

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee

UNPUBLISHED
October 11, 2012

v

MICHAEL ANTHONY WALTIERE,

Defendant-Appellant.

No. 305799
Macomb Circuit Court
LC No. 2010-004556-FH

Before: K. F. KELLY, P.J., and MARKEY and SERVITTO, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of two counts of uttering and publishing, MCL 750.249, for which he was sentenced to two years' probation with nine months in the county jail. We affirm.

I. BASIC FACTS

Defendant's convictions stem from instances in which he and his friend, Justin Matijow, filled out and cashed stolen checks at a liquor store in July 2010.

Matijow worked at Fergie's Rental from July 20, 2010 to July 28, 2010. Thomas Ferguson, the owner of Fergie's Rental, testified that during Matijow's employment, Ferguson kept checks in the store. On August 4, 2010, Ferguson was on his bank's website and noticed that some checks were out of order and that they had not been written by him. He clicked on the check images to view the checks and discovered they were signed by someone else. Ferguson identified three of the missing checks from Fergie's Rental. The first check (#3413) was made out to defendant for \$432. The second check (#3414) was made out to Justin Matijow for \$486. The third check (#3415) was made out to defendant in the amount of \$386. Ferguson also noticed that two additional checks were missing.

Matijow, who was incarcerated at the Macomb County Jail for uttering and publishing a check, testified for the prosecution. Matijow testified that he had known defendant since sixth grade. They were best friends in July 2010, the period during which Matijow began working at Fergie's Rental. While at work, he came in contact with some checks belonging to Fergie's Rental. He took two pages from a checkbook, which contained a total of six blank checks, without permission. Matijow gave defendant three of the blank checks and kept three checks for himself to cash. Matijow wrote on the three checks in his possession, but misspelled certain

words and made other mistakes on two of the checks. He tore up those two checks and threw them away.

Matijow testified that he went with defendant to a liquor store at Ten Mile Road and Mound Road in Center Line, where defendant cashed one of his checks. Defendant knew an individual at the store. Matijow did not talk to defendant about what he planned to do with the other checks. As far as Matijow knew, defendant cashed two of the checks he gave him. Matijow was ultimately sentenced to one year in the Macomb County jail as the result of a plea agreement.

Defendant denied any wrongdoing. He testified he was unaware that the checks were stolen and that he did not intend to defraud anyone when he presented the checks to be cashed. He testified that he and Matijow stopped by the home belonging to the manager of Fergie's Rental to pick up the checks. According to defendant, Matijow went inside, came back with the checks, and handed them to defendant in the car. Defendant genuinely believed that the money from the checks represented compensation or pay for Matijow for working at Fergie's Rental. Defendant and Matijow had been best friends for 12 years, so he did not have any reason to believe that Matijow would lie to him. There was nothing on the checks to raise suspicion; they were filled in when he received them from Matijow.

II. ANALYSIS

On appeal, defendant claims there was insufficient evidence to support his convictions because the prosecution failed to prove beyond a reasonable doubt that he knew the checks presented were false, altered or forged, or that he intended to defraud or cheat anyone. We disagree.

When deciding a claim of insufficient evidence, an appellate court “‘must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt.’” *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000), quoting *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended in part 441 Mich 1201 (1992). “The standard of review is deferential: a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict.” *Nowack*, 462 Mich at 400. “‘Circumstantial evidence and the reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime.’” *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999), quoting *People v Allen*, 201 Mich App 98, 100; 505 NW2d 869 (1993). “Even in a case relying on circumstantial evidence, the prosecution need not negate every reasonable theory consistent with the defendant’s innocence, but merely introduce evidence sufficient to convince a reasonable [fact-finder] in the face of whatever contradictory evidence the defendant may provide.” *People v Konrad*, 449 Mich 263, 273 n 6; 536 NW2d 517 (1995). “Because of the difficulty of proving an actor’s state of mind, minimal circumstantial evidence is sufficient” to prove that an actor had the requisite intent, *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999).

“Uttering and publishing consists of three elements: (1) knowledge on the part of the defendant that the instrument was false; (2) an intent to defraud; and (3) presentation of the

forged instrument for payment.”” *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001) quoting *People v Shively*, 230 Mich App. 626, 631, 584 NW2d 740 (1998).

Viewed in a light most favorable to the prosecution, there was sufficient evidence to establish beyond a reasonable doubt that defendant had knowledge that the checks were false and that he cashed them with the intent to defraud. Matijow testified that he gave defendant, his best friend at the time, three of the six business checks he took from his former employer. The checks were blank and listed the business’s name at the top, left-hand corner. Matijow testified that he and defendant later went to a liquor store where defendant knew an employee, that defendant filled out one of the checks in his own writing and that he received cash for the check from the employee. Although Matijow did not see defendant fill in or cash the second check, he stated that, as far as he knew, defendant cashed two checks. A bank employee testified that two of the checks were made payable to defendant. The business owner testified that he never gave Matijow or defendant permission to take or cash the checks.

Although defendant gave a different account as to how he received and ultimately cashed the checks, we may not interfere with the trier of fact’s role “to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences.” *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). Similarly, questions pertaining to the credibility of witnesses should be left to the trier of fact to resolve. *Wolfe*, 440 Mich at 515.

A rational trier of fact could reasonably conclude from the foregoing evidence that defendant fraudulently presented two of the stolen checks for payment with knowledge of their false character and that he received money from the transactions.

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Jane E. Markey

/s/ Deborah A. Servitto