[Cite as *State v. Windle*, 2011-Ohio-4171.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

STATE OF OHIO,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2010-L-033**
- vs -	:	
CHRISTOPHER R. WINDLE,	:	8-19-11
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 09 CR 000516.

Judgment: Reversed and conviction vacated.

Charles E. Coulson, Lake County Prosecutor, and *Alana A. Rezaee*, Assistant Prosecutor, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Plaintiff-Appellee).

Concetta F. Grimm, 11455 Rust Drive, Chesterland, OH 44026 (For Defendant-Appellant).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellant, Christopher R. Windle, appeals from the judgment of the Lake County Court of Common Pleas convicting him, after trial by jury, of one count of forgery, one count of possessing criminal tools, and one count of theft. For the reasons discussed in this opinion, we reverse the judgment of the trial court and vacate appellant's convictions.

{¶2} On May 26, 2008, Eastlake, Ohio, Walmart employee, Sharrell Barnes, was working at the customer service desk. Part of a customer service associate's job at Walmart involves cashing payroll and government checks. Pursuant to Walmart policy, a prospective payee must provide a valid picture identification and his or her social security number to cash a check.

{¶3} At approximately 1:12 p.m., appellant approached the desk to cash a payroll check in the amount of $789. The maker of the check was "Holladay Healthcare Pharmacy" located in Euclid, Ohio. The check indicated Holladay Healthcare Pharmacy had an account at KeyBank in Euclid. The check also included appellant's name and address. Appellant presented his driver's license and entered his social security number into the check-reader. After the check went through, appellant endorsed the check and was given the money. Ms. Barnes noticed appellant left with a man who was wearing a white shirt; according to Ms. Barnes, appellant returned to her counter a short-time later, inquiring whether he left his cell phone at the desk. After they determined the phone was not in the store, appellant again left. The transaction was captured on store video surveillance.

{¶4} Approximately three hours later, a woman approached the service desk to cash a similar payroll check. Again, the maker was Holladay Healthcare Pharmacy in Euclid for the amount of $791. The woman presented her ID, entered her social security number, and Ms. Barnes again surrendered the money. As the woman left, Ms. Barnes noticed she was accompanied by the same man she had seen earlier with appellant. This transaction was also caught on video surveillance.

{¶5} Sometime later, a third man approached the customer service desk and provided his driver's license to cash a payroll check in the amount of $795. The maker of this check was "Home Partners," an entity purportedly located in Cleveland, Ohio. The similarity between the three checks caused Ms. Barnes to take the third draft, with the payee's license, to asset protection officer Douglas Lock. The third individual subsequently left the store without his license. The encounter was again captured on video surveillance.

{¶6} Mr. Lock kept the third check, with the driver's license, and collected the first two checks (from Holladay Healthcare Pharmacy) from Ms. Barnes' register and notified the Eastlake Police Department. Officer Warren Clayton from the Eastlake Police Department arrived at the store and collected the three checks along with the video surveillance footage. In the course of his investigation, the officer attempted to locate the businesses listed as makers on the respective checks, but was unsuccessful. Although the officer never contacted the banks listed on the checks to actually determine their authenticity, the Lake County Grand Jury eventually indicted appellant on four separate felony counts, to wit: passing bad checks, in violation of R.C. 2913.11(B); possessing criminal tools, in violation of R.C. 2923.24; forgery, in violation of R.C. 2913.31(A)(3), and theft, in violation of R.C. 2913.02(A)(3)—all felonies of the fifth degree.

{¶7} Appellant entered a plea of "not guilty" and the matter proceeded to jury trial at which the state presented the testimony of Sharrell Barnes, Douglas Lock, and Officer Warren Clayton. First, Ms. Barnes testified she cashed the alleged forged writings and eventually reported her suspicion that the checks were "bad" to Walmart's

asset protection department. Ms. Barnes' testimony set forth the background facts, which led to appellant's ultimate indictment.

{¶8} The state next called certified Walmart asset protection officer Douglas Lock. Mr. Lock was first asked to explain what is required to obtain certification as a Walmart asset protection officer, to which he replied:

{¶9} "Usually training takes ten apprehensions to be certified. It is three - - you take three apprehensions with somebody, you witness three with somebody, then you have four on your own. So you watch three, you are a part of three, then you have four that you have to make the stops on your own. But the four stops that you make on your own, will be with somebody but you are approaching the suspect and you are giving your speech and whatnot, making an attempt to stop them."

{¶10} Mr. Lock testified that he had personally observed at least 50 "bad checks" in the course of his employment with Walmart. Mr. Lock was not asked to define what he considered a "bad check," but his testimony suggested a "bad check" is one that would not be honored by a bank. Mr. Lock next testified concerning certain details, which help him determine whether a check is bad or not:

{¶11} "One, the first sign that we notice is checks bleeding through. Checks that print on paper, on correct paper, government paper, do not bleed through. Meaning the signature. If they bleed through, then obviously that should be the first sign of a bad check because that should never happen. That should be the very first sign. The other thing [to] look for, that you can look for, would be maybe something misspelled. If you look at the ID, look at the person's name on the ID, maybe the person's name is misspelled. That could be a sign of a bad check. The type of background the check is

printed on is a sign of a bad check. Also accounting, the routing numbers are a bad check - - or a can be a sign of bad checks."

{¶12} Despite this testimony, the state introduced no evidence that Mr. Lock possessed any training or expertise in identifying "bad checks."

{¶13} When asked what, if anything, raised his suspicions in the case, Mr. Lock testified each check shared the same number (40282), the same routing number (000000518), and were made out in similar amounts ($789, $791, and $795). The maker of the checks passed by appellant and the second individual was Holladay Healthcare Pharmacy and, according to Mr. Lock, checks bearing this company name had been dishonored upon presentment in the past. Notwithstanding the fact that each check had a different account number, Mr. Lock concluded that the checks in question were bad. Given the circumstances, Mr. Lock determined it was unnecessary to present the checks for payment. Instead, Lock called the Eastlake Police Department to initiate an investigation.

{¶14} The state next played the surveillance video, which captured the transaction between appellant and Ms. Barnes. When Lock was questioned on direct examination about appellant's demeanor, Mr. Lock responded, over objection: "You notice all the signs of nervousness or suspected - - or a person looking for someone if you will." When asked to elaborate on the so-called "signs of nervousness," Lock testified:

{¶15} "*** [L]ooking around, some panicking, some walk into the store, then walk back out, then back in the store, some phone calls."

{¶16} On cross-examination, however, Mr. Lock conceded the only "sign of nervousness" appellant had exhibited was "looking around." Defense counsel consequently inquired:

{¶17} "Q. Okay. So in your experience, nobody goes into Wal Mart, cashes a check and looks around unless they are cashing a bad check?

{¶18} "A. Actually you wouldn't believe, that's correct. ***"

{¶19} After Mr. Lock's testimony, the state called Officer Warren Clayton, who testified he arrived at the store and took custody of the three checks after receiving Mr. Lock's call. In the course of his investigation, the officer testified he was unable to locate a physical address for Holladay Healthcare Pharmacy, the maker of the check appellant passed. He stated he first searched for the company via the internet yellow pages, but was unsuccessful. He next tried to locate the business based upon the address listed on the check using a GPS. The officer was again unsuccessful, testifying the address "does not exist."

{¶20} On cross-examination, the officer conceded he neither contacted the secretary of state nor did he attempt to obtain federal or state tax records to confirm whether Holladay Healthcare Pharmacy was a registered company in Ohio. The officer also conceded he did not contact KeyBank to determine if the account listed on the check actually existed.

{¶21} At the close of the state's evidence, defense counsel moved the court for a judgment of acquittal on all counts. After considering the parties' respective arguments, the trial court dismissed the charge of passing bad checks. The court

overruled the motion as it pertained to the remaining charges. The matter was subsequently submitted to the jury, who found appellant guilty on each remaining count.

{¶22} Appellant was sentenced to serve a prison term of nine months for possessing criminal tools and nine months for theft, each to be served consecutively with one another. The court further determined the forgery conviction merged with the possessing criminal tools conviction for purposes of sentencing. In addition, the trial court sentenced appellant to one year imprisonment for violating post-release control arising from a sentence imposed by the Cuyahoga County Court of Common Pleas to be served consecutively to the 18 months imposed for the underlying convictions. Appellant was also ordered to pay restitution for the crimes. Appellant now appeals and assigns four errors for our review.

{¶23} His first assignment of error contends:

{¶24} "The trial court erred to the prejudice of the defendant-appellant when it denied his motion for acquittal made pursuant to Crim.R. 29(A)."

{¶25} Under this assignment of error, appellant challenges the sufficiency of the evidence introduced by the state to support each of his three convictions. Evidential sufficiency invokes an inquiry into due process, and examines whether the state introduced adequate evidence to support the verdict as a matter of law. *State v. Schlee* (Dec. 23, 1994), 11th Dist. No. 93-L-082, 1994 Ohio App. LEXIS 5862, *13. As a general proposition, a "sufficiency" argument raises a question of law as to whether the prosecution was able to present some evidence concerning each element of the charged offense. *State v. Driesbaugh*, 11th Dist. No. 2002-P-0017, 2003-Ohio-3866, at ¶36. A reviewing court may not reweigh or reinterpret the evidence; rather, the proper

inquiry is, after viewing the evidence most favorably to the prosecution, whether the jury could have found the essential elements of the crime proven beyond a reasonable doubt. *State v. Troisi*, 179 Ohio App.3d 326, 329, 2008-Ohio-6082, citing *State v. Jenks* (1991), 61 Ohio St.3d 259, 273.

{¶26} We shall first consider whether the state offered sufficient evidence to support appellant's conviction for forgery. R.C. 2913.31(A)(3), the forgery offense with which appellant was charged, provides in relevant part:

{¶27} "(A) No person, with purpose to defraud, or knowing that the person is facilitating a fraud, shall do any of the following:

{¶28} "***

{¶29} "(3) Utter, or possess with purpose to utter, any writing that the person knows to have been forged."

{¶30} In short, the state was required to introduce some evidence demonstrating appellant, with purpose to defraud or knowing he was facilitating a fraud, uttered a forged check, knowing the check had been forged.

{¶31} To "forge" means to "fabricate or create, in whole or in part and by any means, any spurious writing ***." R.C. 2913.01(G). To "defraud" is to "knowingly obtain, by deception, some benefit for oneself or another, or to knowingly cause, by deception, some detriment to another." R.C. 2913.01(B). To "utter" means to "issue, publish, transfer, use, put or send into circulation, deliver, or display." R.C. 2913.01(H). Finally, one acts knowingly when, regardless of his purpose, "*** he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A

person has knowledge of circumstances when he is aware that such circumstances probably exist." R.C. 2901.22(B).

{¶32} Appellant argues the state failed to introduce sufficient evidence, as a matter of law, that the check was "spurious." Appellant points out that even though the officer testified he could not locate the check's maker, Holladay Healthcare Pharmacy, this testimony was insufficient to show that the business did not exist. Furthermore, appellant underscores that Walmart never presented the check to the payor bank to determine whether it would be dishonored. And, similarly, Officer Clayton never contacted the payor to investigate the validity of the account listed on the check. Without evidence that the account did not exist or proof that Holladay Healthcare Pharmacy was fraudulent, appellant contends the state failed to meet its burden of production under R.C. 2913.31(A)(3). Thus, he argues, the trial court erred in denying his Crim.R. 29(A) motion.

{¶33} In response, the state maintains it introduced adequate circumstantial evidence that the check was spurious. That is, even though there was no direct evidence that the check was spurious, it bore indicators that would allow a rational trier of fact to conclude it was. In support, the state points out the check appellant passed shared the same check and routing numbers as a check cashed three hours later. Moreover, the state underscores Mr. Lock's testimony that, even though the check at issue was not presented to the bank for payment, he recalled seeing checks cashed at Walmart from Holladay Healthcare Pharmacy in the past which had, in fact, been dishonored. The state also emphasizes that, although there was no direct proof that Holladay Healthcare was a sham company, Officer Clayton discovered the address

provided on the check for the company "did not exist." According to the state, this evidence, viewed as a whole, demonstrates the trial court did not err in allowing the case to go to the jury.

{¶34} It is well-settled that "[c]ircumstantial evidence and direct evidence inherently possess the same probative value ***." *Jenks,* paragraph one of the syllabus. Circumstantial evidence has been defined as testimony not grounded on actual personal knowledge or observation of the facts in controversy, but of other facts from which inferences are drawn, showing indirectly the facts sought to be established. *State v. Nicely* (1988), 39 Ohio St.3d 147, 150. An inference is "a conclusion which, by means of data founded upon common experience, natural reason draws from facts which are proven." *State v. Nevius* (1947), 147 Ohio St. 263. From these points, it therefore follows that when circumstantial evidence forms the basis of a conviction, that evidence must prove collateral facts and circumstances, from which the existence of a primary fact may be rationally inferred according to common experience.

{¶35} We first point out that, despite the state's argument to the contrary, Mr. Lock's testimony failed to establish adequate facts from which the ultimate fact, viz., that the check was spurious as a matter of law, could be inferred. Mr. Lock testified that, in his estimation, the checks at issue were "bad checks." Mr. Lock did not specifically testify what he meant by a "bad check," only that Walmart does not cash them and, depending upon the circumstances, passing such checks may lead to Walmart filing a criminal complaint.[1] Further, although Mr. Lock testified he had "seen" at least 50 "bad checks," the record does not indicate he possessed the expertise or training to identify

1. On cross-examination, defense counsel asked: "Isn't a bad check one that is drawn on an account that either doesn't exist or doesn't have sufficient funds?" Mr. Lock ambiguously answered, "Could be."

such checks in an ad hoc fashion. Finally, Mr. Lock's testimony that other checks issued by Holladay Healthcare Pharmacy had been dishonored in the past is irrelevant to the issue of whether the check passed by appellant was spurious as a matter of law. Nothing in the record indicates the previous checks were rejected because they were spurious; rather, Mr. Lock simply testified to his recollection that the bank to which the checks were sent would not cash them. Mr. Lock's testimony was disconnected and unsubstantiated and therefore failed to provide any probative facts tending to establish the check appellant passed was spurious.

{¶36} With respect to the remaining evidence, the state introduced two payroll checks, each issued by a company named Holladay Healthcare Pharmacy, that were cashed at Walmart on May 26, 2009.[2] Although the checks were made out to two separate payees, each check bore the same check number and the same routing number. The state, however, did not introduce *any evidence* regarding the significance of these points. There is nothing in the record discussing the purpose and import, if any, of a routing number. Nor is there any evidence regarding why law enforcement might question the validity of two checks with the same routing number coming from the same payor bank, sharing the same maker, but issued to two separate payees.

{¶37} The lack of such evidence is compounded by the fact that the two checks at issue were drawn on *different* KeyBank accounts. Given this direct evidence, the fact that both the check appellant passed and the subsequent Holladay Healthcare

2. We acknowledge that a third check was introduced at trial bearing the same check number as the two checks purportedly issued from Holladay Healthcare Pharmacy. The third check, however, had a completely different maker. This fact, in conjunction with the evidence that a completely separate party with no apparent relationship to appellant attempted to pass the check, renders the third check irrelevant to our analysis.

Pharmacy check share the same number is not inherently problematic. Without some evidence indicating the checks were actually spurious (e.g., evidence from KeyBank invalidating the account(s) listed on the check(s)), the check appellant cashed from Holladay Healthcare Pharmacy, when compared with the second check cashed by a separate party, is not facially incriminating.

{¶38} Next, the state contends the officer's testimony that the company address on the check was invalid was enough to establish, as a matter of law, the spurious quality of the writing. We do not agree.

{¶39} Even though the check provided a false company address, this does not imply that the maker of the check was fictitious or that the check itself was spurious. There was neither testimony that Holladay Healthcare Pharmacy was not an actual company nor any testimony that the account number listed on the check did not exist. This court has previously stated that "***a motion for judgment of acquittal should be granted only where reasonable minds could not fail to find reasonable doubt." *State v. Bell* (1994), 97 Ohio App.3d 576, 579. Here, a rational trier of fact could not fail to have reasonable doubt as to the spurious nature of the writing where the only evidence tending to establish the element is an error or problem relating to the numeric street address printed on the check. We therefore hold the evidence of the invalid address, standing alone, is inadequate to permit the inference that the check passed by appellant was spurious as a matter of law.

{¶40} In this case, the state failed to introduce circumstantial evidence that would permit the jury to conclude the check was forged on its face; further, the officer's testimony, in and of itself, was insufficient to permit the inference that the check

appellant passed was spurious. As discussed above, when the state utilizes circumstantial evidence to convict a defendant, the evidence must demonstrate that the collateral facts upon which the prosecution relies is rationally sufficient to establish the primary fact. Even viewing the evidence in a light most favorable to the prosecution, the collateral facts introduced by the state fail to support the inference that the check appellant cashed was spurious as a matter of law. We therefore hold that reasonable minds could not fail to have a reasonable doubt regarding the spurious nature of the check appellant passed. The state failed to present sufficient evidence at trial to have the forgery charge submitted to the jury and, as a result, appellant was entitled to a judgment of acquittal.

{¶41} In the interest of a thorough analysis of the case, however, our analysis shall not end with this conclusion. Even assuming the state met its burden of production showing the writing was spurious, it nevertheless failed to introduce sufficient evidence on the independent mens rea element; to wit: that appellant *knew* the document was forged when he passed it.

{¶42} As we have repeatedly emphasized, there was no testimony or evidence in this case tending to show that Holladay Healthcare Pharmacy was fictitious. There was also no evidence that the account listed on the check was invalid or that Holladay Healthcare Pharmacy was not a customer of KeyBank.

{¶43} Here, appellant entered Walmart and presented an associate with an apparent payroll check. Although Mr. Lock testified that appellant showed "all the signs of nervousness" while waiting in line, he eventually conceded this simply meant

appellant was "looking around"—a behavior, Mr. Lock ultimately admitted, was not dispositive of one who passes a "bad check."

{¶44} In the course of cashing the check, appellant presented his actual identification as well as his social security number. Ms. Barnes did not testify that appellant was acting strange and there was no evidence he left the store in haste. To the contrary, according to Ms. Barnes, after appellant left with the money, he actually returned to her desk concerned that he left his cell phone at the counter.

{¶45} With these points in mind, the evidence in this case simply showed appellant possessed and uttered the check. Possessing or even uttering a forged writing, however, is not a crime. These acts only become criminal when a suspect utters or possesses with purpose to utter a forged writing knowing that writing was forged. Viewing these facts as a whole, there was simply no evidence that would permit a rational trier of fact to conclude that appellant knew the check he passed had been forged. We therefore hold that reasonable minds could not fail to have a reasonable doubt on the mens rea element of the forgery charge.

{¶46} Given the foregoing analysis, we hold the state failed to meet its burden of production as a matter of law. The case should not have been submitted to the jury on the forgery charge. The trial court accordingly committed reversible error in denying appellant's motion for acquittal on the forgery charge.

{¶47} Appellant was also convicted of possessing criminal tools and theft. With respect to the latter, the indictment charged appellant with violating R.C. 2913.02(A)(3), which provides:

{¶48} "No person, with purpose to deprive the owner of property or services, shall *knowingly* obtain or exert control over either the property or services *** [b]y deception[.]"

{¶49} Even assuming the check was forged, the state failed to introduce evidence that appellant possessed this knowledge. Moreover, given the context and presentation of the evidence, the state failed to demonstrate appellant was deceptive when he uttered the writing. We therefore hold the state failed to introduce sufficient evidence to reach the jury as a matter of law on the theft charge. The trial court therefore erred in denying appellant's Crim.R. 29(A) motion on the charge of theft.

{¶50} Similarly, with respect to the crime of possessing criminal tools, the indictment specifically alleged appellant possessed the check with purpose to use it criminally, and the "circumstances indicated that" the check "was intended for use in the commission of a felony, to wit: Forgery and/or Theft." The only way the check could have been determined a criminal tool, however, is if the state proved appellant committed forgery or theft. Because we hold the state failed to prove either charge, there was insufficient evidence that appellant possessed criminal tools. Appellant therefore was entitled to a judgment of acquittal on the charge of possessing criminal tools.

{¶51} Appellant's first assignment of error is accordingly sustained.

{¶52} Appellant's second, third, and fourth assignments of error provide:

{¶53} "[2.] The trial court erred to the prejudice of the defendant-appellant when it returned a verdict of guilty against the manifest weight of the evidence.

{¶54} "[3.] The trial court erred to the prejudice of the defendant-appellant when it allowed prosecutorial misconduct during the state's closing argument in violation of the defendant-appellant's due process rights and rights to a fair trial as guaranteed by the Fifth, Sixth and Fourteenth amendments to the United States Constitution and Article I, Sections 5 and 10 of the Ohio Constitution.

{¶55} "[4.] The trial court erred by sentencing the defendant-appellant to consecutive terms of imprisonment."

{¶56} As our disposition of appellant's first assignment of error is dispositive of this appeal, appellant's remaining assigned errors are overruled as moot.

{¶57} For the reasons discussed in this opinion, appellant's first assignment of error is sustained. It is therefore the judgment of this court that the judgment entered by the Lake County Court of Common Pleas convicting appellant of forgery, possessing criminal tools, and theft is reversed and appellant's convictions are hereby vacated.

THOMAS R. WRIGHT, J., concurs,

DIANE V. GRENDELL, J., dissents with a Dissenting Opinion.

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{¶58} I respectfully dissent from the majority's conclusion that there was insufficient evidence to submit the Forgery, Theft, and Possessing Criminal Tools charges against Windle to the jury.

{¶59} The majority finds that the State failed to present sufficient evidence to support the inference that the check cashed by Windle was spurious, and therefore, a forgery. However, a review of the evidence presented at trial, when taken in the light most favorable to the prosecutor, reveals that there was sufficient evidence to support a finding that the check was spurious. See *State v. Jenks* (1991), 61 Ohio St.3d 259, at paragraph two of the syllabus (in reviewing the sufficiency of the evidence to support a criminal conviction, "[t]he relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt").

{¶60} It is important to first emphasize that "'[d]irect evidence, circumstantial evidence, or both may establish an element of the charged offense.'" *State v. Griesmar*, 11th Dist. No. 2009-L-061, 2010-Ohio-824, at ¶50 (citations omitted). "Circumstantial evidence and direct evidence inherently possess the same probative value." *Jenks*, 61 Ohio St.3d 259, at paragraph one of the syllabus. Although much of the evidence presented by the State in this case was circumstantial, such evidence is not less valuable than direct evidence and this court must consider the evidence before the trial court as a whole when making a determination of sufficiency.

{¶61} The State first presented evidence, through the testimony of Douglas Lock, a loss prevention officer at Walmart, that the check presented by Windle had several characteristics of a forged or "bad" check. Lock testified that he had previously seen checks from Holladay Healthcare, the same company named as the payor on Windle's check, that had been deemed "bad." He further explained that such checks were "bad" because they were checks "the bank would not cash" or honor. Although

Windle argues otherwise, it is not necessary for the State to prove a bank has rejected or refused to cash a check in order to prove the check is spurious. The State may provide alternate evidence that will allow a jury to determine the check is a forgery. See *State v. Weese*, 9th Dist. No. 23897, 2008-Ohio-3103, at ¶11 (the appellate court held that a forgery conviction was supported by sufficient evidence when the forged check was not presented to the bank but, instead, a Checksmart employee "testified that she had been trained to identify forged documents and she was suspicious of the money order"); *State v. Parker*, 8th Dist. No. 90298, 2008-Ohio-3538, at ¶¶28-30 (a check not presented to a bank for verification was found spurious when additional evidence regarding the check's forged nature was presented).

{¶62} Lock also testified regarding the specific characteristics that made Windle's check appear forged. He stated that Windle's check had a signature that bled through the back of the check, the edges of the check paper were perforated, and the signature was in large letters and looked as though it had been copied. He testified that, in his experience, these were signs of a "bad" or forged check. Similar testimony has been deemed sufficient to support such a forgery conviction. See *Weese*, 2008-Ohio-3103, at ¶9-11 (the testimony of Checksmart employee that a check raised "red flags" due to a blurry signature and the appearance that the check had been photocopied or altered in some way provided sufficient evidence that the check was a forgery); *State v. Hart*, 6th Dist. No. L-03-1073, 2004-Ohio-5511, at ¶30 (the spuriousness of a check was established by the testimony of a supermarket supervisor that the type of paper the check had been printed on was often used for counterfeit

checks and she could not find the correct address and telephone number of the payor on the check).

{¶63} Lock also testified that the three "bad checks" submitted into evidence, all cashed at Walmart on the date Windle cashed his check, had a similar appearance. These checks also had the exact same check number, 40282, as well as the same routing numbers and similar account numbers. Lock testified that, in his experience, multiple fraudulent or forged checks were often cashed on the same day, by people travelling in groups. This further lends support to the fact that Windle's check was forged and may have been part of a scheme of cashing forged checks.

{¶64} Moreover, Officer Clayton testified that he was unable to verify the existence of Holladay Healthcare. He testified that he checked the internet Yellow Pages. He also used a GPS and drove to the purported location of Holladay Healthcare, but found no such business located at the address provided on the check, or at any other address.

{¶65} While the majority finds that each piece of evidence presented individually did not prove the spuriousness of the check, when considering all of the foregoing evidence together, there is sufficient evidence to support Windle's convictions. When an appellate court reviews a sufficiency of the evidence claim, the court must not reverse unless reasonable minds could not reach the conclusion reached by the trier of fact. *State v. Treesh*, 90 Ohio St.3d 460, 484, 2001-Ohio-4. Based on the foregoing evidence, reasonable minds could have reached the conclusion reached by the trier of fact in this case.

{¶66} The majority also asserts that the State failed to prove Windle had knowledge that the check was a forgery. As with other elements of a charge, knowledge can be inferred from circumstantial evidence. See *Griesmar*, 2010-Ohio-824, at ¶50; *State v. Seiber* (1990), 56 Ohio St.3d 4, 13-14. In this case, the evidence presented was sufficient to allow the trier of fact to determine that Windle had knowledge that the check was forged.

{¶67} Regarding the issue of knowledge, the majority first asserts that there was no evidence that Windle's check was spurious. However, as discussed above, there is sufficient evidence of the spurious nature of the check.

{¶68} Moreover, the surveillance video presented by the State, as well as Lock's testimony, established that Windle expressed signs of nervousness while cashing the check. Lock testified that Windle was "looking around at everything around him" and "looking nervous." The video shows Windle looking from side to side, both while waiting in line and while cashing the check. The evidence of this behavior further supports the conclusion that Windle knew the check he was cashing was a forgery.

{¶69} In addition, the testimony of Officer Clayton that he could not verify the existence of Holladay Healthcare also supports a conclusion that Windle knew the check was forged, as the company from which he received the check could not be shown to exist.

{¶70} The majority finally contends that Windle did not have knowledge that the check had been forged because he presented his own social security number and identification to the cashier and, had he been aware the check was forged, he would not have presented his true identification. However, this argument has been rejected by

other appellate courts. See *State v. Rhoads*, 4th Dist. No. 08CA25, 2009-Ohio-4180, at ¶25 (the appellate court found no merit in appellant's argument that endorsing a check in his own name weighed in favor of his lack of knowledge that the check had been forged); *State v. Bender* (1985), 24 Ohio App.3d 131, at paragraph two of the syllabus. Evidence that Windle presented his real identification does not negate the existence of the other, sufficient, evidence that Windle had knowledge of the forgery.

{¶71} Based on the foregoing analysis, the State presented sufficient evidence to support a finding that the check presented by Windle was spurious and Windle had knowledge that the check was a forgery. Accordingly, I would affirm Windle's convictions.