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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)
Appellee,) Filed June 30, 1978
vs.)
WARD E. WILLIAMS,) 516
Appellant.) 60928

Appeal from Tama District Court - Louis W. Schultz, Judge.

Defendant appeals his conviction on two counts of false drawing and uttering of checks over twenty dollars, in violation of § 713.3, The Code 1975, contending that his motion for a directed verdict should have been granted because the evidence was insufficient to support the jury verdict. Affirmed by Operation of Law, § 684.10, The Code.

Curtis A. Ward, of Mowry, Irvine & Brooks, of Marshalltown, counsel for appellant.

Richard C. Turner, Attorney General of Iowa, and Jared Bauch, Tama County Attorney, counsel for appellee.

Heard by Allbee, C. J., Donielson, Snell, and Oxberger, JJ.; Carter, J., takes no part.

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DONIELSON, J.

Defendant-Ward E. Williams appeals his conviction on two counts of false drawing and uttering of checks over twenty dollars, in violation of § 713.3, The Code 1975, contending that his motion for a directed verdict should have been granted because the evidence was insufficient to support the jury verdict. Williams argues that the State failed to prove beyond a reasonable doubt that he had received "money, credit, or things of value" as required by § 713.3, in exchange for the checks in question which were written.

In making a determination as to the propriety of the trial court's ruling on a motion for a directed verdict in a criminal case, this court views the evidence in the light most favorable to the State regardless of whether it is contradicted and every legitimate inference that may be fairly and reasonably deducted therefrom must be carried to the aid of the evidence. State v. Overstreet, 243 N.W.2d 880, 883-884 (Iowa 1976); State v. Beyer, 258 N.W.2d 353, 356 (Iowa 1977). In light of this principle, the cause in a criminal action should be submitted to the jury and the court should not direct a verdict of acquittal if there is any substantial evidence reasonably tending to support the charge. Either direct or circumstantial evidence may be sufficient to warrant a verdict of guilty. However, where circumstantial evidence alone is relied upon as to an essential element, the circumstances must be entirely consistent with defendant's guilt, wholly inconsistent with any rational hypothesis of his innocence, and so convincing as to exclude a reasonable doubt that defendant was guilty of the offense charged. Like direct evidence, it must raise a fair inference of guilt, generate something more than suspicion, speculation or conjecture. State v. Overstreet, supra, at 883-884.

It is equally well settled that on defendant's appeal from a criminal conviction based upon a jury verdict challenging the sufficiency of evidence to sustain the verdict, we need only consider supportive evidence, whether contradicted or not. It is for the fact finder, not us, to resolve questions of fact and determine the credibility of witnesses. Thus, a finding of guilt by the trier of fact is binding on this court unless we find that it is without substantial evidence in the record or is clearly against the weight thereof. Id. at 884; see State v. Rosewall, 239 N.W.2d 171, 173 (Iowa 1976); State v.

Hall, 235 N.W.2d 702, 715-716 (Iowa 1975); State v. Dahlstrom, 224 N.W.2d 443, 447-448 (Iowa 1974).

The elements necessary to sustain a conviction for false drawing and uttering of a check in violation of § 713.3 were set forth in State v. Mullin, 225 N.W.2d 305, 307 (Iowa 1975). See State v. Coburn, 244 N.W.2d 560, 562 (Iowa 1976). Williams now argues that the evidence was insufficient to demonstrate beyond a reasonable doubt that he received something of value at the time the checks were given to Bennett's DX Service Station.

The record reflects that in November of 1976, defendant wrote two checks for $30 and $85 to Bennett's DX which were drawn against an account at the Newton National Bank. Written in on the memo portion of each check was the word "gas". Both checks were deposited by the station and subsequently returned unpaid by the bank due to the fact that the account had been closed for over a year. Williams stipulated that on the dates he wrote the checks, he was aware the account was closed and that he had no agreement or understanding with the bank to honor his checks.

Stephanie Bennett, bookkeeper at the service station, testified concerning the normal business practices of Bennett's DX and Williams' one and only charge account there. She stated that she handles all the accounts at the station and, on a daily basis, takes all receipts, charge tickets, etc. and brings the accounts up to date. Mrs. Bennett also testified that Williams had a habit of getting behind in paying his bills with the station and, as a result of these prior unpleasant financial dealings with him, the station and Williams entered into an arrangement whereby defendant paid the station $100 in advance and was able to charge gas, oil and other products and services, until the $100 credit was gone. At the time Williams paid the $100, he had no outstanding debts at the station.

Mrs. Bennett testified that she was the one who entered the $100 payment in the station's financial records and made all entries against it. At the time Williams wrote the two checks in question, he had a credit balance of $12.70 at the station and did not owe it any money. Mrs. Bennett stated that due to the lapse of time and workload of the service station, she could not recall specifically what items were given defendant in exchange for his checks. However, she indicated that the checks must have been given

in exchange for goods of some kind because, otherwise, the $12.70 account would have been closed. Furthermore, the amounts of the checks were far too large to be completely offset by the account balance.

Mrs. Bennett also testified that she found it highly unlikely that Williams would write checks for nothing and then later inform the station as he did that he would redeem these two bad checks. Finally, she stated that had Williams charged any item at the station, she would have received a charge ticket from the sale and posted it to his account, thereby wiping out the credit balance thereon. Bennett stated that she received no such charge ticket.

The State concedes that the evidence presented in this case is circumstantial, but contends that it satisfies the requirements for the use of such evidence discussed in State v. Overstreet, supra. After considering defendant's contentions and reviewing the entire record in light of the standards of review previously discussed, we conclude that there was sufficient evidence to support the jury verdict and consequently, the trial court did not err in overruling defendant's motion for a directed verdict. The judgment of the district court is affirmed by operation of law. Section 684.10, The Code.

Affirmed by Operation of Law.

Allbee, C. J., concurs. Snell and Oxberger, JJ., dissent.

OXBERGER, J. (dissenting)

The charge in this case is that Williams falsely drew and uttered checks in violation of § 713.3, The Code. One element of the State's proof on such a charge must be that Williams secured money, credit, or other valuables in exchange for the worthless checks. The evidence relied upon to establish this element was circumstantial in its entirety. The bookkeeper's testimony does not exclude the reasonable hypothesis that the checks were written as payment for past purchases. Since such payment would fail to induce the securing of products, money or credit, no violation of § 713.3 could be made out on the basis of these checks. I cannot follow the bookkeeper's deduction that since Williams had a $12.70 credit balance, he must have received goods in exchange for the checks. The $85 check was undated. The bookkeeper on cross-examination acknowledged the checks could have been for prior purchases and all she knew for certain was that they were not included in the account Williams was running at the station with the $12.70 credit balance in November 1975. She also acknowledged other persons charged gas in Williams name and he would stop in and pay for it subsequently. No employee apparently had any recollection of the dates or circumstances under which the checks were accepted. The State failed to prove this element of its case.

SNELL, J. joins in this dissent.