# IN THE COURT OF APPEALS OF IOWA

No. 5-536 / 94-1417

001279

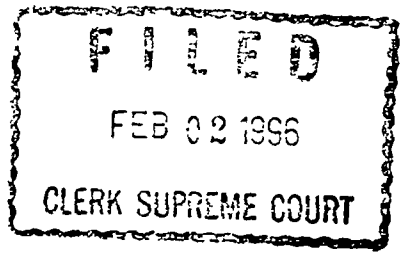
**STATE OF IOWA,**

Appellee,

vs.

**PATRICK R. ZAHNER,**

Appellant.




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Appeal from the Iowa District Court for Sioux County, James D. Scott, Judge.

Patrick R. Zahner appeals the judgment and sentence entered upon his conviction of forgery. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Sarah E. Hennesy, Assistant State Appellate Defender, for apellant.

Thomas J. Miller, Attorney General, Angelina M. Smith, Assistant Attorney General, and Mark J. Schouten, County Attorney, for appellee.

Considered by Sackett, P.J., and Habhab and Cady, JJ.

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**HABHAB, J.**

Defendant Patrick Zahner was charged with the crime of forgery in violation of Iowa Code sections 715A.1(1), 715A.2(1)(b) and (c), and 715A.2(2) (1993). Following a bench trial, he was convicted of this crime. We affirm. This is a companion case to *State v. Zahner*, No 94-1416 / 5-535 (Iowa App. 1995) (Unpublished), which involves defendant's wife.

On July 10, 1993, the Anema Meat truck was in Hawarden, Iowa. Anema Meat is owned by Jay Schipper. Schipper testified Patrick and a short, heavy-set woman entered the truck that day. Patrick told Schipper he was one of Anema Meat's best customers in Sioux City While Patrick talked to Schipper, the woman picked out meat. At one point, Patrick told her, "Remember, dad said we can only go up to $150." When the woman wanted additional meat, Patrick told her, "If you want it, take it."

The woman paid for the meat with a check for $165. The name on the check was Dorothy Sitzman and the woman signed as Dorothy Sitzman. The check was later returned to Schipper with the notation, "account closed." Schipper went to Sioux City to see Sitzman. When he saw Sitzman, he realized she was not the person who had signed the check. When Schipper inquired who could have written the check, Sitzman showed him a picture of Patrick and Melissa Zahner. Melissa is Sitzman's granddaughter. Schipper identified Patrick and Melissa as the people who had given him the forged check.

At trial, Sitzman testified that less than two weeks before the crime, Patrick had accompanied her to the bank. Sitzman stated she asked the bank to give her more checks. Patrick told her she did not need any checks because she had some under the telephone stand in her home. Sitzman testified when she looked under the telephone stand she found a checkbook from a closed account and there were no checks in it.

Patrick's mother, Marlena Pannell, now known as Marlena Van Dorn, and a social worker, Betty Nelson, both testified Patrick brought a quantity of meat to his house on July 10, 1993. Patrick told them he had won the meat from a local radio station.

Patrick admitted he went to the Anema Meat truck in Hawarden on July 10, 1993. He testified he went with Marlena and she had paid for the meat. He stated he did not realize until later that she had forged a check to pay for the meat.

Patrick and his wife, Melissa, were jointly tried in a bench trial. The district court found them both guilty of forgery. The court found Melissa was the person who had forged the check. Patrick was found guilty of aiding and abetting the forgery.

The court denied Patrick's motion in arrest of judgment and motion for new trial. Patrick was sentenced to a term of imprisonment not to exceed five years. This sentence was suspended and he was placed on probation for a period of three years. He now appeals.

Patrick contends the State failed to prove beyond a reasonable doubt he aided and abetted Melissa in the crime of forgery. He states there is insufficient evidence

to show he knew of the forgery at or before its commission. He claims there is no evidence to show he encouraged or participated in the forgery.

When a criminal defendant challenges the sufficiency of evidence to support a conviction, we review all the evidence in the record in a light most favorable to the State. *State v Garr*, 461 N.W.2d 171, 173 (Iowa 1990). We must uphold the conviction if there is substantial evidence in the record to support it. *State v. Frake*, 450 N.W.2d 817, 819 (Iowa 1990). Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion. *State v. Robinson*, 288 N.W.2d 337, 339 (Iowa 1980).

One cannot be convicted of a crime upon a theory of aiding and abetting unless there is substantial evidence to show he or she assented to or lent countenance and approval to the criminal act either by active participation in it or by some manner encouraging it prior to or at the time of its commission. *State v. Lott*, 255 N.W.2d 105, 107 (Iowa 1977). Neither knowledge nor proximity to the scene alone is enough to prove aiding and abetting. *State v. Lewis*, 514 N.W.2d 63, 66 (Iowa 1994). However, these factors in combination with circumstantial evidence, such as presence, companionship, and conduct before and after the offense is committed, may be enough from which to infer a defendant's participation in the crime. *State v. Johnson*, 534 N.W.2d 118, 123 (Iowa App. 1995).

We find there is sufficient evidence in the record to show Patrick aided and abetted in the crime of forgery. The evidence showed Patrick knew Sitzman had

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some checks she was not using. Also, his statements in the Anema Meat truck show he was trying to lend legitimacy to the situation Patrick's statement that they were good customers at another location would reduce the likelihood Schipper would become suspicious. Also, his statement that they had a dollar limit would reduce the likelihood of suspicion because there was no reason for them to worry about the dollar limit if they were planning to forge a check. Furthermore, Patrick was seen at his home with a quantity of meat and, in explanation of where he obtained the same, he told his mother and a social worker he had won the meat in a radio contest.

We conclude this evidence shows Patrick was an active participant in the forgery of the check We affirm his conviction. Costs of this appeal are assessed to defendant.

**AFFIRMED.**