

IN THE COURT OF APPEALS OF IOWA

No. 9-165 / 98-0419

FILED

STATE OF IOWA,
Appellee,

vs.

BRENDA GAIL FISHER,
Appellant.

Appeal from the Iowa District Court for Johnson County, Kristin L. Hibbs,
Judge.

Brenda Fisher appeals her conviction and sentence, following a jury trial, for
wilful injury and tampering with records. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Dennis D. Hendrickson,
Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Linda J. Hines, Assistant Attorney
General, J. Patrick White, County Attorney, and Anne M. Lahey, Assistant County
Attorney, for appellee.

Considered by Sackett, C.J., and Streit and Zimmer, JJ.

STREIT, J.

Brenda Fisher appeals her convictions for wilful injury and tampering with records. She claims there is insufficient evidence to support her conviction for tampering with records. She also claims she received ineffective assistance due to counsel's failure to object to a hearsay statement. We affirm on appeal.

On July 2, 1997, Fisher was in the upstairs area of Gabe's, a bar in Iowa City, with some family members. On the same evening, Cynthia Carter and Larry Alger were in the downstairs area of the bar. After the bar closed at 2:00 a.m., Fisher was with a group of people congregated in the alley behind the bar. Michael Davis, a doorman at Gabe's, noticed Fisher was being loud and told her to keep it down.

A taxi driver had parked in the alley hoping to pick up a fare. Carter and Alger came out of the back door of Gabe's and started walking toward the taxi. An argument began between Fisher and Carter, with the women pushing each other and calling names. During the fight, Carter was stabbed twice in the neck. She and Alger got in the taxi and went to the hospital. Dr. Guy McFarland testified Carter could have died due to loss of blood if she had not received medical assistance in a timely fashion.

A police officer accompanied Alger back to the scene of the crime. Alger and Davis both identified Fisher as the person who had stabbed Carter. Fisher told police officers her name was Laticia Johnson. She produced a social security card, Rock

Island County court notice, and a telephone company calling card, all with the name Laticia Johnson. At the police station, Fisher signed the fingerprint card as Laticia Johnson.

Fisher was charged with wilful injury, in violation of Iowa Code section 708.4 (1997), and tampering with records, in violation of section 715A.5. A jury found her guilty of these crimes. She was sentenced to a term of imprisonment not to exceed ten years on the wilful injury charge and a term of imprisonment not to exceed two years on the tampering charge, the sentences to be served concurrently. Fisher appealed.

Fisher contends the State did not present sufficient evidence to support her conviction for tampering with records. She claims section 715A.5 applies only to tampering with financial records. Section 715A.5 defines the offense of tampering with records:

A person commits an aggravated misdemeanor if, knowing that the person has no privilege to do so, the person falsifies, destroys, removes, or conceals a writing or record, with the intent to deceive or injure anyone or to conceal any wrongdoing.

Section 715A.1(1) provides:

As used in this chapter the term “*writing*” includes printing or any other method of recording information, and includes money, coins, tokens, stamps, seals, credit cards, badges, trademarks, and other symbols of value, right, privilege, or identification.

There is certainly nothing in the language of section 715A.1(1) or 715A.5 which would limit the offense to tampering with financial records. The supreme court

upheld a defendant's conviction for violating section 715A.5 by falsifying the proof of service on a subpoena, which is not a financial record. *State v. Walker*, 574 N.W.2d 280, 290 (Iowa 1998). We reject defendant's argument section 715A.5 applies only to financial records.

Fisher also asserts that although she signed a fictitious name on the fingerprint card, there is not sufficient evidence to show she intended to deceive anyone or conceal anything.

Our review of a substantial evidence claim is on error. *Walker*, 574 N.W.2d at 284. We are bound by the fact finder's decision unless the verdict is not supported by substantial evidence. *Id.* The intent to deceive or conceal may be shown by circumstantial evidence and the reasonable inferences drawn from that evidence. *State v. Romeo*, 542 N.W.2d 543, 549 (Iowa 1996). Specific intent is seldom capable of direct proof. *Walker*, 574 N.W.2d at 289.

The fact Fisher admittedly provided false information on the fingerprint card is evidence of her intent to deceive. She also stated she was Laticia Johnson and provided officers with documents intended to reinforce her claim to be Laticia Johnson. At the police station, even under further questioning, Fisher continued to claim to be Laticia Johnson. There is sufficient evidence to show Fisher falsified a document, the fingerprint card, intending to deceive police officers as to her true identity.

Fisher claims she received ineffective assistance because her trial counsel failed to object to a hearsay statement. During the trial, Carter was questioned about her condition after she got into the taxi:

Q. How were you feeling at this time?

A. I thought I was going to die.

Q. Why did you think that ?

A. Because it was -- it was squirting real good. And the doctor said I lost six pints.

Fisher asserts she was prejudiced by Carter's hearsay statement concerning how much blood she had lost.

Our review of an allegation of ineffective assistance of counsel is de novo. *Cox v. State*, 554 N.W.2d 712, 714 (Iowa App. 1996). To establish a claim of ineffective assistance of counsel, a defendant must show: (1) the attorney failed to perform an essential duty; and (2) prejudice resulted to the extent it denied defendant a fair trial. *Bettis v. State*, 547 N.W.2d 635, 637 (Iowa App. 1996).

Assuming Carter's statement was inadmissible hearsay, we find Fisher was not prejudiced by the statement. There was plenty of other evidence of Carter's blood loss in the record. The taxi driver testified Carter was bleeding heavily. Alger testified blood spurted from the wound. The emergency room physician testified the front of Carter was covered with blood when she came in and he was concerned about her blood loss. Another physician testified Carter could have died due to loss of blood if she had not received medical assistance in a timely fashion. Police officer Troy Kelsay testified there were pools and splatters of blood on the ground after the

incident. With all this evidence of blood loss, it was a reasonable trial tactic not object to the voluntary statement by Carter as to the quantity of blood. An objection and to motion to strike would needlessly draw attention to the statement. Fisher has failed to show she received ineffective assistance due to counsel's failure to object to Carter's statement.

We affirm Fisher's convictions for willful injury and tampering with records. Costs of this appeal are assessed to Fisher.

AFFIRMED.

No. 98-0419. [9-165] STATE v. FISHER

Appeal from the Iowa District Court for Johnson County, Kristin L. Hibbs, Judge. **AFFIRMED.** Considerd by Sackett, C.J., and Streit and Zimmer, JJ. Opinion by Streit, J. (6 pages \$2.40)

Brenda Fisher appeals her convictions for wilful injury and tampering with records. There is certainly nothing in the language of section 715A.1(1) or 715A.5 which indicates the statutes apply only to tampering with financial records. We reject Fisher's argument section 715A.5 applies only to financial records. Fisher asserts there is not sufficient evidence to show she intended to deceive anyone or conceal anything. The fact Fisher admittedly provided false information on the fingerprint card is evidence of her intent to deceive. Fisher was not prejudiced by a hearsay statement by Carter concerning how much blood she had lost.