

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

DJUAN LA SHAUN BAKER, *Appellant*.

No. 1 CA-CR 21-0069

FILED 11-1-2022

Appeal from the Superior Court in Maricopa County

No. CR2017-001682-001

The Honorable Howard D. Sukenic, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix

By Michael O'Toole

Counsel for Appellee

Maricopa County Public Defender's Office, Phoenix

By Jesse Finn Turner

Counsel for Appellant

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MEMORANDUM DECISION

Judge Brian Y. Furuya delivered the decision of the Court, in which Presiding Judge David D. Weinzwieg and Judge Jennifer M. Perkins joined.

F U R U Y A, Judge:

¶1 Defendant Djuan La Shaun Baker appeals his convictions for one count of fraudulent schemes and artifices and one count of forgery as well as the resulting sentences. Baker argues there was insufficient evidence to support each conviction and his Arizona Rule of Criminal Procedure (“Rule”) 20 motion should have been granted. Because the evidence showed Baker gained a prospective benefit from his fraudulent scheme, we affirm his conviction and sentence. We also affirm his conviction and sentence for forgery because there was substantial evidence to support the same.

FACTS AND PROCEDURAL HISTORY

¶2 Baker and H.K. met online in February 2016 and dated until December 2016. It was a long-distance relationship. Baker lived in Arizona. H.K. lived in Utah. The couple stayed in touch by text message and telephone. H.K. once visited Baker in April.

¶3 In late 2016, Baker twice asked H.K. if he could cash his payroll check in her bank account because his bank account had “fraud activity,” and he was hospitalized after a car accident. Baker said his employer would deposit the check in H.K.’s bank account, and H.K. could send the money to a Western Union in the hospital. H.K. refused to provide her bank account information to Baker, but she agreed to speak with a bank teller to authorize the \$2,200 deposit.

¶4 After Baker continued to reassure her and express his urgent need, H.K. attempted to send Baker the funds through Western Union. H.K. testified at trial, in pertinent part, that she “attempted to” transfer the \$2,200 to Baker the day after the check was supposedly deposited into her account. Before she transferred the funds to Baker’s Western Union account, however, she double-checked her own bank account “to make sure that [the funds had] processed,” discovering instead that her account was frozen. Ultimately, H.K. never sent Baker the funds and their communications ceased sometime thereafter.

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¶5 After receiving a report of this incident, Police investigated and seized the bank records associated with Baker's supposed payroll check and learned that Baker had opened the dummy account associated with the check with one dollar the week before attempting to cash the \$2,200 check. The check made no reference to Baker on its face. Rather, the check had "Core One Wellness" written in the top left corner. The account was closed by the bank in January with a negative balance due to fees associated with the bad check.

¶6 The State charged Baker with one count of fraudulent schemes and artifices, a Class 2 felony, one count of forgery, a Class 4 felony, and one count of attempt to commit theft, a Class 6 felony.

¶7 At trial, the State argued that Baker obtained a prospective benefit under A.R.S. § 13-2310(A). Following the State's presentation of the case, the defense made a Rule 20 motion regarding the fraudulent schemes and artifices and forgery counts. Defense counsel argued because Baker was never given any money or any other thing of value, he had not received any benefit from H.K., and therefore, the State had not presented substantial evidence of a fraud scheme. When asked about Baker depositing the check at the bank, defense counsel argued the evidence only described "an attempted fraud scheme which is far different than a fraud scheme where somebody knowingly obtains a benefit"

¶8 Defense counsel also argued there had been no forgery because the check was returned for insufficient funds rather than for use of an unrecognized name at the top of the check. The court found there had been substantial evidence of forgery and denied that portion of the motion but withheld judgment on the fraudulent schemes and artifices issue.

¶9 After consideration, the court ruled the State had presented substantial evidence of fraudulent schemes and artifices "on the thinnest of margin." The court explained it did not agree with the State's charging decision, but still found Baker "*could have* obtained a benefit, and that benefit *could have* been [prospective]." (Emphasis added).

¶10 The defense rested without calling any witnesses. During closing argument, the State explained that a benefit is a "value or advantage present or [] [prospective]."

¶11 The jury convicted Baker on all counts. After finding multiple prior felony convictions and being on release status, the court sentenced Baker to 12.5 years for fraudulent schemes and artifices, a concurrent term of 8 years for forgery, and a concurrent term of 4.25 years for attempted theft.

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Baker timely appealed, and we have jurisdiction pursuant Arizona Revised Statutes (“A.R.S.”) §§ 12-120.21(A)(1), 13-4031, and -4033(A).

DISCUSSION

¶12 Baker argues the court erred in denying his Rule 20 motion because the State did not show substantial evidence of fraudulent schemes and artifices or forgery.

¶13 We review the superior court’s ruling on a Rule 20 motion de novo and view the evidence in the light most favorable to sustaining the verdict, to determine whether “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *State v. West*, 226 Ariz. 559, 562 ¶¶ 15–16 (2011) (quoting *State v. Mathers*, 165 Ariz. 64, 66 (1990)) (emphasis in original). A court must deny a Rule 20 motion where the State has presented substantial evidence of guilt, which may be either direct or circumstantial. *West*, 226 Ariz. at 562 ¶ 16. Substantial evidence is such proof as a reasonable jury “could accept as adequate and sufficient to support a conclusion” of guilt beyond a reasonable doubt. *Id.* (quoting *Mathers*, 165 Ariz. at 67).

I. Sufficient Evidence Was Presented to Establish Fraudulent Schemes and Artifices.

¶14 We review issues of statutory interpretation de novo with the goal of effectuating legislative intent. *Ariz. Chapter of the Associated Gen. Contractors of Am. v. City of Phoenix*, 247 Ariz. 45, 47 ¶ 7 (2019). A person commits the crime of fraudulent schemes and artifices if he “pursuant to a scheme or artifice to defraud, knowingly obtains any benefit by means of false or fraudulent pretenses, representations, promises or material omissions.” A.R.S. § 13-2310(A). Although § 13-2310 does not define the word “obtain,” the criminal code defines “obtain” elsewhere as “to bring about,” “to receive,” or “to secure.” See A.R.S. § 13-1801(10). “Benefit” is expressly defined within our criminal code as “anything of value or advantage, present or prospective.” A.R.S. § 13-105(3).

¶15 The State argued Baker violated § 13-2310 because he obtained a prospective advantage from his scheme or artifice. See A.R.S. § 13-2310(A). *State v. Henry* represents the law for prospective advantage and controls here. In *Henry*, the defendant lured girls to his apartment under the pretense of testing a face cream. *State v. Henry*, 205 Ariz. 229, 231 ¶¶ 2–3 (App. 2003). He then photographed them for his own sexual gratification and to post for profit on his pornographic website. *Id.* at 231–32 ¶ 7. This court held the defendant in *Henry* actually received and secured the covertly taken photos,

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which both served his own sexual gratification (a present “benefit”), and – even though no evidence showed Henry had actually done so – enabled him to prospectively gain money if he had posted them to his website (a prospective advantage). *Id.* at 235 ¶ 26.

¶16 The facts here are that H.K. “attempted to” transfer the funds to Baker, but a cause beyond her control – the bank froze her account – prevented that transfer. Given this testimony, we cannot say a reasonable jury could not have determined that H.K. would have transferred the funds to Baker as he requested if not for the bank freezing her account. Although Baker never secured a present benefit, the evidence in this record can reasonably support that he did obtain a prospective advantage. Having acquired H.K.’s compliance in “attempt[ing] to” transfer the funds to him – no matter how short the duration of that attempt and regardless of its ultimate success – Baker did obtain a requisite prospective benefit. Like the defendant in *Henry* who obtained the prospective benefit of uploading and profiting from the photos, *id.*, here Baker obtained the prospective benefit of the \$2,200 when H.K. undertook to transfer the funds to his Western Union account. And because we must view the evidence in the light most favorable to sustaining the jury’s verdict and look to whether “any rational trier of fact could” have found that Baker obtained a prospective benefit, *see State v. Cox*, 217 Ariz. 353, 357 ¶ 22 (2007) (emphasis omitted), we must affirm.

¶17 Baker further comments on the inconsistency and weakness of the evidence, arguing that no reasonable jury could properly accept it. But criticisms as to inconsistency and weakness in the evidence merely go to its weight. *See State v. Erivez*, 236 Ariz. 472, 476 ¶ 16 (App. 2015). A court does not err by deferring questions of weight to the jury. *See Alvarado v. State*, 63 Ariz. 511, 516 (1945) (observing that “it is the sole province of the jury to determine the credibility of the witnesses and to evaluate the weight to be given to their testimony.”). Thus, we conclude that the court did not err in denying Baker’s Rule 20 motion.

II. The State Provided Substantial Evidence that Defendant Used False or Fraudulent Pretenses, Representations, Promises, or Material Omissions.

¶18 Baker further argues the State failed to show he did anything beyond writing a bad check. Baker contends the check was a real check and free of false information, which would render the check invalid, and he “did not make any effort to hide his involvement in the check or the account it was drawn from.” Finally, Baker argues “the State did not present evidence

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Mr. Baker lied about being in a car accident.” The record contradicts his arguments.

¶19 Police investigation revealed Baker himself opened the account associated with the check. Therefore, Baker’s many assurances beyond attempting to cash the bad check, *supra* ¶¶ 3-5, were not truthful. The jury was also free to consider whether writing “Core One Wellness” on the header of the starter check was an attempt by Baker to bolster the credibility of his scheme. Baker also claimed he was in the hospital awaiting surgery, meaning an accountant for the company would deposit the check, but this was demonstrably false. Photographs revealed Baker himself deposited the check. Even if Baker had been in an accident or needed surgery, a reasonable jury could have concluded his statements made on the day of the deposit were false or contained material omissions to garner sympathy and trust from H.K.

¶20 Viewing the evidence most favorably to sustaining the verdict, there was substantial evidence for the jury to determine beyond a reasonable doubt there was a fraudulent scheme that sought benefit “by means of false or fraudulent pretenses, representations, promises or material omissions.” A.R.S. § 13-2310; *West*, 226 Ariz. at 562 ¶ 15.

III. The State Provided Substantial Evidence of Forgery.

¶21 Finally, Baker argues there was *no* evidence of forgery because “[t]he check was real, it was drawn on a real account, and it was deposited in a real account.” A person commits forgery if he falsely makes a written instrument. *See* A.R.S. § 13-2002(A)(1). A person falsely makes a written instrument if he “make[s] or draw[s] a complete or incomplete written instrument that purports to be an authentic creation of its ostensible maker but that is not either because the ostensible maker is fictitious, or because, if real, the ostensible maker did not authorize the making or drawing of the written instrument.” A.R.S. § 13-2001(7).

¶22 There was substantial evidence Baker completed the check with fictitious or unauthorized information to further his attempted scheme. The top left of the check read “Core One Wellness.” Baker made false representations the check was for payroll, that it would be deposited by an accountant for the company, and he had never had issues cashing checks from the company before. The deceptive effect of writing “Core One Wellness” at the top of the starter check was also shown by H.K.’s inquiry with the teller, where she learned the check appeared “off.” But the deception was apparently effective because despite the teller’s disclosure,

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H.K. still attempted to transfer money to Baker. Given this evidence, a reasonable jury was free to conclude “Core One Wellness” was either fictitious or did not authorize the check. The check was therefore a forged instrument meant to induce H.K. into sending \$2,200. *See* § 13-2001(7)–(8).

CONCLUSION

¶23 For the forgoing reasons we affirm Baker’s convictions and sentences.



AMY M. WOOD • Clerk of the Court
FILED: AA