FILED
DEC 23 1980
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

409

STATE OF IOWA,

Plaintiff-Appellee,

vs.

TERRY CLEOPHAS SALLIS,

Defendant-Appellant.

Filed December 23, 1980

0-279
62936

Appeal from Black Hawk District Court - William G. Klotzbach, Judge.

Defendant appeals from his conviction of uttering a forged instrument. - AFFIRMED.

James F. Whalen, of Dunbar & Dunbar, Waterloo, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa and John P. Messina, Assistant Attorney General of Iowa, for plaintiff - appellee.

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

PER CURIAM

Defendant, Terry Sallis, appeals his conviction of uttering a forged instrument. We affirm.

Defendant was charged as a result of cashing a forged check at a grocery store. The check was drawn on the account of Minority Alcohol Action Program (MAAP), made out to the order of Grace Kelly and bore the name of the vice-chairman of MAAP on the single signature line. The defendant testified a woman calling herself Grace Kelly had given him the check to cash for her. The jury found defendant guilty of the charge. Following conviction, defendant pleaded guilty to being a habitual criminal.

Defendant appeals his conviction on the following grounds: 1) trial court erred in admitting evidence of an identification card subsequent to defendant's overruled motion in limine to exclude, 2) prosecutor engaged in prejudicial misconduct during closing argument, 3) evidence was insufficient to support the conviction, and 4) defendant was denied effective counsel.

I. Defendant sought to exclude evidence of his involvement with the making of an identification card in the name of Grace Kelly by a motion in limine on the grounds of irrelevancy and immateriality. The court overruled the motion on those grounds. No objection was offered when this evidence was later presented at trial. We find no preservation of this issue.

A motion in limine is designed to preclude the premature presentation of evidence. State v. Mark, 286 N.W.2d 396, 410 (Iowa 1979); State v. Langley, 265 N.W.2d 718, 721 (Iowa 1978). A ruling granting or denying the motion does not necessarily preserve an admissibility issue for review. See State v. Mark, 286 N.W.2d at 410; State v. O'Connell, 275 N.W.2d 197, 202 (Iowa 1979). It is only where the ruling reaches the ultimate issue, and declares the evidence admissible or inadmissible, that it is a final ruling, which need not again be raised at trial. Id.

The trial court ruled on the motion in limine as follows:

> So as far as I'm concerned the present rulings would be I overrule as the making of the I.D. card where the name Grace Kelly was used on that there is a certain amount of relevancy . . . .

The term "present rulings" indicate the judge's intent to hold the matter open for further objection when viewed in the context of the evidence actually offered during the trial. Futhermore, defendant now urges the evidence to be prejudicial. No

objection on these grounds was offered at trial and the judge's ruling on the motion in limine did not mention this basis. We do not find the ruling on the motion to be final on the issue and appealable without further preservation.

II. Defendant's claim of prosecutorial misconduct must also fail for lack of preserved error. Defendant alleges prosecutor improperly referred to defendant's failure to produce evidence and thus violated his due process right to require the state to assume the burden of proof. No objections to the disputed closing remarks were made. The plain error rule as alleged is not appropriate in this matter. See State v. Rinehart, 283 N.W.2d 319, 324 (Iowa 1979); State v. Johnson, 272 N.W.2d 480, 484 (Iowa 1978). "[C]onstitutional questions must be preserved in the same manner as any other issue. Id.

III. The defendant contends the verdict is without substantial support in the evidence because the State failed to prove certain elements of the offense.

A. Legal Efficacy of the Instrument on its Face.

Defendant states the check had no legal effect because two signatures were required. The check contained only one signature line. The check on its face was not so incomplete or irregular to put the cashier on notice of possible invalidity . See § 555.3304, The Code 1979. This transaction affected the legal relationship of the parties and was of sufficient legal efficacy.

B. Defendant did not utter or publish the check as true.

Defendant alleges his question to the cashier "Is this check good" somehow relieves him of his own affirmative action. Mere presentation of a check for approval is sufficient to complete the element of uttering. State v. Craig, 252 Iowa 290, 293, 106 N.W.2d 653, 655 (1960).

C. Defendant did not know instrument was forged.

We find evidence, though primarily circumstantial, sufficient for jury's conclusion of defendant's knowledge of this element.

IV. Defendant contends he was denied effective counsel. Our review of this issue is de novo. Kellogg v. State, 288 N.W.2d. 561, 563 (Iowa 1980). The standard to evaluate this claim is whether the attorney's performance fell within the range of normal competency. Id. at 566; State v. Killpack, 276 N.W.2d 368, 372 (Iowa 1979). At this

hearing on defendants post-trial motion testimony was presented on this matter by the attorney and the defendant. Defendant alleges three specific failures of the attorney: 1) failure to call certain witnesses, 2) undue limitation of defendant's direct examination, and 3) failure to impeach a prosecution witness. We find the first two actions to have been performed as a matter of strategy and with the knowledge and acquiescence of the defendant. We further find the attorney's failure to impeach the cashier concerned a matter which had little bearing on the ultimate issue to be determined by the jury. We are in agreement with the trial court's finding based on the above and the totality of the trial and representation the defendant was given that the representation was adequate.

Finding no error and affirming the trial court's ruling on the post-trial motion, we affirm the conviction.

AFFIRMED.