

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

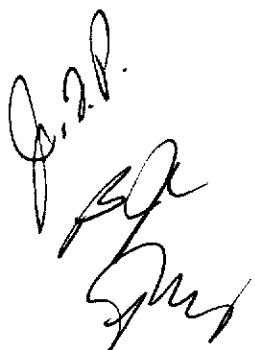
NO. 2009 KA 2326

STATE OF LOUISIANA

VERSUS

JESSE PAUL HOLTZCLAW

Judgment rendered June 11, 2010.



Appealed from the
22nd Judicial District Court
in and for the Parish of St. Tammany, Louisiana
Trial Court No. 453587
Honorable Reginald T. Badeaux, III, Judge

HON. WALTER P. REED
DISTRICT ATTORNEY
COVINGTON, LA
AND
KATHRYN W. LANDRY
SPECIAL APPEALS COUNSEL
BATON ROUGE, LA

ATTORNEYS FOR
STATE OF LOUISIANA

ERIC LABOURDETTE
SLIDELL, LA
AND
RACHEL M. YAZBECK
NEW ORLEANS, LA

ATTORNEYS FOR
DEFENDANT-APPELLANT
JESSE PAUL HOLTZCLAW

BEFORE: CARTER, C.J., GUIDRY, AND PETTIGREW, JJ.

PETTIGREW, J.

The defendant, Jesse Paul Holtzclaw, was charged by bill of information with one count of monetary instrument abuse, a violation of La. R.S. 14:72.2(A), and pled not guilty. Following a jury trial, he was found guilty as charged. Thereafter, the State filed a habitual offender bill of information against the defendant, alleging he was a second-felony habitual offender.¹ Following a hearing, he was adjudged a second-felony habitual offender, and was sentenced to five years at hard labor without the benefit of probation or suspension of sentence. He now appeals, challenging the sufficiency of the evidence to support the conviction. We affirm.

FACTS

Theresa Griffin, the victim, testified at trial. On November 12, 2007, she was working as a teller at Quick Cash Check Cashing (Quick Cash) in Covington, Louisiana. Prior to cashing checks, Griffin routinely contacted the bank or company that had issued the check and verified its validity.

On November 12, 2007, the defendant presented State Exhibit #3, a counterfeit \$500.00 American Express Traveler's Check from Wells Fargo Bank, to Griffin and asked that she cash the check. Griffin asked the defendant for his identification, and he gave her his driver's license. Griffin made copies of the traveler's check and the defendant's driver's license, and asked the defendant where he had obtained the check. The defendant claimed that a friend had given him the check. Griffin had worked for three years at Citizens Bank and Trust and Parish National Bank, but had never seen a traveler's check from Wells Fargo Bank. She also noted misspellings and felt that "the color was off" on the check. When Griffin called American Express to verify the check, she learned that it was a "falsified item," and signaled her co-worker to call the police. When the co-worker picked up her cell phone, the defendant began hitting the glass separating the tellers from the customers, and demanded that Griffin return his driver's license. He did

¹ The predicate offense was set forth as the defendant's April 4, 2000 guilty plea, under Twenty-second Judicial District Court Docket #99-CR6-76439, to possession of Xanax (alprazolam).

not, however, ask Griffin to return the counterfeit check to him. Griffin asked the defendant to give her "a second," but the defendant refused. She returned the defendant's driver's license to him, and he "left as fast as he possibly could." Approximately five to ten minutes passed between the time the defendant presented the counterfeit check for payment and the time he demanded the return of his driver's license and stormed out of Quick Cash.

Byron Daniels, a representative of American Express Security Division, also testified at trial. He indicated that the counterfeit check was a "good quality printing." He noted, however, that the serial number on the counterfeit check was valid only for a \$100.00 traveler's check. He also noted that "Travelers" was spelled with two "l"s in the middle of the check, but with one "l" elsewhere on the check. He indicated that when someone purchases traveler's checks, they are instructed to endorse the check with their name on the upper left-hand side. When the person uses the check, they are supposed to write the payee's name on the middle of the check, and then countersign the bottom. The counterfeit check was signed by the defendant on the top and the middle of the check.

SUFFICIENCY OF THE EVIDENCE

In his sole assignment of error, the defendant argues there was insufficient evidence of his intent to deceive another person because he voluntarily submitted his identification information, the counterfeit traveler's check was of good quality, and he believed the check was legitimate. He concedes that the evidence was sufficient to prove the other elements of the offense.

The standard of review for sufficiency of the evidence to uphold a conviction is whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could conclude the State proved the essential elements of the crime and the defendant's identity as the perpetrator of that crime beyond a reasonable doubt. In conducting this review, we also must be expressly mindful of Louisiana's circumstantial evidence test, which states in part, "assuming every fact to be proved that the evidence tends to prove," every reasonable hypothesis of innocence is excluded. **State v. Wright**, 98-0601, p. 2 (La. App. 1 Cir. 2/19/99), 730 So.2d 485, 486, writs denied, 99-0802 (La.

10/29/99), 748 So.2d 1157, 2000-0895 (La. 11/17/00), 773 So.2d 732 (quoting La. R.S. 15:438).

When a conviction is based on both direct and circumstantial evidence, the reviewing court must resolve any conflict in the direct evidence by viewing that evidence in the light most favorable to the prosecution. When the direct evidence is thus viewed, the facts established by the direct evidence and the facts reasonably inferred from the circumstantial evidence must be sufficient for a rational juror to conclude beyond a reasonable doubt that the defendant was guilty of every essential element of the crime.

Wright, 98-0601 at 3, 730 So.2d at 487.

Louisiana Revised Statutes 14:72.2, in pertinent part, provides:

A. Whoever, makes, issues, possesses, ... a counterfeit ... monetary instrument ... of an organization, with intent to deceive another person, shall be fined not more than one million dollars but not less than five thousand dollars and imprisoned, with or without hard labor, for not more than ten years but not less than six months, or both.

....

C. For purposes of this Section:

(1) "Counterfeit" means a document or writing that purports to be genuine but is not, because it has been falsely made, manufactured, or composed.

....

(3) "Monetary instrument" means:

(a) A ... traveler's check[.]

....

(4) "Organization" means a legal entity, other than a government, established or organized for any purpose, and includes a corporation ... [or] company....

After a thorough review of the record, we are convinced that a rational trier of fact, viewing the evidence presented in this case in the light most favorable to the State, could find that the evidence proved beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, all of the elements of monetary instrument abuse and the defendant's identity as the perpetrator of that offense. The jury heard, but rejected, the hypothesis of innocence presented by the defense, i.e., the defendant did

not know that the check was counterfeit and he had no intent to deceive Griffin. When a case involves circumstantial evidence and the jury reasonably rejects the hypothesis of innocence presented by the defense, that hypothesis falls, and the defendant is guilty unless there is another hypothesis that raises a reasonable doubt. **State v. Moten**, 510 So.2d 55, 61 (La. App. 1 Cir.), writ denied, 514 So.2d 126 (La. 1987). No such hypothesis exists in the instant case. Further, in reviewing the evidence, we cannot say that the jury's determination was irrational under the facts and circumstances presented to them. See State v. Ordodi, 2006-0207, p. 14 (La. 11/29/06), 946 So.2d 654, 662. An appellate court errs by substituting its appreciation of the evidence and credibility of witnesses for that of the fact finder and thereby overturning a verdict on the basis of an exculpatory hypothesis of innocence presented to, and rationally rejected by, the jury. **State v. Calloway**, 2007-2306, pp. 1-2 (La. 1/21/09), 1 So.3d 417, 418 (per curiam). This assignment of error is without merit.

REVIEW FOR ERROR

Our review for error is pursuant to La. Code Crim. P. art. 920, which provides that the only matters to be considered on appeal are errors designated in the assignments of error and "error that is discoverable by a mere inspection of the pleadings and proceedings and without inspection of the evidence." La. Code Crim. P. art. 920(2).

The trial court failed to impose the mandatory fine of not less than five thousand dollars nor more than one million dollars. See La. R.S. 14:72.2(A). Although the failure to impose the fine is error under Article 920(2), it certainly is not inherently prejudicial to the defendant. Because the trial court's failure to impose the fine was not raised by the State in either the trial court or on appeal, we are not required to take any action. As such, we decline to correct the illegally lenient sentence. See State v. Price, 2005-2514, pp. 18-22 (La. App. 1 Cir. 12/28/06), 952 So.2d 112, 123-25 (en banc), writ denied, 2007-0130 (La. 2/22/08), 976 So.2d 1277.

CONVICTION, HABITUAL OFFENDER ADJUDICATION, AND SENTENCE AFFIRMED.