

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
TERRY CRABTREE, JUDGE

DIVISION II

CA CR 06-245

September 20, 2006

DANNY SHEETS

APPELLANT

APPEAL FROM THE CIRCUIT COURT OF
GARLAND COUNTY
[NO. CR-2004-723 IV]

V.

STATE OF ARKANSAS

APPELLEE

HONORABLE THOMAS LYNN
WILLIAMS,
JUDGE

AFFIRMED

Appellant Danny Sheets was found guilty in a bench trial of forgery in the first degree for which he was sentenced to five years in prison with three years suspended and fined \$500. His only argument on appeal is that there is insufficient evidence to support the guilty verdict. We affirm.

A person forges a written instrument if, with the purpose to defraud, he makes, completes, alters, counterfeits, possesses, or utters a written instrument that purports to be, or is calculated to become, or to represent if completed the act of a person who did not authorize that act. Ark. Code Ann. § 5-37-201(a) (Repl. 2006). The term “utter” means to transfer, pass or deliver or cause to be transferred, passed or delivered to another person any written instrument, or to attempt to do so. Ark. Code Ann. § 5-37-101(7) (Repl. 2006). A person commits forgery in the first degree if he forges a written instrument that is money. Ark. Code Ann. § 5-37-201(b)(1) (Repl. 2006).

The test for determining the sufficiency of the evidence is whether the verdict is supported by substantial evidence, direct or circumstantial. *Peterson v. State*, 81 Ark. App. 226, 100 S.W.3d 66 (2003). Substantial evidence is evidence of sufficient certainty and precision to compel a conclusion one way or another and pass beyond mere suspicion or conjecture. *Barrett v. State*, 354 Ark. 187, 119 S.W.3d 485 (2003). On appeal, we review the evidence in the light most favorable to the appellee and consider only the evidence that supports the verdict. *Britt v. State*, 344 Ark. 13, 38 S.W.3d 363 (2001). Where the evidence is circumstantial, the appellate court must consider whether the evidence was sufficient to exclude all other reasonable hypotheses; whether circumstantial evidence excludes every other reasonable hypothesis is a question for the trier of fact, and it is only when the evidence leaves the trier of fact solely to speculation or conjecture that it is insufficient as a matter of law. *Ewings v. State*, 85 Ark. App. 411, 155 S.W.3d 715 (2004).

The charge in this case stemmed from appellant's passing of counterfeit money at the 270 Farm Supply, a business located in Hot Springs. Sharon Gaut, a store clerk, testified that on October 13, 2004, appellant paid for five boxes of matches with a purported twenty-dollar bill. She gave appellant the change and then marked the bill with a counterfeit-detecting pen. The pen mark on the bill turned black, indicating that it was possibly counterfeit. Gaut marked the bill a second time and again the mark turned black. She told appellant that she was calling the police and that he was not to leave, because he needed to explain to the police where he had gotten the bill. Gaut asked appellant to return the change, and he did so.

Gaut testified that, while she was speaking to the police on the telephone, appellant was backing up and moving toward the door. She again asked appellant to stay, and appellant said that he had to "go tell my buddy." Appellant then ran out of the store.

State Trooper Dennis Overton was on patrol in the area and received a dispatch that someone was attempting to pass counterfeit money at the store. He responded immediately and saw a green Ford Taurus leaving the parking lot at a high rate of speed. He managed to block the vehicle's retreat by pulling in front of it. The driver of the vehicle, who was identified as Ricky Wilhite, ducked down in the seat. Overton ordered Wilhite to sit up, and Overton exited his vehicle with his gun drawn. Overton approached the driver's side of the vehicle where Wilhite was lying, and then removed him from the vehicle. Overton testified that a large knife had been lying beneath Wilhite. A large wad of what appeared to be money was found under the passenger's seat.

Fred Hawthorne, a deputy with the Garland County Sheriff's Office, arrived shortly after Trooper Overton had apprehended Wilhite. Overton advised Hawthorne that another subject had run to the rear of the store. They found appellant hiding in one of the storage buildings located behind the store. Deputy Hawthorne testified that appellant told him that Wilhite had given him the twenty-dollar bill and that he had not known that it was fake. Hawthorne retrieved the twenty-dollar bill from Gaut and gave it to Sergeant Ron Martineau, a criminal investigator with the sheriff's office.

Sergeant Martineau testified that he took custody of the twenty-dollar bill that Deputy Hawthorne had given him. He also took custody of the wad of suspected counterfeit bills that had been found under the passenger seat in the car, which consisted of seventeen twenty-dollar bills and eight one hundred-dollar bills. Another suspicious twenty-dollar bill was found on Wilhite's person.

Terry Gambill, a Special Agent with the United States Secret Service, testified that all of the bills that had been seized were counterfeit. He said that the quality of the counterfeit bills was average, and he believed that they had been generated by an ink-jet printer.

Appellant testified that he was visiting at a friend's house that day where he met Wilhite for the first time. Appellant said that Wilhite was going to get beer and that he rode along in order to buy cigarettes. Appellant testified that Wilhite was injured, so he agreed to go into the store to buy matches for Wilhite with a twenty-dollar bill that Wilhite had given him. He said that the clerk gave him the matches and the change for the twenty, and that the clerk told him that the money was not good right after he asked for cigarettes. Appellant testified that he had not looked at the money and thought she meant that it had been torn. He said that he told the clerk, "Well, this fellow out there has money. He's the one that gave it to me, so let me go out there and tell him to come in or if he's got some more money." Appellant said that when he went outside Wilhite yelled that they had to leave and that Wilhite freaked out and put the car in reverse. Appellant testified that he went to the back of the store, sat in the trailer and smoked a cigarette, thinking about what he was going to do because there were two warrants for his arrest. He said that he had decided to turn himself in but that the officers came and arrested him before he was able to do so. Appellant testified that he did not know that the money was fake, that he was "really put out," and that he felt "like a sucker." Appellant said that he did not run out of the store and that the clerk had told him that it was alright for him to go outside to get the man who had given him the money.

Appellant recalled Sargeant Martineau to the witness stand, who testified that appellant had told him about driving with Wilhite to get beer and cigarettes. Martineau confirmed that appellant had also told him that Wilhite had given him the money and that Wilhite had sped off after appellant told him that there was something wrong with the money. Appellant also told Martineau that he had hidden in the storage building because there were warrants for his arrest.

Appellant's sufficiency argument is that there was no evidence showing that he was aware

that the bill was counterfeit, and thus there was no proof that he acted with the intent to defraud. A criminal defendant's intent or state of mind, however, is seldom capable of proof by direct evidence and must usually be inferred from the circumstances of the crime. *Edmond v. State*, 351 Ark. 495, 95 S.W.3d 789 (2003). Here, there was testimony that appellant fled the store and hid in a storage building after being told that the bill was not genuine. Flight to avoid arrest can be considered as corroboration of evidence tending to establish guilt. *Breshears v. State*, 83 Ark. App. 159, 119 S.W.3d 61 (2003). Although appellant testified that he did not know that the bill was a counterfeit, that he did not actually flee the store, and that he secreted himself in the storage building only because there were warrants for his arrest, the trier of fact was not obliged to believe his version of events. Decisions regarding the credibility of witnesses are for the trier of fact, which is not required to believe any witness's testimony, especially the testimony of the accused, because he is the person most interested in the outcome of trial. *Winbush v. State*, 82 Ark. App. 365, 105 S.W.3d 789 (2003). Additionally, a defendant's improbable explanation of suspicious circumstances may be admissible as proof of guilt. *Chapman v. State*, 343 Ark. 643, 38 S.W.3d 305 (2001). We hold that there is substantial evidence to support the verdict of guilt.

Affirmed.

ROBBINS and GRIFFEN, JJ., agree.