

Will Arline appeals his conviction of three counts of Class C felony forgery.¹ Arline presents four issues for our consideration:

1. Whether the trial court abused its discretion by trying Arline *in absentia*;
2. Whether the trial court abused its discretion when it twice denied Arline's motions for continuance;
3. Whether the State presented sufficient evidence Arline committed Class C felony forgery; and
4. Whether Arline's sentence is inappropriate based on his character and the nature of his crime.

We affirm.

FACTS AND PROCEDURAL HISTORY

In December 2008, Sarah Peters stole Thomas Barber's checkbook. Peters forged Barber's signature and made the checks out either to Arline or herself. When Peters made the checks out to herself, she would sign them over to Arline or his mother. Between March 3 and April 8, 2009, Arline cashed fifteen checks from Barber's account totaling \$7,280.00. In exchange for cashing each check, Peters gave Arline a portion of each check. Barber discovered the theft after his banker told him his account was overdrawn.

The State charged Arline with three counts of Class C felony forgery, and police arrested him on December 10, 2009. Arline did not appear for a pre-trial hearing on March 1, 2010, and the trial court issued a warrant for his arrest. At his contempt hearing on April 26, the trial court purged Arline of contempt and informed him his jury trial was scheduled

¹ Ind. Code § 35-42-5-2.

for October 26. The court ordered Arline to remain in contact with his counsel and to inform counsel of any telephone number or address changes.

On September 13, Arline attended a hearing during which the court granted Arline's request for a two-week continuance to consider his options regarding three separate sets of charges, including the forgery counts that are the subject of this appeal. At that hearing, the court again reminded Arline his trial was set for October 26. On September 27, the court completed the hearing, told Arline his jury trial was scheduled for October 26, and told him to "keep in touch" with his attorney. (Tr. at 14.)

On October 21, Arline's counsel asked for a continuance because he had been unable to contact Arline since September 27. The trial court denied the motion and held Arline's jury trial as scheduled on October 26. Arline did not attend his trial, and nothing in the record suggests he told the court he would not be present. At the trial, the State moved to amend the charges against Arline, and defense counsel did not object. Defense counsel requested a continuance based on the amendment, but the trial court denied the request. The jury found Arline guilty on all counts, and the trial court entered convictions against Arline *in absentia*. The court issued an arrest warrant for Arline.

On January 10, 2011, Arline appeared for his sentencing hearing and claimed he did not attend his trial because he did not have transportation.² The trial court ordered a pre-sentencing report and scheduled Arline's sentencing hearing for February 23. Arline

² The Court Reporter indicated an audio malfunction prevented the recording of the January 10 hearing, so it could not be transcribed. The court placed Arline's statement regarding lack of transportation in the Chronological Case Summary.

remained in jail until his sentencing hearing. On February 23, the trial court sentenced Arline to five years for each count, to be served concurrently, with two years suspended, two years executed at the Indiana Department of Correction, and one year executed on in-home detention.

DISCUSSION AND DECISION

1. Conviction *in Absentia*

The Sixth Amendment of the United States Constitution and Article 1, Section 13 of the Indiana Constitution give a criminal defendant the right to be present during his trial. A defendant in a non-capital case “may waive his right to be present at trial, but the waiver must be voluntarily, knowingly, and intelligently made.” *Holtz v. State*, 858 N.E.2d 1059, 1061 (Ind. Ct. App. 2006), *trans. denied*. When a defendant does not appear in court, notify the trial court, or provide an explanation for his absence, the trial court “may conclude that the defendant’s absence is knowing and voluntary and proceed with trial when there is evidence that the defendant knew of his scheduled trial date.” *Id.* at 1062.

When a defendant later appears in court, the trial court must afford him an opportunity to present evidence that his absence from the trial court was not voluntary, but the trial court is not required to make a *sua sponte* inquiry. *Id.* at 1062-63. On appeal, we examine the entire record to determine if the defendant’s absence was voluntarily, knowingly, and intelligently made. *Id.* at 1062.

We hold Arline knowingly and voluntarily waived his right to be present at his trial because the trial court notified Arline of his trial date on at least three occasions – at his

initial hearing, at his contempt hearing, and at his dispositional hearing. Arline argues the trial court did not inquire about his whereabouts before trial; however, neither did Arline notify the court in advance that he would be absent. At his sentencing hearing, Arline stated he was unable to attend his trial because he did not have transportation. Because Arline received notification of his trial date on three separate occasions and did not notify the court he could not attend his trial, he knowingly, voluntarily, or intelligently waived his right to be present at his trial. *See Soliz v. State*, 832 N.E.2d 1022, 1029 (Ind. Ct. App. 2005) (trial court did not err in convicting Soliz *in absentia* when he had twice been informed of his trial date and did not notify the court he would be absent, even though he later offered multiple reasons for his absence), *trans. denied*.

Arline also argues the trial court abused its discretion when it tried him *in absentia* because he received no initial hearing after the State amended the charges against him on the day of his trial. It did not. His counsel did not object to the State's amended charges, nor did counsel argue an initial hearing on the amended charges was required before trial could occur. We therefore cannot find error in the trial court's decision. *See Costello v. State*, 643 N.E.2d 421, 422 (Ind. Ct. App. 1994) ("The failure of the record to show either an arraignment or plea, or both, will not invalidate a conviction unless the record shows the defendant objected, before the trial commenced, to the lack of arraignment or plea.").

2. Motions to Continue

When, as here, a party moved for a continuance not required by statute,³ we review the court's decision for abuse of discretion. *Flake v. State*, 767 N.E.2d 1004, 1008 (Ind. Ct. App. 2002). An abuse of discretion occurs when the ruling is against the logic and effect of facts and circumstances before the court or the record demonstrates prejudice from denial of the continuance. *Id.* Continuances to allow more time for preparation are generally disfavored in criminal cases. *Risner v. State*, 604 N.E.2d 13, 14 (Ind. Ct. App. 1992), *trans. denied*.

a. Motion on October 21, 2010

On October 21, 2010, less than a week before Arline's trial date, Arline's counsel requested a continuance because he had not had contact with Arline since September 27. Arline claims he was prejudiced by the denial of the continuance because he did not have time to confer with his counsel prior to trial. However, the court twice admonished Arline to maintain communication with his counsel, but Arline did not. His trial counsel indicated he unsuccessfully attempted to contact Arline, and the trial court conducted contempt proceedings against Arline earlier in the proceedings because he did not appear at a pre-trial hearing. Arline has not demonstrated prejudice from the denial of this motion for continuance, and therefore we hold the trial court did not abuse its discretion in doing so.

b. Motion on October 26, 2011

On October 26, 2011, the day of Arline's trial, his counsel requested a continuance because Arline was not present. Arline claims the trial court abused its discretion when it

³ Neither party argues either of Arline's motions for continuance was pursuant to statute.

denied this continuance because he was not present when the State amended the charges against him on the day of his trial and thus he was unable to properly defend against the amended charges. We disagree.

For an amendment to charges to be prejudicial, the defendant must demonstrate he was unable to properly formulate a defense based on the amended charges. *Wilkinson v. State*, 670 N.E.2d 47, 48 (Ind. Ct. App. 1996), *trans. denied*. The amended charges changed the check numbers the State alleged were uttered by Arline in support of the forgery charge against him. Arline has not indicated how the change in check numbers would have impaired his defense, and therefore he has not demonstrated prejudice from the amendments.

Further, a trial court does not abuse its discretion when it denies a request for a continuance based on the defendant's unexplained absence. *Fletcher v. State*, 537 N.E.2d 1385, 1386 (Ind. 1989). Thus, we hold Arline has not demonstrated the trial court abused its discretion when it denied his request, through counsel, for a continuance.

3. Sufficiency of the Evidence

When reviewing sufficiency of evidence to support a conviction, we consider only the probative evidence and reasonable inferences supporting the trial court's decision. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). It is the jury's role, and not ours, to assess witness credibility and weigh evidence to determine whether it is sufficient to support a conviction. *Id.* To preserve this structure, when we are confronted with conflicting evidence, we consider it most favorably to jury's decision. *Id.* We affirm a conviction unless no reasonable jury could find the elements of the crime proven beyond a reasonable doubt. *Id.*

It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence; rather, the evidence is sufficient if an inference reasonably may be drawn from it to support the jury's decision. *Id.* at 147.

To prove Arline committed Class C felony forgery, the State was required to prove he “with intent to defraud, ma[de], utter[ed], or possesse[d] a written instrument in such a manner that it purports to have been made: (1) by another person; (2) at another time; (3) with different provisions; or (4) by authority of one who did not give authority.” Ind. Code § 35-43-5-2(b). Knowledge a written instrument is false is not an element of the crime of forgery. *Wendling v. State*, 465 N.E.2d 169, 170 (Ind. 1984). Regarding intent to defraud, we have previously explained:

An intent to defraud involves an intent to deceive and thereby work a reliance and an injury. There must be a potential benefit to the maker or potential injury to the defrauded party. Because intent is a mental state, the fact-finder often must resort to the reasonable inferences based upon an examination of the surrounding circumstance to determine whether – from the person's conduct and the natural consequences therefrom – there is a showing or inference of the requisite criminal intent.

Diallo v. State, 928 N.E.2d 250, 252-3 (Ind. Ct. App. 2010) (internal quotations and citations omitted).

Arline argues the State did not prove his intent to defraud. We disagree. Arline benefitted from the transactions because Peters gave him part of the money obtained by depositing or cashing the checks. The State presented evidence Arline and Barber did not know each other, yet Arline cashed several checks allegedly written to him by Barber. In addition, Peters testified she wrote some of the checks while “hanging out” at Arline's house

and then gave the checks to Arline to cash. (Tr. at 190.) These facts are sufficient to permit a reasonable jury to infer he intended to obtain money by depositing or cashing checks that he knew had been forged. Thus, Arline's arguments are an invitation for us to reweigh the evidence, which we cannot do. *See Drane*, 867 N.E.2d at 146.

4. Appropriateness of Sentence

We may revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. *Williams v. State*, 891 N.E.2d 621, 633 (Ind. Ct. App. 2008) (citing Ind. Appellate Rule 7(B)). We consider not only the aggravators and mitigators found by the trial court, but also any other factors appearing in the record. *Roney v. State*, 872 N.E.2d 192, 206 (Ind. Ct. App. 2007), *trans. denied*. The appellant bears the burden of demonstrating his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

When considering the nature of the offense, the advisory sentence is the starting point to determine the appropriateness of a sentence. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *clarified on reh'g* 878 N.E.2d 218 (Ind. 2007). When a court deviates from the advisory sentence, we consider whether there is anything more or less egregious about the offense that makes it different from the "typical" offense accounted for by the legislature when it set the advisory sentence. *Rich v. State*, 890 N.E.2d 44, 54 (Ind. Ct. App. 2008), *trans. denied*. The advisory sentence for a Class C felony is four years, with a range of two to eight years. Ind. Code § 35-50-2-6. This trial court imposed a five-year sentence for each count of Class C felony forgery, to run concurrently.

Arline argues “forgery is not the worst kind of C felony offenses” and his crimes were “non-violent.” (Br. of Appellant at 11.) However, absence of physical injury or violence during a crime does not warrant a reduction in sentence. *See White v. State*, 433 N.E.2d 761, 763 (Ind.1982) (absence of physical injury or violence during a crime does not warrant reduction in sentence). Arline deprived Barber, who is a Vietnam War veteran with a disability affecting his memory, of over \$7,000 by cashing fifteen checks. Based on the nature of the offense, we cannot say his sentence is inappropriate.

With regard to character, one relevant factor is criminal history. *See Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007). While we do not consider a history of arrest evidence of criminal history, “a record of arrest, particularly a lengthy one, may reveal that a defendant has not been deterred even after having been subject to the police authority of the State.” *Cotto v. State*, 829 N.E.2d 520, 526 (Ind. 2005). Despite Arline’s relatively unremarkable criminal history consisting of multiple infractions and misdemeanor driving-related offenses, while the current charges were pending, Arline was also facing eight felony charges related to the possession of controlled substances, and those reflect poorly on his character. Therefore, we cannot say Arline’s sentence is inappropriate based on his character.

CONCLUSION

The trial court did not abuse its discretion when it tried Arline *in absentia* because Arline had notice of his trial date but did not timely notify the trial court about his lack of transportation. Nor did the trial court abuse its discretion when it denied Arline’s requests

for continuances. The State presented sufficient evidence Arline committed Class C felony forgery, and Arline's sentence of five years is not inappropriate based on his character and the nature of his offenses. Accordingly, we affirm.

Affirmed.

NAJAM, J., and RILEY, J., concur.