

NOT DESIGNATED FOR PUBLICATION

No. 124,198

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

KRISTINA LEE KNIGHT,
Appellant.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; STEPHEN J. TERNES, judge. Opinion filed June 23, 2023.
Affirmed.

Jennifer C. Roth, of Kansas Appellate Defender Office, for appellant.

Lance J. Gillett, assistant district attorney, *Marc Bennett*, district attorney, and *Kris W. Kobach*, attorney general, for appellee.

Before CLINE, P.J., MALONE and ATCHESON, JJ.

PER CURIAM: A jury sitting in Sedgwick County District Court found Defendant Kristina Lee Knight guilty of three counts of forgery for delivering checks to her landlord for delinquent rent that had been drawn without permission on an account of the business where she worked as a bookkeeper. The trial evidence, including Knight's own testimony that she had nothing to do with checks, left her credibility in tatters and amply supported the verdicts. Contrary to Knight's arguments on appeal, we find no basis to set aside the convictions for insufficient evidence, prosecutorial error, or the district court's decision

during trial to allow an amendment of the complaint expanding the time frame of the crimes. We, therefore, affirm the guilty verdicts and the resulting sentences.

FACTUAL AND PROCEDURAL HISTORY

For about three and a half months in the summer of 2017, Knight worked as a bookkeeper for Arbor Springs, Inc., a business owned and run by David and Mary Wurth, a husband-and-wife team. The company operated several nursing homes and had recently taken over McCall Manor, a financially ailing facility in Salina. As part of her job, Knight prepared checks to pay Arbor Springs' business expenses. The checks typically were computer generated and bore the stamped signature of David Wurth.

During the trial in November 2019, Mary Wurth testified that when she was reviewing paid checks, she discovered checks issued on the account for McCall Manor to Craig Harms. Ms. Wurth said she did not recognize Harms as a vendor Arbor Springs did business with. The checks were also handwritten rather than printed. Ms. Wurth told the jurors she confronted Knight about the checks to Harms. According to Ms. Wurth, Knight said she had been pressured by a loan shark to whom she owed money to write the checks, and she offered to repay the money in hopes of keeping her job. Ms. Wurth fired Knight.

Ms. Wurth told the jurors she spoke with Harms who informed her he was Knight's landlord and Knight had fallen behind on her rent. According to Ms. Wurth, Harms said Knight explained Mr. Wurth had given her the business checks to cover part of her compensation because he and Ms. Wurth were feuding over the operation of Arbor Springs. In his trial testimony, Harms confirmed what he had said to Ms. Wurth. He could not recall whether Knight had personally delivered the checks to him or left them at his residence. Either way, however, Harms testified he would have received them in Sedgwick County. Mr. Wurth testified that he had not authorized Knight to prepare or

deliver the three checks to Harms. Knight testified in her own defense. She told the jurors she knew nothing about the three checks and neither prepared them nor gave them to Harms.

The Sedgwick County District Attorney's office had charged Knight with two counts of forgery for each check. One count alleged the "making" of the check "without the authority" of Mr. Wurth, a felony violation of K.S.A. 2017 Supp. 21-5823(a)(1); the other count alleged the "issuing or distributing" of the check knowing it to have been unauthorized, a felony violation of K.S.A. 2017 Supp. 21-5823(a)(2). Before submitting the case to the jury, the district court dismissed the three counts charging the making of the forged checks because the prosecution had not presented any evidence to show Knight prepared the checks in Sedgwick County rather than in Saline County, where the McCall Manor nursing home was located.

The jury convicted Knight of the remaining three counts for presenting the forged checks to Harms. The district court later imposed a combination of concurrent and consecutive sentences with a controlling term of imprisonment of 16 months followed by postrelease supervision for 12 months and placed Knight on probation for 18 months, consistent with the sentencing guidelines. Under the special sentencing conditions in K.S.A. 2017 Supp. 21-5823(b) for convicted forgers, the district court required Knight to serve 45 days in jail and fined her \$2,995. The district court also ordered Knight to pay restitution. On appeal, Knight has not directly challenged her punishment or the restitution order.

ANALYSIS

As we indicated, Knight raises three issues on appeal: sufficiency of the evidence, prosecutorial error in closing argument, and improper amendment of the complaint. We address the arguments in that order, adding facts as necessary for each of them.

Sufficiency of the Evidence

In reviewing a sufficiency challenge, an appellate court construes the evidence in a light most favorable to the party prevailing in the district court, here the State, and in support of the jury's verdict. The court will neither reweigh the evidence generally nor make credibility determinations specifically. *State v. Aguirre*, 313 Kan. 189, 209, 485 P.3d 576 (2021); *State v. Butler*, 307 Kan. 831, 844-45, 416 P.3d 116 (2018). The issue for review is simply whether rational jurors could have found the defendant guilty beyond a reasonable doubt. *Butler*, 307 Kan. at 844-45; *State v. McBroom*, 299 Kan. 731, 754, 325 P.3d 1174 (2014).

To commit forgery, Knight had to present the checks payable to Harms "with intent to defraud." K.S.A. 2022 Supp. 21-5823(a). The State, therefore, bore the burden of proving that mental element of the crime and could rely exclusively on circumstantial evidence to do so. *Aguirre*, 313 Kan. at 209; *State v. Lopez-Sanchez*, No. 120,900, 2020 WL 4555816, at *2 (Kan. App. 2020) (unpublished opinion). Because "criminals tend not to declare their malevolent state of mind," jurors commonly "must infer bad intent from circumstantial evidence." *Lopez-Sanchez*, 2020 WL 4555816, at *2; see *State v. Dixon*, 289 Kan. 46, 65, 209 P.3d 675 (2009). Knight contends the State's proof of intent fell short.

Intent to defraud is a defined term in the Kansas Criminal Code that means "an intention to deceive another person, and to induce such other person, in reliance upon such deception, to assume, create, transfer, alter or terminate a right, obligation or power with reference to property." K.S.A. 2022 Supp. 21-5111(o). Viewed in the State's favor, the evidence shows Knight presented the checks to Harms knowing Mr. Wurth did not write or approve them. In turn, Harms accepted them as payments for the residence he rented to Knight, a transaction that transferred a leasehold interest in the property to her. The jury had ample circumstantial evidence Knight knew her conduct was wrongful.

First, of course, Mr. Wurth testified Knight did not have permission to prepare or deliver the checks to pay her personal expenses rather than obligations of Arbor Springs—testimony we necessarily credit in considering this issue.

Second, Knight offered a string of sometimes conflicting deceptions about the checks. She told Ms. Wurth that she prepared the checks after a loan shark pressured her. She told Harms the Wurths were embroiled in a disagreement with each other, so Mr. Wurth gave her the checks as partial compensation for her work. That explanation makes little sense on even cursory reflection: If Mr. Wurth could write a check to Harms notwithstanding the dispute with Ms. Wurth, why couldn't he simply write a check to Knight for her pay? Finally, Knight told the jurors she had nothing to do with the checks. So someone else must have conveniently prepared them and gotten them to Harms when she happened to be delinquent on her rent—all without her knowledge. Hmm. The explanations Knight offered cannot all be true; and their serial presentation strongly suggests none of them may be. Jurors may properly consider a defendant's resort to false explanations to be evidence of a guilty mind. See *State v. Donahue*, 218 Kan. 351, 354, 543 P.2d 962 (1975); see also *United States v. Stoney End of Horn*, 829 F.3d 681, 687 (8th Cir. 2016) (defendant's inconsistent explanations for otherwise inculpatory circumstances are themselves indicative of guilt); *United States v. Holbert*, 578 F.2d 128, 129 (5th Cir. 1978) ("long line of authority . . . recognizes that false exculpatory statements may be used not only to impeach, but also as substantive evidence tending to prove guilt"); *State v. Richard*, No. 121,450, 2021 WL 4127200, at *6 (Kan. App. 2021) (unpublished opinion).

Likewise, the jurors obviously found Knight's testimony unworthy, since they would have found her not guilty if they entertained so much as a reasonable doubt that her categorical denial might have been true. The jurors could fairly treat Knight's mendacity on the witness stand as circumstantial evidence indicative, though not conclusive, of guilt. See *United States v. Wilson*, 788 F.3d 1298, 1311-12 (11th Cir.

2015); *Daughtie v. State*, 297 Ga. 261, 263-64 & n.2, 773 S.E.2d 263 (2015); *State v. Mayeux*, 347 So. 3d 623, 625 (La.), *judgment vacated on other grounds by Mayeux v. Louisiana*, ___ U.S. ___, 141 S. Ct. 225, 208 L. Ed. 2d 1 (2020); *Sumpter v. State*, No. 117,732, 2019 WL 257974, at *9 (Kan. App. 2019) (unpublished opinion).

Without belaboring this issue, the jury heard sufficient evidence to support a conclusion Knight lacked the authority to draft or present the checks and thus acted with an intent to defraud. To come to any other conclusion now, we would have to reweigh the evidence contrary to our limited scope of review.

Although not framed as a distinct issue for reversal, Knight points out that the district court's instruction outlining the State's required proof of the charged crimes under K.S.A. 2022 Supp. 21-5823(a)(2) omitted the element that she presented the checks knowing they had been prepared "without authority." To be convicted under K.S.A. 2022 Supp. 21-5823(a)(2), a defendant must know that a check has been forged in violation of subsection (a)(1), so the State must prove the elements of subsection (a)(1), including the lack of authority. See PIK Crim. 4th 58.300 (2019 Supp.).

The omission of an element of the charged crime from the jury instructions is not a structural error and should be reviewed using an especially exacting standard for harmlessness. See *Neder v. United States*, 527 U.S. 1, 19, 119 S. Ct. 1827, 144 L. Ed. 2d 35 (1999); *State v. Richardson*, 290 Kan. 176, 182, 224 P.3d 553 (2010). In *Richardson*, the Kansas Supreme Court embraced the standard the United States Supreme Court crafted in *Neder* and held the error could be treated as harmless if "the omitted element was uncontested and supported by such overwhelming evidence that the jury verdict would have been the same without the omission." 290 Kan. at 182. We conclude the error was harmless. At trial, Knight did not dispute whoever prepared the checks did so without authority. She explained to the jurors she had nothing to do with the checks—not that she believed it was okay for her to issue them to her landlord because one of the

Wurths told her so or because she misunderstood what she had been told. The trial evidence overwhelmingly showed the checks were unauthorized. Mr. Wurth so testified. Ms. Wurth's actions in investigating the checks in the first instance and then firing Knight underscored their issuance to be wrongful, i.e., without authority. In short, Knight's appellate observation about the omitted element in no way benefits her.

The trial evidence amply supported the jury's guilty verdicts.

Prosecutor's Closing Argument

Knight largely repurposes her contention about the insufficiency of the evidence as a claim the prosecutor made a legally impermissible and, thus, erroneous argument to the jury about proving intent to defraud. She characterizes the argument as a misstatement of the governing law. We are unpersuaded.

Lawyers cannot misrepresent or misstate relevant legal principles in their closing arguments to jurors. *State v. Watson*, 313 Kan. 170, 179, 484 P.3d 877 (2021) ("prosecutor . . . commits error, if he or she misstates the law" during closing argument). We examine claims a prosecutor has done so using an error and prejudice standard first outlined in *State v. Sherman*, 305 Kan. 88, 109, 378 P.3d 1060 (2016). See *State v. Frantz*, 316 Kan. 708, 745, 521 P.3d 1113 (2022) (reiterating and applying *Sherman* standard for prosecutorial error).

The *Sherman* analytical model first considers whether an error has occurred and then weighs any prejudice to the defendant resulting from the error. Comments made during closing argument will be considered error if they fall outside that wide latitude afforded a prosecutor in discussing the evidence and the law. 305 Kan. at 109. If an appellate court finds the challenged argument to be prosecutorial error, it must then consider prejudice measured by the test set out in *State v. Ward*, 292 Kan. 541, Syl. ¶ 6,

256 P.3d 801 (2011), for a constitutional wrong. The State, as the party benefiting from the error, must demonstrate "beyond a reasonable doubt" that the mistake "did not affect the outcome of the trial" taking account of the full trial record. *Sherman*, 305 Kan. at 109 (quoting *Ward*, 292 Kan. 541, Syl. ¶ 6). That is, the appellate court must determine if the error compromised the defendant's right to a fair trial—a constitutional protection rooted both in due process and in the right to trial itself. 305 Kan. at 98-99, 109.

Knight essentially contends the prosecutor misstated the law applicable to proving an intent to defraud by pointing to the undisputed evidence that the three checks were written without authorization and to the adverse inferences the jurors could draw from the conflicting accounts she gave before trial to Ms. Wurth and Harms and the entirely new—and wholly inconsistent—account she offered during trial. In rejecting Knight's sufficiency claim, we have already explained why those circumstances presented admissible, if indirect, evidence of guilt. For the same reasons, the prosecutor could properly comment on those circumstances in closing argument by way of explaining to the jurors how they supported an intent to defraud and, more broadly, Knight's guilt. In short, the prosecutor's closing argument fell well within the realm of fair comment on the evidence. The argument was not prosecutorial error. We, therefore, need not and do not undertake the second step of the *Sherman* analysis aimed at gauging the prejudicial effect of a demonstrable error.

Amendment of the Complaint

The complaint charged that Knight prepared and presented each of the checks "on or about July 1, 2017." At the close of the trial evidence, the State moved to amend the complaint to expand the date range to encompass the dates on the checks and the dates they were processed through normal banking channels. The expansion essentially covered the summer of 2017. The precise dates are irrelevant. Knight objected to the

requested amendment, and the district court overruled the objection. Knight has reiterated the point on appeal.

Under K.S.A. 22-3201(e), the district court may permit the State to amend a complaint at any time before the jury renders a verdict if no new crime is charged and the "substantial rights of the defendant are not prejudiced." A defendant is nonetheless entitled to fair notice of the charges, serving a constitutional due process right. So a late amendment can neither inject a new crime nor substantially alter the State's theory of how the charged crimes have been committed in a way that would unfairly prejudice the defendant.

In general, we apply an abuse of discretion standard to a district court's modification of a complaint. *State v. White*, 316 Kan. 208, 213, 514 P.3d 368 (2022). A district court exceeds that broad authority if it rules in a way no reasonable judicial officer would under the circumstances, if it ignores controlling facts or relies on unproven factual representations, or if it acts outside the legal framework appropriate to the issue. See *State v. Darrah*, 309 Kan. 1222, 1227, 442 P.3d 1049 (2019); *Ward*, 292 Kan. 541, Syl. ¶ 3. The party asserting an abuse of judicial discretion bears the burden of proving the point. *State v. Thomas*, 307 Kan. 733, 739, 415 P.3d 430 (2018).

In reviewing a district court ruling granting the State's request to modify the dates of the crimes charged in the complaint, we consider five factors bearing on possible prejudice to the defendant: "(1) the date was a critical issue; (2) the change implicates the statute of limitations; (3) the amendment affects an alibi defense; (4) time was an element of the offense; or (5) there is any surprise to the accused." *White*, 316 Kan. at 213-14 (citing *State v. Holman*, 295 Kan. 116, 146, 284 P.3d 251 [2012], *overruled on other grounds by State v. Dunn*, 304 Kan. 773, 375 P.3d 332 [2016]). An unduly prejudicial amendment falls outside the governing legal framework and would amount to an abuse of discretion for that reason.

We need not gild the lily here. The amendment of the dates implicated none of the considerations outlined in *White*. At trial, Knight asserted she had nothing to do with the checks in any way whatsoever—that was a denial of guilt based on a complete dissociation from the criminal acts. Knight never presented some sort of alibi defense. Time is not an integral component of criminal forgery. And the charges were indisputably brought within the statute of limitations. Accordingly, Knight cannot establish any prejudice flowing from the amendment of the dates.

Affirmed.