IN THE COURT OF APPEALS OF IOWA

No. 0-572 / 89-1922

FILED
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CLERK SUPREME COURT

STATE OF IOWA,

Appellee,

vs.

DENNIS HORN,

Appellant.

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Appeal from the Iowa District Court for Lee County, John C. Miller, Judge.

Defendant appeals his conviction, following a jury trial, for theft in the second degree. **AFFIRMED.**

Linda Del Gallo, Acting State Appellate Defender, and Andi S. Lipman, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General; Roxann M. Ryan, Assistant Attorney General; and Michael P. Short, County Attorney, for appellee.

Heard by Oxberger, C.J., and Donielson and Habhab, JJ.

OXBERGER, C.J.

Dennis Horn purported to sell a car to George and Elizabeth Long for $1,700. To pay for the car, the Longs took out a $1,700 loan from State Central Savings Bank in Fort Madison. The bank issued a cashier's check for $1,700 payable to the Longs and Horn. The Longs endorsed this cashier's check and returned it to the loan officer. Horn then endorsed the cashier's check and cashed it at the same bank. Of the proceeds, about $1,008 was applied toward Horn's unrelated loans at the same bank and about $696 was given to Horn in cash.

It later developed that Horn was unable to deliver the car's title and had failed to disclose to the Longs the existence of a lien against the title that was recorded in New Mexico. The Longs had to turn the car over to the bank. The bank ultimately obtained a clear title to the car, at the bank's own expense, and sold the car at a loss.

As a result of these events, Horn was later charged with theft in the second degree. He was accused of obtaining the $1,700 purchase price by deception, specifically by failing to disclose the lien on the car's title.

A jury found Horn guilty of theft in the second degree. He has appealed from the resulting conviction. Horn challenges the sufficiency of the evidence to prove all the elements of theft. He contends the State failed to

prove that he obtained a transfer of property of any value from the Longs. He asserts the evidence shows that he obtained a transfer of property from the bank rather than from the Longs. He also asserts he did not obtain property from the bank by deception because the bank, unlike the Longs, was aware of the lien against the car's title. The bank and the State contend the bank was not aware of the lien. We affirm.

Our scope of review is for the correction of errors at law. Iowa R. App. P. 4. We are bound by the findings of fact if supported by substantial evidence. Iowa R. App. P. 14 (f)(1). We view the evidence in a light most favorable to the State. State v. Williams, 445 N.W.2d 408, 410 (Iowa App. 1989), citing State v. Hamilton, 309 N.W.2d 471, 479 (Iowa 1981). All evidence must be considered, and all legitimate inferences that may be deduced therefrom will be accepted. Id. The trial court's refusal to direct a verdict for a defendant will withstand challenge if there is substantial evidence in the record tending to support the charge. State v. York, 256 N.W.2d 922, 927 (Iowa 1977). Substantial evidence means such evidence as could convince a rational trier of fact that the defendant is guilty of the crime charged beyond a reasonable doubt. State v. Robinson, 288 N.W.2d 337, 339 (Iowa 1980).

Horn was charged with theft in the second degree in violation of Iowa Code sections 714.1(3) and 714.2(2).

Iowa Code section 714.1(3) provides that a person commits theft when he or she "obtains labor or services of another or, a transfer of possession, control, or ownership of the property of another, or the beneficial use of property of another by deception. "Section 702.9, defining deception, provides that "deception" consists of knowingly doing any of the following:

> 4. Selling or otherwise transferring or incumbering property or failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether such impediment is or is not valid, or is or is not a matter of official record.

At trial the jury was instructed that the State was required to prove that (1) Horn sold a 1980 Chevrolet Caprice to the Longs; (2) at the time of the sale Horn had knowledge that there was a lien placed on the car's title; (3) Horn failed to disclose the existence of the lien to the Longs; and (4) Horn obtained a transfer of possession, control, or ownership of the property of the Longs, i.e., the $1,700 cashier's check. Horn contends the State has failed to satisfy the fourth element of the offense. Horn contends that the money transferred to Horn was at all times the property of the bank. We disagree.

Property has been defined as "the right and interest or domination rightfully obtained over a particular object, with the unrestricted right to its use, enjoyment and disposition." 63A Am. Jur.2d Property § 74 (1984). When the bank extends a loan to a customer, a contract

obligation is created whereby the bank gives money to the customer in exchange for a promise to repay the amount loaned. Iowa Code § 554.3104(1)(b) (1989). When the loan contract was completed in the present case, the bank transferred the money to the Longs in the form of a cashier's check in the amount of $1,700 payable to the Longs and Horn. Thus, by its terms the check was made payable only to the Longs and Horn, and the bank had no property interest in the check at that time. Iowa Code § 554.3110 (1) (1989). The check was thus negotiable only if all the parties named on the check endorsed it. Iowa Code § 554.3116 (1989). The bank was not a payee listed on the check, and therefore had no property interest in the check until it was tendered to it after all the named payees had endorsed the check. Iowa Code § 554.3202(1) (1989).

Upon consideration of the authority discussed above, we find that Horn has misconstrued the property relationship of the cashier's check as it relates to the Longs and Horn. The Long's property interest in the cashier's check was negotiated to Horn when they endorsed the check and the bank delivered the check to Horn for his endorsement. The bank merely delivered the cashier's check to Horn in payment for the car, but could not cash the check in any way until both named payees had endorsed the check. Had the bank possessed a property interest in the check, it could have independently transferred the check to Horn without the endorsement of the Longs.

Horn maintains that he informed an officer of the bank, David Fazio, that there was a lien on the car, and that Fazio told him he could get the title and loan Horn the money to pay off the existing amount of the lien. Horn insists that the entire situation was a "big mistake", since Fazio had assured him he would take care of everything. The record also reveals, however, that Horn attempted to obtain title to the car by having a friend in California alter the title.

Mike Krohn, a motor vehicle investigator for the Iowa Department of Transportation, testified Horn had explained to him that he had obtained the car from a Mr. Fuentes at an auctioneering school in Kansas City, Missouri. Krohn testified Horn never mentioned that the car may have been obtained in Albuquerque, New Mexico. Krohn stated the registration received by him was for a 1980 Datsun, and not a 1980 Caprice. There was no indication that the vehicle had ever been in the possession of a car dealer in Albuquerque, where the lien was placed.

Horn himself testified at trial that he informed the Longs he could obtain title of the car from a friend for $200. The Longs testified Horn offered numerous explanations as to why he could not deliver the title, telling them at various times that the title was in Burlington, that the title had been misplaced, and that he had it in his hands but could not find it.

From these facts we find substantial evidence to support the jury's verdict finding Horn guilty of second degree theft. Horn admitted he had not informed the Longs about the lien. When Horn obtained the $1,700, he did not apply the proceeds to payment of the lien in New Mexico, but rather applied the money to existing loans at the State Central Bank, receiving the remainder of the money in cash. We likewise find that Horn's arguments that the Longs believed the money used to pay for the car belonged to the bank, and that the bank knew of the existence of the lien, have no merit.

AFFIRMED.