IN THE COURT OF APPEALS OF IOWA

No. 5-488 / 94-1828

FILED
NOV 27 1995
CLERK SUPREME COURT

STATE OF IOWA,

Appellee,

vs.

ANDRE TYRONE GRIFFITH,

Appellant.

Appeal from the Iowa District Court for Linn County, David M. Remley, Judge.

Griffith appeals his conviction, following a jury trial, for forgery. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Kevin Cmelik, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Susan M. Crawford, Assistant Attorney General, Denver D. Dillard, County Attorney, and Jerry Vander Sanden, Assistant County Attorney, for appellee.

Considered by Hayden, P.J., and Habhab and Huitink, JJ.

HAYDEN, P.J.

Andre Tyrone Griffith was charged with forgery under Iowa Code section 715A.2(1)(c)(1993). The trial information was amended to charge a second alternative of forgery under section 715A.2(1)(b).

At trial Steven Moller, an assistant at Foot Locker Shoe Store, testified Griffith tried to pay for merchandise with a stolen check belonging to Angela Becker. Griffith wrote the date and the name of the store on the check before Moller made it clear he would not accept the check. Griffith told Moller it was his girlfriend's check and she had given him permission to use it. Griffith never signed the check.

Griffith was found guilty as charged and sentenced to a five-year term. Griffith appeals. He asserts, under section 715.2(1)(b), the State must show he *forged* an instrument and *completed* a transaction, and under section 715A.2(1)(c) the State must show he *offered* an instrument *forged* under section (b). Griffith claims the State proved neither of these alternatives because he did not sign the check or complete the transaction.

The State contends, among other things, Griffith has misconstrued the language of section 715A.2(1)(b) and ignored the legislative intent. The State argues it did not have to prove a completed transfer, negotiability, or a signature to establish forgery.

I. Standard of Review.

Our scope of review is on assigned error only. Iowa R. App. P. 4 The standard of review in challenging the sufficiency of the evidence is well established. *State v.*

Lampman, 342 N.W.2d 77, 81 (Iowa App. 1982). We will uphold a verdict where there is substantial evidence in the record tending to support the charge. *State v. Aldape*, 307 N.W.2d 32, 39 (Iowa 1981).

When reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the State, including legitimate inferences and presumptions that fairly and reasonably may be deduced from the evidence in the record. *State v. Bass*, 349 N.W.2d 498, 500 (Iowa 1984); *State v. Hall*, 371 N.W.2d 187, 188 (Iowa App. 1985). It is necessary to consider all the evidence in the record, and not just the evidence supporting the verdict, to determine whether there is substantial evidence to support the charge. *Bass*, 349 N.W.2d at 500; *Hall*, 371 N.W.2d at 188. Substantial evidence means evidence which would convince a rational fact finder the defendant is guilty beyond a reasonable doubt. *State v. LeGear*, 346 N.W.2d 21, 23 (Iowa 1984); *Hall*, 371 N.W.2d at 188.

II. Sufficiency of the Evidence.

The two alternatives charged in this case read as follows:

> 1. A person is guilty of forgery if, with the intent to defraud or injure anyone, or with knowledge that the person is facilitating a fraud or injury to be perpetrated by anyone, the person does any of the following:
> b. Makes, completes, executes, authenticates, issues, or transfers a writing so that it purports to be the act of another who did not authorize that act, or so that it purports to have been executed at a time or place or in a numbered sequence other than was in fact the case, or so that it purports to be a copy of an original when no such original existed.
> c. Utters a writing which the person knows to be forged in a manner specified in paragraph "a" or "b".

Iowa Code § 715A.2(1)(b) and (c).

Griffith argues there was insufficient evidence to find him guilty of forgery under this statute. In particular, Griffith argues he did not commit forgery because there was not a complete transfer of the check, the check was not negotiable without a maker's signature, and he did not write a signature on the check. We find the defendant's conduct does fall within the purview of the statute, and we affirm.

According to the jury instruction in this case, a person "utters" a check when he offers it to another and represents it as genuine. Uttering is *offering to pass* the instrument to another person, declaring or asserting, directly or indirectly, *by words or actions*, it is good. *State v. Craig*, 252 Iowa 290, 293, 106 N.W.2d 653, 654 (1960). In the case at bar, the defendant stated the check was good and his girlfriend had given him permission to use it. He began filling out the check by writing the name of the store and the date. Griffith implied, through his words and actions, he was authorized to use the check. Furthermore, he offered the check to the clerk as payment for shoes. These action clearly constitute "uttering."

Part (c) also requires the instrument be forged in a manner specified in part (b). Part (b) requires the defendant make, complete, execute, authenticate, issue or transfer a writing so it purports to be the act of another who did not authorize the act. Iowa Code § 715A.2(1)(b). In this case, the State maintained the defendant "*made*" a writing which purported to be the act of Angela Becker who did not authorize the act.

"Make" is listed as a separate alternative from both "transfer" and "complete." Because they are separate alternatives, the statute does not require a transfer of the

check in order to sustain a conviction for forgery. Similarly, the statute does not require the writing to be completed in order to commit forgery. Defendant only needs to "make" a writing which purports to be the act of another who did not authorize the act. We find the uncompleted check along with the defendants verbal representations sufficiently "made" a writing which purported to be the act of Becker who did not authorize the act.

Additionally, the statute itself does not explicitly state a signature is necessary in order to constitute forgery. If the legislature so intended, it would have included the requirement of a signature in the statute. As the State mentions, several other states have upheld forgery convictions where the defendant did not write another person's signature, or where the written instrument was incomplete or not negotiable. *State v. Propps*, 376 N.W.2d 619, 622 (Iowa 1985) (lack of endorsed money order was not fatal to a charge of false use of financial instrument); *State v. Machon*, 331 N.W.2d 665, 667 (Wis. App. 1983) (absence of maker's signature on the forged checks did not prevent defendant's conviction on two counts of uttering as genuine a forgery); *People v. Fudge*, 239 N.W.2d 686, 690 (Mich 1976) (fact check which defendant attempted to cash was never endorsed did not preclude conviction for uttering and publishing a forged check); *People v. Susalla*, 220 N.W.2d 405, 407 (Mich. 1974) ("Nowhere is there a requirement that a signature is necessary, much less a fictitious one, before we can call something a forgery."). Furthermore, this court has upheld a forgery conviction

where the defendant wrote a false authorization number on an instrument rather than signing it. *State v. Bolinger*, 460 N.W.2d 877, 879-80 (Iowa App. 1990).

Lastly, the statute does not require a *negotiable* instrument be the document forged in order to sustain a conviction for forgery. The statute merely says forgery is committed if the defendant "Makes, completes, executes, authenticates, issues, or transfers a *writing* . . . ." Iowa Code § 715A.2(1)(b) (emphasis added). A "writing" is defined as "including printing or any other method of recording information, and includes money, coins, tokens, stamps, seals, credit cards, badges, trademarks" and other symbols of value. Iowa Code section 715A.1. *See also Bolinger*, 460 N.W.2d at 879.

As the State mentions, several states have held an instrument does not need to be negotiable in order to sustain a forgery conviction. *Machon*, 331 N.W.2d at 667 (forgery conviction upheld even though check did not contain signature of maker and was thus not negotiable); *Johnson v. State*, 355 S.W.2d 529,531-32, 172 Tex. Crim. 224, 226-27 (Tex. Crim. App. 1962) (written instrument need not be negotiable to support a forgery conviction).

Clearly, defendant committed a forgery as defined in Iowa Code section 715A.2(1)(b) and (c). Defendant told the Foot Locker sales clerk he had authority to use Angela Becker's check for payment of shoes he was purchasing. Defendant began writing out a check to the Foot Locker Shoe Store. The only reason he stopped filling out the information on the check was because the sales clerk told him the check would

not be accepted. Griffith should not avoid his conviction for forgery merely because he did not complete the entire act of writing out the check. We affirm.

AFFIRMED.