IN THE COURT OF APPEALS OF IOWA

No. 1-194 / 00-1010
Filed May 9, 2001

STATE OF IOWA,
Plaintiff-Appellee,

vs.

RAYMOND BRADLEY ROUSE,
Defendant-Appellant.

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CLERK SUPREME COURT

Appeal from the Iowa District Court for Johnson County, Kristin L. Hibbs, Judge.

Defendant appeals from the judgment and sentence entered following his conviction for forgery. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and James G. Tomka, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney General, J. Patrick White, County Attorney, and Linda M. Paulson, Assistant County Attorney, for appellee.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

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VAITHESWARAN, J.

Raymond Rouse's brother Mike worked at a bank. He took some checks from the bank and wrote one of the them to Rouse for $350, signing the name of the account holder, Jeffrey Kleffman. Rouse cashed the check but it was returned because Kleffman's account had been closed.

The State charged Rouse with forgery.[1] *See* Iowa Code §§ 715A.2(1)(b) or (c)[2]; 715A.2(2)(a)(3)[3]; 703.1 (1997).[4] Following the close of the State's case, Rouse moved for judgment of acquittal. The district court denied the motion.

The jury returned a guilty verdict. The district court sentenced Rouse to a prison term not exceeding five years, but suspended the sentence and placed him on probation for three years. On appeal, Rouse challenges the district's court's denial of his motion for judgment of acquittal, arguing the evidence was insufficient to support his conviction. We affirm.

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[1] The State charged Raymond with two counts based on this incident and another. The jury acquitted him on the other count. Therefore, we will not address the facts or proceedings relating to that count.

[2] Iowa Code section 715A.2(b) and (c) state:

> 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:
>
> 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".

[3] Iowa Code section 715A.2(2)(a)(3) states:

> 2. a. Forgery is a class "D" felony if the writing is or purports to be any of the following:
> (3) A check, draft, or other writing which ostensibly evidences an obligation of the person who has purportedly executed it or authorized its execution.

[4] Iowa Code section 703.1 defines "aiding and abetting."

I. Standard of Review

We review challenges to the sufficiency of the evidence for errors of law. *State v. Beeson*, 569 N.W.2d 107, 110 (Iowa 1997). We will affirm a district court's denial of a motion for judgment of acquittal if the record contains substantial evidence to support the defendant's conviction. *State v. Anderson*, 618 N.W.2d 369, 372 (Iowa 2000). The evidence may be direct or circumstantial. *State v. Uthe*, 542 N.W.2d 810, 815 (Iowa 1996).

II. Sufficiency of the Evidence

According to the jury instructions, the State was required to prove the following elements to establish forgery:

1. On or about January 7, 1998, the Defendant uttered a check that the Defendant knew had been forged by another.
2. The Defendant knew the check on the account of Jeffrey Kleffman had been forged so that it would appear to be the act of one who did not authorize the act.
3. The Defendant specifically intended to defraud or injure another, or the Defendant knew the act would facilitate a fraud or injury to another.

The State presented substantial evidence to support each of these elements. Rouse's brother Mike had a roommate, Brian Benson, who testified for the State. Benson stated that after Mike brought the checks home from the bank, he, Mike, and Rouse discussed "going out and buying all kinds of merchandise." Benson was asked if he specifically discussed the $350 check with Rouse. He responded:

> I was told that Mike wrote the check out for the $350 amount. I told Ray that the check will bounce and they will catch you, and he just gave a story that he was going to sell -- he was going to give the cops or anybody that asked him about the check, that he sold some speakers to this guy and that's how he got the cash.

A police officer who investigated the matter confirmed Benson's version of events. The officer also testified he spoke to Rouse, who initially told him the precise story Benson had recounted about the speakers. Finally, the officer stated he received an affidavit of forgery signed by Kleffman indicating the check was not authored or signed by him.

Rouse nevertheless argues the State did not prove its case because Kleffman was not called to testify that the check was forged. It is true Kleffman did not testify at trial and the court refused to admit his affidavit in the face of a hearsay objection. However, the testimony of Benson and the officer establish Kleffman did not authorize the writing of the $350 check and Rouse knew he did not. The fact Rouse hatched a story to explain the check in the event he was caught confirms his specific intent to defraud Kleffman or his knowledge that his acts would facilitate a fraud on Kleffman.

We conclude the evidence was sufficient to support Rouse's forgery conviction and, accordingly, affirm his judgment and sentence.

AFFIRMED.