

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL EARL LEDUC,

Defendant-Appellant.

UNPUBLISHED

May 31, 2002

No. 233152

Delta Circuit Court

LC No. 00-006588-FH

Before: Griffin, P.J., and Hood and Sawyer, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of writing or delivering an insufficient funds check, \$500 or more, MCL 750.131(3)(c), and writing or delivering an insufficient funds check, \$100 or more but less than \$500, MCL 750.131(3)(b)(i). He was sentenced to concurrent terms of eighteen months' probation, with the first six months to be served in jail. Defendant appeals as of right, and we affirm.

Defendant befriended William Haack, who was approximately five years his junior. At defendant's direction, Haack opened a checking account at First Bank with \$50 cash and received starter checks. Haack prepared a check for \$389.76, with defendant designated as the payee. Defendant instructed Haack to indicate that the payer was "B & J Construction," and to provide Haack's home address and telephone number. The check contained a notation that the check was for payroll. Defendant took the check to the Super One store to have it cashed, but stated that he did not have identification. Super One cashier Nicole Berry did not personally know defendant, but recognized him from prior visits to the store. Berry cashed the check. After purchasing cigarettes, defendant obtained \$358.75 in cash. However, defendant told Haack that he was unable to cash the check and stole the cigarettes. Defendant instructed Haack to flee the scene and meet later at the Wal-Mart store.

Haack had also executed a second check in the amount of \$6,000 for the purchase of defendant's vehicle. Haack knew that there were insufficient funds in his newly opened checking account to cover the written checks. However, defendant advised Haack that the bank would send a monthly bill for payment. Despite the receipt of the check, defendant did not transfer title to the vehicle or relinquish possession of the vehicle.

Defendant deposited the \$6,000 check with Delta County Credit Union where he had an existing account. The deposit occurred after 5:00 p.m. on Friday, and he requested cash for the

check. Bank teller Lesa Wallin advised defendant that a hold would be placed on the check for four business days before withdrawal of the funds could occur. Defendant did not argue with Wallin. However, the next day, defendant attempted to withdraw the funds a second time. Wallin conferred with her supervisor and again advised defendant that the funds would not be available for four business days. Defendant returned to the bank later that morning and was able to withdraw \$1500 from inexperienced teller Terri Kidd. Defendant returned to the bank on Monday and was able to withdraw \$4300 at 1:00 p.m. from Kidd. A second withdrawal of \$200 occurred within three minutes. Later that day, Delta loan and security officer Mary Stacy learned from First Bank that funds were not available from the account to honor the \$6,000 check.

Detective Mike Gierke interviewed defendant about the cashed checks. Defendant admitted that he knew that there were insufficient funds to cover the \$389.76 payroll check. Defendant stated that he “felt” that there would be a deposit to cover the amount. Defendant admitted that he instructed Haack to write the “payroll” designation on the check so it would be cashed at the store. Defendant admitted to cashing the payroll check at Super One, but alleged that he returned the cigarettes and cash to Haack. During the interview, Haack called defendant on his cellular telephone. Defendant agreed to pick up Haack to allow police to arrest him.

Haack testified that he entered into a plea agreement. Pursuant to the agreement, one of the charges against him was dropped, and he received a delayed sentence. Haack admitted that he had an extensive juvenile record. Haack testified that the plan to open the checking account and obtain cash through the starter checks was concocted by defendant. Haack testified that defendant gave him written instructions on how to obtain a checking account. Additionally, defendant drove Haack to the secretary of state’s office prior to their visit to First Bank to obtain an updated identification card to open the account. Haack testified that he erroneously believed defendant’s representations that the bank would merely bill him monthly for overdrafts. However, Haack testified that he received \$706 in social security benefits every other month. Haack also testified that his uncle was willing to send money to purchase a vehicle that did not belong to defendant. Haack never promised any money from his uncle to defendant and did not represent that he would have the money by a date certain. There was no testimony to indicate the exact amount of money promised to Haack by his uncle.

Defendant argued that acquittal was warranted because there was no evidence of the element of intent to defraud. Rather, defendant believed that money would be deposited in Haack’s account. The prosecutor argued that Haack was a naïve petty thief who was taken advantage of by defendant. It was further argued that evidence of defendant’s intent to defraud was demonstrated by his repeated and ultimately successful attempts to withdraw cash from the deposit of the \$6,000 check despite notice of the hold. The jury convicted defendant as charged.

Defendant alleges that there was insufficient evidence to support his convictions. We disagree. The elements of an insufficient funds charge are: (1) an intent to defraud; (2) the drawing of a check for the payment of money upon a bank; and (3) knowledge by the writer or deliverer of the check that the bank account has insufficient funds or credit for the payment of such checks. See *People v Chappelle*, 114 Mich App 364, 370; 319 NW2d 584 (1982), overruled in part on other grounds *People v Bearss*, 463 Mich 623, 633 n 9; 625 NW2d 10 (2001).

Defendant challenges only the intent to defraud element. When evaluating a challenge to the sufficiency of the evidence, a reviewing court must examine the evidence in the light most favorable to the prosecutor and determine whether a rational trier of fact could find that each element of the crime was proved beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). In determining whether there was sufficient evidence to sustain a conviction, all conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Questions of credibility and intent are properly resolved by the trier of fact, *In re Forfeiture of \$25,505*, 220 Mich App 572, 581; 560 NW2d 341 (1996), and deference must be given to the trier of fact's determination. *People v Lemmon*, 456 Mich 625, 646; 576 NW2d 129 (1998). Intent may be inferred from all the facts and circumstances. *People v Nelson*, 234 Mich App 454, 459; 594 NW2d 114 (1999). Giving deference to the jury's determination of intent and assessment of credibility, we conclude that there was sufficient evidence of intent to defraud to support defendant's convictions.

Affirmed.

/s/ Richard Allen Griffin

/s/ Harold Hood

/s/ David H. Sawyer