

FILED

APR 28 1978

CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)

Appellee,)

vs.)

CHARLES R. PEARSON,)

Appellant.)

Filed April 28, 1978

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60696

Appeal from Buena Vista District Court - Thomas Hamilton, Judge.

Defendant claims he was denied opportunity to testify he lacked intent to defraud and could not, therefore, be convicted of uttering a forged instrument in violation of § 718.2, The Code. - Affirmed.

Hamilton Law Firm, P.C., for Appellant.

Richard C. Turner, Attorney General of Iowa, Ray Sullins, Assistant Attorney General, and Phil Redenbaugh, Buena Vista County Attorney, for Appellee.

Submitted to Albee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

Defendant Charles Richard Pearson claims his conviction of uttering a forged instrument in violation of § 718.2, The Code, must be reversed because he was denied an opportunity to testify as to his lack of intent to defraud. We affirm.

We agree that the excluded testimony was not self-serving. In *re Hasselstroms' Estate*, 257 Iowa 1014, 135 N.W.2d 530 (1965), since it was testimony at trial rather than an offer of an extrajudicial statement. Likewise, the testimony was directly material to Pearson's defense that he lacked intent. See *State v. Johnson*, 196 N.W.2d 563, 569 (Iowa 1972). Further, Pearson's neglect to make an offer of proof does not preclude our review. The proof which would have been adduced is apparent and was placed in the record by other testimony of Pearson. See *State v. Buckner*, 214 N.W.2d 164, 168 (Iowa 1974).

Nevertheless, we must affirm Pearson's conviction since any error in these rulings by the trial court was harmless. The following testimony was submitted to the jury without any objection:

- Q. Did you anticipate that this check would not be cleared by the bank? A. No, I figured it would go through and I'd settle up with my dad.
- Q. And you knew that your father didn't authorize you to sign his name to the check. A. I considered it a loan.
- Q. You knew somebody was going to have to come up with that \$200.00 didn't you? A. Right. I would have eventually in the end.

This testimony demonstrates the jury had before it Pearson's claimed lack of intent to defraud his father. Section 619.16, The Code, mandates that we disregard any defects in the trial proceedings since no substantial right of Pearson has been affected. *State v. Gilmore*, 259 N.W.2d 846, 858 (Iowa 1977) specifically ruled error requiring reversal may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected.

AFFIRMED.