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ATTORNEY FOR APPELLANT:

MARK SMALL
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

GEORGE P. SHERMAN
Deputy Attorney General
Indianapolis, Indiana

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IN THE COURT OF APPEALS OF INDIANA

DOUGLAS NORMAN and THERESA NORMAN,

Appellants-Defendants,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

No. 15A01-1102-CR-74

APPEAL FROM THE DEARBORN SUPERIOR COURT
The Honorable Sally A. Blankenship, Judge
Cause Nos. 15D02-0905-FC-7 & 15D02-0905-FC-8

December 14, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Douglas Norman ("Doug") and Theresa Norman ("Theresa") bring this consolidated appeal from their convictions for money laundering,[1] as a Class D felony. Doug also appeals his conviction for one count of corrupt business influence,[2] as a Class C felony, one count of forgery,[3] as a Class C felony, and one count of intimidation,[4] as a Class A misdemeanor. Doug and Theresa present the following restated issues for our review:

I. Whether Doug has established fundamental error in the forgery charging information; and

II. Whether there is sufficient evidence to support Doug's and Theresa's convictions.

We affirm.

FACTS AND PROCEDURAL HISTORY

Doug was the owner of a business known as Doug's Cars and was married to Theresa. Theresa worked at Doug's Cars on Saturdays and would collect the tax money for any cars sold during the week and took care of the necessary paperwork related to the business.

Brandon Roberts ("Roberts") was employed as a mechanic at Doug's Cars. Doug purchased cars that had "problems," "put a little money into them," and sold the vehicles. *Tr.* at 124. Roberts was aware that Doug would write down a different amount on a vehicle title than the actual purchase price for the vehicle in order to pay less in taxes to the State. Roberts often observed that when a customer purchased a car, Doug would tell the customer

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[1] *See* Ind. Code § 35-45-15-5.

[2] *See* Ind. Code § 35-45-6-2.

[3] *See* Ind. Code § 35-43-5-2.

[4] *See* Ind. Code § 35-45-2-1.

"we're going to write this down, so I can pay less taxes and then that way it will cost you less money when you go get your title done." *Id.* at 127.

On one occasion, Doug asked Roberts to attempt to roll back the odometer on a car, but Roberts declined. On other occasions, Doug told Roberts to call customers to tell them lies about vehicle titles. Doug also physically threatened people, including Roberts, and Roberts' wife and child. There were some occasions where Doug told customers, "I'll find you, I'll hunt you down, [and] I'll kill you, if you ever run your mouth." *Id.* 128.

In February 2009, Melissa Mason purchased a 2000 Volvo S40 from Doug for $3,600. The Indiana Department of Revenue ST-108 form for the sale stated the purchase price was $2,700. Doug told Mason that she would pay less in taxes this way.

Doug and Mason signed a form which stated that Mason expected a refund in the event she discovered any major problems with the vehicle. A mechanic looked over the vehicle for Mason and determined it had mechanical problems. When Mason and her boyfriend, Jason Waits, attempted to return the vehicle to Doug the following day, Doug was irate and declined to make a refund. Doug pulled out a baseball bat and said, "Get the fuck out of here. You don't know who the fuck I am." *Id.* at 75-76.

Waits left Doug's Cars and filed a police report. Doug later told Mason that he would return her money in exchange for her dropping the charges against him. Waits and Mason returned the car, and Doug refunded their money.

Cassie Phillips and her husband purchased a Nissan Altima for $1,500 from Doug in February 2009. The title, however, stated that the purchase price was $895. In April 2009, Christina Schneider purchased a 1993 Toyota Celica for $1,500 from Doug's Cars. The

Vehicle Order stated the purchase price was $400. Doug told Schneider that she would pay less in taxes that way.

On April 20, 2009, Robert and Robin Lyons purchased a 1996 Honda Civic from Doug and paid $2,000 for the car. Doug filled out the Used Vehicle Order form and the Department of Revenue ST-108 form to reflect a purchase price of $1,500. Doug also told them that this would save money on taxes.

Kelsey and Billy Huff notified Lawrenceburg Police Detective Nicholas Beetz ("Detective Beetz") that they had purchased a 1995 Honda Civic for $1,988 from Doug, but that the paperwork reflected a purchase price of $600. Detective Beetz gave Billy a recording device and followed him to Doug's Cars. Detective Beetz maintained surveillance of Billy as he met with Doug and Theresa. While Billy spoke with them, he pointed out that he paid more for the vehicle he had purchased than was listed in the documentation. Theresa told Billy that he would owe less in taxes if the price was listed as $600.

Detective Beetz obtained a search warrant for Doug's Cars. During a search of the office, a baseball or softball bat was found on the floor behind Doug's desk. A used vehicle order book was located on a desk inside the office, and a receipt book was located on Doug's desk. Copies of the Sales Tax Returns filed by Doug's Cars were obtained from the Indiana Department of Revenue.

Detective Beetz interviewed Theresa on June 1, 2009, and in that interview, she stated that she assisted Doug with the paperwork at Doug's Cars. She explained that she and Doug totaled their sales monthly and for the year by using their bills of sale. The bills of sale were identified as the Used Vehicle Orders. Theresa said that she used the Used Vehicle Orders to

make the monthly sales tax reports that were submitted to the State. The Used Vehicle Order book, which was identified at trial as State's Exhibit 50, reflected that Doug's Cars had total sales of $18,045 for the month of April 2009. However, Doug's Cars reported to the State that the dealership had total sales of $11,805 during the month of April 2009.

Kathy Henninger, the tax payer advocate and disclosure officer for the Indiana Department of Revenue, testified at Doug's and Theresa's trial. Henninger testified that car dealers are required by law to collect sales tax from vehicle sales and submit the money to the State on a monthly basis. The sales tax is based on the purchase price of the vehicle, and a car dealer is required to fill out an ST-108 form with every vehicle sale as it documents the purchase price. She testified that if a dealer were to sell a vehicle and state on the ST-108 that the purchase price was less than what was actually paid for the vehicle, this would defraud the State of Indiana of the tax revenue to which it is legally entitled.

On May 29, 2009, the State charged Doug and Theresa with one count of corrupt business influence as a Class C felony, one count of forgery as a Class C felony, one count of making a false sales document as a Class D felony, one count of theft as a Class D felony, one count of attempting to commit theft as a Class D felony and one count of money laundering as a Class D felony. The State also charged Doug individually with one count of Class C felony intimidation with a deadly weapon and one count of intimidation as a Class A misdemeanor.

Following a bench trial for both defendants, Doug was found guilty of one count of corrupt business influence, one count of forgery, one count of the lesser included offense of intimidation as a Class A misdemeanor, and one count of making a false sales document.

Both Doug and Theresa were found guilty of one count of money laundering.

The trial court sentenced Doug to concurrent terms of six years with five years suspended for his corrupt business influence conviction, six years with five years suspended for his forgery conviction, one year with 180 days suspended for the intimidation conviction, and three years with two years suspended on his money laundering conviction. With respect to Theresa, the trial court sentenced her to two years imprisonment with two years suspended for her money laundering conviction. Doug and Theresa now appeal.

DISCUSSION AND DECISION

I. Fundamental Error

Doug claims that the charging information relating to the forgery charge against him was defective because it did not have attached thereto a copy of the allegedly forged instrument, nor did it have the contents of the allegedly forged instrument set forth in it. In general, the proper means by which to challenge deficiencies in a charging information is to file a motion to dismiss prior to arraignment. *Dickenson v. State*, 835 N.E.2d 542, 549 (Ind. Ct. App. 2005). The failure to assert error in an indictment or information results in waiver of that error. *Id*. Doug did not challenge his information prior to trial, but seeks to avoid waiver on appeal by asserting fundamental error.

To be considered fundamental, the error must be so prejudicial to the rights of the defendant that he could not have received a fair trial. *Id*. An information that enables the defendant, the court, and the jury to determine the crime for which conviction is sought satisfies due process concerns. *Id*. at 550. "Errors in the information are fatal only if they mislead the defendant or fail to give him notice of the charge filed against him." *Gordon v.*

State, 645 N.E.2d 25, 27 (Ind. Ct. App. 1995). "Although the State may choose to do so, it is not required to include detailed factual allegations in the charging instrument." *Richardson v. State*, 717 N.E.2d 32, 51 (Ind. 1999) (citing Ind. Code § 35-34-1-2). The defendant has the burden of showing how he was unduly prejudiced by any deficiencies in the charging information. *Rowe v. State*, 867 N.E.2d 262, 266 (Ind. Ct. App. 2007).

The cases cited by Doug in support of his contention that a copy of the allegedly forged document must be attached to the charging information are from the 1800s. *See McGinnis v. State*, 24 Ind. 500 (1865) (forged document must be set out in indictment); *State v. Cook*, 52 Ind. 574 (1876) (forged document must be attached to indictment). We have found no recent cases since Indiana's notice pleading system was implemented that have reversed a conviction for a failure to attach the allegedly forged document to the charging information.

Here, the allegations set forth in the charging information tracked the language of the forgery statute. In particular, it stated that between February 4, 2009 and April 29, 2009, Doug,

> with intent to defraud, made, uttered, or possessed a written instrument in such a manner that it purports to have been made with different provisions, to wit: [Doug], owner of Doug's Cars . . . . made sales documents and receipts for vehicles at the times of sale indicating the sales prices were lower than the actual sales prices.

Appellant's App. at 109. This charging information was not misleading to Doug and sufficiently advised him of the charge filed against him. Doug has failed to meet his burden of showing how he was unduly prejudiced by any deficiencies in the charging information. We find no fundamental error here.

Doug also asserts a discovery violation regarding disclosure of State's Exhibit 3 prior to trial. During the trial, counsel for both defendants argued that they had not seen the document. The State responded that counsel had been given the opportunity to examine the documents including State's Exhibit 3 prior to trial, but had not done so. The trial court took a brief recess and allowed counsel to review the exhibit. Doug did not renew his discovery violation objection after the recess or when the exhibit was admitted into evidence. Doug made a relevance objection, which was overruled. Doug has failed to establish a discovery violation regarding this exhibit.

II. Sufficiency of the Evidence

When reviewing the sufficiency of the evidence, we consider only the probative evidence and reasonable inference supporting the verdict. *Mork v. State*, 912 N.E.2d 408, 411 (Ind. Ct. App. 2009). We do not reweigh the evidence or reassess witness credibility. *Id*. We consider conflicting evidence most favorably to the trial court's ruling. *Id*. We will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. *Id*.

A. Forgery

Doug challenges the sufficiency of the evidence supporting his conviction for forgery. In order to establish that Doug committed the offense of forgery, the State was required to prove that Doug knowingly or intentionally made or uttered a written instrument in such a manner that it purports to have been made with different provisions. Ind. Code § 35-43-5-2(a)(1)(C). As previously mentioned, the charging information in this case alleged that

between February 4, 2009 and April 29, 2009, Doug prepared sales documents and receipts for vehicles at the time of sale which reflected a lower sales price than the actual sales price.

Doug argues that the State has failed to present any evidence of harm to the buyers, that the buyers were defrauded, or any benefit received by Doug from the transactions. He argues that the State could not establish that he had committed the offense when some sales were rescinded, money was refunded, or some sales were not finalized.

Our Supreme Court has stated that no monetary gain is required for a conviction of forgery. *Flick v. State*, 455 N.E.2d 339, 342 (Ind. 1983). "What is required is proof of intent to defraud." *Id.* Several witnesses testified at trial that Doug made or possessed sales documents purporting to state the purchase price for a vehicle when the actual price for the vehicles was much higher. Robert and Robin Lyons purchased a 1996 Honda from Doug on April 20, 2009, paying $2,000 for the vehicle, but the Used Vehicle Order form filled out by Doug reflected a purchase price of $1,500. The ST-108 form also indicated a lesser purchase price. Cassie Phillips and her husband purchased a Nissan Altima for $1,500 from Doug in February 2009; however, the stated purchase price was $895. Christina Schneider purchased a 1993 Toyota Celica from Doug for $1,500 in April 2009. The Used Vehicle Order form stated that the purchase price was $400. Doug told Schneider she would pay less in taxes that way, and other witnesses similarly testified.

Doug argues that the indictment does not state the party intended to be defrauded. In support of that argument, Doug cites to *Glaser v. State*, 204 Ind. 59, 183 N.E. 33 (1932). *Glaser* states that the indictment is required to state the party intended to be defrauded, citing the statute in effect at that time. *Id.* at 34. Notwithstanding the fact that Doug did not

challenge the information on this basis in a motion to dismiss prior to trial, our current statute has no such requirement that the defrauded party be named in the information. *See* I.C. § 35-43-5-2. Nonetheless, the probable cause affidavit states that the intention was to defraud the State of Indiana from taxes to which it was legally entitled. Numerous witnesses testified that Doug told them they would pay less in taxes if the documents were prepared in such manner. Sufficient evidence supports Doug's forgery conviction.

B. Money Laundering

Doug and Theresa challenge their convictions for money laundering. In order to convict Doug and Theresa of money laundering, the State was required to establish that Doug and Theresa knowingly or intentionally acquired or maintained an interest in, received, concealed, possessed, transferred, or transported the proceeds of criminal activity. Ind. Code § 35-45-15-5. As it pertains to this offense, the term "proceeds" is defined by statute as "funds acquired or derived directly or indirectly from, produced through, or realized from an act." Ind. Code § 35-45-15-4. The term "criminal activity" is defined by statute as "any offense" that "is classified as a felony under Indiana" law. Ind. Code § 35-45-15-1.

Doug challenges his conviction for money laundering claiming that the car sales were not illegal; therefore the money received from the transactions was not from an illegal activity. He also argues that he did not acquire any proceeds in such a way as to implicate money laundering. The record reflects that both Doug and Theresa told customers that the purpose of the difference in the documented price from the actual price of the vehicles was the payment of less in taxes. Doug would fill out the Used Vehicle Order form to reflect a price that was lower than the actual price. While the sales in and of themselves were valid

transactions, the forging of the sales documents concealing the actual proceeds was illegal. Therefore, the evidence is sufficient to establish that Doug knowingly or intentionally concealed or possessed the proceeds of criminal activity.

Theresa also challenges her conviction for money laundering. She claims that she had not acquired or maintained an interest in Doug's Cars, and that her conviction should be set aside because she was acquitted of forgery, theft, and making false sales documents. The evidence reflects, however, that she forged tax documents concealing the actual proceeds acquired through the forged sales documents. Theresa used the information from the sales documents, which she knew reflected an inaccurate sales price, to prepare the tax documents. Further, the statute does not require that Theresa be convicted of the criminal activity from which the proceeds were acquired. The evidence is sufficient to support Theresa's conviction for money laundering.

C. Making False Sales Documents

Doug asserts that there is insufficient evidence to support his conviction for making false sales documents. Although the trial court found Doug guilty of making false sales documents, the trial court did not enter a judgment of conviction on that count, nor did Doug receive a sentence for that offense. We find no error here as the issue is moot. *Samm v. State*, 893 N.E.2d 761, 765 (Ind. Ct. App. 2008) (court will not discuss moot questions, which are questions from which no effective relief can be rendered to the parties).

D. Intimidation

Doug challenges the sufficiency of the evidence to support his conviction for Class A misdemeanor intimidation as a lesser-included offense of Class D felony intimidation.

Indiana Code section 35-45-2-1 provides that "[a] person who communicates a threat to another person, with the intent that the other person be placed in fear of retaliation for a prior lawful act" commits the offense. Doug claims that there was no evidence of a prior lawful act.

The evidence of the incident involving Waits and Mason's attempt to return for a refund on the vehicle she had purchased from Doug was the basis of the allegation. As previously stated, Mason and Doug signed an agreement at the time she purchased a vehicle from Doug providing that Mason could return the vehicle and obtain a refund in the event that mechanical problems with the car were discovered. This document was admitted at trial as State's Exhibit 4. A mechanic discovered mechanical problems with the car, and Mason and Waits attempted to return the vehicle. When Waits requested a refund of the purchase price of the car Mason had purchased, Doug pulled out a baseball bat and threatened Waits with the bat placing him in fear of retaliation. In *Griffith v. State*, 898 N.E.2d 412, 418 (Ind. Ct. App. 2008), a panel of the court held that there was sufficient evidence to support the defendant's conviction where the evidence established the victim's prior lawful act of being at her residence and the defendant's communication of a threat to the victim shortly thereafter placing her in fear. Waits attempted to return the car and obtain a refund as provided for in the agreement Mason and Doug had executed. Doug then pulled out the bat and threatened Waits for attempting to return the car. The evidence is sufficient to support Doug's conviction.

E. Corrupt Business Influence

Doug also asserts that there is insufficient evidence to support his conviction for corrupt business influence. The State alleged that Doug, through a pattern of racketeering activity, i.e., forgery, intimidation, theft, and/or money laundering, knowingly or intentionally acquired or maintained, directly or indirectly, an interest in or control of property or an enterprise, i.e., Doug's Cars. Indiana Code section 35-45-6-2(2) provides that "A person . . . who through a pattern of racketeering activity, knowingly or intentionally acquires or maintains, either directly or indirectly, an interest in or control of property or an enterprise . . . commits [the offense] corrupt business influence." The term "[p]attern of racketeering activity" is defined as "engaging in at least two (2) incidents of racketeering activity that have the same or similar intent, result, accomplice, victim, or method of commission, or that are otherwise interrelated by distinguishing characteristics that are not isolated incidents." Ind. Code § 35-45-6-1(1)(d). The term "'[r]acketeering activity means to commit, to attempt to commit, to conspire to commit a violation of, or aiding and abetting in a violation of any of the following" forgery, intimidation, theft and money laundering, among other offenses. Ind. Code § 35-45-6-1(1)(e).

Here, the trial court found Doug guilty of three predicate offenses where only two were required to support his conviction of corrupt business influence, i.e., forgery, intimidation, and money laundering. Doug's conviction for corrupt business influence was supported by sufficient evidence.

Affirmed.

BAKER, J., and BROWN, J., concur.