

Heard by Oxberger, C.J., and Donielson, Snell, and Schlegel, JJ. Hayden, J., takes no part.

PER CURIAM

Defendant appeals from his conviction on two counts of false use of a financial instrument (FUPI) in violation of Iowa Code section 715.6, asserting that the evidence was insufficient to support the jury's verdict and that he was denied due process and a fair trial by the trial court's failure to give requested jury instructions concerning the good faith use of assumed names. We affirm.

Defendant wrote two checks payable to John Hanson, both drawn on Peoples Trust and Savings Bank in Indianola, Iowa. One check showed "Paul Hanson" as the drawer in the amount of \$25. The other showed the drawer as "Robert Hanson" in the amount of \$30. Defendant endorsed the name John Hanson on the back of each check and cashed them at the Hy Vee store in Indianola. No bank account existed at Peoples Trust and Savings Bank under either of the names "Paul Hanson" or "Robert Hanson." The checks were returned to Hy Vee unpaid by the bank. Defendant admits making out the checks and endorsing them; however, he argues that he cannot be convicted of FUPI since the three names he signed on the two checks were his own aliases.

At trial, defendant produced evidence that he sometimes used all three Hanson names and testified that he did not intend to defraud the store because he intended to reimburse it. The record indicates that defendant used the name John Hanson extensively, but that his use of the names Paul Hanson and Robert Hanson was, at best, sporadic. Defendant unsuccessfully moved for a judgment of acquittal on the ground that the State had failed to prove the elements of the crime as charged. He later requested two jury instructions, the first of which provided: "A person may sign a check by an assumed name, designation or mark he may choose to adopt, provided he used that as a substitute for his own name and intends to be bound by it. The second instruction which was requested provided:

A person, without abandoning his real name, may adopt or assume any name, wholly or partly, different from his name by which he may become known and by which he may

transact business, execute contracts and carry on its affairs, unless he does so in order to defraud others. It is the identity of the individual which is regarded and not the name he may bear or assume. The assumed name adopted may be either purely an artificial name or a name which is or may be implied to natural persons. The validity of the assumed name to other persons does not depend on whether the person assuming the name is as well known by the assumed name as by his true name, but on whether, with respect to the particular transaction, the name is used in good faith by the person adopting it as a description of his person.

The trial court refused to give either instruction. The case was submitted to the jury which returned verdicts of guilty on both counts.

I. Scope of Review

Because this is an appeal from a criminal conviction, our scope of review is an independent evaluation of the totality of the circumstances on all issues involving the alleged violation of basic constitutional safeguards. State v. Cullison, 227 N.W.2d 121, 126-27 (Iowa 1975). This is the same as a de novo review. On all other issues our review is on assigned error. Id.

II. Sufficiency of the Evidence

Defendant's first contention on appeal is that the evidence was insufficient to support a conviction for FUI since the State failed to establish an essential element of the offense. FUI is defined in Iowa Code section 715.6, as follows:

The use of a financial instrument with the intent to obtain fraudulently anything of value by one who knows that the instrument is not what it purports to be, or who knows that he or she is not the person nor the authorized agent of the person who, as shown on the instrument, has the right to so use the instrument, shall constitute the false use of a financial instrument. False use of a financial instrument is a class "C" felony.

Defendant argues that because he was known by each of the names signed on the two checks, the jury could not, as a matter of law, have found that the checks were not what they purported to be.

A. Preservation of Error

Before going to the merits of this controversy, we must address a threshold issue which the State has raised. The State contends that defendant's motion for a

judgment of acquittal was not sufficiently specific to preserve this issue for appeal, since defendant did not expressly advance the argument that he, in effect, signed the checks with his own name. We do not agree.

The only defense raised by defendant at the trial level was that John Hanson, Paul Hanson and Robert Hanson were all names by which he was known. Defendant's motion for a judgment of acquittal also contained the following passage:

The State by way of the evidence that has been offered to this point has failed to show the elements of the crime as charged. Therefore, there is insufficient evidence to sustain a conviction. Further, your Honor, I believe that the State may have proved a crime. However, it is not the crime that has been charged in this case. Namely, I think if any crime has been proven I think it would be one of theft and not false use of a financial instrument.

As the trial court is no doubt aware, the distinction between FUI and theft in a bad check case is that FUI is essentially a forgery offense.

We have frequently stated that an issue is preserved for appeal if the motion or objection raised in the trial court was specific enough to alert the trial court that the issue is being raised. See Dutcher v. Lewis, 221 N.W.2d 755, 759 (Iowa 1974). The trial court here had ample warning that defendant was challenging the sufficiency of the evidence on the ground that he had signed his own, albeit assumed, names on the checks. The issue has therefore been properly preserved for appeal.

B. Signature of Assumed or Fictitious Names

The legislative intent in enacting the FUI provision was to consolidate several forgery and forgery related offenses which were previously contained in various parts of the Code. See False Use of a Financial Instrument, 60 Iowa L. Rev. 598 (1975). As a result, the FUI provision "maintains the traditional focus [of the forgery offenses] on the falsity of the instrument itself." State v. Schoelerman, 315 N.W.2d 67, 75 (Iowa 1982).

The writing of a check signed in the maker's name is not forgery, despite the fact that the check is drawn on a bank where the maker has no account. Similarly, the legislature did not intend the FUPI provision to include the writing of a check in the maker's own name, but drawn upon a nonexistent bank account. Schoelerman at 75. "Such a check is precisely what it purports on its face to be, with falsity entering the picture only in the implied representation that the maker has moneys on deposit from which the check would be paid." Melvin v. U.S., 316 F.2d 647, 648 (9th Cir. 1963). The issue raised by defendant is whether this holds true for checks signed with assumed or fictitious names.

It is well settled that an individual may adopt or assume any name. . . by which he may become known, and by which he may transact business, execute contracts, and carry on his affairs, unless he does so in order to defraud others. 65 C.J.S. Names § 9(1), at pp. 11-12 (1961). Defendant argues that he has assumed the names John Hanson, Paul Hanson, and Robert Hanson, and that since he may adopt another name and lawfully conduct business under the substituted name, the jury could not have found that the checks were not what they purported to be. We do not agree.

To begin with, defendant cannot have assumed all three names. An individual can assume but one name at a time. See U.S. v. Crim, 527 F.2d 289, 294 (10th Cir. 1975). As a rule, an individual's "real" name is that "designation by which he is distinctively known in the community." Loser v. Plainfield Savings Bank, 149 Iowa 672, 677 (1910). Defendant has arguably assumed the name John Hanson. He has used this name extensively and is generally identified by it. However, defendant's use of the names Robert Hanson and Paul Hanson has been far more limited. He is not generally known by either name, nor does he normally use them. In fact, when the cashier asked him who Paul Hanson was, defendant replied that it was his brother. Thus, when he signed these names to the checks, he used fictitious names rather than assumed names.

It should be noted that chapter 715 is primarily concerned with protecting the integrity of financial instruments as such, and is only incidentally concerned with the persons whose identity may be improperly used when a false instrument is made... [I]t is not relevant that, for example, the purported maker of a false check is a fictitious person or that a falsified credit card be made in the name of someone who does not in fact exist. The existence of such false instruments poses a threat to the system which is no different than that offered by false checks or cards made in the name of an existing person.

Yeager and Carlson, 4 Iowa Practice, Criminal Law and Procedure § 364, 95-96 (1979).

We also note that defendant may not lawfully use an assumed name if he does so for the purpose of defrauding others. It is well established in this jurisdiction that the signing of an assumed name to a check constitutes "forgery" if it can be shown that the name was used with an intent to defraud. State v. Meeks, 65 N.W.2d 76, 79 (Iowa 1954), 245 Iowa 1231.

We are not persuaded by defendant's protestations that he did not intend to defraud the store and that he intended to be bound by the checks. The fact that defendant wrote, endorsed and cashed the checks, knowing full well that he had drawn them on nonexistent accounts, is ample evidence of an intent to defraud.

C. Standard of Review

The State has met its burden of coming forth with evidence to establish every element of the offense. The standard of review we apply when insufficiency of evidence supporting a conviction is raised on appeal was set forth in State v. Robinson, 288 N.W.2d 337 (Iowa 1980). "[w]e view the evidence in the light most favorable to the State... If there is substantial support for the verdict in the record, the jury verdict is conclusive." Id. at 338. Substantial support exists if a reasonable mind would accept the evidence as a sufficient basis upon which to reach a conclusion. Under the circumstances presented in the instant case, we hold that there is ample support in the record for the conclusion that the checks were falsely made and were not what they purported to be.

III. Jury Instructions

Defendant argues that he was denied a fair trial due to the trial court's refusal to submit two of his requested jury instructions. We find no error in the trial court's decision.

"[A] jury must be instructed on the law applicable to facts supported by the evidence." State v. Lamar, 210 N.W.2d 600, 605 (Iowa 1973). The first requested instruction was not applicable to the facts. While defendant arguably used the name John Hanson as a substitute for his own, the evidence is clear that, at the time he cashed the checks, he did not represent himself as Paul Hanson or Robert Hanson. To meet the standards for an assumed name, there must be no doubt about the identity of the person acting under that name during the transaction.

Defendant's second requested instruction does not accurately reflect the applicable law of this jurisdiction. While it is true that an individual may adopt or assume any new name, it is also true that an individual is limited to one name at a time. U.S. v. Crim, at 293 and 204. Moreover, as a general rule, something more than a limited or sporadic use of a name is necessary for it to be assumed. 65 C.J.S. Names § 9(1), at 13 (1961). Defendant's proposed instruction did not mention this, and would have left the erroneous impression that infrequent usage of any number of names for any purpose is sanctioned by law.

Because defendant's proposed instructions were either not applicable to the facts or inaccurately stated what the applicable law was, defendant was not entitled to have them submitted to the jury.

AFFIRMED.