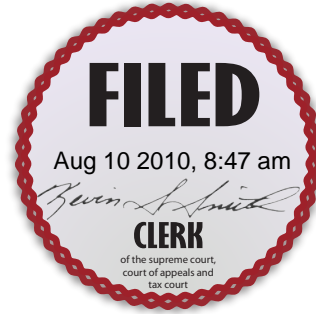


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

MARK A. BATES
Lake County Public Defender
Crown Point, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

JANINE STECK HUFFMAN
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

TIMOTHY A. STEVENS,
Appellant- Defendant,

vs.

STATE OF INDIANA,
Appellee- Plaintiff,

)
)
)
)
)
)
)
)
)
)

No. 45A05-0912-CR-723

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Salvador Vasquez, Judge
Cause No. 45G01-0609-FC-115

August 10, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

Timothy Stevens appeals his conviction and sentences for one count of forgery and one count of fraud on a financial institution, both Class C felonies, and three counts of theft, all Class D felonies. For our review, Stevens raises two issues, which we restate as: whether sufficient evidence supports his convictions, and whether the trial court properly ordered his eight-year sentence to be served consecutive to a sentence in a related case. Concluding the evidence is sufficient and the sentence is proper, we affirm.

Facts and Procedural History

In the summer of 2006, Stevens ordered twelve blank traveler's checks valued at \$500.00 each, under his alias "Steve Timmons," through an internet advertisement posted by a company allegedly located in the United Kingdom. The company solicited U.S. citizens to act as representatives of the company under the condition that they cash the traveler's checks in the United States for an eleven-to-fifteen percent commission on each check cashed. Upon arrival of the checks, Stevens called his attorney to ask what he should do with them. The attorney advised Stevens that the checks were probably no good and suggested that he take them to his bank. Stevens instead contacted his uncle, Kenny Campbell, to ask if he would cash the checks for him because he did not have personal identification. Kenny also lacked personal identification, so he contacted his daughter Maranda to ask if she would cash the checks; Maranda agreed. On July 23, 2006, Maranda contacted Stevens and agreed to meet him at White Castle on Route 30, down the road from the Hobart Wal-Mart. Stevens and Maranda worked out an agreement that Maranda would receive twenty percent of each check cashed, which was

roughly \$80.00 to \$100.00 per check. The two then drove to the Hobart Wal-Mart and met in the parking lot where Stevens opened a white envelope and gave Maranda one traveler's check. Maranda and Stevens agreed that she would go into Wal-Mart to purchase minutes for her phone with the traveler's check, and they would split the change from the purchase according to their previous agreement. From July 23, 2006 to August 2, 2006, Stevens and Maranda repeated the same process in which Maranda made purchases at two other Wal-Marts in Lake County, and three in Porter County. Maranda cashed seven of the traveler's checks. Stevens signed and deposited two checks into a savings and checking account with Chase Bank. Stevens withdrew amounts from the accounts through ATM transactions and transferred money from savings to checking. The traveler's checks were returned marked "counterfeit."

On October 15, 2009, a jury found Stevens guilty of one count of forgery and one count of fraud on a financial institution, both Class C felonies, and three counts of theft, all Class D felonies. On November 12, 2009, the trial court sentenced Stevens to six years on the forgery count, six years on the fraud count, and two years on each theft count. The six-year sentences on the forgery and fraud counts were ordered to be served concurrently with each other, and the two year sentences on the three counts of theft were ordered to be served concurrently with each other but consecutively to the sentences on the forgery and fraud counts, for a total sentence of eight years. The trial court also ordered the sentence served consecutively to a sentence imposed by the Porter County Superior Court in a separate proceeding relating to the traveler's checks cashed in Porter County. Stevens now appeals his convictions and sentences.

Discussion and Decision

I. Sufficiency of Evidence

A. Standard of Review

When reviewing the sufficiency of the evidence to support a criminal conviction, we neither reweigh the evidence nor judge witnesses' credibility. Wright v. State, 828 N.E.2d 904, 906 (Ind. 2005). Rather, we consider only the probative evidence and reasonable inferences supporting the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). Therefore, we will affirm the conviction if the probative evidence and reasonable inferences drawn therefrom could have allowed a reasonable trier of fact to find all elements of the crime proven beyond a reasonable doubt. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005).

B. Forgery

Initially, Stevens argues the State has not proved forgery beyond a reasonable doubt because he believed the traveler's checks were legitimate, and therefore, there was no evidence that he intended to defraud anyone. "A person who, with intent to defraud, makes, utters, or possesses a written instrument in such a manner that it purports to have been made: (1) by another person; (2) at another time; (3) with different provisions; or (4) by authority of one who did not give authority; commits forgery, a Class C felony." Ind. Code § 35-43-5-2(b).¹ It is well established that "[t]he element of intent may be proven by circumstantial evidence alone, and it is well-established that knowledge and intent may be inferred from the facts and circumstances of each case. The State is not required

¹ "A person engages in conduct 'intentionally' if, when he engages in the conduct, it is his conscious objective to do so." Ind. Code § 35-41-2-2 (a). "A person engages in conduct 'knowingly' if, when he engages in the conduct, he is aware of a high probability that he is doing so." Ind. Code § 35-41-2-2 (b).

to prove intent by direct and positive evidence.” Scott v. State, 867 N.E. 2d 690, 695 (Ind. Ct. App. 2007), trans. denied.

The circumstantial evidence proved Stevens knew the checks were illegitimate and that he lacked the authority to cash the checks. Under his alias “Steve Timmons,” Stevens ordered \$6,000.00 worth of traveler’s checks from an internet website company free of charge. Furthermore, when the checks arrived, Stevens contacted his attorney for advice regarding the authenticity of the checks and what he should do with them. Despite his attorney’s suggestion to take the checks to the bank to verify whether they were real, Stevens chose to disregard that advice and risk the consequences of uttering fake checks. Uttering is the offering of a forged instrument, knowing it to be such, with representation that it is genuine, and with intent to defraud. Miller v. State, 693 N.E.2d 602, 604 (Ind. Ct. App. 1998). All together, the suspect manner in which Stevens received the checks, followed by his subsequent inquiry to his attorney regarding their legitimacy, are evidence that Stevens was aware of the high probability that the checks were fake when he gave them to Maranda to cash and when he deposited them into his Chase Bank accounts. Therefore, the jury could have reasonably inferred that Stevens had the intent to defraud when he uttered the checks without adequate authority. As a result, the evidence is sufficient to sustain Stevens’s conviction of Class C felony forgery.

C. Fraud on a Financial Institution

Stevens contends the State has not proved beyond a reasonable doubt that he committed fraud on a financial institution, as he did not set up a fictitious account, use a false name, or take any money from his account after he deposited the two traveler’s

checks into his accounts at Chase Bank. We disagree. Indiana Code section 35-43-5-8(a) provides:

(a) A person who knowingly executes, or attempts to execute, a scheme or artifice:

(1) to defraud a state or federally chartered or federally insured financial institution; or

(2) to obtain any of the money, funds, credits, assets, securities, or other property owned by or under the custody or control of a state or federally chartered or federally insured financial institution by means of false or fraudulent pretenses, representations, or promises;

commits a Class C felony.

As stated above, circumstantial evidence alone is enough to support the inference that Stevens had the intent to defraud. See Scott, 867 N.E.2d at 695. Firstly, the conditions under which Stevens received the traveler's checks were suspicious. Stevens ordered the checks via internet, from an overseas company offering an eleven-to-fifteen percent commission to any U.S. citizen willing to cash the checks and send the remainder of the cash back to the overseas company. Moreover, Stevens admitted his intention to defraud the company by keeping one hundred percent of each cashed check. Secondly, Stevens was involved in another internet scam where he cashed a counterfeit check prior to receiving these traveler's checks from the overseas company. Stevens admitted:

Well, ironically, like we discussed, um, I was involved with some more internet scams and it was that day that it was brought to my attention that I did, in fact, deposit a—a counterfeit check in my name... FedEx happen to pull up with these particular traveler's checks. And I proceeded to call, uh, Michael Lambert who is my attorney and I told him, uh, about both incidents and, um, he told me, well, you know, they're probably no good, either.

Transcript at 181. Also, ATM receipts show that Stevens withdrew money from his account after he signed and deposited the two traveler's checks. Additionally, Stevens transferred funds from his checking to savings account, knowing that the checks were illegitimate. The suspicious circumstances in which Stevens received the checks, his willingness to defraud the overseas company, his participation in other internet schemes involving counterfeit checks, and his disregard of advice given by counsel not to cash the checks, is sufficient evidence to prove that Stevens had the intent to defraud Chase Bank when he knowingly deposited the two fake traveler's checks into his accounts. Therefore, the evidence is sufficient to sustain Stevens's conviction of Class C felony fraud on a financial institution.

D. Theft

To convict Stevens of theft, a Class D felony, the State must prove beyond a reasonable doubt Stevens knowingly or intentionally exerted unauthorized control over money and merchandise owned by Wal-Mart at locations in Hobart, Schererville, and Hammond, with intent to deprive Wal-Mart of any part of its value or use, see Ind. Code § 35-43-4-2(a), or that Stevens intentionally or knowingly aided, induced, or caused Maranda to commit theft, see Ind. Code § 35-41-2-4. Stevens admitted his intention to cause Maranda to commit theft from Wal-Mart. His statement to the police in relevant part reads:

I just wanna add that, uh, this was against my better judgment. It was an act of desperation. I was in financial straits and trying to get out of a predicament. I—I feel like I was kind of steal from Peter to pay Paul. And like I—I told you, I initially had Kenny in mind more than Maranda, kinda of a revenge thing in—in the event that they were fraudulent to more or less

take the heat off of me. And, like I said, he stole from my grandma and my mother and I wouldn't feel bad if he went back to jail or prison.

Tr. at 184-85. Consistent with his statement, Stevens asked his Uncle Kenny to cash the checks but Kenny did not have personal identification, so Kenny suggested Maranda. Stevens offered Maranda twenty percent of each cashed check in order to induce her to participate in his plan. Stevens and Maranda agreed to cash one check at a time at Wal-Mart stores located in Hobart, Schererville, and Hammond. They would cash the checks in the following manner: after the two of them met in the parking lot of each store, and Stevens pulled out an envelope and handed Maranda one of the checks, the two of them would either agree on what purchases were to be made in the store or shop there together, and Maranda would purchase items with the counterfeit checks and keep twenty percent of the remaining cash.

Furthermore, Stevens's intention to deprive Wal-Mart of the use and value of its products is established by the evidence. Stevens's knowledge of the counterfeit nature of the traveler's checks, as set forth above, is evident. With that knowledge, he developed a scheme where he was either an active participant in the theft, or induced Maranda to make purchases with the traveler's checks as he waited in the parking lot for her. The purchases ranged from CDs, cigarettes, and candy, to more expensive items such as webcams, phone card minutes, and groceries. Stevens had no intention of returning the items, deprived from Wal-Mart, or of paying for them legitimately. Stevens made the argument that he requested Maranda cash the checks only because he lacked sufficient identification, but that claim is contrary to his statement on the record and the

circumstantial evidence showing otherwise. He admitted that his motivation behind cashing the checks was his dire financial straits and need of money. If personal identification was truly a problem he could have made an attempt to obtain adequate identification and cashed the checks himself. Instead, Stevens induced Maranda into cashing fraudulent checks through a scheme that continued over a span of eleven days at multiple Wal-Mart stores located across two counties. We conclude the State presented sufficient evidence to support Stevens's convictions of Class D felony theft.

II. Consecutive Sentences

Generally the trial court has discretion to impose consecutive sentences based upon the aggravating and mitigating circumstances. Williams v. State, 891 N.E.2d 621, 630 (Ind. Ct. App. 2008). In imposing Stevens's sentence, the trial court cited as aggravating factors Stevens's twenty-five-year criminal history, which includes seven misdemeanor and five felony convictions; the failure of prior leniency by criminal courts to deter Stevens's criminal behavior; Stevens's conviction for operating while intoxicated while on bond in this cause; and Stevens's convictions in a related case in 2008.²

Stevens argues the trial court abused its discretion by imposing consecutive sentences, because the present eight-year sentence in Lake County, when served consecutively to the ten-year sentence out of Porter County, amounts to a total sentence of eighteen years for crimes arising out of an episode of criminal conduct, which exceeds

² Stevens and Maranda perpetrated their scheme at three Wal-Mart stores in Porter County, for which Stevens was also tried and convicted. Stevens was sentenced to two years on each of three aiding in theft convictions, four years on one count of bribery, and six years on a second count of bribery. The sentences on the three counts of aiding in theft and the sentence on the first count of bribery to be served concurrently, and the second count of bribery to be served consecutively to the first, for a total of ten years. See Stevens v. State, 913 N.E.2d 270, 275 (Ind. Ct. App. 2009), trans denied.

the advisory sentence for a felony which is one class of felony higher than the most serious of the felonies for which Stevens has been convicted. See Ind. Code § 35-50-1-2 (c). The next highest class of felony, Class B, has an advisory sentence of ten years. Ind. Code § 35-50-2-5. An “episode of criminal conduct” is defined as “offenses or a connected series of offenses that are closely related in time, place, and circumstances.” Ind. Code § 35-50-1-2(b). The singleness of a criminal episode should be based upon whether the alleged conduct was so closely related in time, place, and circumstance that a complete account of one charge cannot be related without referring to the details of the other charge. Cole v. State, 850 N.E.2d 417, 419 (Ind. Ct. App. 2006). The timing of the offenses is important when considering whether a series of offenses constitutes a single episode of criminal conduct. Smith v. State, 770 N.E.2d 290, 294 (Ind. 2002). Crimes that are “simultaneous” and “contemporaneous” in nature may constitute a single episode of criminal conduct. Id. By contrast, where crimes take place at separate times and separate locations, they do not constitute a single episode of criminal conduct. Id.

Stevens’s offenses clearly were committed at separate times and separate places. The first criminal episode took place on July 23, 2006. Stevens’s crimes continued until August 2, 2006, with multiple criminal episodes in between. Although Stevens’s criminal conduct appears to be part of a connected scheme, the separation of time, place, and circumstances distinguishes each episode of criminal conduct so that a complete account of each episode can be given without referring to the details of another. For example, Stevens’s theft at the Hobart Wal-Mart on July 23 is completely separate from his episode of theft at the Schererville Wal-Mart three days later. Likewise, Stevens’s

claim that his crimes in Porter County are part of the same episode of criminal conduct as the crimes in Lake County must be discarded. Stevens's three counts of aiding in theft in Porter County were connected but distinctly separate in time, space, and circumstances from the thefts in Lake County. Moreover, his two bribery convictions in Porter County are unrelated to Stevens's scheme with the traveler's checks. Therefore, the trial court was not constrained by the limitation on consecutive sentences contained in Indiana Code section 35-50-1-2 (c).

Conclusion

Sufficient evidence supports Stevens's convictions of forgery, fraud on a financial institution, and theft. Further, the trial court did not improperly sentence Stevens.

Affirmed.

FRIEDLANDER, J., and KIRSCH, J., concur.