

NOTICE

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2016 IL App (4th) 140728-U

NO. 4-14-0728

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

August 24, 2016

Carla Bender

4th District Appellate

Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)

Plaintiff-Appellee,)

v.)

NICOLE (NIKKI) DAILEY,)

Defendant-Appellant.)

) Appeal from

) Circuit Court of

) Adams County

) No. 11CF564

) Honorable

) William O. Mays,

) Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Presiding Justice Knecht and Justice Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the evidence was sufficient to support defendant's conviction for forgery under the theory of accountability.

¶ 2 In March 2011, the State charged defendant, Nikki Dailey, with one count of forgery (720 ILCS 5/17-3(a)(1) (West 2010)). In May 2014, a jury found defendant guilty of forgery under the theory of accountability. In July 2014, the trial court sentenced defendant to two years in prison.

¶ 3 Defendant appeals, arguing the State failed to prove her guilty of forgery beyond a reasonable doubt. We disagree and affirm.

¶ 4 **I. BACKGROUND**

¶ 5 In September 2011, the State charged defendant by information with one count of forgery arising from a check that Lemario Johnson created in the name of a fictitious company,

K's Maids, LLC (K's Maids), and that Mark Lewis cashed at United Community Credit Union in March 2011 (720 ILCS 5/17-3(a)(1) (West 2010)).

¶ 6 A. Jury Trial

¶ 7 In May 2014, defendant's jury trial commenced, at which time the jury heard the following evidence.

¶ 8 1. *Mark Lewis*

¶ 9 Mark Lewis testified that, in early 2011, he met Johnson and defendant, Johnson's then girlfriend, at a friend's apartment in downtown Quincy, Illinois. Lewis began purchasing crack cocaine from them and did so for "several months."

¶ 10 Approximately one month after Lewis met Johnson and defendant, Johnson asked Lewis about his banking history and his relationship with his bank. Lewis told Johnson that he had a long-standing relationship with United Community Credit Union in Quincy. Lewis testified that Johnson and defendant "discussed *** making this check up for a cleaning company" and told him they "can make some money out of this."

¶ 11 Lewis testified that, two days later, Johnson and defendant called him and picked him up from the Elks Hotel in Quincy, where he was living. According to Lewis, Johnson and defendant gave him "a dummy check" from K's Maids in the amount of \$1,070.16 and drove him to the credit union to cash it. The State elicited the following testimony from Lewis:

"Q. Okay. And, uhm, on the way to the bank, was there a [discussion of what to] do with *** each of these checks, whether you were going to deposit it, whether you were going to cash it, what you were going to do?

A. They was [*sic*] to be deposited and cashed

Q. Was that discussion held in the car with
[defendant]—

A. Yes.

Q. —[defendant] present?

A. Yes

* * *

Q. Did [defendant] participate in that discussion?

A. Yes. I was talking to Lemario. I just asked, 'is
this going to work,' and he applied [*sic*]. His statement was that she
knows what she's doing."

¶ 12 Lewis testified that he carried the K's Maids check into the credit union while Johnson and defendant remained in the car. Lewis entered the credit union, cashed the check, and returned to the car with the cash. He immediately gave the cash to Johnson.

¶ 13 Lewis testified that Johnson gave him two other checks, which were both written on defendant's personal account. The two checks appeared to be signed by defendant and were payable to Lewis in the amounts of \$750 and \$650. Lewis stated that defendant was in the car when Johnson drove him to the credit union two more times that day to cash the second and third checks in the credit union's drive-through. After cashing the second check and handing the cash to Johnson, Lewis was given \$150 in return. Lewis stated they returned to the drive-through once more that day to cash the third check, the cash from which all went to Johnson.

¶ 14 Lewis testified that, after "several weeks," Johnson and defendant asked him to open an account at Bank of America and provide them with the account information and debit card associated with the account, which he did. That was the last time Lewis had contact with

either Johnson or defendant. When asked whether he was promised anything by law enforcement or anyone else, Lewis indicated he was not.

¶ 15 On cross-examination, Lewis clarified that Johnson, not defendant, had been the one to inquire about his banking, to call him on the day he cashed the K's Maids check, to give him the three checks to be cashed that day, and to take the cash from him after each transaction. However, Lewis also testified that defendant was physically present on all those occasions.

¶ 16 *2. Travis Wiemelt*

¶ 17 Travis Wiemelt, a police officer for the city of Quincy, testified that he participated in the investigation of the forged checks submitted to United Community Credit Union. As a part of that investigation, Wiemelt contacted Lewis on multiple occasions. In April 2011, during Wiemelt's first conversation with Lewis, Lewis stated that he received the checks as payment for work he had done. In May and June 2011, Wiemelt provided Lewis with photographic lineups, from which Lewis identified both Johnson and defendant as the individuals who provided him with the fraudulent checks.

¶ 18 Wiemelt further testified that, on July 7, 2011, he went to the Adams County jail to meet with Johnson as a part of his investigation into the forged checks. The State elicited the following testimony from Wiemelt:

"Q. Okay. As you were leaving, did Mr. Johnson make any comments to you?"

A. He did.

Q. What specifically did he say?

A. He made the comment that, 'If we can work it out where [defendant] doesn't get in any trouble, I'll take the rap for it.' "

¶ 19 Wiemelt testified that Johnson's statement was his final comment before invoking his right to counsel.

¶ 20 *3. Sarah Distin*

¶ 21 Sarah Distin, the operations manager at the Quincy branch of the United Community Credit Union in 2011, testified for the State. Distin testified that, on March 24, 2011, she reported to the Quincy police department that three of Lewis's checks had been returned because they were written on nonexistent accounts.

¶ 22 Distin testified that she spoke with Lewis about all three checks, including the two written on defendant's account at Metro Gateway Credit Union in St. Louis. With respect to the K's Maids check, Distin asked Lewis where he acquired the check and the "story that he told [the bank] was that he had done some cleaning for someone, but he couldn't tell the bank where that was; he didn't remember. So what he was saying didn't really make sense to [the bank]."

¶ 23 Distin testified that she investigated the status of defendant's two personal checks and contacted Metro Gateway. Distin stated that Metro Gateway informed her that "they no longer had this in their system, meaning that [defendant's account] had been closed at some point in the past."

¶ 24 *4. Lemario Johnson*

¶ 25 Johnson testified for the defense that, starting in June 2010, he would visit his brother in Quincy. He stated that he would "camouflage coming to visit [his] brother *** to bring drugs." Johnson would sometimes bring defendant, his then girlfriend, with him, but there

were "several times" she did not come. During one of Johnson's trips, he began selling crack cocaine and methamphetamine to Lewis.

¶ 26 Johnson also "found a way of making a little money off to the side with [Lewis]." Johnson testified that, in the past, he had used consumer accounting software to fabricate payroll checks, which is what he planned to do with Lewis. When Lewis "couldn't afford to buy more drugs, he still wanted more drugs, so [Johnson] conned him into cashing these checks." Johnson stated that he had also planned to have Lewis cash some of defendant's personal checks. He explained that he "had, rumbling through the house, *** ran across some of [defendant's] old checks—from an old bank account or something." Johnson testified that he had filled out and signed the K's Maids check he created and the two other checks for Lewis to cash.

¶ 27 On March 8, 2011, Johnson and defendant travelled to Quincy to cash the checks that, according to Johnson, he had mailed to Lewis a few days earlier. Johnson stated that defendant did not inquire as to why they were picking up Lewis. Johnson testified that, after picking up Lewis, he drove Lewis to his credit union to cash the K's Maids check, which Lewis was carrying in his wallet. Johnson stated there were no conversations on the way to the credit union because "there was already an understanding of what would go down." Johnson explained that "when [he] discussed creating the check with [Lewis], [he] discussed how [they] would do it." Johnson testified that the conversation took place outside of defendant's presence.

¶ 28 While they were at the credit union, defendant remained in the car while Lewis and Johnson entered the credit union and cashed the check. Johnson testified defendant did not ask any questions throughout their time at the credit union. Johnson stated that, after Lewis successfully cashed the K's Maids check, Johnson drove Lewis home. When Johnson dropped Lewis off, he gave Lewis "about \$300 *** worth of crack" and Lewis gave him all the cash from

the K's Maids check. Johnson testified that defendant did not inquire about the large sum of cash because she knew Johnson was a drug dealer and "she had seen it before."

¶ 29 Johnson also testified that he had sent Lewis a fourth check, which Lewis was to cash after he opened a bank account with Bank of America. Johnson stated that Lewis was supposed to provide him with the debit card and account information he received from opening that account. Defendant, according to Johnson, was not aware of these interactions between the two.

¶ 30 Johnson testified that he was in custody at the time of his testimony at defendant's trial and had been incarcerated since his May 2011 arrest for manufacturing methamphetamine. In July 2011, Wiemelt visited Johnson in jail as a part of his investigation into the fraudulent checks. Johnson testified that he could not recall whether he told Wiemelt, "[i]f I could work it out to where [defendant] doesn't get in any trouble, I'll take the rap for it." Johnson did, however, acknowledge that, "at the time of incarceration, [he] was in love with [defendant]" and "wouldn't have got [*sic*] her in any trouble."

¶ 31 *5. Erica Scott*

¶ 32 Erica Scott, a police officer for the City of Quincy, testified that, on March 24, 2011, she responded to a call from United Community Credit Union regarding forged checks. After Scott met with Distin, she suspected defendant was responsible for the forged checks. As a part of her preliminary investigation, Scott spoke with Lewis and asked about Lewis's relationship with defendant. Lewis told Scott that he had only met defendant one time and could not provide further information about her. After Scott took the initial report, she turned the case over to Wiemelt.

¶ 33 B. Verdict and Sentencing

¶ 34 In May 2014, the jury found defendant guilty of forgery. In July 2014, the matter proceeded to a sentencing hearing. Following the sentencing hearing, the trial court sentenced defendant to two years in prison.

¶ 35 This appeal followed.

¶ 36 II. ANALYSIS

¶ 37 Defendant appeals, arguing the State failed to prove her guilty of forgery beyond a reasonable doubt because the testimony of an accomplice is not sufficiently credible to establish guilt under the theory of accountability.

¶ 38 Where defendant challenges the sufficiency of the evidence, we must determine whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the necessary elements to prove defendant guilty beyond a reasonable doubt. *People v. Wheeler*, 226 Ill. 2d 92, 114, 871 N.E.2d 728, 740 (2007). A conviction will not be upheld where the evidence is so unreasonable, improbable, or unsatisfactory as to give rise to reasonable doubt. *People v. Smith*, 185 Ill. 2d 532, 542, 708 N.E.2d 365, 370 (1999). "It falls within the province of the trier of fact to judge the credibility of witnesses, resolve conflicts in the evidence, and draw conclusions based on all the evidence." *People v. McCarter*, 2011 IL App (1st) 092864, ¶ 21, 954 N.E.2d 718. "The trier of fact is free to accept or reject as much or as little of a witness's testimony as it pleases." *Id.* ¶ 22.

¶ 39 The jury found defendant guilty of forgery under an accountability theory. "A person is legally accountable for the conduct of another when: * * * either before or during the commission of an offense, and with the intent to promote or facilitate that commission, he or she solicits, aids, abets, agrees, or attempts to aid that other person in the planning or commission of the offense." 720 ILCS 5/5-2(c) (West 2010). Words of agreement are not necessary to

demonstrate this shared purpose; it can be inferred from the surrounding circumstances. *People v. Cowart*, 2015 IL App (1st) 113085, ¶ 31, 27 N.E.3d 209. The trier of fact may consider, among other factors, the defendant's presence during the commission of the offense, his continued close association with other members of the group after the commission of the offense, or his failure to report the crime. *Id.* The defendant's mere presence at the scene is insufficient to prove accountability; however, it may constitute circumstantial evidence for the trier of fact to consider in determining the defendant's guilt. *Id.* A defendant is not accountable for the underlying offense if his involvement occurred after the commission of that offense. See *People v. Clark*, 221 Ill. App. 3d 303, 308, 581 N.E.2d 722, 726 (1991).

¶ 40 Here, viewing the evidence in the light most favorable to the State, the evidence supports the inference that defendant participated in the planning and execution of the check forgery scheme. Lewis's testimony that he let Johnson and defendant up to his hotel room where they "discussed drugs, and then was it was other things that we talked about, the credit union and the checks," supports the jury concluding Johnson, Lewis, and the defendant all participated in the formulation of the plan to defraud the credit union. Defendant was present later when Johnson drove Lewis to the credit union to cash the K's Maids check; and continued to be present while Johnson transported Lewis to cash two other checks from her closed account. Moreover, Lewis testified that Johnson reassured Lewis about the risks of getting caught, telling him that "she knows what she's doing." Finally, when asked by Officer Wiemelt to "view the photo lineup and identify the female, if he could, from whom he received the checks," Lewis indicated defendant was that person.

¶ 41 Defendant argues, however, that Lewis's testimony was insufficient to establish defendant's accountability because Lewis was an accomplice whose testimony should be viewed

with utmost caution. Defendant analogizes Lewis's testimony in this case to the testimony of the three accomplices in *People v. Washington*, 375 Ill. App. 3d 1012 (2007), where the Second District Appellate Court found the three accomplices' testimonies during an attempted murder trial to be "irreconcilably diverse" and insufficient to prove the defendant's guilt beyond a reasonable doubt under an accountability theory.

¶ 42 However, unlike this case, of the three accomplices in *Washington*, two represented the defendant was not guilty, while one indicated defendant was guilty, and there was no corroboration of either view. Here, Lewis's testimony regarding the number of visits to the credit union and his conduct in cashing the checks is corroborated by credit union employee Sarah Distin. Additionally, this matter is further distinguishable from *Washington* in that there is no indication of any promise for certain testimony or a grant of immunity potentially coloring Lewis's testimony. Furthermore, Lewis's and Johnson's statements are not contradictory on many material issues and, in many instances, are consistent. Lewis testified without contradiction that, worried before he left the car to cash a check, he asked Johnson if it "was going to work," and Johnson responded with, "she knows what she's doing." Moreover, both Lewis and Johnson agree defendant was present during key phases of the scheme, including Johnson and Lewis's discussion of the plan to deposit a fraudulent check into Lewis's account, the car ride to the credit union to cash the K's Maids check, and when Lewis returned from the credit union with a large sum of cash.

¶ 43 Although defendant offers Johnson's testimony as proof that defendant was not aware of the creation or cashing of the K's Maids check, the jury could have reasonably found Lewis's testimony more credible than Johnson's. In fact, Johnson provided a prior statement to police that "if we can work it out where Nikki doesn't get in any trouble, I'll take the rap for it."

From this statement, the jury could reasonably infer defendant's involvement and conclude that because of the nature of the relationship between defendant and Johnson, he sought to avoid defendant having to face the consequences of their criminal conduct. Despite Johnson's claim that defendant remained oblivious to the forgery scheme, when we consider the circumstantial evidence and the reasonable inferences to be drawn from that evidence, we conclude a rational trier of fact could have found defendant guilty beyond a reasonable doubt. See *People v. Austin*, 349 Ill. App. 3d 766, 769, 812 N.E.2d 588, 591 (2004) (it is for the trier of fact to determine the credibility of witnesses).

¶ 44 Viewing the evidence in the light most favorable to the prosecution, we find that a rational trier of fact could find defendant guilty of forgery under an accountability theory.

¶ 45 III. CONCLUSION

¶ 46 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2014).

¶ 47 Affirmed.