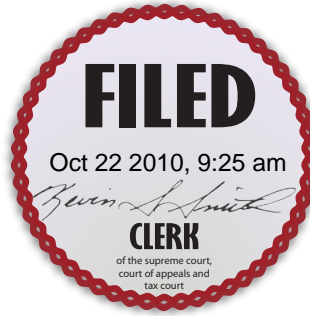


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEYS FOR APPELLANT:

GEORGE J. CRIDER
JOEL E. HARVEY
Hayes Copenhaver Crider, LLP
New Castle, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

ANGELA N. SANCHEZ
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

RONNIE G. HANLEY,)
)
Appellant-Defendant,)
)
vs.) No. 33A01-1001-CR-25
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE HENRY SUPERIOR COURT
The Honorable Bob A. Witham, Judge
Cause No. 33D02-0812-CM-0559

October 22, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Ronnie G. Hanley (“Hanley”) was convicted in Henry Superior Court of Class A misdemeanor check deception. Hanley appeals and argues that the State failed to present sufficient evidence to support his conviction. We affirm.

Facts and Procedural History

On September 30, 2008, Hanley purchased various appliances and electronics from Robert Stewart (“Stewart”). Hanley paid for the items with a personal check for \$1,000.00, dated September 30, 2008. Although Hanley told Stewart that he had sufficient funds in the account to cover the check, Stewart agreed to hold the check for a day or two to allow Hanley to confirm that the funds were available.

A few days later, after calling Hanley to confirm that the funds were available, Stewart attempted to deposit the check into his bank account. The check was later returned due to insufficient funds. Stewart then contacted Hanley, who told Stewart that the money was in the account and that he should try to cash the check at the bank on which the check was drawn. When Stewart attempted to do so, the bank refused to cash the check because Hanley had stopped payment on October 14, 2008.

On December 5, 2008, the State charged Hanley with Class A misdemeanor check deception. A bench trial was held on August 26, 2009, and the court issued a written order finding Hanley guilty as charged on December 17, 2009. Hanley now appeals.

Discussion and Decision

Hanley claims that the State presented insufficient evidence to support his conviction for Class A misdemeanor check deception. In reviewing a challenge to the sufficiency of the evidence, we neither reweigh the evidence nor judge the credibility of

witnesses. Atteberry v. State, 911 N.E.2d 601, 609 (Ind. Ct. App. 2009). Instead, we consider only the evidence supporting the conviction and the reasonable inferences to be drawn therefrom. Id. If there is substantial evidence of probative value from which a reasonable trier of fact could have drawn the conclusion that the defendant was guilty of the crime charged beyond a reasonable doubt, then the judgment will not be disturbed. Baumgartner v. State, 891 N.E.2d 1131, 1137 (Ind. Ct. App. 2008).

To establish that Hanley committed Class A misdemeanor check deception, the State was required to prove that Hanley “knowingly or intentionally issue[d] or deliver[ed] a check, a draft, or an order on a credit institution for the payment of or to acquire money or other property, knowing that it will not be paid or honored by the credit institution upon presentment in the usual course of business[.]” Ind. Code § 35-43-5-5(a) (2004). However, a person does not commit check deception when “the payee or holder knows that the person has insufficient funds to ensure payment or that the check, draft, or order is postdated[.]” Ind. Code § 35-43-5-5(f) (2004).

Hanley contends that the State failed to present sufficient evidence to prove that Stewart was unaware that there were insufficient funds in Hanley’s account or that the check was postdated. Specifically, he claims that Stewart’s testimony on these points was incredibly dubious. Appellate courts may apply the “incredible dubiousity” rule to judge the credibility of a witness. Fajardo v. State, 859 N.E.2d 1201, 1208 (Ind. 2007).

The rule is expressed as follows:

If a sole witness presents inherently improbable testimony and there is a complete lack of circumstantial evidence, a defendant's conviction may be reversed. This is appropriate only where the court has confronted

inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiousity. Application of this rule is rare and the standard to be applied is whether the testimony is so incredibly dubious or inherently improbable that no reasonable person could believe it.

Id. (quoting Love v. State, 761 N.E.2d 806, 810 (Ind. 2002)).

In support of his argument, Hanley points to perceived inconsistencies in Stewart's testimony. Hanley first directs our attention to the following portion of Stewart's direct testimony:

Q: Okay, and had Mr. Hanley indicated to you before that the check would clear?

A: Oh, yes. He said the money's in the bank. You know, I could cash the check. I even called and told him. I said, I'm going to take the check to the bank

Tr. p. 17. Hanley argues that Stewart's direct testimony is inconsistent with the following portion of his testimony on cross examination:

Q: Okay. It's your testimony that [Hanley] wrote you the check on the 30th?

A: Yes, sir.

Q: Okay. Did [Hanley] post date the check or was the check dated?

A: No, no. I held the check for a day or two. I couldn't tell you what day I cashed it, but

Q: Okay. Any reason why you held onto it?

A: Because he asked me to. He said, hold this until I make sure the money's in there. It looks like from this that it was on the 10-03-08 when it was cashed, but that's when I called him and he said, no problem.

Tr. p. 20.

Nothing about this testimony is so incredibly dubious or inherently improbable that no reasonable person could believe it. Stewart testified that Hanley assured him that there were sufficient funds available in his account to cover the check, but asked him to

wait a few days before cashing the check in order to allow Hanley time to confirm that fact. Moreover, Stewart testified that before attempting to deposit the check, he called Hanley, who confirmed that the funds were available.

Additionally, when Hanley's counsel asked whether the check was postdated or "dated," Stewart responded "No, no. I held the check for a day or two." Tr. p. 20. As a result of the ambiguity in counsel's question, Stewart's answer is not entirely clear. However, it is not inconsistent with his testimony that Hanley wrote the check on September 30, 2008. This testimony, in combination with a copy of the returned check introduced into evidence at trial showing that the check was dated September 30, 2008, was sufficient to establish that the check was not postdated.

Stewart's testimony was not incredibly dubious, and it was sufficient to establish the necessary elements of Class A misdemeanor check deception. The State presented sufficient evidence to support Hanley's conviction.

Affirmed.

BAKER, C.J., and NAJAM, J., concur.