2021 IL App (2d) 190787-U
No. 2-19-0787
Order filed September 20, 2021

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. SHONTA D. JACKSON, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Stephenson County. No. 18-CF-130 Honorable Michael P. Bald, Judge, Presiding.

PRESIDING JUSTICE BRIDGES delivered the judgment of the court.
Justices Jorgensen and Brennan concurred in the judgment.

ORDER

¶ 1 *Held*: In a forgery case, where a bank teller provided strong testimony identifying defendant as the individual who deposited a forged check, defendant could not show prejudice from trial counsel's failure to seek exclusion of, or a limited instruction on, (1) surveillance footage showing an individual matching defendant's description using the debit card of the check's payee, and (2) another check, deposited into a different branch of the same bank, from the same payor to the same payee.

¶ 2 Defendant, Shonta D. Jackson, appeals his conviction, following a jury trial, of forgery (720 ILCS 5/17-3(a)(2) (West 2016)). He argues that he was denied the effective assistance of counsel because his trial counsel: (1) failed to ensure that the jury was instructed that certain other-

crimes evidence could be considered only as evidence of identification; and (2) failed to object to the use of other evidence as improper other-crimes evidence and request a limiting instruction. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On August 9, 2018, defendant was charged by information with one count of forgery (*id.*). The charge alleged that defendant, with the intent to defraud, knowingly delivered to Midland States Bank a document apparently capable of defrauding another, in that it was purported to have been made by another. The document was a check from United Rack Installers, Inc., dated September 28, 2017, drawn on Capitol One Bank of Fairfield, New Jersey, and payable to Carrie N. Lott, in the amount of $2466.91.

¶ 5 Before trial, the State gave notice to defendant that it intended to introduce at trial (1) the check at issue, (2) a second fraudulent check deposited into Lott's account, and (3) a signature card signed by Lott when she opened her checking account. The State indicated that the purpose of this evidence was to allow the jury to compare the signatures. The State later moved to admit the documents as self-authenticating business records. Defense counsel did not object, and the trial court granted the motion.

¶ 6 In addition, defense counsel filed a motion *in limine* asking the trial court to exclude evidence regarding the unauthorized use of Lott's debit card. During the investigation, a detective reviewed surveillance videos from Walmart that captured an individual using the card who matched a witness's description of the person who deposited the check at issue. Defense counsel argued that the evidence was inadmissible other-crimes evidence. The State countered that the evidence was properly admissible to show identification, opportunity, and motive. The court held that the evidence was admissible "as to identification but not as to motive or opportunities." The

court noted that it "does require jury instructions at the time that that evidence would be presented at trial ***. So I would ask that the parties remind me."

¶ 7 The evidence at trial established the following. On September 29, 2017, Jannie Delaine was working as a bank teller at the Freeport branch of Midland States Bank when an individual entered the drive-through lanes of the bank and deposited a check into an account belonging to Lott, whom Delaine knew as a regular customer. Delaine testified that the individual was driving a white car and wearing "a colorful jacket" and a white "Bull's hat." Delaine made an in-court identification of defendant as the person who deposited the check. Delaine identified State's exhibit No. 3 as the check deposited by defendant. The check was made payable to Lott and issued by United Rack Installers. Delaine testified that she later learned that the check was fraudulent. According to her, the "fraud department had contacted [her] branch saying that another check—same kind of check was deposited at a different Midland State's Bank branch." Delaine identified State's exhibit No. 4 as the check that was deposited into Lott's account at a different branch of Midland States Bank; it was also issued by United Rack Installers and payable to Lott. Delaine testified that, after learning that the check at issue was fraudulent, she saw defendant at a restaurant and immediately recognized him as the person who deposited the check. She identified State's exhibit No. 5 as a photo of defendant.

¶ 8 On cross-examination, Delaine testified that, when defendant came through the drive-through, his car was in the "commercial lane," which is the lane closest to the windows. When a person used the commercial lane, Delaine was able to "clearly see the customer." When asked whether she recalled telling Freeport police detective Kurt Mills that the man who deposited the check was "a very attractive, thin, black man in his 30s," she stated: "No. When they asked me for a description, I remember saying he had a white hat on, it was a colorful jacket. I possibly could

have said he was in his 30s, yes." Delaine denied looking up Lott's Facebook page following the transaction that day. Rather, "after the incident" she was asked to look up Lott's Facebook page because she was friends with Lott on Facebook, and she did so along with Clarissa Shaver, her manager. They "were looking for a specific person from video." Delaine denied telling Mills that she looked up Lott's Facebook page because she thought that the man who deposited the check was attractive. Delaine testified that she had never seen defendant before the transaction at the bank.

¶ 9 On redirect examination, Delaine drew a diagram of the layout of the teller lanes at the bank. She indicated where she was standing and the location of defendant's vehicle when he made the deposit. The diagram was admitted as State's exhibit No. 8.

¶ 10 Lott testified that she worked at Willow Glen and that she had a checking account at Midland States Bank, which was her only bank account. Lott's employer deposited her paychecks directly into her bank account and she accessed her money using a debit card. Although she was issued checks for her bank account, she used her debit card to pay for things and to obtain cash from automated teller machines (ATM). Using her debit card required a four-digit personal identification number (PIN). She never told anyone her PIN. Her debit card was orange.

¶ 11 On October 4, 2017, Lott learned that her account was $2000 overdrawn and she contacted the bank. She looked for her debit card and realized that it was missing. That same day, she went to the police and reported her debit card as stolen. She told a police officer that she last remembered using her debit card at a Beef-A-Roo in Rockford on September 24, 2017. Lott identified State's exhibit No. 1 as her bank statement from September 25, 2017, through October 10, 2017. Lott identified State's exhibit No. 2 as the paperwork that she filled out when she opened her account and her signature on the paperwork. Lott identified State's exhibit No. 3 as a copy of a check

payable to her by United Rack Installers. Lott never worked for United Rack Installers and there was no reason for them to give her money. Lott testified that the signature on the back of the check was not hers. Lott identified State's exhibit No. 4 as another check payable to her by United Rack Installers. Lott again testified that the signature on the back of the check was not hers.

¶ 12 Lott testified that defendant was her "cousin-in-law"—her husband was defendant's first cousin. Defendant was like family and she had known him for over 25 years. Defendant lived down the street from Lott, and she saw him "[a]ll the time." Lott identified State's exhibit No. 5 as defendant's Facebook profile page. Lott was "friends" with defendant on Facebook. Lott identified State's exhibit No. 5a as a photograph of defendant on her Facebook page that she took when they were out to breakfast. Lott testified that she did not give defendant permission to use her debit card, that she did not tell him her PIN, and that she did not permit him to deposit checks into her bank account.

¶ 13 On cross-examination, Lott testified that after she filed the police report, a male officer followed up with her "[m]onths later." The officer showed her the picture of defendant from her Facebook page. When she first went to the bank, on October 4, 2017, after learning that her account was overdrawn, she was shown "the Walmart pictures" and "a picture of the person in the bank teller window." Lott was not able to identify anyone in the pictures that she was shown at the bank.

¶ 14 On redirect examination, Lott clarified that, on October 4, 2017, she filed the police report and then took it back to the bank, where she was shown a video of the bank's drive-through and a screenshot from the video. It was not until months later, when she met with the male officer, that she was shown the "Walmart pictures" and the Facebook photograph.

¶ 15 Carl Alex Seymour, an asset protection assistant manager at Walmart in Freeport, testified that he was contacted by Mills about obtaining surveillance video from the store. Mills provided

Seymour with information concerning a specific debit card transaction and a description of an individual. Seymour was able to obtain the relevant video based on the debit card transaction. Seymour identified: (1) State's exhibit No. S-1 as a screenshot from surveillance video taken on September 29, 2017, at 2:46 p.m., which showed the front register area of the store, including Woodforest Bank, which was located in Walmart, and an ATM; (2) State's exhibit No. S-2 as a screenshot from surveillance video taken at 2:47 p.m. of the same area, showing an individual wearing a colorful jacket and white hat; (3) State's exhibit No. S-3 as a screenshot from surveillance video showing the same individual holding an orange debit card and conducting a transaction at a register at 3:10 p.m.; (4) State's exhibit No. S-5 as a screenshot from surveillance video showing the same individual leaving the store at 3:14 p.m.; and (5) State's exhibit No. S-6 as a screenshot of surveillance video showing a white car traveling through the Walmart parking lot at 3:21 p.m.

¶ 16 Mills testified that he was assigned to investigate the fraudulent check. He first contacted the Freeport branch of Midland States Bank and attempted to obtain surveillance video from the drive-through lanes. He was told by Shaver that the video was "no good" because "the sun was shining on it and you couldn't see." Mills testified that defendant was a suspect. Mills unsuccessfully attempted several times to meet defendant to talk about the incident. Mills obtained surveillance footage from Walmart. He testified that the vehicle in State's exhibit No. S-6 matched the vehicle described to him by Delaine. Delaine identified defendant as the person who deposited the check on September 29, 2017. Delaine seemed to be "very" familiar with defendant. Mills was asked by counsel: "And do you recall—did you ask her if she was sure or certain, or do you remember what she said?" Mills responded: "I did. She said she was completely positive she had seen him in the drive[-]through, and then she had seen him at a local restaurant as well." Mills was

asked about the description of the individual provided by Delaine. He testified: "She said the person that pulled up and delivered the check was an attractive, black male with a white hat. I don't remember, I think it may have been more specific than that. A white hat and then a multi-colored jacket. A thin, black male." Delaine also described the man as being in his 30s. Mills also spoke with Lott. He did not remember Lott telling him anything about a video that she had seen from the bank.

¶ 17 On cross-examination, Mills agreed that Delaine first told him that defendant caught her attention because she thought he was attractive. Mills could not recall whether Delaine told him that she looked up Lott's Facebook page after the transaction took place or whether it was "when the check came back." Using his police report to refresh his recollection, Mills testified that Delaine told him that she looked up Lott's Facebook page after the transaction because she thought defendant was attractive. Mills ran the license plate on the white car and learned that it was registered to a leasing company. Mills attempted to find out to whom the vehicle was leased but was unable to do so. Mills spoke with Lott and did not remember her ever identifying the individual who deposited the check. Mills did not remember ever showing Lott any images.

¶ 18 On redirect examination, Mills testified that he put in his report that Delaine was completely positive as to her identification of defendant.

¶ 19 The parties stipulated that State's exhibit No. 3, the check deposited in Lott's account, was fraudulent in that it was not issued by United Rack Installers and was capable of defrauding another.

¶ 20 The trial court denied defendant's motion for a directed verdict, and defendant presented no evidence. The jury found defendant guilty of forgery.

¶ 21 After denying defendant's motion for a new trial, the trial court sentenced him to 30 months' probation. This timely appeal followed.

¶ 22 II. ANALYSIS

¶ 23 Defendant argues that defense counsel was ineffective for failing to ensure that the jury was properly instructed concerning the use of other-crimes evidence—evidence that an individual matching Delaine's description of the person who deposited the check into Lott's bank account was seen using Lott's debit card at Walmart shortly after the deposit. Defendant also argues that counsel was ineffective for failing to object to the admission of State's exhibit No. 4—the similar check deposited into Lott's account at a different Midland States Bank branch—as improper other-crimes evidence and for failing to request a limiting instruction on the jury's use of the evidence. The State responds that defendant forfeited his claims by failing to object when the evidence was introduced and failing to raise the claims in his posttrial motion. Alternatively, the State argues that defendant's claims fail because he cannot establish prejudice.

¶ 24 We first consider the State's forfeiture argument. Defendant claims that his trial counsel was ineffective. That same counsel, however, prepared defendant's posttrial motion. Technically, to avoid forfeiture, counsel would have had to allege his own ineffectiveness in that motion. But our supreme court has held that an "attorney cannot be expected to argue his own ineffectiveness" and that, as a consequence, "trial counsel's failure to assert his own ineffective representation in a posttrial motion does not waive the issue on appeal." *People v. Lawton*, 212 Ill. 2d 285, 296 (2004); see also *People v. Keener*, 275 Ill. App. 3d 1, 5 (1995) ("We determine that defendant did not waive his [ineffectiveness] argument by failing to raise it in the post-trial motion. A *per se* conflict of interest arises when attorneys argue motions in which they allege their own ineffectiveness. [Citation.] In such situations defendants do not waive ineffective-assistance claims.").

¶ 25 We turn to the merits. To succeed on a claim of ineffective assistance of counsel, a defendant must demonstrate that counsel's representation fell below an objective standard of reasonableness. *Strickland v. Washington*, 466 U.S. 668, 688 (1984). In addition, a defendant must establish prejudice by showing "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. "A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome." *Id.* If a claim may be resolved on the basis that there is no prejudice, a reviewing court need not consider whether counsel's performance was deficient. See *id.* at 697 ("If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, *** that course should be followed."); *People v. Gaciarz*, 2017 IL App (2d) 161102, ¶ 50 (courts may resolve ineffectiveness claims by reaching only the prejudice component of *Strickland*, because lack of prejudice renders counsel's performance irrelevant).

¶ 26 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 2016)), which required the State to prove that defendant, with intent to defraud, knowingly issued or delivered a false document apparently capable of defrauding another, knowing it to have been thus made or altered. *Id.* Generally, "other-crimes evidence is not admissible to prove that the defendant has a propensity or disposition to commit the charged offense(s)." *People v. Potts*, 2021 IL App (1st) 161219, ¶ 174. However, "other-crimes evidence is admissible as proof of any other material fact at issue other than propensity, as long as its potential for prejudice does not substantially outweigh its probative value." *Id.* "When the trial court admits other-crimes evidence for a non-propensity purpose, it should instruct the jury to consider the evidence *only* for that purpose." (Emphasis in original.) *Id.* ¶ 175. Defense counsel's failure to object to, or seek a limiting instruction on, other-crimes evidence is "harmless" when the

defendant cannot establish that, but for counsel's errors, the result of the proceeding would have been different. *People v. Markiewicz*, 246 Ill. App. 3d 31, 48-49 (1993).

¶ 27 We need not consider whether defense counsel's actions were objectively unreasonable, because defendant cannot establish a reasonable probability that the result of the proceeding would have been different had the jury been given the limiting instruction concerning the other-crimes evidence and had State's exhibit No. 4 been objected to and excluded. Defendant argues that "[a]bsent the danger of the jury considering the other-crimes evidence as propensity evidence, the evidence in this case is not overwhelming." He challenges Delaine's identification testimony and also asserts that "[t]here was no direct evidence demonstrating that [defendant] had knowledge of the validity of the check." We reject defendant's argument.

¶ 28 First, we note that Delanie's identification testimony, standing alone, was solid. Delaine testified that defendant used the commercial lane when he deposited the check, which allowed Delaine to see him "clearly." She was able to describe his vehicle, his clothing, his race, and his approximate age. After learning that the check that defendant deposited was fraudulent, Delaine saw him at a restaurant and recognized him immediately. She also identified him on Lott's Facebook page. Mills testified that Delaine told him that "she was completely positive she had seen him in the drive[-]through, and then she had seen him at a local restaurant." Delaine identified defendant in open court. Defendant attempts to challenge this identification testimony by suggesting that Delaine's credibility "was called into question throughout trial." As defendant notes, Delaine contradicted Mills' police report—she denied telling him that she looked up Lott's Facebook page after the transaction because she thought defendant was attractive. This, however, does not impeach her identification. Indeed, the fact that she may have looked up defendant on Facebook sooner rather than later would likely make her identification more reliable.

¶ 29 In any event, it is not reasonably probable that the outcome of the proceeding would have been different if the jury was given a limiting instruction on the Walmart surveillance footage. Certainly, the purpose of a limiting instruction on other-crimes evidence is to reduce prejudice. *People v. Young*, 381 Ill. App. 3d 595, 601 (2008). Here, however, there was no reasonable chance of prejudice given the strength of Delaine's identification testimony, which was itself more than sufficient for the jury to find that defendant was the individual who deposited the check.

¶ 30 We recognize that Lott testified that she was not able to identify anyone in the pictures that she was shown at the bank. However, her testimony is not clear as to exactly which pictures she had seen. She referenced a "picture of the person in the bank teller window," but Mills' testimony suggested that the video from the bank was not clear due to the sun. Thus, it is questionable whether there was even anyone identifiable in a screenshot from the bank video. Lott also referenced "the Walmart pictures," but Mills testified that he did not recall showing Lott the screenshots from the Walmart surveillance camera. Even if the jury had concluded that Lott was truthful about being shown the screenshots, the jury could have found that she was not truthful about her inability to identify anyone. The screenshots did not show the individual's face, but they did show his clothing and vehicle, which were consistent with Delaine's description, as well as his possession of Lott's orange debit card. The jury could have found that Lott was familiar enough with defendant's apparel to identify him from the screenshots but that their relationship made her reluctant to do so.

¶ 31 We also reject defendant's claim concerning the absence of direct evidence of defendant's knowledge. The State can prove an element of an offense by circumstantial evidence alone. *People v. Wheeler*, 226 Ill. 2d 92, 120 (2007). "Circumstantial evidence is 'proof of facts and circumstances from which the trier of fact may infer other connected facts which reasonably and usually follow according to common experience.' " *People v. McPeak*, 399 Ill. App. 3d 799, 801

(2010) (quoting *People v. Stokes*, 95 Ill. App. 3d 62, 68 (1981)). "In forgery cases, proof must often be by circumstantial evidence." *People v. Johnson*, 2018 IL App (1st) 150209, ¶ 24. The jury could have reasonably inferred that when defendant, who was very close with Lott, deposited a fraudulent check into Lott's account without her permission or knowledge, he knew that the check was fraudulent.

¶ 32 Similarly failing for lack of prejudice is defendant's claim concerning the similar check deposited at a different Midland States Bank branch. Even if we were to find that the check was improperly admitted, we cannot say that, but for its admission, the result of the proceeding would have been different. First, we note that the similar check was mentioned only briefly at two points in the testimony: once when Delaine testified that she was informed by the bank's fraud department that the "same kind of check" was deposited in Lott's account at a different branch and again when Lott identified the signature on the back of the check and testified that it was not hers. Delaine's testimony about the similar check explained how she came to learn that the check at issue was fraudulent and also served as additional evidence of Lott's signature. We note, too, that the State did not refer to this check in its closing argument. Given the totality of the evidence presented, we cannot say, absent evidence of this second check, that the result of the proceeding would have been different.

¶ 33 In light of the foregoing, we cannot say that there is a reasonable probability that the result of the trial would have been different absent trial counsel's allegedly deficient performance. Therefore, defendant's ineffectiveness claims fail for lack of prejudice.

¶ 34 III. CONCLUSION

¶ 35 For the reasons stated, we affirm the judgment of the circuit court of Stephenson County.

¶ 36 Affirmed.