IN THE COURT OF APPEALS OF IOWA

No. 7-291 / 96-0895

000703

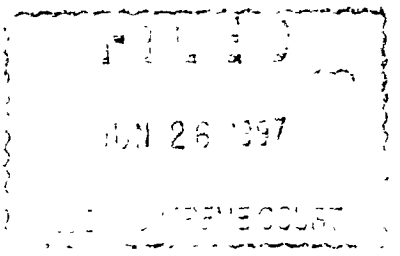
STATE OF IOWA,

Plaintiff-Appellee,

vs.

DELBERT LEE McGUIRE,

Defendant-Appellant.



Appeal from the Iowa District Court for Polk County, Gene L. Needles, Judge.

Defendant appeals the judgment and sentence entered upon his convictions of four counts of forgery in violation of Iowa Code sections 715A.1 and 715A.2 (1995).

REVERSED.

Robert A. Wright, Sr. of Wright and Wright, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney General, John P. Sarcone, County Attorney, and Odell McGhee, Assistant County Attorney, for appellee.

Considered by Sackett, P.J., and Huitink and Vogel, JJ.

SACKETT, P.J.

Defendant-appellant Delbert Lee McGuire appeals the judgment and sentence entered upon his convictions after a jury trial of four counts of forgery in violation of Iowa Code sections 715A.1 and 715A.2 (1995). He contends there was insufficient evidence to support the charge and the district court erred in overruling his motion for judgment of acquittal based on insufficiency of the evidence. He also contends the trial court erred in admitting hearsay evidence. We reverse the conviction.

Defendant opened a savings account at the Iowa State Bank of Des Moines. He signed a form directing that a check he received from the Veterans Administration be directly deposited into the savings account. Between April 17, 1995 and April 22, 1995, defendant presented four checks to the bank payable to himself. The four checks were drawn on an account of the Ankeny Car Wash at Boatman's Bank and were signed with the name Mary Kay Frasier. He deposited part of each of the four checks into his savings account and received cash for the balance.

On April 21, 1995, Iowa State Bank closed defendant's savings account. The four checks drawn on the Ankeny Car Wash account had been returned as unpaid. On April 22, 1995, McGuire attempted to make a cash withdrawal from this savings account. A teller was instructed to hold defendant. The police were called. Defendant was arrested. While defendant was transported to a patrol car, a fifth check drawn on the Ankeny Car Wash account fell to the ground. In searching

000705

defendant, a sixth check also drawn on the Ankeny Car Wash account was found. The six checks and the dates on which they were written are as follows:

Check Number	Date	Amount of Check	CashReceived
1383	4/21/95	$15 or $75	Not deposited
1384	4/17/95	$153.30	$128.30
1386	4/18/95	$210.15	$157.15
1387	4/16/95	$244.83	$144.83
1388	4/19/95	$253.20	$153.20
1391	4/20/95	$257.10	Not deposited
1392	4/21/95	$185.50	Not deposited

Checks numbered 1383, 1391, and 1392 were not deposited. The other four checks were deposited. Mary Kay Frasier was never identified by the State.

At trial, the State introduced the testimony of Jack Slump, an officer of Iowa State Bank, that the bank was not able to locate the account on which the checks from the Ankeny Car Wash were drawn. He testified Boatman's Bank had been contacted and the account had been closed for quite some time. Slump explained Iowa State Bank marked defendant's checks with the notation "unable to locate" which means the account has been closed for quite some time. Slump further testified on April 22 the Iowa State Bank showed a loss on the checks of $1068.58. In addition to receiving cash at the time of deposit, there were withdrawals from his savings account. However, on May 1, a Veterans Administration check in the amount of $1892.20 came to the bank and more than covered its loss.

Des Moines police officer Ronald Vestal testified when defendant was questioned about the checks, defendant referred to an Altoona location for the Ankeny Car Wash. Vestal further testified there was no Ankeny Car Wash in Altoona.

Richard McCauley, a security officer with Boatman's Bank, was asked by the prosecutor if there was an account for the Ankeny Car Wash at the Boatman's Bank. McGuire objected and McCauley was voir dired. McCauley stated the operations officer of the bank was the person responsible for recordkeeping, not him. The court overruled McGuire's renewed objection that there was no foundation for McCauley to testify regarding the bank's records. McCauley then testified that the Ankeny Car Wash account was terminated on October 31, 1994.

Defendant contends the trial court erred in admitting McCauley's testimony. The State concedes the district court may have erred in admitting McCauley's testimony the bank account was closed because he was not custodian of the bank records. However, it urges such error was harmless in light of the other evidence in the record regarding the closed account.

McCauley's testimony was cumulative on the issue of the closed bank account. Defendant was not prejudiced by the admission of the evidence. *See State v. Sowder*, 394 N.W.2d 368, 372 (Iowa 1986).

Defendant next contends there is not substantial evidence to support the conviction and the trial court should have sustained his motion for acquittal. Defendant advances the evidence was not sufficient to establish his guilt beyond a

reasonable doubt because the State failed to prove that Mary Kay Frasier did not authorize the checks and that he knew she did not.

The State admits there was no testimony from either Mary Kay Frasier or the Ankeny Car Wash that Mary Kay Frasier did not authorize the checks, but advances that is not fatal because the reasonable inference is the checks were not authorized. The State supports this argument by advancing that the signatures of Mary Kay Frasier on the checks were not consistent, the check numbers were not in sequential order, and it was unusual for a person to have the number of checks defendant did for the time frame in question.

We view the evidence in the light most favorable to the State and accept as reasonable all reasonable inferences tending to support the jury's action. *State v. Hall*, 287 N.W.2d 564, 565 (Iowa 1980).

The State had to produce evidence to convince a rational fact finder that defendant knew the four checks were not what they were purported to be; that is, he knew it was a forgery. *See State v. Martin*, 341 N.W.2d 728, 730 (Iowa 1983).

The checks appeared on their face to be drawn on an existing account made payable to defendant. Possession of these checks by defendant was not alone sufficient to support his conviction. *Id.* at 731; *see also State v. Waterbury*, 133 Iowa 135, 140, 110 N.W. 328, 330 (1907).

We reverse the conviction.

REVERSED.