



155

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)

Plaintiff-Appellee,)

Filed February 5, 1980

vs.)

LESLIE D. PINCKNEY,)

299
62608

Defendant-Appellant.)

Appeal from Ida District Court - James P. Kelley, Judge.

Defendant appeals conviction on three counts of obtaining money under false pretenses in violation of section 713.1, The Code 1975, asserting evidence was insufficient to establish any element of the crime. Affirmed.

William H. Cone, Jr., and John P. Roehrick, Des Moines, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, Kathy Krewer and Bruce L. Cook, Assistant Attorney Generals, and Robert Belson, Ida County Attorney, for plaintiff-appellee.

Heard by Oxberger, C. J., Donielsen, Carter and Johnson, JJ. Sneli, J., takes no part.

- 1 -

DONIELSON, J.

Defendant appeals conviction on three counts of obtaining money under false pretenses in violation of section 713.1, The Code 1975, asserting evidence was insufficient to establish any element of the crime. We affirm.

I.

Defendant was charged by three separate county attorney informations filed on July 7, 1978. At the close of State's evidence and the close of defendant's case, defendant moved for a directed verdict of acquittal; both motions were overruled. The jury returned a guilty verdict. Defendant subsequently moved for a new trial, which the trial court overruled. The trial court imposed a three-year suspended sentence and \$1500 fine.

II.

Defendant was employed by the Iowa Beer and Liquor Control Department (IBLCD). His duties included negotiating leases and construction of new liquor stores. He had wide discretion in the performance of his duties with little or no direction from his superiors. The IBLCD had general specifications for the liquor stores to be constructed after a lease was granted. However, the IBLCD did not require or encourage builders or landlords to use any specific blueprints for construction. Eventually, the IBLCD did obtain a set of plans and for a \$3 fee would send a set to anyone who requested one.

Defendant became involved in selling blueprints meeting state specifications to successful bidders for construction of new liquor stores. The company that designed the blueprints would receive \$300 per set if they were used. The company's owner testified he would then return \$200 in cash to defendant. Two of the three bidders involved in the specific incidents forming the basis for the filed charges testified they asked defendant to obtain blueprints for them and were satisfied with the results. The third bidder testified defendant told him purchase of the \$300 blueprints was required.

Defendant testified he never represented purchase of the blueprints was necessary. He also testified he received only \$150 per set. Two witnesses to some conversations between defendant and successful bidders testified they did not hear defendant state purchase of the blueprints was required. A rebuttal witness for State,

- 2 -

who had purchased a set of blueprints, testified defendant told him purchase was a requirement to obtain the lease.

III.

Defendant contends State failed to present sufficient evidence to support conviction for obtaining money under false pretenses in violation of section 713.1, The Code 1975. We must decide if the trial court correctly overruled defendant's motion for directed verdict of acquittal and defendant's motion for new trial. We conclude sufficient evidence supports the conviction and the trial court correctly overruled defendant's motions.

A trial judge may grant a directed verdict only if no substantial evidence supports defendant's guilt. State v. York, 256 N.W.2d 922, 927 (Iowa 1977); State v. Overstreet, 243 N.W.2d 880, 883 (Iowa 1976); State v. Lewis, 242 N.W.2d 711, 724 (Iowa 1976). In considering a motion for directed verdict, the trial court views the evidence in the light most favorable to the State, State v. McDaniel, 265 N.W.2d 917, 922 (Iowa 1978); Iowa R. App. P. 14(f)(2), and accepts as established all reasonable inferences tending to support the jury's action. Overstreet, 243 N.W.2d at 884. The fact-finder, not us, resolves factual questions and determines the credibility of witnesses. Id. Thus, a finding of guilt by the trier of fact is binding on appeal unless it lacks substantial support in the record. Id.; see State v. Rosewall, 239 N.W.2d 171, 173 (Iowa 1976); State v. Reeves, 209 N.W.2d 18, 21 (Iowa 1973).

A trial court has considerable discretion in ruling on a motion for a new trial. Its decision may be reversed only on a clear abuse of discretion. State v. Kaufman, 265 N.W.2d 601, 617 (Iowa 1978); State v. Sheffey, 234 N.W.2d 92, 98 (Iowa 1975).

To convict a person of the crime of obtaining money under false pretenses, the State must establish beyond reasonable doubt the person made a false representation of a material fact, knowing it to be false and intending to defraud another individual, with reliance by the defrauded individual on the false representation that resulted in defendant accomplishing the fraud. State v. Warren, 212 N.W.2d 509, 513 (Iowa 1973); State v. Comes, 245 Iowa 485, 488-91, 62 N.W.2d 753, 755 (1954). State presented sufficient evidence here to establish beyond a reasonable doubt each element of the crime.

A. False Representation or Statement of a Material Fact.

A false representation may be made by words or actions and may include a failure to disclose a material fact, there need not be an express false representation. State v. West, 252 N.W.2d 456, 461-62 (Iowa 1977). Defendant's statements to the bidders that it was customary and required to purchase blueprints were false. Testimony established the IBLCD had no official policy on the use of blueprints and would approve any blueprints that conformed to general specifications. Successful bidders were not required by the IBLCD to use the blueprints defendant was offering, yet this was defendant's representation in these incidents. These misrepresentations were material since they induced the bidders to make blueprint purchases not required of them.

B. Knowledge of Accused that Misrepresentation is False.

Defendant knew IBLCD required only minimal specifications and had no policy requiring use of a uniform set of blueprints. After complaints about defendant's sale of blueprints to other bidders were received by defendant's supervisor, the supervisor told defendant the IBLCD would not require any particular set of blueprints and warned him not to repeat his sales practices. He specifically told defendant builders would be responsible for obtaining blueprints or the IBLCD would provide plans free of charge. Defendant knew his representations to be false. See State v. Moline, 164 N.W.2d 151, 154 (Iowa 1969).

C. Intent to Defraud.

Intent to defraud is rarely susceptible of direct proof and may be proven by circumstantial evidence. State v. Johnson, 196 N.W.2d 563, 567-68 (Iowa 1972); Moline, 164 N.W.2d at 154. When a person makes an unqualified statement that a fact exists when it does not, and thereby induces another to act on the statement, the law imputes a fraudulent intent. See State v. Huckins, 212 Iowa 283, 291-93, 234 N.W. 554, 559 (1931); State v. Chambers, 179 Iowa 436, 453-54, 161 N.W. 470, 476 (1917). Here, defendant stated to the bidders it was customary or required to purchase the blueprints he offered. Defendant argues there can be no fraud when the bidders received what they had agreed to purchase and since defendant did not specifically intend to injure or damage the prospective landlords. This argument is inapposite. See Huckins, 212 Iowa at 294, 234 N.W. at 560. Defendant sought to induce builders to buy blueprints they thought were

- 4 -

required, knowing he would receive part of the sales price--a fact unknown to the builders. Defendant's acts benefited neither the State nor the builders. The builders could have received equivalent plans at less cost from the State who was only concerned the new buildings meet certain specifications. Defendant alone benefited from his actions and his intent to defraud is clear.

D. Accomplishment of Fraud.

Uncontroverted testimony established that three landlords paid the engineering firm \$300 for blueprints and defendant received a considerable part of each payment. Nothing more need be shown to establish this element. It is not necessary, as defendant contends, for the State to prove defendant obtained property of another without just and adequate compensation to the person from whom it was obtained. Huckins, 212 Iowa at 291-93; 234 N.W. at 559. Even so, the victims were injured since they could have obtained the blueprints for considerably less or done without them entirely.

E. Reliance by the Victim.

The State must establish defendant's fraudulent representations induced the victims to part with their money. State v. Fooks, 65 Iowa 196, 198, 21 N.W. 561, 561 (1884). Each bidder stated he believed obtaining the blueprints was customary or required and there was no alternative but to purchase them.

IV.

Sufficient evidence was presented to sustain the jury verdict. Overstreet, 243 N.W.2d at 884-85. It was shown defendant intentionally and knowingly made false representations to obtain money. Additionally, it was sufficiently demonstrated the bidders would not have purchased the blueprints but for defendant's misrepresentations. The trial court did not err in overruling defendant's motions for directed verdict or new trial.

AFFIRMED.