FILED
MAR 22 1979
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

352

STATE OF IOWA,

Appellee,

vs.

MAURICE WILSON,

Appellant.

Filed March 22, 1979

37
62157

Appeal from the Polk District Court - Ray A. Fenton, Judge.

Defendant appeals from conviction for false use of a financial instrument in violation of section 715.6, Code Supp. 1977. AFFIRMED.

Joseph B. Joyce of Adler, Brennan, Joyce & Steger, Des Moines, Iowa, for appellant.

Thomas J. Miller, Attorney General of Iowa, and J. Susan Allender, Assistant Attorney General, for appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendant appeals from conviction for false use of a financial instrument in violation of section 715.6, Code Supp. 1977. He asserts the State did not meet its burden of proving defendant had the requisite intent for conviction under section 715.6 because it failed to negate the inference that defendant had authority to act as he did. We affirm.

On February 13, 1978, defendant attempted to cash a check for $420.00 at the National Bank of Des Moines drawn against the account of Stewart, Wimer, Hudson and Flynn. When defendant presented the check, which was made out to a Robert Landry, he also presented one of Robert Landry's deposit slips. Defendant directed the bank teller to deposit $120.00 in Landry's account and give the remaining $300.00 to him in $20 bills. The teller testified that she was aware that checks had been stolen from Stewart, Wimer, Hudson and Flynn[1] and, when she asked defendant for identification, he fled. When police returned defendant to the bank, the teller positively identified him as the person attempting to cash the false financial instrument.

On appeal defendant claims that there was no evidence that he was acting without the consent and approval of the payee on the financial instrument, Robert Landry, and that the State failed to prove his intent to fraudulently obtain anything of value. Defendant cites section 715.4, Code Supp. 1977, for the proposition that mere possession of a false financial instrument does not prove intent to fraudulently obtain something of value.

This argument would be persuasive if defendant had presented the check only for deposit to Landry's account. However, the major portion of the check's proceeds, $300.00, was to be paid directly to defendant, not the payee on the check. The situation thus is functionally no different than if defendant had presented the check without the deposit ticket and directed all proceeds be paid to him.

Defendant further cites State v. Waterbury, 133 Iowa 135, 110 N.W. 328 (1907), for the proposition that the possessor of a false instrument, purportedly endorsed in blank by a payee other than the possessor, receives title to the instrument upon delivery and thus, on those facts alone, cannot be convicted of false uttering due to lack of scienter. In the case at bar defendant did possess an instrument endorsed by a payee other than himself. However, defendant also fled when questioned about the transaction.

[1] At trial William Wimer testified that blank checks had been stolen from his business office sometime before February 13, 1978, and that his signature on the check in question was forged.

The State, of course, must prove all essential elements of the crime, but such proof can be supplied either by direct or circumstantial evidence. Any evidence, circumstantial or direct, must be sufficient to raise a fair inference of guilt. State v. Bone, 201 N.W.2d 80, 81 (Iowa 1972). When asked for identification, defendant did not produce it, but fled. Defendant's flight becomes a fact of circumstantial evidence inconsistent with innocence and tending to put his intent at issue.

We find that an inference as to fraudulent intent thus was raised when the evidence is viewed in the light most favorable to the State. State v. Overstreet, 243 N.W.2d 880, 883 (Iowa 1976). Once rendered, a jury verdict will be overturned only if contrary to the weight of the evidence. State v. Herndon, 257 N.W.2d 19, 22 (Iowa 1977); State v. Overstreet, 243 N.W.2d 880, 884 (Iowa 1976). It may rest entirely upon circumstantial evidence when consistent with defendant's guilt and inconsistent with any rational hypothesis of innocence. State v. Streit, 205 N.W. 742, 743 (Iowa 1973).

We find that the State has met its burden of providing sufficient evidence on the question of intent to generate a jury question. We therefore affirm the trial court's judgment.

AFFIRMED.