STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED July 15, 2008
v	No. 277371 Cass Circuit Court
MICHAEL FRED CURRY, Defendant-Appellant.	LC No. 06-010304-FH

Before: Murphy, P.J., and Bandstra and Beckering, JJ.

PER CURIAM.

Defendant Michael Fred Curry appeals as of right his jury trial convictions for one count of forgery of a state warrant, MCL 750.250, and one count of uttering and publishing an altered state warrant, MCL 750.253. Defendant was sentenced as an habitual offender, fourth offense, MCL 769.12, to 34 to 240 months' imprisonment for each conviction. We affirm.

Defendant first argues that the prosecutor failed to produce sufficient evidence from which a rational jury could find beyond a reasonable doubt that defendant possessed the intent to defraud. Defendant also argues that the fact that none of the parties were materially harmed by defendant's actions indicates his lack of intent to defraud.

We review claims of insufficient evidence de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515-516; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). This Court will not interfere with the trier of fact's role of determining the weight of the evidence or the credibility of witnesses. *Id.* at 514-515. Circumstantial evidence and reasonable inferences that arise from such evidence can constitute satisfactory proof of the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

MCL 750.250 provides:

> Any person who shall falsely make, alter, forge or counterfeit any note, certificate, bond, warrant or other instrument, issued by the treasurer or other

> officer authorized to issue the same, of this state, or any of its political subdivisions or municipalities, with intent to injure or defraud as aforesaid, shall be guilty of a felony, punishable by imprisonment in the state prison not more than 7 years.

In *People v Susalla*, 392 Mich 387, 392-393, 407; 220 NW2d 405 (1974), our Supreme Court made the following observations regarding the law of forgery:

> Most writers and commentators agree that forgery is "the false making or material alteration, with intent to defraud, of any writing which, if genuine, might apparently be of legal efficacy or the foundation of a legal liability."
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> [I]t is clear that forgery includes any act which fraudulently makes an instrument appear to be what it is not.
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> In the instant case, defendant created a business check by signing his name. The check would not have been negotiable without a signature, therefore, the signing was itself the act which made the false instrument. He had no authority to do so, therefore he acted with fraudulent intent. [Citations and footnotes omitted.]

MCL 750.253 provides:

> Any person who shall utter or pass, or tender in payment as true, any such false, altered, forged or counterfeit note, certificate or bill of credit for any debt of this state, or any of its political subdivisions or municipalities, any bank bill or promissory note, payable to the bearer thereof, or to the order of any person, issued as aforesaid, knowing the same to be false, altered, forged or counterfeit, with intent to injure or defraud as aforesaid, shall be guilty of a felony, punishable by imprisonment of not more than 5 years or by fine of not more than 2,500 dollars.

"The crime of uttering and publishing consists of offering or passing a forged instrument as genuine, knowing the same to be false, with an intent to injure or defraud." *People v Peace*, 48 Mich App 79, 86; 210 NW2d 116 (1973) (citation omitted). Stated otherwise, or breaking it down, the elements of uttering and publishing are: (1) knowledge that an instrument was false, (2) an intent to defraud, and (3) presentation of the forged instrument for payment. *People v Shively*, 230 Mich App 626, 631; 584 NW2d 740 (1998).

An actor's intent may be inferred from the facts and circumstances, and minimal circumstantial evidence is sufficient to show a defendant's state of mind. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). Here, the prosecutor presented sufficient evidence from which a rational juror could find beyond a reasonable doubt that defendant altered or forged a check issued by the Department of Corrections (DOC), otherwise referred to as a

"state warrant," in the amount of $360. He did so by fraudulently causing a false endorsement on the back of the check, and there was sufficient evidence to establish that he acted with the requisite intent to defraud the DOC and the lodging establishment known as the Castle Inn. At trial, the prosecutor introduced evidence that defendant presented a check issued by the DOC with a false signature on the back to a gas station attendant who cashed the check. Defendant caused the check to appear to be something that it was not, i.e., a check endorsed by both necessary parties listed on the check, which were defendant and the Castle Inn.[1] In addition, this Court has previously determined that the act of endorsing another person's name on a bank withdrawal slip without authorization demonstrated an intent to defraud. *People v Van Horn*, 127 Mich App 489, 491; 339 NW2d 475 (1983); see also *Susalla*, *supra* at 393 (signing check without authority showed that the defendant "acted with fraudulent intent").

Defendant argues that there was insufficient evidence to show an intent to defraud as the prosecutor did not establish that any of the parties involved suffered a loss. However, the manager of the Castle Inn testified that the hotel depended on the money that it received from the DOC for housing parolees and that the Castle Inn did not receive the money it expected to receive from defendant. It had a reservation held in defendant's name, and defendant was supposed to give the state warrant to the Castle Inn. Defendant attempts to counter this evidence with the claim that any money that would have been received by the Castle Inn was miniscule in comparison to the entire operation; however, this argument actually supports the prosecution's case, where the dollar amount of the instrument is irrelevant for purposes of establishing the crimes. Defendant also contends that because the Castle Inn did not have to provide a room or any services to defendant, given that he never showed up, it did not suffer a loss. This argument is strained. The argument necessarily assumes that the Castle Inn makes no profit on the amount charged for a room, which lacks logic. The bottom line is that the Castle Inn did not receive a check as a result of defendant's forgery and incurred a loss, and the DOC was also defrauded in the sense that the money was not used for the intended purpose as accomplished by the alteration of the check.

Moreover, in *People v Hester*, 24 Mich App 475, 481; 180 NW2d 360 (1970), this Court stated that "it is well established that the people need not show an actual monetary loss . . . in order to support the charged offense" of uttering and publishing a forged document.[2]

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[1] We note that, although there was evidence that defendant convinced an acquaintance to forge the signature instead of defendant doing it himself, the court instructed the jury on an alternative theory of aiding and abetting.

[2] Defendant runs through a litany of reasons and excuses regarding why he could not stay at the Castle Inn or why it was impractical to do so, and he asserts that it was more practical and economically efficient to cash the check and not stay at the Castle Inn. Logically defendant may be correct, but these arguments do not and cannot serve as a defense to the crime; he intentionally altered or forged the check, or directed such action, and fraudulently and knowingly presented it for payment. Defendant's alleged concerns do not equate to proof that he had no intent to defraud; rather, they evince a position that he intended to defraud but for good reason to his thinking.

Defendant next argues that he did not commit the crimes of uttering and publishing and forgery, where all he did was not use the check for the intended purpose that the check was given to him. Defendant presents the following analogy: "[I]f a father gives a son a check and tells his son the money is for payment of the son's rent for the next month[, and] if the son in fact cashes the check and uses the money for something else, he did not use it as it was intended. But this doesn't mean that when he cashed the check there was an uttering and publishing or a forgery." The ingredient missing from this quaint and claimed analogy, which is found here, is that the son did not alter or forge the check to accomplish the purpose that was contrary to his father's directive; it was presumably made out to the son alone as defendant does not state otherwise, and therefore there was no forged instrument that was presented by the son. Accordingly, this argument lacks merit.

Defendant further argues on appeal that the prosecutor failed to show that defendant altered a "check" because the instrument he was given was post-dated one week in advance of the day he received it. It was not payable on demand and, thus, was not a "check." However, the statutes under which defendant was convicted were both applicable to various instruments. MCL 750.250 prohibits the alteration of "any note, certificate, bond, warrant or other instrument, issued by the treasurer or other officer authorized to issue the same, of this state, or any of its political subdivisions or municipalities," while MCL 750.253 applies to any "false, altered, forged or counterfeit note, certificate or bill of credit for any debt of this state, or any of its political subdivisions or municipalities, any bank bill or promissory note, payable to the bearer thereof, or to the order of any person, issued as aforesaid." At trial, a parole officer explained that the "state warrant" that was issued to defendant was, essentially, a check drawn against the DOC's account. Regardless of whether it was post-dated, the instrument defendant fraudulently passed fell under the plain language of the statutes.

Next, defendant argues that the trial court abused its discretion by allowing the prosecutor to introduce evidence that defendant violated the terms and conditions of his parole by not traveling to the Castle Inn. We review a trial court's decision to admit evidence for an abuse of discretion. *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998). An abuse of discretion occurs where a trial court's decision falls outside of the range of principled outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). A trial court's decision on a close evidentiary question ordinarily will not be considered an abuse of discretion. *People v Hine*, 467 Mich 242, 250; 650 NW2d 659 (2002). Where a decision regarding the admission of evidence involves a preliminary question of law, e.g., whether a rule of evidence precludes admissibility, the question of law is reviewed de novo. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999).

Defendant contends that the challenged evidence was inadmissible evidence of defendant's prior bad acts and irrelevant. MRE 404(b)(1) governs the admission of other-acts evidence:

> Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident when the same is material, whether such other

crimes, wrongs, or acts are contemporaneous with, or prior or subsequent to the conduct at issue in the case.

The trial court did not abuse its discretion or otherwise err in admitting the contested evidence. In *People v Sholl*, 453 Mich 730, 741; 556 NW2d 851 (1996), our Supreme Court, after acknowledging MRE 404(b), stated, "Nevertheless, it is essential that prosecutors and defendants be able to give the jury an intelligible presentation of the full context in which disputed events took place." Quoting *People v Delgado*, 404 Mich 76, 83; 273 NW2d 395 (1978), the *Sholl* Court expressed:

> "It is the nature of things that an event often does not occur singly and independently, isolated from all others, but, instead, is connected with some antecedent event from which the fact or event in question follows as an effect from a cause. When such is the case and the antecedent event incidentally involves the commission of another crime, the principle that the jury is entitled to hear the "compete story" ordinarily supports the admission of such evidence." [*Sholl, supra* at 742 (citations omitted).]

Here, the evidence regarding defendant's parole status, the parole rules, and violation of the parole rules was part of the res gestae of the charged crimes, and it was not introduced to show defendant's propensity to commit the crimes. The testimony touching on these matters was so interwoven with the facts pertaining to defendant's actions in handling the check at issue, to the arrangement between defendant, the DOC, and the Castle Inn, and to the elements of the crimes charged, including knowledge and intent, that the testimony was admissible and necessary to give the jury the complete story. The evidence was relevant and admissible pursuant to MRE 401, 402, and 403. Moreover, we fail to see how the challenged evidence prejudiced defendant, assuming error. See MCL 769.26; *Lukity, supra* at 495.

Defendant next argues that the trial court committed plain error by improperly instructing the jury about financial loss. The court instructed the jury that it did not matter whether a person suffered a loss as a result of defendant's actions. Defendant contends that, while this instruction is generally correct, it was not applicable here because defendant actually presented the check and cashed it, and by giving the instruction the court deprived defendant of the defense that he did not intend to defraud anyone. First, this argument was waived by defendant when defense counsel expressly and affirmatively approved the instructions on the record. *Lueth, supra* at 688.

Defendant, however, also asserts that counsel was ineffective for failing to object to the instruction. We conclude that counsel's performance was not deficient because any objection would have been futile and meritless. *People v Carbin*, 463 Mich 590, 599-600; 623 NW2d 884 (2001); *People v Goodin*, 257 Mich App 425, 433; 668 NW2d 392 (2003). We fail to see the logic in defendant's argument. The court's instructions were consistent with the elements of the crimes as discussed above, which do not include proof of loss, and the court instructed that the prosecution was required to prove beyond a reasonable doubt that defendant intended to defraud someone. Defendant aggressively argued to the jury that the facts and circumstances showed that he had no intent to defraud anyone. Defendant was not deprived of his constitutional right to present a defense. *People v Hayes*, 421 Mich 271, 278; 364 NW2d 635 (1984). To the extent that the court's instruction precluded the jury from considering any loss, or lack thereof, incurred by the DOC or Castle Inn for purposes of deliberating on the issue of intent to defraud, there can

be no legitimate dispute that Castle Inn suffered a loss, and thus no prejudice flowed from any assumed instructional error and the failure to object. Reversal is simply unwarranted.

Defendant next argues numerous alleged instances of prosecutorial misconduct, none of which have merit. Defendant first maintains that the prosecutor impermissibly introduced evidence that defendant violated the terms and conditions of his parole. As ruled above, however, the contested evidence was admissible. Claims of prosecutorial misconduct cannot be predicated on the elicitation of admissible evidence, nor was there any indication of bad faith on the part of the prosecutor even were the evidence inadmissible. *People v Noble*, 238 Mich App 647, 660-661; 608 NW2d 123 (1999); *People v Curry*, 175 Mich App 33, 44; 437 NW2d 310 (1989).

Next, defendant argues that the prosecutor impermissibly argued facts not in evidence and denigrated defendant and defendant's trial counsel during closing argument. Defendant is correct that a prosecutor may not introduce or argue facts that are not in evidence. *People v McCain*, 84 Mich App 210, 215; 269 NW2d 528 (1978). But a prosecutor is allowed to argue the evidence and reasonable inferences that arise from the evidence. *People v Ackerman*, 257 Mich App 434, 450; 669 NW2d 818 (2003). And, a prosecutor may comment on a witness's credibility during closing argument, especially in cases where the jury's verdict will likely depend on which witnesses the jury believes. *People v Thomas*, 260 Mich App 450, 455; 678 NW2d 631 (2004). In making arguments, and stating inferences and conclusions, a prosecutor need not use bland language. *People v Launsburry*, 217 Mich App 358, 361; 551 NW2d 460 (1996). Here, the prosecutor's remarks were clearly designed to support the theory that defendant possessed the intent to defraud, a necessary element of the charged crimes. The challenged argument was based on the evidence and reasonable inferences. Defendant's assertion that there was no dispute about the facts in evidence, other than whether he endorsed the check for Castle Inn, is belied by the record. Moreover, the trial court instructed the jury not to be influenced by sympathy or prejudice, that the lawyers' comments are not evidence, and that the case must be decided on the basis of the evidence. The trial court's instructions were sufficient to dispel any possible prejudice. *People v Long*, 246 Mich App 582; 588; 633 NW2d 843 (2001).

Defendant next argues that the prosecutor misstated the law to the jury. A prosecutor's comments must be examined in context, and their propriety depends on the particular facts of the case. *People v Callon*, 256 Mich App 312, 330; 662 NW2d 501 (2003). Defendant does not clearly explain how the challenged statements made by the prosecutor misled the jury regarding the law of forgery or uttering and publishing. Defendant argues that the prosecutor's remarks implied that "disobeying a verbal order is committing forgery or . . . uttering and publishing." However, in context, the prosecutor never argued that the charged crimes were committed because defendant disobeyed verbal orders from his parole officer. The prosecutor argued that defendant's conduct, including ignoring parole rules, was indicative of fraudulent intent, which is an element of the charged crimes. Defendant also argues that the prosecutor misstated the law by analogizing defendant's loan agreement with the DOC to an auto loan. Defendant claims that the analogy was inapt because none of the parties in the instant matter suffered a loss. As mentioned above, however, the manager of the Castle Inn testified that the Castle Inn depended on the money that it received from the DOC for housing parolees and that the Castle Inn did not receive the money it expected to receive from defendant. The prosecutor's comments did not

constitute a misstatement of law. Furthermore, the trial court correctly instructed the jury that the "lawyers' statements and arguments are not evidence." Jurors are presumed to follow their instructions. *People v Matuszak*, 263 Mich App 42, 58; 687 NW2d 342 (2004).

Next, defendant argues that the prosecutor impermissibly elicited a police officer's opinion of defendant's veracity. It is generally improper for a witness to comment or provide an opinion on the credibility of another witness because matters of credibility are to be determined by the trier of fact. *People v Williams*, 153 Mich App 582, 590; 396 NW2d 805 (1986). Assuming that the challenged questions were improper, this unpreserved error did not amount to plain error that affected defendant's substantial rights, as it did not affect the outcome of the proceedings, and defendant is not actually innocent, nor did any error seriously affect the fairness or integrity of the judicial proceedings. *Carines*, *supra* at 763.

Defendant also argues that the sum of the instances of prosecutorial misconduct demands reversal; however, given our rulings on the individual claims of misconduct and the strong evidence of defendant's guilt, reversal is unwarranted. We also reject defendant's unsupported argument that the harmless error rule should not apply.

Finally, defendant claims that his trial counsel was ineffective for failing to object, but his argument is not specific. He does not explain or rationalize his position or discuss whether trial counsel was pursuing a legitimate trial strategy. A party may not simply announce a position and leave it for this Court to discover and rationalize the basis for his claim. *People v Kevorkian*, 248 Mich App 373, 389; 639 NW2d 291 (2001). The argument appears to be a broad swipe at counsel's failures in relation to all of the issues presented, but we find no basis for reversal.

Affirmed.

/s/ William B. Murphy
/s/ Richard A. Bandstra
/s/ Jane M. Beckering