

FILED

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DEC 30 1981

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,

)

Plaintiff-Appellee,

)

Filed December 30, 1981

vs.

)

NEIL CRAIG CLAPPER,

)

1-417

66376

Defendant-Appellant.

)

Appeal from story District Court, M. D. Seiser, Judge.

Defendant appeals from his conviction of first-degree theft in violation of section 714.1(6), The Code 1979. AFFIRMED.

Timothy J. Finn of Murray, Curtis & Finn, Ames, for defendant-appellant.

Thomas J. Miller, Attorney General, and Michael Jordan, Assistant Attorney General, for plaintiff-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

PER CURIAM

Defendant appeals from his conviction of first-degree theft in violation of section 714.1(6), The Code 1979. We affirm the conviction.

The defendant wrote a check on August 2, 1980, for the amount of \$7858 to purchase an automobile. The check was returned to the automobile dealer because of insufficient funds, and defendant was charged by county attorney's information on October 16, 1980, with first-degree theft. Defendant pleaded not guilty, was tried, and found guilty by a jury.

At trial the State offered into evidence Exhibit 4, a copy of the defendant's checking account statement for the month in which the \$7858 check was written. The State also offered into evidence exhibit 5, which was copies of notices of insufficient funds which the bank had mailed to the defendant. Defendant objected to both because some of the checks were written and some of the notices were sent after the date the defendant wrote the check he was being prosecuted for. Defendant argued that the exhibits were irrelevant and not the best evidence, but his objections were overruled.

Defendant argued mistake of fact in his defense. He argued that he thought the bank had agreed to lend him 75 percent of the price of the automobile. If the bank had done so and deposited the money in the account, there would have been sufficient funds. Thus, defendant wished to keep out any evidence from the bank which showed he had written more bad checks after he had written the check for \$7858. Allegedly, the total of his bad checks was over \$20,000.

L. When we review the trial court's exercise of discretion in admitting the evidence regarding defendant's subsequent overdrafts that month, we must first consider the relevance of the evidence defendant complained about. The general rule is that evidence of other crimes is inadmissible, because one crime cannot be proved by proof of another. State v. Wright, 191 N.W.2d 638, 641 (Iowa 1971). The reason is that we do not want to convict anyone of a crime just because he is a bad person, or on the basis that if he committed one crime then he probably committed this crime too. Thus, "evidence which is relevant to prove some fact or element in issue other than the defendant's criminal disposition escapes the rule's prohibition." State v. Cott, 283 N.W.2d 324, 326 (Iowa 1979). Exceptions to the rule include the following: (1) motive,

(2) intent, (3) absence of mistake or accident, (4) a common scheme or system of criminal activity embracing the commission of two or more crimes so related that proof of one tends to prove the other, or (5) identity of the perpetrator. State v. O'Connell, 275 N.W.2d 197, 203 (Iowa 1979).

Defendant's primary defense was mistake of fact, so the evidence was necessary to show that defendant was not mistaken when he wrote the check for the automobile. He argued that he thought he had an arrangement with the bank. Thus, the evidence of overdraft notices and his other checks written without sufficient funds in the account tends to show that the bank had no such arrangement with defendant and that defendant knew he was writing checks without funds in his account to cover them. We think the disputed evidence was relevant and admissible under State v. O'Connell, supra.

This disputed evidence was of substantial probative value. The standard is whether that probative value is substantially outweighed by the danger of prejudice from the evidence. State v. McDaniel, 265 N.W.2d 917, 921 (Iowa 1978). The trial court did not abuse its discretion in admitting the evidence of other crimes.

We find no reversible error.

AFFIRMED.