described countermeasures, Harden opined that the currency he examined was counterfeit. Harden then explained he believed the currency was fake because the bills had identical serial numbers and did not have either a watermark or a security strip.

¶ 17 Kim Ballard testified she was working as a cashier at the Peru Walmart on October 25, 2013, (two days after the Peru and Ottawa Walmarts received counterfeit currency). That day, a man attempted to make a purchase at her register. Ballard described the man as a tall African-American male. The man was wearing a dark jacket and hat. He attempted to pay for his purchase with cash. However, Ballard felt the currency and thought that it did not feel real.

Ballard took the money to the customer service manager. As Ballard and her manager were discussing the money, the individual walked past, took the money from Ballard and the manager, and walked out of the store.

¶ 18 Michael Smith, an asset protection manager at the Peru Walmart, testified that he watched the individual take the money from Ballard and her manager. Smith followed the man out of the store and through the Walmart parking lot to the Starbucks parking lot nearby. Smith observed the man enter a white Cadillac.

¶ 19 Mark Wright, an asset protection associate for the Peru Walmart, accompanied Smith as he followed the individual through the parking lot. Wright called the police.

¶ 20 Peru police officer David Damron testified that he responded to Wright's call. As Damron arrived at Walmart, he observed a white Cadillac leaving the parking lot. Damron stopped the vehicle and then approached it, observing four individuals inside. The driver initially identified himself as Jeffrey Johnson. However, Damron later learned this individual was actually defendant, Mark Johnson. Also in the vehicle were two African-American males and an African-American female. One of the males initially identified himself to police as Mamaduce Engari. Damron later learned the man's name was actually Dani Toure. At the time, Toure was wearing a black jacket and a black hat. The woman was identified as Ketra Davis. All four individuals were taken into custody.

¶ 21 The video recording of the traffic stop was admitted into evidence. In the video, defendant was wearing a dark hooded coat and white shoes. Another male was in defendant's car and was wearing a black jacket and a black hat. A third individual, a female, was wearing a gray sweat suit with a pink hood.

¶ 22 Over the defense's objection, a recording of a telephone call made by defendant while in custody at the La Salle County jail was admitted into evidence. In the recording, defendant identified himself as Mark Johnson, and acknowledged that he gave the false name Jeffrey Johnson to the police. Also over the defense's objection, the clothing worn by Toure and defendant at the time of their arrest was admitted into evidence.

¶ 23 Defendant did not testify or present any evidence during his case-in-chief.

¶ 24 Ultimately, the trial court found defendant guilty of obstructing justice. As to the two counts of forgery by delivery, the trial court stated that there was no doubt the elements of the offense had been proven beyond a reasonable doubt. According to the trial court, the only issue was whether identity had been proven. Relying on the October 25, 2013, traffic stop (which occurred two days after defendant was alleged to have committed forgery by delivery), the trial court concluded that identity had been proven beyond a reasonable doubt. The trial court explained to defendant that the October 25, 2013, traffic stop outside the Peru Walmart provided circumstantial evidence "that placed you, even though you were not involved as to the initial stop, it placed you in and added to the vehicle, the clothing, and as a result convinced this Judge beyond a reasonable doubt that you, [defendant], were both in Peru and Ottawa at the time in question."

¶ 25 Prior to defendant's sentencing hearing, he filed a *pro se* motion for a new trial. Relevant to this appeal, is defendant's allegation that trial counsel was ineffective for failing "to file any motions on behalf of the defendant." Defendant claimed counsel failed to file a motion regarding: (1) the admission of Toure's clothing at trial; (2) Harden obtaining defendant's clothing while defendant was in jail without defendant's consent; (3) Harden's testimony that he did not wear gloves when he collected the counterfeit money; and (4) the Walmart

"Manager['s]" testimony that the money she believed was counterfeit passed through several hands before turning it over to Harden. In his *pro se* motion for a new trial, defendant did not request that he be allowed to represent himself.

¶ 26 At defendant's sentencing hearing, defense counsel asked to strike defendant's *pro se* motion for a new trial. However, defense counsel then told the trial court he spoke with defendant and that defendant told counsel he wanted to proceed *pro se*. The trial court then told defendant it was not convinced based on defendant's educational background and the content of defendant's motion that he was capable of representing himself. The court then asked defendant why he thought he could do a better job than his defense counsel. After hearing defendant's response, the trial court told defendant that his complaints went to the sufficiency of the evidence and the trial court's rulings throughout the proceedings–and not to defense counsel's performance. Defendant told the trial court, "I don't completely want to represent myself. But I was asking him could my motions just be put on file wherever I go." The trial court noted it was "convinced it is not in [defendant's] best interest that [he] proceed to post-trial motions and sentencing without [defense counsel.]" Ultimately, the trial court found defendant did not have the requisite capacity to make an intelligent and knowing waiver of his right to counsel based on its previous findings as to defendant's background and his statements before the court. The trial court denied defense counsel's written motion for a new trial.

¶ 27 After denying the motion for a new trial, the trial court proceeded to conduct the sentencing hearing. Ultimately, the trial court sentenced defendant to nine years' imprisonment.

¶ 28 ANALYSIS

¶ 29 On appeal, defendant argues the State failed to prove his guilt beyond a reasonable doubt. Alternatively, defendant contends the cause should be remanded for new posttrial proceedings.

Specifically, defendant argues the trial court erred by denying his request to discharge counsel and proceed *pro se* for the posttrial proceedings.

¶ 30 Initially, we note defendant only argues the evidence at trial was insufficient to prove beyond a reasonable doubt he committed the offenses of forgery by delivery. The offense of forgery by delivery has five elements:

> "(1) a document apparently capable of defrauding another; (2) a making or altering of such document by one person in such 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." *People v. Hockaday*, 93 Ill. 2d 279, 282 (1982).

¶ 31 Defendant argues the State failed to prove both that defendant knew the currency was counterfeit and that he subsequently delivered the counterfeit currency.

¶ 32 When presented with a challenge to the sufficiency of the evidence, " '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.' " (Emphasis in original.) *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). "When considering a challenge to the sufficiency of the evidence, it is not the function of a reviewing court to retry the defendant." *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). Instead, in a bench trial, the trial court remains responsible for determining the credibility of the witnesses, the weight to be given to their testimony, and the reasonable inferences to be drawn from the evidence. *Id.*

¶ 33 Defendant's argument with regard to the third and fourth elements of the offense involves questions that concern defendant's knowledge and identity. Defendant calls our attention to the

fact that Krogulski and Freeman did not immediately report receiving the counterfeit currency. According to defendant, because others could have been "fooled" as to the authenticity of the currency, it can be fairly inferred that defendant himself was "fooled by it, just as others were."

¶ 34 The money in question lacked the countermeasures included in genuine bills, such as different serial numbers, watermarks, and security strips. While we acknowledge that the store clerks and defendant *arguably* may not have noticed the bills lacked those characteristics, both Krogulski and Freeman testified that the money they received felt very different from regular currency. Krogulski testified that the bills she received did not "seem right" and felt like "copy paper." The unnatural feel of the bills was so apparent that Krogulski subsequently called her manager over to inspect the bills. Similarly, Freeman described the bills as looking "strange" and felt "sand papery." Viewing this evidence in the light most favorable to the State, we conclude the trial court could reasonably infer defendant knew about the counterfeit nature of the money.

¶ 35 Next, defendant contends the evidence is insufficient to prove his identity as the person who delivered the counterfeit currency to the cashier. Defendant points out that the counterfeit money was mixed with other currency in the cash register. Defendant also emphasizes that neither cashier identified defendant as the individual who presented the counterfeit currency.

¶ 36 Here, Krogulski testified that she received currency that "felt different" from a man purchasing a necklace at her register. Krogulski testified the man was with a "heavyset" female. Freeman testified the man paid for the necklace with five $20 bills, five $10 bills, a $5 bill and a $1 bill. Significantly, the surveillance footage depicting events at Krogulski's register is consistent with Krogulski's description of the transaction. The video shows a man purchasing a necklace from Krogulski using cash. Based on Krogulski's testimony, we hold a rational trier of fact could view the Peru Walmart surveillance video and make its own determination of whether

the video depicted defendant purchasing the necklace with the money that Krogulski described as having an unusual texture.

¶ 37 Further, despite Krogulski's lack of knowledge of where the currency went after she gave it to her customer service manager, Officer Brown's testimony supports the inference that the counterfeit currency he retrieved from the Peru Walmart is the same currency that "felt different" to Krogulski. The money Brown retrieved comprised of five $20 bills (four of which had the same serial number) and five $10 bills (all of which had the same serial number). This is consistent with the number of $20 and $10 bills Freeman testified that she accepted from the man purchasing the necklace. Based on the consistency in Krogulski's and Brown's testimony, we hold that a rational trier of fact could infer the counterfeit currency Brown retrieved from the Peru Walmart is the same currency used by the man in the surveillance video.

¶ 38 With respect to the Ottawa Walmart, Freeman testified that she received money that looked "more darkish-green and sand papery" from a group of three customers. Freeman identified the transactions in which she received the currency that looked "more darkish-green and sandpapery" in her testimony. Specifically, she testified the money came from a group of two males and a female that made three separate cash purchases. The first individual made two transactions. First, he purchased grapes, and then he returned to purchase an antenna and a slow cooker using cash. The second male purchased clothing using cash. The female purchased a coffeemaker using cash. Freeman described the money she accepted from each member of the group as "strange" in that it looked "more darkish-green and sandpapery." The surveillance video of the transactions is consistent with Freeman's account of the transactions. The video shows a group of three individuals making cash purchases at Freeman's register. Based on Freeman's testimony, we conclude a rational trier of fact could infer the money she described as

"more darkish-green and sandpapery" came from all three individuals shown making purchases in the Ottawa Walmart surveillance video.

¶ 39 Additionally, despite Freeman's failure to recognize the counterfeit currency, Perrin's testimony supports the inference that the counterfeit currency retrieved by police was the same currency Freeman described as "strange." Perrin (the asset protection manager) testified that the day after Freeman accepted the currency, the accounting department discovered suspicious currency in Freeman's drawer. Perrin obtained the suspicious currency from the accounting department and provided it to the Ottawa police. Detective Harden examined the bills the Ottawa police retrieved from Perrin and determined the currency was counterfeit. Based on the testimony of Freeman, Perrin, and Harden, we conclude a rational trier of fact could infer the counterfeit currency police retrieved from the Ottawa Walmart is the same currency used by all three individuals in the surveillance video.

¶ 40 Having found that a rational trier of fact could conclude that the man seen in the October 23, 2013, surveillance videos from the Peru and Ottawa Walmarts delivered counterfeit currency, we now must consider whether the State proved defendant was the individual seen in the videos passing the counterfeit currency. After careful review, we hold that a rational trier of fact could infer from the circumstantial evidence that defendant delivered counterfeit currency to the Peru and Ottawa Walmarts.

¶ 41 After reviewing the October 23, 2013, surveillance videos from both the Peru and Ottawa Walmarts, the trier of fact could have concluded the man in both surveillance videos strongly resembles defendant, as seen in the video footage from his arrest. In particular, the clothing worn by defendant at the time of his arrest matches that of the man seen in the videos. Specifically, we note the dark hooded coat and white shoes defendant wore at the time of his arrest. The timing of

defendant's arrest is also significant: it occurred shortly after Toure attempted to make a purchase at the Peru Walmart using counterfeit money. Toure fled Walmart security to a vehicle driven by defendant, and the group was arrested. The individuals arrested with defendant (Toure and Davis) were both wearing outfits identical to the individuals also shown in the October 23, 2013, video surveillance from the Ottawa and Peru Walmarts. Specifically, Davis was arrested wearing the same gray sweat suit with a pink hood. Toure was arrested wearing the same black jacket and black hat.

¶ 42 Further, defendant was arrested while driving a white vehicle that had a striking resemblance to the vehicle used by the group of individuals in the October 23, 2013, surveillance video from the Peru Walmart parking lot. The above circumstances support the inference that the group arrested on October 25, 2013, was the same group of individuals seen in the October 23, 2013, surveillance videos. It therefore follows that a rational trier of fact could also infer defendant was the individual seen in the October 23, 2013, surveillance footage using counterfeit money to make purchases at the Peru and Ottawa Walmarts.

¶ 43 Alternatively, defendant argues he is entitled to new posttrial motion proceedings because the trial court erred in denying his request to discharge counsel and proceed *pro se*. "[A] defendant has a sixth amendment right to represent himself." *People v. Burton*, 184 Ill. 2d 1, 21 (1998) (citing *Faretta v. California*, 422 U.S. 806 (1975)). To assert this right, "a defendant must knowingly and intelligently relinquish his right to counsel." *Id.* Pursuant to Illinois Supreme Court Rule 401 (eff. July 1, 1984):

> "[t]he court shall not permit a waiver of counsel by a person accused of an offense punishable by imprisonment without first, by addressing the defendant personally

> in open court, informing him of and determining that he understands the following*:*
>
> (1) the nature of the charge;
>
> (2) the minimum and maximum sentence prescribed by law, including, when applicable, the penalty to which the defendant may be subjected because of prior convictions or consecutive sentences; and
>
> (3) that he has a right to counsel and, if he is indigent, to have counsel appointed for him by the court."

We review a trial court's decision regarding a defendant's request to represent himself for an abuse of discretion. *People v. Rohlfs*, 368 Ill. App. 3d 540, 545 (2006).

¶ 44 In the present case, the trial court, without admonishing defendant pursuant to Rule 401, found defendant lacked the requisite capacity to knowingly and intelligently relinquish his right to counsel. The trial court based its determination on its knowledge of defendant's background, his statements before the court, as well as the court's belief that defendant lacked the necessary skills to protect his own interests. The reasoning applied by the trial court was erroneous, because "a defendant's constitutional right of self-representation 'may not be thwarted by the trial court's opinion that [the] defendant's decision is ill-advised, unwise, or unsound, however correct that opinion may be.' " *People v. Fisher*, 407 Ill. App. 3d 585, 589 (2011) (quoting *People v. Ward*, 208 Ill. App. 3d 1073, 1085 (1991)).

¶ 45 Despite the above, we find that the trial court's decision was proper in light of the fact that defendant failed to unequivocally request to represent himself. "A waiver of counsel must be clear and unequivocal, not ambiguous." *Id.* at 590 (citing *Burton*, 184 Ill. 2d at 21). "In

determining whether a defendant's statement is clear and unequivocal, courts have looked at the overall context of the proceedings." *Burton,* 184 Ill. 2d at 22.

¶ 46 Here, defendant filed a *pro se* motion for a new trial arguing defense counsel provided ineffective assistance of counsel by failing to file motions regarding: (1) the admission of Toure's clothing at trial; (2) Harden obtaining defendant's clothing while defendant was in jail without defendant's consent; (3) Harden's testimony that he did not wear gloves when he collected the counterfeit money; and (4) the Walmart "Manager['s]" testimony that the money she believed was counterfeit passed through several hands before turning it over to Harden. Defendant's *pro se* motion did not request that counsel be discharged and defendant be allowed to continue *pro se*. A review of defendant's *pro se* motion and his statements at the sentencing hearing indicate defendant disagreed with some of defense counsel's decisions and the trial court's prior rulings but not that defendant wished to represent himself. In particular, we note that defense counsel did object to the admission of Toure and defendant's clothing at trial. Defense counsel also argued the State failed to prove defendant's guilt beyond a reasonable doubt by emphasizing the handling and chain of custody of the counterfeit currency. Significantly, when the trial court asked defendant to explain why he wanted to discharge counsel, defendant admitted that he did not "completely want to represent [himself]." In this context, we hold defendant did not unequivocally request to represent himself and the trial court properly denied his request.

¶ 47 CONCLUSION

¶ 48 The judgment of the circuit court of La Salle County is affirmed.

¶ 49 Affirmed.

¶ 50 JUSTICE McDADE, dissenting.

¶ 51 The majority affirms defendant's convictions and sentences for forgery and obstruction of justice, finding (1) that the evidence is sufficient to prove defendant guilty of the charged crimes beyond a reasonable doubt and (2) that the trial court did not err when it denied defendant's request to dismiss counsel and proceed *pro se* for the posttrial proceedings. I disagree with the majority's conclusions on both issues and, therefore, respectfully dissent.

¶ 52 First, I dissent from the finding that the evidence is sufficient to prove defendant committed the offense of forgery because the State failed to prove beyond a reasonable doubt that defendant had knowledge of the counterfeit nature of the currency.

¶ 53 The State offered neither direct nor compelling circumstantial evidence to establish that defendant actually knew the money he was alleged to have used was counterfeit. While the State is not required to present direct evidence of defendant's knowledge to establish this element (See *People v. Pollock*, 202 Ill. 2d 189, 217 (2002)), the only circumstantial evidence presented on this issue was the cashiers' testimony and the fact that the bills lacked countermeasures. The majority finds that this circumstantial evidence is sufficient to support a reasonable inference that defendant was aware of the counterfeit nature of the bills. *Supra* ¶ 34. I disagree.

¶ 54 Notably, the cashiers' testimony establishes that other people were "tricked" by the counterfeit currency. In particular, I note the testimony of Freeman, the cashier who accepted the money at the Ottawa Walmart without recognizing that the bills were counterfeit. While Freeman did testify at trial that the money appeared "strange" and had a different feel than normal currency, she did not report any doubts about its authenticity to the manager at the time. Indeed, Freeman only learned the bills were counterfeit *after* she was approached by the store manager. There is no evidence that Freeman personally recognized the money as counterfeit. Further, Krogulski, the Peru Walmart cashier, testified that she initially accepted the currency from

defendant. Although she later raised a question to management, the fact that she initially accepted the money shows that she, too, was "fooled" into believing the currency was authentic. Cashiers handle money in high volume and, therefore, should be better able than the normal user to distinguish between authentic and counterfeit currency. If a cashier could not recognize currency as counterfeit, it is unreasonable to simply infer defendant could.

¶ 55 Moreover, while it is true the money in question lacked certain countermeasures, there is no evidence that a person who has not been trained to look for such measures would be able to recognize counterfeit currency based on their absence. There is no evidence that defendant had the training or experience to allow him to recognize counterfeit currency on this basis. In addition, neither cashier testified that she noticed the bills lacked these countermeasures. Again, both cashiers accepted the bills in question without recognizing them as counterfeit. The State has presented no factual basis for inferring defendant had knowledge that such countermeasures even existed or that they were absent from these bills. The State invites us to *assume* the defendant had such knowledge and that is simply improper.

¶ 56 Even if one *were* to assume defendant knew to look for these countermeasures, such as a unique serial number, there is no evidence that he looked at each bill he used to ascertain whether the serial numbers were different. Indeed, it is unrealistic to think that the average person would inspect every bill he or she uses to ensure the countermeasures are present. For these reasons, I believe the majority's reliance on circumstantial evidence to prove the element of knowledge is flawed. Because I would find that the State failed to prove the essential element of knowledge beyond a reasonable doubt, I would vacate defendant's forgery convictions. I express no opinion regarding the sufficiency of the evidence of the remaining elements of the offense.

¶ 57 On the second issue, I note defendant's conviction for obstruction of justice remains and not been challenged on appeal. Instead, defendant argues the trial court erred in denying his request to discharge counsel and represent himself in the posttrial proceedings.

¶ 58 I agree with the majority's finding that the trial court failed to admonish defendant pursuant to Rule 401(a) when it denied his request (s*upra* ¶ 44); and that it was improper for the trial court to make its determination based on its knowledge of defendant's background, his statements before the court, and the court's belief that defendant lacked the necessary skills to protect his own interests. *Id.* I disagree, however, with the majority's finding that defendant failed to unequivocally request to discharge counsel. *Supra* ¶ 45.

¶ 59 In this case, the record establishes that defendant's request was unequivocal. In particular, I note the trial court's initial comment at the sentencing hearing that the court had received correspondence from defendant regarding his desire to represent himself at the sentencing stage. Defense counsel's statements at the hearing also confirm that defendant sought to discharge counsel and proceed without assistance on his *pro se* motions. Specifically, I note counsel's statement that defendant informed him that he wished to strike counsel's posttrial motion and proceed *pro se* on his own *pro se* motion. Inasmuch as the trial court, defense counsel, and defendant all understood that defendant wanted to discharge counsel and go it alone, I would find defendant made an unequivocal request to discharge his attorney and proceed *pro se*. I believe the majority's contrary finding is without factual support.

¶ 60 I would remand the cause for new posttrial proceedings with regard to defendant's one remaining conviction of obstruction of justice. At the new proceedings defendant may elect to assert his right to proceed either *pro se* or with the assistance of counsel. In the event that

defendant opts to represent himself, the trial court should address his preference in the manner prescribed in Rule 401(a).