IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)
Plaintiff-Appellee,)
vs.)
DENNIS EUGENE GILMORE,)
Defendant-Appellant.)

Filed September 29, 1981

1-174
64707

Appeal from Polk District Court - Harry Perkins, Judge.

The defendant appeals his conviction for false use of a financial instrument in violation of section 715.6, The Code 1979. AFFIRMED.

Nick Krpan, Des Moines, attorney for defendant-appellant.

Thomas J. Miller, Attorney General, Roxann Ryan, Assistant Attorney General, and Ted Prine, Assistant County Attorney, for plaintiff-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

PER CURIAM

This defendant, Dennis Eugene Gilmore, appeals his conviction for false use of a financial instrument in violation of section 715.6, The Code 1979. The defendant claims there was insufficient evidence to support a conviction of the crime and the trial court erred in giving an instruction on aiding and abetting when the defendant was not charged with that crime in the trial information.

On October 2, 1979, the defendant was charged by trial information with the crime of false use of a financial instrument in violation of section 715.6, The Code 1979. The defendant pleaded not guilty and the case proceeded to a jury trial. The defendant was found guilty and was sentenced to Fort Madison for a term not to exceed ten years and fined $5000.

The charges stemmed from the defendant's alleged use of a stolen credit card to purchase merchandise at a K-Mart store in Des Moines. The defendant, and a companion, Patricia Benge, entered K-Mart near closing time on Sunday, September 2, 1979. The store clerk testified that the defendant handed her a MasterCharge card bearing the name "R. Barry." The clerk proceeded to obtain a credit verification from Master Charge officials, who informed the clerk that the credit card had been reported stolen the previous day. The clerk attempted to stall the defendant but he ran out of the store. Defendant was apprehended in the K-Mart parking lot by K-Mart security.

I. The defendant claims that there was not substantial evidence from which the jury could conclude the defendant tendered the credit card to the store clerk, in light of testimony by Ms. Benge and the defendant to the effect it was actually Ms. Benge who tendered the card. The defendant's position is untenable.

In deciding whether there is sufficient evidence to support a conviction, we view all evidence on the record in the light most favorable to the State. State v. Robinson, 288 N.W.2d 337, 338, 340 (Iowa 1980). If there is substantial support for the verdict in the record, the jury verdict is conclusive. Id. at 338. Substantial evidence is defined as such evidence as could convince a rational trier of fact that defendant is guilty beyond a reasonable doubt. Id. The relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Id.

In this case there is abundant evidence from which a rational trier of fact could conclude the defendant was guilty beyond any reasonable doubt. The record contains evidence that the defendant knew he was not authorized to use the credit card. The defendant told the clerk his name was Archie Barry. There was testimony that when Ms. Benge told the clerk she lived at 300 Grand and that her name was Mrs. Archie Barry, the defendant knew the information was false and made no attempt to present the truth. There was evidence to the effect that the defendant became nervous and ran out of the store when the clerk began to stall the couple after the credit verification check. There was evidence that the defendant denied even knowing his companion, Ms. Benge. The record is replete with similar evidence from which the jury could easily conclude that the defendant presented the stolen credit card to the clerk, that the defendant knew the use of the card was unauthorized, and that the defendant intended to obtain merchandise fraudulently. We have no problem with holding there was substantial evidence in the record to support the jury's guilty verdict.

II. The defendant also asserts the trial court committed prejudicial error by instructing the jury on the crime of aiding and abetting when the State did not charge the defendant with that crime in the trial information. We are of the opinion that claim is without merit. State v. Hamilton, 179 N.W.2d 369, 371 (Iowa 1970). See also State v. Rydel, 262 N.W.2d 598, 601 (Iowa 1978).

Affirmed.