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2013 IL App (3d) 110484-U

Order filed January 3, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellee,)	Will County, Illinois,
)	
v.)	Appeal No. 3-11-0484
)	Circuit No. 09-CF-1710
)	
CHARLES R. SMITH, JR.,)	Honorable
)	Edward Burmila, Jr.,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Presiding Justice Wright and Justice McDade concurred in the judgment.

ORDER

- ¶ 1 *Held:* The evidence was sufficient to prove the defendant's guilt of deceptive practices beyond a reasonable doubt.
- ¶ 2 The defendant, Charles R. Smith, Jr. was convicted of deceptive practices (720 ILCS 5/17-1(B)(d) (West 2008)) and sentenced to 30 months' imprisonment. On appeal, the defendant argues that the State failed to prove his guilt beyond a reasonable doubt. We affirm.

¶ 3

FACTS

¶ 4 On August 20, 2009, the defendant was charged by indictment with one count each of theft by deception and deceptive practices. On March 10, 2011, the case proceeded to a bench trial.

¶ 5 Lynn Haas testified that she was the manager of Rink's Gun and Sport (Rink's). On May 7, 2009, the defendant came into the store to purchase a handgun. The defendant returned on May 20, 2009, tendered a check to Rink's, and took possession of the handgun. Thereafter, the defendant's check was returned due to insufficient funds. Haas left at least two voice mail messages at one of the defendant's telephone numbers. Haas noted that the telephone number that the defendant had written on his receipt differed from the number in his customer history file.

¶ 6 Illinois State Police Investigator Steven Pryor testified that he interviewed the defendant on July 31, 2009. Pryor explained to the defendant that the interview was in regards to a bad check that the defendant had made to purchase a handgun at Rink's. The defendant replied that he knew about the check and that he had bounced at least one other check at a different gun shop in Kane County in April 2009. The defendant told Pryor that he had also bounced a check to his cellular telephone service provider, but he had repaid that amount in cash.

¶ 7 The defendant testified that on October 21, 2008, he opened a bank account at TCF Bank. At the time, he deposited \$25 into the account. Approximately seven days later, the defendant withdrew the \$25. Sometime in November 2008, the defendant learned that his account had a negative balance. The defendant intended to deposit money into the account, but he did not have enough money left after he paid his monthly bills.

¶ 8 The defendant testified that he opened the account shortly after he began working for Professional Pride Security (PPS). From August until December 2008, the defendant received a payroll check from PPS. After December 2008, PPS was in financial trouble, and the defendant received his paycheck irregularly.

¶ 9 In 2009, the defendant wrote a check to purchase a firearm in Kane County, knowing that the check would not be honored. The check was returned due to insufficient funds. The defendant stated that he was going to deposit his paycheck into the account, but he "screwed up." The defendant was not informed that his account was closed at that time. Thereafter, the defendant entered a check diversion program in Kane County.

¶ 10 Around the middle to end of May 2009, PPS offered to direct deposit the defendant's paycheck into a bank account. Prior to filling out the direct deposit forms, the defendant checked his most recent account statement, from February 2009, and learned that his TCF bank account still had a negative balance; however, it had not been closed. The defendant then filled out paperwork to have his paychecks directly deposited into his bank account. The defendant believed that his "next upcoming check" would be deposited into his account.

¶ 11 On May 20, 2009, the defendant purchased a handgun with a check from Rink's. At the time, he did not know that his account was closed, and he thought that his check would be honored. The defendant believed that his direct-deposited paycheck would cover the check that he drew to purchase the handgun at Rink's. However, he discovered "at the end of May around the time we got paid. Between *** the 27th or 28th of May toward June 1st" that his paycheck had not been direct deposited into his account. The defendant had not deposited any other funds into the account prior to his purchase.

¶ 12 After the defendant took possession of the handgun, he received one voice mail from Haas. The defendant contacted Haas in an attempt to repay the amount of the insufficient check, but Haas directed him to contact Pryor. During his interview with Pryor, the defendant learned for the first time his TCF bank account had been closed. On June 15, 2009, the defendant received his last paycheck from PPS. The defendant's wages were not direct deposited, but were paid via check.

¶ 13 The trial court found that the defendant was not credible. The trial court did not believe that the defendant thought that his check would be honored. The court found the defendant guilty of deceptive practices and sentenced him to 30 months' incarceration. The defendant appeals.

¶ 14 ANALYSIS

¶ 15 The defendant argues that the State failed to prove his guilt beyond a reasonable doubt because the evidence did not establish that he made the check knowing that he had insufficient funds in his account to cover the costs of the handgun. The defendant contends that he made the check at Rink's thinking that his account had funds from his direct-deposited paycheck.

¶ 16 When reviewing the sufficiency of the evidence, the relevant question is whether " 'after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " (Emphasis omitted.) *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). On appeal, it is not the function of the reviewing court to retry a defendant, and the weight to be given to a witness' testimony and the reasonable inferences to be drawn from the evidence are for the trier of fact. *People v. Steidl*, 142 Ill. 2d 204 (1991).

¶ 17 To convict a defendant of deceptive practices, the State must prove beyond a reasonable doubt that the defendant: (1) made, drew, issued, or delivered a check or draft for payment; (2) obtained money or property in return; (3) knew at the time he tendered the check that there were insufficient funds to pay the check; and (4) acted with the intent to defraud. *People v. Bormet*, 142 Ill. App. 3d 422 (1986). The trier of fact may infer that the defendant knew that the check would not be paid by the depository bank and that the defendant acted with intent to defraud when he failed to have sufficient funds in his account at the time the check was issued or delivered. 720 ILCS 5/17-1(B)(d) (West 2008).

¶ 18 In the instant case, the evidence was sufficient to prove the defendant's guilt beyond a reasonable doubt. The defendant argues that he did not know that there were insufficient funds in his account to pay the check. However, the evidence showed that the defendant opened an account at TCF Bank in October 2008. The account had a negative balance in November 2008. The defendant testified that he did not deposit money into the account; he merely directed PPS, sometime between the middle and end of May, to begin direct deposit starting with his "next upcoming check." The trier of fact could infer from these facts that the defendant knew that his account was not adequately funded at the time he wrote the check on May 20.

¶ 19 Additionally, in February 2009, the defendant received an account statement that showed that his account had a negative balance. Nevertheless, in April 2009, he drew a check to purchase a firearm in Kane County. This check was returned for insufficient funds. The defendant also admitted to Pryor that he had drawn a bad check to pay his cellular telephone bill. Evidence that the defendant has issued other bad checks and that his account had a negative balance is highly probative of his knowledge of the status of his account. See *People v. Shepard*,

193 Ill. App. 3d 910 (1990). The trial court could infer from this evidence that the defendant made the instant check knowing that his account had insufficient funds to cover the cost of the purchase.

¶ 20 The defendant further argues that he thought that his account had funds in it at the time of his purchase from Rink's because he had directed his employer to deposit his paychecks into his account. However, the trial court found that the defendant was not a credible witness. As a court of review, we are not allowed to substitute our judgment for that of the fact finder on questions involving the credibility of the witness. *People v. Sutherland*, 155 Ill. 2d 1 (1992). Therefore, viewing the evidence in the light most favorable to the State, we hold that the fact finder could infer from the evidence that the defendant intended to defraud Rink's at the time he made the check.

¶ 21

CONCLUSION

¶ 22 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 23 Affirmed.