

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2017 IL App (4th) 150184-U

NO. 4-15-0184

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

March 24, 2017

Carla Bender

4th District Appellate

Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	McLean County
JERELL D. DUDLEY,)	No. 13CF788
Defendant-Appellant.)	
)	Honorable
)	John Casey Costigan,
)	Judge Presiding.

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

ORDER

¶ 1 *Held:* The appellate court affirmed the trial court, concluding (1) there was sufficient evidence to support defendant's convictions for forgery, and (2) the restitution order did not warrant plain-error review.

¶ 2 In December 2014, following a bench trial, the trial court found the State had proved defendant, Jerell D. Dudley, guilty beyond a reasonable doubt on two counts of forgery for delivering fraudulent checks (720 ILCS 5/17-3(a)(2) (West 2012)). The court sentenced defendant to 30 months' probation and ordered him to pay \$2,100 in restitution.

¶ 3 Defendant appeals, arguing (1) the State failed to prove beyond a reasonable doubt defendant knew the checks were fraudulent, and (2) the restitution order should be vacated because the court failed to set a payment schedule with consideration of defendant's ability to pay. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In June 2013, defendant was indicted on two counts of forgery (720 ILCS 5/17-3(a)(2) (West 2012)) for cashing a check for \$2,100 and attempting to cash another check for \$3,000, both to be drawn on Countiss Griffin's bank account without her authority on May 20, 2013, at Busey Bank. In October 2014, the matter proceeded to a bench trial, during which the trial court heard the following evidence.

¶ 6 A. Trial

¶ 7 1. *Countiss Griffin*

¶ 8 Countiss Griffin testified, on May 20, 2013, she checked her bank balance online and noticed the cashing of a check that she did not recall writing. Griffin went to a Busey Bank branch in Bloomington and reported a problem with her account. A bank employee asked to see Griffin's checkbook and discovered a number of missing checks. The State showed Griffin People's exhibit Nos. 4 and 5, which Griffin identified as her checks, numbers 8290 and 8291. Griffin testified the bank employee noted checks 8286 through 8291 were missing from her checkbook and showed Griffin copies of checks 8290 and 8291. According to Griffin, someone presented checks 8290 and 8291 to the bank earlier in the day. Griffin acknowledged her name was written on the checks' signature lines, but she testified it was not her signature and she did not write the checks.

¶ 9 Griffin testified she and the bank employee looked at the last checks written by Griffin. According to Griffin, she wrote a check to Walmart the night of Saturday, May 18, 2013, and a check to her church on Sunday, May 19, 2013. The checks with sequential numbers between the Walmart check and the church check were missing. Griffin testified, on Sunday, May 19, 2013, "I had my checkbook in my purse in the car when I was on my way to church and stopped to pick up a young lady. I had given a friend of my daughter a ride and he was left in the

car for a few minutes at that time." According to Griffin, her daughter's friend was named Roy and was 18 or 19 years old. This was the only time Griffin thought the checks could have been stolen. Finally, Griffin testified she had never seen defendant before the day of the trial and had no reason to think he took her checks.

¶ 10 *2. Amber Borlick*

¶ 11 Amber Borlick, a teller manager at Busey Bank, testified Griffin was a regular customer at the branch where Borlick worked. According to Borlick, Griffin regularly made deposits and rarely made withdrawals. Borlick testified she "only cashed a couple of checks off of [Griffin's] account *** and they ha[d] always been under \$100."

¶ 12 Early on the morning of May 20, 2013, a noncustomer, later identified as defendant, came into Borlick's branch and wanted to cash a check (later identified as Griffin's check number 8290) made out to defendant. Borlick testified she asked defendant for two forms of identification, a phone number, and a thumbprint. As Borlick began to collect this information, the signature card associated with the checking account came up on her computer. According to Borlick, when someone tries to cash a check for more than \$500, the computer system automatically shows a signature card so the teller can confirm the signature on the check matches. Borlick testified the signatures did not match, and she looked at Griffin's account and noticed another check for a large amount had been cashed that morning.

¶ 13 Borlick testified she went to the assistant branch manager to look at the account and verify the signatures. While Borlick was in her manager's office, she testified, defendant "kind of was parallel with the office and I could see that he was getting nervous, he was fidgety, and he walked off and left me the check and when that happened is when I knew that there was something wrong." Defendant did not say anything before he left and made no attempt to

retrieve the check from Borlick. According to Borlick, defendant wore a red sweatshirt and jeans. The State then played a surveillance video which showed defendant in a red sweatshirt entering, and subsequently leaving, the bank.

¶ 14 *3. Shawn Campbell*

¶ 15 Shawn Campbell, previously employed as a detective with the Bloomington police, testified he was assigned to investigate a forgery regarding checks drawn on Griffin's account. Campbell testified he obtained surveillance video and the original checks from two different branches of Busey Bank, which had identifiers on the backs such as a name, telephone number, and state identification number. According to Campbell, the state identification number on the back of the checks was the same and belonged to defendant. Based on this information, defendant became a suspect.

¶ 16 Campbell testified defendant knew which checks Campbell was referring to when he first spoke with defendant. According to Campbell, defendant appeared to be aware something was wrong with the check he successfully cashed and the second check he attempted to cash. The State played a video of Campbell's interview with defendant. During the course of that interview, defendant told Campbell he sold a 72-inch flat-screen television, a laptop, and an Xbox 360 to a man named Red. According to defendant, Red's wife came to pick up the items and wrote defendant two checks in return. Defendant denied filling out anything on the face of the checks. Defendant testified Red's wife told him to take the checks to two separate banks because it would freeze her account if he tried to deposit both checks at the same bank. According to defendant, he did not know Red's last name or his wife's name, but he said Red was a light-skinned black male in his mid-40s.

¶ 17 Defendant told Campbell his girlfriend, Stephanie Mislich, took him to cash the first check at a drive-through teller window in Normal. Although Mislich drove him to the bank, defendant insisted she had no knowledge of the checks. Defendant went inside a bank in Bloomington to cash the second check. The teller wrote defendant's identification number and his phone number on the back of the check. The teller then went to speak with someone, at which point defendant began to have doubts and exited the bank to call Red to ask if anything suspicious was happening. During that conversation, defendant was told Red's wife would get paid in a couple of weeks and defendant would get his money then.

¶ 18 Defendant told Campbell he did not know who Griffin was. Campbell testified he attempted to identify and locate Red, but his efforts were unsuccessful. According to Campbell, defendant "stated he thought there might be something wrong, but he didn't know that [the checks] were bad."

¶ 19 Campbell testified he interviewed Mislich, who confirmed defendant's telephone number. Mislich stated she had no knowledge about the trip to the bank, although she confirmed she had given defendant a ride. Mislich also told Campbell she had seen the large flat-screen television before at defendant's apartment but it was no longer there.

¶ 20 *4. Defendant*

¶ 21 Defendant testified he sold some items, including a television, to a person defendant knew only as Red and his wife in return for the two checks. The next morning, defendant and Mislich went to a Busey Bank branch drive-through window in Normal and cashed the first check for \$2,100. Later that morning, defendant took the second check for \$3,000 to a Busey Bank branch in Bloomington. Defendant testified he took the second check into the bank and the teller asked him for identification. According to defendant, he provided the

teller with identification and signed the back of the check, and the teller asked him how he wanted the money back. The teller then told defendant she would be right back and walked away. Defendant testified he waited 10 minutes, and then left the bank without the check to call Red. According to defendant, he made no attempt to retrieve the check. Defendant stated, "I don't follow how the banking systems work and I had a bank account in one of Heartland Bank, so I was thinking if I leave my check here and everything go through, they should be able to put it to my account for me."

¶ 22 Defendant testified he was initially worried the checks might not go through because he had already given the items to Red and he wanted the money. According to defendant, he did not think the checks were fake when he brought them to the bank. He was concerned because he was unfamiliar with banking and did not know what cashing a check involved. In response to further questions about his concerns, defendant stated, "I knew of Red, but I really didn't know him like that. I just knew him as a person, he'll be bonds over people and who you usually can sell things to."

¶ 23 B. Judgment

¶ 24 In December 2014, the trial court entered a written order finding the State met its burden of proving defendant guilty beyond a reasonable doubt on both counts of forgery. In particular, the court emphasized the following:

"Defendant took two checks from a person he only knew as 'Red.' He did not know 'Red's' last name or where he lived. He took two checks which were allegedly signed by 'Red's' wife for a total of \$5,100. Defendant went to two separate Busey branches to cash the checks. When it appeared that questions were being raised

with one of the checks[,] defendant left the check and quickly exited the branch. Defendant left the check for \$3,000 at the bank. The [c]ourt is convinced based on these facts that defendant deliver[ed] the checks knowing them to be altered with the intent to defraud."

¶ 25 C. Sentence

¶ 26 In March 2015, the trial court sentenced defendant to 30 months' probation, 180 days in jail (with credit for time served), alcohol or other treatment as directed by probation, and ordered \$2,100 in restitution to Busey Bank by March 3, 2017.

¶ 27 This appeal followed.

¶ 28 II. ANALYSIS

¶ 29 Defendant appeals, arguing (1) the State failed to prove beyond a reasonable doubt defendant knew the checks were fraudulent, and (2) the restitution order should be vacated because the court failed to set a payment schedule with consideration of defendant's ability to pay. We turn first to defendant's sufficiency-of-the-evidence claim.

¶ 30 A. Sufficiency of the Evidence

¶ 31 In reviewing a challenge to the sufficiency of the evidence, this court must determine whether, "viewing the evidence in the light most favorable to the State, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (Emphasis in original and internal quotation marks omitted.) *People v. Wheeler*, 226 Ill. 2d 92, 114, 871 N.E.2d 728, 740 (2007). "[I]t is not the function of a reviewing court to retry the defendant." *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228, 920 N.E.2d 233, 232 (2009). In a bench trial, the trial court, as the trier of fact, is best equipped to determine the credibility of

witnesses and the weight to give their testimony. *Wheeler*, 226 Ill. 2d at 114-15, 871 N.E.2d at 740.

¶ 32 The trier of fact need not "search out all possible explanations consistent with innocence" or disregard inferences drawn from the evidence. *People v. Saxon*, 374 Ill. App. 3d 409, 416, 871 N.E.2d 244, 251 (2007). "An inference is simply a reasonable deduction from the consideration of other facts that the fact finder may draw in its discretion, but is not mandated to draw as a matter of law." *People v. Sorrels*, 389 Ill. App. 3d 547, 551, 906 N.E.2d 788, 792 (2009). We reverse only where the evidence is so unsatisfactory, unreasonable, or improbable that it raises a reasonable doubt as to the defendant's guilt. *People v. Evans*, 209 Ill. 2d 194, 209, 808 N.E.2d 939, 947 (2004).

¶ 33 The offense of forgery consists of the following 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." (Internal quotation marks omitted.) *People v. Hockaday*, 93 Ill. 2d 279, 282, 443 N.E.2d 566, 567 (1982); see also 720 ILCS 5/17-3(a)(2) (West 2012). To be convicted of forgery, a defendant's knowledge that a check was not authentic must be clearly proved. *People v. Baylor*, 25 Ill. App. 3d 1070, 1072, 324 N.E.2d 255, 257 (1975). However, "proof must often be by circumstantial evidence." *Id.* at 1074, 324 N.E.2d at 258.

¶ 34 In concluding the State met its burden, the trial court noted defendant took two checks for a total of \$5,100 dollars from a person he knew only as "Red," a street name. Defendant went to two separate bank branches within a relatively short time, attempting to cash the checks. When there appeared to be a problem cashing the second check, defendant quickly

exited the bank branch and never returned for the \$3,000 check he left there. The court concluded these facts were sufficient to show defendant delivered the checks knowing they were altered and with the intent to defraud.

¶ 35 Defendant contends there is no reasonable inference of guilt to be drawn from defendant accepting two checks from Red's wife when he knew neither Red's nor Red's wife's legal name. Defendant contends it was reasonable for him to do so because Red was a "long time business associate." Defendant overstates the testimony. Defendant himself testified he was worried the checks would not go through and, relevant to his "long time" relationship with Red, he testified he did not really know Red well, but knew he was a person "who you can usually sell things to." This does not indicate a long-standing, trusted "business" relationship on which defendant reasonably relied in accepting the two checks. Moreover, accepting two separate checks and attempting to cash the checks at two different banks early on the same morning is not a reasonable way one conducts normal banking business. Although defendant relies heavily on his purported inexperience with banking procedures, the trial court, as trier of fact, "is not obligated to accept all or any part of the defendant's testimony, but may assess the probabilities, the reasonableness of any defense offered and reject any or all of defendant's account in favor of the State's circumstantial evidence of guilt." *People v. Nyberg*, 275 Ill. App. 3d 570, 579, 656 N.E.2d 65, 72 (1995).

¶ 36 Additionally, defendant's flight from the bank after encountering difficulties in cashing the second check supports a reasonable inference of his guilt. See *People v. Hunter*, 331 Ill. App. 3d 1017, 1026, 772 N.E.2d 380, 387 (2002) ("[D]efendant's actions of inquiring as to the delay in cashing the check followed by the immediate departure of defendant in the vehicle without *** the check *** suggest that defendant was aware of the problems with the check and

fled with guilty knowledge."); *People v. Carr*, 225 Ill. App. 3d 170, 177, 587 N.E.2d 543, 549 (1992) ("[W]hen it appeared that there was a problem with cashing the check, defendant left the check and work identification card at the teller's window and fled."). Defendant contends flight may be consistent with innocence and argues he merely left the bank to call Red. Further, defendant argues his actions in leaving behind the check for \$3,000 were reasonable in light of his inexperience with the banking system. However, this ignores Borlick's testimony that defendant appeared nervous and began to fidget before he quickly left the bank. It also ignores defendant's own testimony that he was worried about the checks before he cashed the first one. The evidence of defendant's flight and his leaving a \$3,000 check behind, viewed in the light most favorable to the State, support a reasonable inference that defendant fled with guilty knowledge of the fraudulent checks.

¶ 37 As stated before, the trial court is not required to accept defendant's version of events and may reject defendant's account in favor of the State's evidence. *Nyberg*, 275 Ill. App. 3d at 579, 656 N.E.2d at 72. Moreover, the trial court is in the best position to determine the credibility of the witnesses and the weight to give their testimony. We give these determinations deference and will not substitute our judgment for that of the trier of fact on these issues. *People v. Brown*, 2013 IL 114196, ¶ 48, 1 N.E.3d 888. Accordingly, we conclude the evidence, when viewed in the light most favorable to the State, is not so unsatisfactory, unreasonable, or improbable that it raises a reasonable doubt as to the defendant's guilt. *Evans*, 209 Ill. 2d at 209, 808 N.E.2d at 947.

¶ 38 B. Restitution

¶ 39 Defendant argues this court should vacate the restitution order because the trial court failed to set a schedule for payment with consideration of defendant's ability to pay. The

State contends defendant has forfeited this argument by failing to object and by failing to preserve the issue in a postsentencing motion. Even if the argument is forfeited, defendant asserts this court may review the restitution order as a matter of plain error.

¶ 40 As an initial matter, we conclude defendant clearly forfeited this claim. *People v. Kirkpatrick*, 272 Ill. App. 3d 67, 72-73, 650 N.E.2d 267, 271 (1995) (failure to object either at the time the restitution order was imposed or in a subsequent motion contesting the order results in forfeiture). Defendant did not object to the restitution order at the sentencing hearing and did not file a postsentencing motion preserving the claim. Accordingly, we turn to the plain-error doctrine.

¶ 41 The plain-error doctrine grants a "narrow and limited" exception to forfeiture, and a defendant must show an obvious or clear error occurred. *People v. Hillier*, 237 Ill. 2d 539, 545, 931 N.E.2d 1184, 1187 (2010). "In the sentencing context, a defendant must then show either that (1) the evidence at the sentencing hearing was closely balanced, or (2) the error was so egregious as to deny the defendant a fair sentencing hearing." *Id.*

¶ 42 Even if we assume an error occurred, defendant has failed to persuade this court the plain-error doctrine excuses his forfeiture of this issue. As to the first prong, defendant contends the evidence in this case, particularly with respect to whether defendant knew the checks were fraudulent, was closely balanced. However, *Hillier* specifically stated the first prong of plain-error review requires a showing that "the evidence *at the sentencing hearing* was closely balanced." (Emphasis added.) *Id.* Defendant makes no argument that the evidence at the sentencing hearing was closely balanced. Accordingly, we decline to find plain error under the first prong of the doctrine.

¶ 43 As to the second prong, defendant argues he had a substantial right to be fairly sentenced and a restitution order that failed to comply with statutory requirements deprived him of that right. Our review of the transcript from the sentencing hearing shows the trial court did not inquire into defendant's ability to pay and, further, did not set forth a specific manner or method for payment.

¶ 44 Nevertheless, defendant makes no endeavor to explain how this alleged error affected his "substantial right to be fairly sentenced." Indeed, defendant makes no argument that he was, in fact, unfairly ordered to pay restitution. Defendant appears to take the position that this alleged error constitutes plain error *per se*.

¶ 45 Although defendant does not appear to contest the amount of restitution, we note the \$2,100 figure reflects the amount of the check defendant successfully cashed. "[T]he trial court is not required to consider a defendant's financial circumstances when setting the amount of restitution; the trial court is required to consider the ability to pay only when determining the *time and manner of payment*." (Emphasis in original.) *People v. Day*, 2011 IL App (2d) 091358, ¶ 56, 958 N.E.2d 300. The trial court's order apparently required a lump-sum payment by March 3, 2017. However, defendant makes no argument that the trial court's failure to consider his ability to pay in ordering this payment of restitution *actually resulted* in him being unfairly sentenced. All errors pertaining to a restitution order are not necessarily *per se* plain error. *People v. Hanson*, 2014 IL App (4th) 130330, ¶ 40, 25 N.E.3d 1. The only alleged error is the absence of specific guidelines for payment beyond a lump sum due on March 3, 2017. "We cannot accept that this type of error is 'sufficiently grave that it deprived the defendant of a fair sentencing hearing' [citation] or such an affront to defendant's substantial rights [citation] that it

cannot be subject to forfeiture." *Id.* Accordingly, we decline to find plain error under the second prong of the doctrine.

¶ 46

III. CONCLUSION

¶ 47 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).

¶ 48

Affirmed.