FILED
APR 28 1978
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Appellee,	)	Filed April 28, 1978
vs.	)	452
STEPHEN STUREK,	)	57004
Appellant.	)	

Appeal from Crawford District Court - D. M. Pendleton, Judge.

Defendant appeals conviction of embezzlement in violation of § 710.5, The Code, claiming admission of tainted evidence, failure to establish fraudulent intent and adverse news and broadcast coverage exposed him to juror prejudice. - Affirmed.

James F. Gaukel, of Gaukel & Nevins, for Appellant.

Richard C. Turner, Attorney General of Iowa, J. Susan Carney, Assistant Attorney General, and Thomas R. Eller, Crawford County Attorney, for Appellee.

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

PER CURIAM

Defendant Stephen Sturek appeals his conviction of embezzlement in violation of § 710.5, The Code. We affirm.

Sturek claims it was error to admit bank photocopies of checks after the originals of these checks had been suppressed on the charge they were illegally seized. The record shows that grand jury exhibits 5 through 10 were presented to the State's investigator by a private person, Lee J. Farnsworth, who acted on his own initiative. Therefore, the search and seizure which obtained that evidence was not subject to the exclusionary rule. United States v. Haes, 551 F.2d 767, 770 (8th Cir. 1977); State v. Holliday, 169 N.W.2d 768, 771-72 (Iowa 1969). While the discovery of grand jury exhibit 14 may have been the result of a search by the State, see United States v. Haes, 551 F.2d at 770-71, the legally obtained evidence (grand jury exhibits 5 - 10) provided a source sufficiently independent of any such illegality to permit introduction of the micro-film. Silverthorne Lumber Co. v. United States, 251 U.S. 385, 392, 40 S.Ct. 182, 183, 64 L.Ed. 319, 321 (1920). The trial court erred in suppressing the originals of the checks. Further, we are persuaded that since the State would have discovered the bank records during the normal course of their routine investigation of the embezzlement charge, the photocopies were admissible evidence. See Brewer v. Williams, 430 U.S. 387, 406 n. 12 (1977).

Sturek's second claim is that his client Wagner never made demand for the funds and that the record by the State failed to establish Sturek had no other funds in other financial institutions to meet such a demand had it been made. Sturek theorizes this record is insufficient to establish fraudulent intent to convert funds. We consider only the evidence supporting the verdict, State v. Beyer, 258 N.W.2d 353, 356 (Iowa 1977) to determine whether a jury question regarding fraudulent intent was established. We find the State's evidence indicates by Sturek's own accounts to Wagner and to Farnsworth he created the impression that he had established trust funds for the benefit of Wagner. Sturek's evidence established neither trust funds set up for Wagner nor any alternative allocation of funds to meet a future demand by Wagner for his settlement proceeds. This record generates more than a suspicion, speculation, or conjecture that Sturek's conduct

exhibited an intent to deprive the client of funds and to convert the same to Sturek's own ends. The evidence is sufficient to raise a fair inference of guilt, nothing more is required. Beyer, id. at 356.

Sturek's third claim concerns the press and broadcast coverage while the case was being tried. After the trial court refused to interrogate the jury during the trial, Sturek failed to demonstrate the requisite prejudice. Such failure was fatal in State v. Bigley, 202 N.W.2d 56, 57 (Iowa 1972) and State v. Sefcheck, 261 Iowa 1159, 1172-74, 157 N.W.2d 128, 135-137 (1968). Like Bigley and Sefcheck, this is not a case where the very publication of the material justifies an inference of prejudice. We note Sturek did not include supporting juror affidavits or testimony of such prejudice with his motion for new trial. The trial court's refusal to grant an evidentiary hearing regarding potential jury exposure to the newspaper and broadcast coverages was proper in the absence of any indication of a serious question regarding possible prejudice or that the material disseminated by the media during the trial went beyond the record. Bigley, supra, 202 N.W.2d at 58.

AFFIRMED.