FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed April 30, 1985
vs.	)	5-174 84-1178
SAUNDERS EUGENE PIKE,	)	
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Polk County - Gene L. Needles, Judge.

Defendant appeals from conviction and sentence for false use of a financial instrument in violation of Iowa Code section 715.6 (1983), asserting (1) there was insufficient evidence to support his conviction and (2) he was denied effective assistance of counsel. AFFIRMED.

Charles Harrington, Appellate Defender, and Patrick R. Grady, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Pamela S. Greenman, Assistant Attorney General, for plaintiff-appellee.

Heard by Snell, P.J., and Schlegel and Sackett, JJ.

SACKETT, J.

The defendant Saunders Pike was charged with false use of a financial, instrument after he attempted to cash a stolen check on February 18, 1984 made out to Pike and signed by him, with Betty Biondi as maker. Biondi testitied her purse was stolen on the evening of February 17, 1984, but could not identify Pike as one of the men who snatched her purse. She stated the check which Pike attempted to cash was among the checks in her stolen purse. Defendant was convicted as charged, and he appealed.

I.

Defendant's first contention is there was insufficient evidence to support the jury's verdict of guilty of False Use of a Financial Instrument in violation of Iowa Code section 715.6 (1983).

There are three basic elements which the State must establish in order to prove false use of a financial instrument: (1) use of a financial instrument; (2) intent to fraudulently obtain something of value; and (3) knowledge that the instrument is not what it purports to be. State v. Combs, 316 N.W.2d 880, 883 (Iowa 1982). Defendant challenges only the third element - sufficiency of the evidence of knowledge.

> When reviewing the sufficiency of the evidence, we view the evidence in the light most favorable to the State, including all legitimate inferences and presumptions which may fairly and reasonably be deduced from the evidence in the record. It is necessary to consider all of the evidence and not just the evidence supporting the verdict. A jury verdict is binding upon this court and will be upheld unless the record lacks substantial evidence to support the charge. Substantial evidence means evidence which would convince a rational trier of fact that the defendant is guilty of the crime charged beyond a reasonable doubt. (Citations omitted.)

State v. Blair, 347 N.W.2d 416, 418-19 (Iowa 1984).

The State presented evidence that a number of checks were stolen from Biondi on February 17, 1984. At noon the following day, defendant entered the

Plaza Bank and attempted to cash a check which was made out to defendant in the sum of $200, and which was apparently signed by Ms. Biondi. The bank manager discovered that the check was one of the series which Ms. Biondi had reported stolen. The manager testified defendant exhibited signs of nervousness common to persons trying to cash bad checks. The manager alerted police who arrested the defendant. Biondi testified the signature on the check was not hers, and she had never written a check to the defendant.

Detective Warne testified he interviewed defendant after his arrest. Defendant claimed that he discovered the check in his mailbox on the morning of February 18, 1984, and assumed the check was in payment for "odd jobs" he had done in the 1800 block of Carpenter, although he was unable to specify the nature of the repairs he had done or the address of the house.

The jury could reasonably have determined that the defendant's story was not credible. Defendant claimed that he found the check in his mailbox and assumed that it was in payment for odd jobs. It was undisputed that the address on the check was in Windsor Heights, and defendant's wife testified that she never knew of defendant doing any work in Windsor Heights and that she had never heard of Biondi. Defendant claimed the $200 was in payment for repairs he had done on a house at an unspecified location in the 1800 block of Carpenter. The 1800 block of Carpenter is five or ten miles away from, 1335 63rd Street, the address on the check. Detective Warne testified he went to the 1800 block of Carpenter in an attempt to verify defendant's story, but he could find no evidence of recent repairs. The jury could have concluded the defendant's explanation was not believable.

The jury was instructed on the common law inference from possession of recently stolen property. This inference allows the jury to infer defendant's knowledge that property in his possession was stolen if the State proves that defendant was in unexplained possession of recently stolen property.

There was no direct evidence the defendant was involved in stealing Biondi's purse. There was evidence from which the jury could have concluded that he was involved. The check was stolen about 8:30 p.m. on February 17, 1984. Defendant claimed that he was at home until about 11:00 on that Friday evening. Defendant's wife testified that they were at home until only 6:30 p.m. Biondi was unable to identify defendant as the person who took her purse. She testified there were two people involved in the theft.

The evidence was sufficient to convince a juror that the defendant had the requisite knowledge of the fact that the check was forged. The jury could have found, based upon the lack of credibility of defendant's version of the story, the defendant had actual knowledge. Or, the jury could have inferred knowledge based upon application of the inference from possession of recently stolen property. The State presented sufficient evidence to support defendant's conviction of false use of a financial instrument.

II.

Defendant contends his trial counsel was ineffective in failing to object to the trial court's instruction to the jury on the inference arising from possession of recently stolen property.

During discussion of defendant's motions for directed verdict, defense counsel disputed the trial court's reliance on inference from possession of recently stolen property in overruling the motion. However, counsel did not object to the trial court's instruction to the jury on that inference. Defendant claims the failure to timely object to the instruction constitutes ineffective assistance of counsel.

In Strickland v. Washington, ___ U.S. ___, ___, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 693 (1984) the Supreme Court sets forth a two-prong test for evaluating ineffective assistance of counsel claims: 1) defendant must

demonstrate that counsel failed to perform an essential duty, and 2) defendant must show that, "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." ___ U.S. at ___, 104 S. Ct. at 2068, 80 L.Ed.2d at 698.

In the instant case, defendant was not prejudiced by counsel's failure to preserve the issue of the propriety of the instruction on the inference from possession of recently stolen property. There was a sufficient evidentiary basis for submission of the instruction.

The common law inference can properly be used to establish knowledge that property is stolen, so long as there is a sufficient factual basis to support submission of the inference to the jury. Although the defendant attempted to explain his possession of the check, the jury was free to disbelieve the defendant's version of the story, as told through Detective Warne and defendant's wife. See State v. Jensen, 66 N.W.2d 480, 485 (Iowa 1954) (truthfulness of denial or explanation is for the jury). A jury question was generated on the issue of whether the inference should be applied, and submission of the instruction was proper.

Defendant argues that Iowa Code §715.4, which states that intent to fraudulently obtain anything of value cannot be proved by mere possession of a falsified financial instrument, in some way renders the common law inference from possession of recently stolen property inapplicable in this case. There are two separate elements. One is knowledge of false use; the other is fraudulent intent. The common law inference was given in this case to allow the jury to find knowledge if it felt that the facts supported such an inference. Section 715.4 deals only with the element of fraudulent intent. The purpose of §715.4 is to insure that a defendant's intent cannot be inferred from his possession of a falsified financial instrument, standing alone. Defendant's fraudulent intent can

be established only if he was aware that the check was falsified, fraudulent intent and knowledge are two separate elements. The common law inference is not in conflict with §715.4.

The outcome of the proceedings would not have been altered even if the jury had not been instructed on the inference, because there was substantial evidence that defendant had knowledge the check was forged.

AFFIRMED.