IN THE COURT OF APPEALS OF IOWA

No. 6-160 / 95-469

FILED
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CLERK SUPREME COURT

STATE OF IOWA,

Plaintiff-Appellee,

vs.

ROGER EUGENE HINTON,

Defendant-Appellant.

Appeal from the Iowa District Court for Linn County, Robert Sosalla, Judge.

Roger Hinton appeals the judgment and sentence entered upon his conviction of fraudulent practices in violation of Iowa Code sections 714.8(10) and 714.12 (1993). **REVERSED AND REMANDED.**

Mark C. Meyer and J. Dean Keegan of Kinnamon, Kinnamon, Russo & Meyer, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Roxann M. Ryan, Assistant Attorney General, Denver D. Dillard, County Attorney, and Russell Keast, Assistant County Attorney, for appellee.

Heard by Sackett, C.J., and Cady and Streit, JJ.

CADY, J.

Roger Hinton appeals the judgment and sentence entered following his conviction in a jury trial of fraudulent practices in violation of Iowa Code sections 714.8(10) and 714.12 (1993). The conviction stems from Hinton's transfer of a motor vehicle titled in the name of Larry Dietze. The crime is commonly known as "jumping title" or transferring title to another person in contravention of the statute requiring each owner to be listed on the title. We reverse and remand for a new trial.

Hinton owned certain vehicle parts. He agreed to sell them to Larry Dietze in return for Dietze's 1970 El Camino as well as some cash. Dietze left the El Camino with Hinton and Hinton delivered some of the parts to Dietze. Dietze also later delivered the vehicle's certificate of title, but did not sign it over to Hinton, claiming Hinton failed to deliver all the parts. Dietze told Hinton he would sign the title once all the parts were delivered. Hinton responded if he sold the El Camino to a third person, Hinton would sign the title himself. In order to avoid a confrontation, Dietze responded "whatever."

Hinton subsequently sold the El Camino to a third person. The title contained the signature of Dietze, which Dietze testified he never signed.

Hinton was charged with "fraudulent practice in the third-degree by transferring ownership of a motor vehicle belonging to Larry Dietze . . . knowing the

certificate of title had been forged" in violation of sections 321.100, 714.8(10),[1] and 714.11 (1993).

The trial court instructed the jury the State must prove both of the following elements for Hinton to be guilty of committing third-degree fraudulent practices:

> 1. On or about the 13th day of March, 1994, the defendant used a forged motor vehicle certificate of title to transfer ownership of a motor vehicle which Larry Dietze owned to Michael Townsend.
> 2. The defendant knew the motor vehicle certificate of title contained Larry Dietze's forged signature.

The jury was further instructed, "[f]or the defendant to know something means he had a conscious awareness that the motor vehicle certificate was not signed by Larry Dietze." The instructions did not define forgery.[2]

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[1] **714.8 Fraudulent practices defined.**
A person who does any of the following acts is guilty of a fraudulent practice.
. . . .
10. Does any act expressly declared to be a fraudulent practice by any other section of the Code.

[2] **715A.2 Forgery.**
1. A person is guilty of forgery if, with intent to defraud or injure anyone, or with knowledge that the person is facilitating a fraud or injury to be perpetrated by anyone, the person does any of the following:
a. Alters a writing of another without the other's permission.
b. Makes, completes, executes, authenticates, issues, or transfers a writing so that it purports to be the act of another who did not authorize that act, or so that it purports to have been executed at a time or place or in a numbered sequence other than was in fact the case, or so that it purports to be a copy of an original when no such original existed.
c. Utters a writing which the person knows to be forged in a manner specified in paragraph "a" or "b".

The jury found Hinton guilty as charged. The trial court sentenced him to serve one year in jail and fined him $2500 plus a surcharge.

Hinton appeals. He claims insufficient evidence exists to support the verdict, the trial court erred in the charging instruction to the jury, and his trial counsel was ineffective for failing to object to the jury instructions. Each of Hinton's claims is premised on the foundational argument the crime of fraudulent practices involving the use of motor-vehicle titles requires a specific intent to defraud. We address this question first.

Iowa Code section 714.8 defines the crime of fraudulent practices.. It includes a catch-all provision making it a fraudulent practice to commit an act which is declared to be a fraudulent practice by some other law.

Iowa Code section 321.100 is one provision of the code which declares certain acts to be fraudulent practice outside the section 714.8 definition. It includes numerous definitions of fraudulent practice in the use a motor vehicle registration, title, permit or identification plate. In relevant part, it provides:

> It is a fraudulent practice for any person to commit any of the following acts:
>
> .1. To alter with a fraudulent intent any certificate of title, . . .
>
> * * *
>
> 3. To hold or use any such document . . . knowing the same to have been so altered, forged, or falsified.
>
> * * *

Iowa Code section 321.100.

Hinton argues the fraudulent intent element of subsection (1) also applies to subsection (3). He observes subsection (3) requires the document held or used by the offender must also have been altered with fraudulent intent.

We agree subsection (3) is not implicated unless the document involved has been altered with fraudulent intent. It is not a crime to use an altered vehicle title unless the title was altered with fraudulent intent. Moreover, using an altered title is not a crime if the user does not have knowledge the title has been altered with fraudulent intent.

On the other hand, section 321.100 (3) imposes criminal responsibility for the use of an altered vehicle title with knowledge it has been altered with fraudulent intent. However, the prohibited act is not altering the document, but using the document with knowledge it has been fraudulently altered. Thus, subsection (1) prohibits the fraudulent alteration of the document, while subsection (3) prohibits the subsequent use of a fraudulent altered document. The act of altering the document requires fraudulent intent, while the act of using an altered document only requires knowledge of its fraudulently altered condition. *See Engman v. Scurr*, 311 N.W.2d 77, 78-81 (Iowa 1981).

We conclude section 321.100 (3) is a general intent crime. Nevertheless, we agree the trial court failed to properly instruct the jury that this important element required knowledge the motor-vehicle title had been altered with fraudulent intent.

The trial court properly identified the elements of the crime in its charging instruction, but then incorrectly instructed the jury that knowledge meant Hinton "had a conscious awareness that the motor vehicle certificate was not signed by Larry Dietze." It was not enough for the State to merely prove Larry Dietze did not sign the title. The State was required to prove knowledge the signature was placed on the title with fraudulent intent. The jury should have been instructed to the effect "knowledge" meant Hinton had a conscious awareness the motor-vehicle title had been altered with fraudulent intent. Moreover, the trial court failed to define forgery. Thus, the instructions permitted the jury to find Hinton guilty without finding he knew the title had been altered with fraudulent intent. Accordingly, we must reverse the conviction and remand for a new trial.

REVERSED AND REMANDED.

Streit, J., concurs; Sackett, C.J., concurs specially.

SACKETT, C.J. (concurring specially)

I concur specially. I agree with the majority's decision to reverse, but for different reasons.

Defendant-appellant Roger Hinton appeals the judgment and sentence entered following his conviction in a jury trial of fraudulent practices in violation of Iowa Code sections 714.8(10) and 714.12 (1993). The charges stem from defendant's transfer of a motor vehicle titled in the name of Larry Dietze. Defendant contends (1) there was not sufficient evidence to support his conviction; (2) the trial court erred in giving certain instructions; and (3) his trial counsel was not effective for he failed to object to the jury instructions. I would reverse and remand for new trial.

Larry Dietze owned a motor vehicle which was transferred to Michael Townsend by a transfer on a certificate of title purporting to bear Dietze's signature. It is undisputed before the transfer Dietze gave the vehicle and the certificate of title to defendant to pay defendant for auto parts Dietze purchased from defendant. Defendant delivered the vehicle and certificate of title to Townsend.

Defendant testified the title was signed when he received it. Dietze testified it was not signed and defendant told him he would sign Dietze's name to it if the vehicle were sold, and Dietze said, "whatever."

There was a subsequent disagreement between the men over whether all the parts were delivered. This disagreement is a civil matter. Clearly, there was an agreement to exchange the vehicle for auto parts.

The trial information charged defendant "did commit fraudulent practice in the third degree by transferring ownership of a motor vehicle belonging to Larry Dietze to Michael Townsend knowing the certificate of title had been forged" in violation of sections 321.100,[1] 714.8(10),[2] and 714.11[3] (1993).

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[1] **321.100 False evidences of registration.**

It is a fraudulent practice for any person to commit any of the following acts:

1. To alter with a fraudulent intent any certificate of title, manufacturer's or importer's certificate, registration card, registration plate, manufacturer's vehicle identification plate, or permit issued by the department or county treasurer.

2. To forge or counterfeit any such document or plate.

3 To hold or use any such document or plate knowing the same to have been so altered, forged, or falsified.

4. To hold or use any certificate of title, manufacturer's or importer's certificate, registration card, registration plate, manufacturer's vehicle identification plate, or permit issued by the department or county treasurer, for any vehicle to which such document or plate is not legally assigned.

5 To transfer in any manner or to offer to transfer in any manner a certificate of title, manufacturer's or importer's certificate to any vehicle on which a salvage certificate of title or junking certificate is required under section 321.52, with knowledge or reason to believe that the certificate will be used for a vehicle other than the vehicle for which the certificate is issued. "*Transfer*" for the purposes of this subsection means to sell, exchange, change possession or ownership or convey in any manner

[2] **714.8 Fraudulent practices defined.**

A person who does any of the following acts is guilty of a fraudulent practice.

. . .

10. Does any act expressly declared to be a fraudulent practice by any other section of the Code.

[3] **714.11 Fraudulent practice in the third degree.**

Fraudulent practice in the third degree is the following:

The jury was instructed for defendant to be guilty of committing third-degree fraudulent practices the State must prove both of the following elements:

> 1. On or about the 13th day of March, 1994, the defendant used *a forged motor vehicle certificate of title to transfer ownership of a motor vehicle* which Larry Dietze owned to Michael Townsend.
> 2. The defendant knew the motor vehicle certificate of title contained Larry Dietze's forged signature. (Emphasis supplied.)

The jury was further instructed, "[f]or the defendant to know something means he had a conscious awareness that the motor vehicle certificate was not signed by Larry Dietze." The instructions did not define forgery.[4]

> 1. A fraudulent practice where the amount of money or value of property or service involved exceeds five hundred dollars but does not exceed one thousand dollars.
> 2 A fraudulent practice as set forth in section 714.8, subsections 2, 8 and 9.
> 3. A fraudulent practice where it is not possible to determine an amount of money or value of property and service involved.
> Fraudulent practice in the third degree is an aggravated misdemeanor.

[4] **715A.2 Forgery.**

> 1. A person is guilty of forgery if, with intent to defraud or injure anyone, or with knowledge that the person is facilitating a fraud or injury to be perpetrated by anyone, the person does any of the following:
> a. Alters a writing of another without the other's permission.
> b. Makes, completes, executes, authenticates, issues, or transfers a writing so that it purports to be the act of another who did not authorize that act, or so that it purports to have been executed at a time or place or in a numbered sequence other than was in fact the case, or so that it purports to be a copy of an original when no such original existed.
> c. Utters a writing which the person knows to be forged in a manner specified in paragraph "a" or "b".

The jury found defendant guilty as charged. He was sentenced to serve one year in jail and fined $2500 plus a surcharge.

I first address defendant's challenge the State failed to prove defendant intended to defraud and his attorney did not provide adequate representation when he did not object to the jury instructions relieving the State of proving defendant had an intent to defraud.

The State advances defendant was convicted of what it calls "title jumping." The State defines "title jumping" as the failure to show the name of each owner when a vehicle is transferred through the use of a forged title.

Defendant points out that certain sections of Iowa Code section 321.100 specifically require the proof of intent. I agree that is true. The State alleges the section under which defendant was found guilty was 321.100(3), which is not a specific intent crime. I agree with the State that section 321.100(3) does not include language calling for specific intent.

What the State argument misses is this section includes the element of forgery and the charge against defendant was predicated on forgery. Forgery as defined by Iowa Code section 715A.2 is a specific intent crime. I agree with defendant the jury should have been instructed for defendant to forge the certificate of title the State had to prove defendant had an intent to defraud or injure.

Defendant's trial attorney did not request such an instruction. Defendant therefore has the burden of showing his counsel's performance fell outside the normal

range of competency and the deficient performance so prejudiced defendant that, but for his trial attorney's error, the result of the trial would have been different. *See State v. McKettrick*, 480 N.W.2d 52, 55 (Iowa 1992). I presume trial counsel's actions were reasonable and competent absent a showing to the contrary. *State v. Buck*, 510 N.W.2d 850, 853 (Iowa 1994).

There was an issue whether defendant had an intent to defraud. The undisputed evidence was Dietze exchanged the vehicle and the title for parts he had purchased from defendant. It is questionable Dietze retained any ownership interest in the vehicle. A jury also could have found Dietze consented to defendant signing his name. There is minimal evidence to support a finding defendant had an intent to defraud. Defendant has shown (1) his trial counsel should have requested an instruction that forgery required an intent to defraud or harm, and (2) he suffered prejudice by the failure to do so.

For these reasons, I would reverse and remand for a new trial.