FILED
MAY 2 3 1989
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,
Plaintiff-Appellee,
vs.
CHARLES ALLEN FISHER,
Defendant-Appellant.

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88-261

Appeal from the Iowa District Court for Marshall County (CR 18-1087), Carl E. Petersen and Carl D. Baker, Judges.

Defendant appeals from his conviction by a jury of false use of a financial instrument in the first degree. **AFFIRMED.**

William L. Wegman, State Public Defender, and James F. Whalen, Assistant State Public Defender, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Julie A. Halligan, Assistant Attorney General, for plaintiff-appellee.

Heard by Donileson, P.J., and Hayden and Schlegel, JJ.

HAYDEN, J. 431

Defendant appeals from his conviction by a jury of false use of a financial instrument in the first degree. He contends the trial court erred by refusing to enforce a promise allegedly made by the prosecutor to reduce the charge from first degree (a class "D" felony) to second degree (an aggravated misdemeanor) in exchange for the defendant's waiver of extradition from Nebraska. We affirm.

The State charged Charles Fisher with false use of a financial instrument in the first degree for his unauthorized use of a check for $202.51 at a Wal-Mart store in Marshalltown on December 9, 1986. Soon afterwards, Fisher left the state. On August 25, 1987, authorities apprehended him in Nebraska. Fisher waived extradition and was returned for trial in Iowa. The a jury found him guilty of false use of a financial instrument in the first degree in violation of Iowa Code section 715.6 (1985). The trial court imposed an indeterminate five-year prison sentence.

Fisher's appeal centers on the circumstances surrounding his extradition from Nebraska. He contends he waived extradition and agreed to make full restitution to Wal-Mart, only because the prosecutor had promised in exchange to reduce the false use of a financial instrument charge against him from first degree (a class "D" felony)

to second degree (an aggravated misdemeanor). He asserts the trial court erred in refusing to enforce that agreement.

The State responds Fisher waived extradition solely in exchange for Nebraska's dismissal of fugitive from justice charges and that the prosecutor in Iowa agreed only to consider reducing the false use of a financial instrument charge if Fisher made advance restitution to Wal-Mart. The State urges the trial court correctly determined this did not constitute an irrevocable commitment by the prosecutor.

We do not find it necessary to address Fisher's primary assignment of error because, regardless of the outcome, defendant cannot establish actual prejudice.

Fisher claims he has been prejudiced because the Marshall County Attorney allegedly reneged on a plea agreement. Fisher asserts had there been no agreement he would not have waived extradition from Nebraska.

First, we note it is axiomatic the "State may withdraw from a plea bargain at any time prior to, but not after, actual entry of the guilty plea by defendant or other action by defendant constituting detrimental reliance upon the arrangement. State v. Edwards, 279 N.W.2d 9, 11 (Iowa 1979) (emphasis added). Our courts have equated detrimental reliance with prejudice. State v. Epps, 316 N.W.2d 691, 694 (Iowa 1982). Thus, even if the defendant waived extradition in keeping with the "agreement," the

State was free to change its mind unless Fisher's waiver constituted prejudice.

To establish actual prejudice, it is necessary for Fisher to show without his waiver, Iowa could not have achieved extradition. We determine he has failed to make such a showing. The United States Supreme Court has held the constitution's extradition clause (Art. IV, § 2, cl.2) creates a mandatory duty on a state or territory to deliver a fugitive on proper demand. Puerto Rico v. Branstad, 483 U.S. 219, 107 S.Ct. 2802, 97 L.Ed.2d 187 (1987).

In this case, the record reveals Iowa had already submitted its extradition paperwork prior to any contact with Fisher's counsel. The State also submitted an exhibit (a letter from Governor Branstad to the Nebraska Governor) which indicates the papers had apparently been approved for legal sufficiency and had been transferred to Nebraska authorities for action. Under these circumstances, we determine the defendant has failed to demonstrate actual prejudice. We affirm the decision of the district court.

AFFIRMED.