ATTORNEYS FOR APPELLANT:

JOHN FORBES
WILLIAM F. THOMS
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

JODI KATHRYN STEIN
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

JOHN OFFETT,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-0912-CR-687
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Stanley Kroh, Judge Pro Tem
Cause No. 49G03-0903-FC-33730

June 30, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

John Offett appeals his conviction for Class C felony forgery. We affirm.

Issue

The sole issue is whether there is sufficient evidence to support Offett's conviction.

Facts

The evidence most favorable to the conviction is that on March 19, 2009, Offett went into a Key Bank branch in Indianapolis and approached teller Kesha Johnson. He presented her with a check made out to him in the amount of $4780.00 on the Key Bank account of Monessen Hearth Systems Company ("Monessen"), of Paris, Kentucky. Offett had received the check in the mail at his home in Indianapolis in an envelope without a return address, but with a Canadian stamp and postage cancellation. Offett has never worked for Monessen.

Offett told Johnson that he wanted to cash the check. In response to Johnson's question about whether he worked for Monessen, he said that he made deliveries for them. He informed Johnson that he did not have a Key Bank account, and Johnson told him of the procedures for cashing a check for a non-customer, which included requiring two pieces of identification, obtaining a thumb print, and payment of $7.50. However, before cashing the check and before Offett endorsed it, Johnson noticed several irregularities with the check. The maker's signature was smudged, the check number was out of sequence with other checks that had cleared the account, and there was a fraud

alert associated with the account.[1] Johnson tried calling the bank's fraud department about the check but did not receive an immediate answer. She then showed the check to her manager, Kelly Crawford.

Crawford also asked Offett if he worked for Monessen, and this time he indicated that he was supposed to undergo customer service training for the company. Later, however, Offett told Crawford that he had no affiliation with Monessen. While Crawford was talking to Offett, the bank's fraud department confirmed that the check was fraudulent. After Offett had been in the bank for twenty to thirty minutes, Crawford told him that she believed the check was not legitimate, and he said, "Well, I kind of questioned that. That's why I didn't take it to my own bank." Tr. p. 58. Offett appeared calm throughout his interactions with Johnson and Crawford.

The State charged Offett with Class C felony forgery and Class D felony attempted theft. At Offett's bench trial, he stipulated that the check was not written by Monessen or by anyone who had Monessen's permission to do so, and that it had not mailed the check to Offett. For its part, the State was unable to present any evidence that Offett himself had caused the writing or delivery of the check. The trial court found Offett guilty as charged but only entered judgment of conviction for Class C felony forgery. Offett now appeals.

Analysis

[1] In 2009, every week about thirty checks fraudulently written on Monessen's account were being sent to various recipients.

Offett contends there is insufficient evidence to support his forgery conviction. When we review the sufficiency of the evidence to support a conviction, we must consider only the probative evidence and reasonable inferences supporting the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). "It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction." Id. When confronted with conflicting evidence, we must consider it in a light most favorable to the conviction. Id. We will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. Id.

To convict Offett of forgery as charged, the State was required to prove that, with intent to defraud, he uttered a written instrument in such a manner that it was purported to have been made with Monessen's authority, when in fact it did not give such authority. See Ind. Code § 35-43-5-2(b)(4). Offett specifically contends there is a lack of evidence that he intended to defraud. Intent to defraud in a forgery prosecution may be proven by circumstantial evidence. Sanders v. State, 782 N.E.2d 1036, 1039 (Ind. Ct. App. 2003). "Intent is a mental function and, absent an admission, it must be determined by courts and juries from a consideration of the conduct and natural and usual consequences of such conduct." Eifler v. State, 570 N.E.2d 70, 77 (Ind. Ct. App. 1991), trans. denied. "Utter" is defined as "to issue, authenticate, transfer, publish, deliver, sell, transmit, present, or use." I.C. § 35-41-1-27. In forgery prosecutions concerning illegitimate checks, the mere act of presenting a forged check may be sufficient to show intent to

defraud. Williams v. State, 892 N.E.2d 666, 671 (Ind. Ct. App. 2008), trans. denied. A defendant's knowledge of an instrument's falsity is not an essential element of forgery, though it may be relevant to show intent to defraud. Benefield v. State, 904 N.E.2d 239, 245 (Ind. Ct. App. 2009), trans. denied.

We admit that there are some gaping holes in the story of this case. It is not known precisely who created the forged instrument that Offett presented, nor is it known how it came to be that the check was mailed to him from Canada, nor why it was written on the account of a Kentucky business with which Offett has no known affiliation. Still, although these holes exist, there is enough evidence here to fill the necessary elements of Class C felony forgery, specifically Offett's intent to defraud. Offett presented an undoubtedly fraudulent check to Johnson and Key Bank and requested that it be cashed. He also lied to Johnson and Crawford about whether he was employed by Monessen, falsely implying that Monessen owed him money when in fact he had no connection with the company.

Offett makes much of the fact that he was, by all accounts, calm in his interactions with Johnson and Crawford and remained in the bank for nearly half an hour, even after they began questioning him about the check, and that there is no evidence of the check's origins. We addressed a similar argument in Williams. In that case, the defendant was convicted of forgery but there was no evidence connecting the defendant with the creation of a fraudulent check, and the defendant did not exhibit any suspicious behavior when she went to a bank to attempt to deposit it to a recently-opened account.

Nonetheless, we held that although "the State's evidence is not overwhelming, neither is it insufficient." Williams, 892 N.E.2d at 671.

Likewise, here, Offett presented a forged check to Johnson and attempted to cash it. Although Offett insisted in his testimony that he merely was asking Johnson to determine whether the check was legitimate and, therefore, was not seeking immediate payment on the check, Johnson testified that he requested to cash it.[2] The trial court as factfinder could have chosen to believe Offett's version of events, but it did not. We cannot second-guess that determination.

Moreover, there is evidence here of suspicious behavior on Offett's part when he attempted to cash the check, which was lacking in Williams, because of his contradictory and, in fact, false assertions of employment by Monessen. Offett also asserted at trial that he thought he may have won a sweepstakes of some kind, and the check represented these winnings, but Crawford testified that Offett mentioned nothing about possibly winning a sweepstakes when she was trying to get him to explain the check's origins and his connection to Monessen. In sum, Offett is requesting that this court reweigh evidence and judge witness credibility, which we cannot do.

Conclusion

[2] Offett also notes that he never endorsed the check and that Johnson took none of the steps associated with cashing a check for a non-Key Bank customer, such as obtaining his thumb print; he contends this evidence supports his claim that he did not immediately seek to cash the check, and merely was attempting to determine its authenticity. The other conclusion to reach from this evidence, however, is that these steps were never taken because Johnson never reached the point of believing that the check should be cashed.

There is sufficient evidence to support Offett's conviction for Class C felony forgery. We affirm.

Affirmed.

BAILEY, J., and MAY, J., concur.