

IN THE COURT OF APPEALS OF IOWA

No. 2-675 / 11-1766
Filed August 22, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

WILLIAM DAVIS,
Defendant-Appellant.

Appeal from the Iowa District Court for Dubuque County, Thomas A. Bitter, Judge.

Defendant appeals his conviction for possession of marijuana and forgery.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

Mark C. Smith, State Appellate Defender, and Robert P. Ranshau, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Daniel R. Burstein, Assistant Attorney General, Ralph Potter, County Attorney, and Christine Corken and Timothy Gallagher, Assistant County Attorneys, for appellee.

Considered by Vogel, P.J., and Danilson and Mullins, JJ.

MULLINS, J.

The defendant, William Davis, appeals from his conviction and sentence for possession of marijuana, in violation of Iowa Code section 124.401(5) (2009), and forgery, in violation of section 715A.2. He claims there was insufficient evidence to prove he had the intent to defraud as required by the forgery conviction. He also asserts the district court erred in failing to conduct a proper guilty plea colloquy on the charge of possession of marijuana.

We find sufficient evidence to support the forgery charge, and therefore, affirm that conviction and sentence. However, we agree the district court erred in failing to conduct a proper guilty plea colloquy for the possession of marijuana charge. Therefore, we reverse the judgment and sentence, and remand to the district court where Davis should be given an opportunity to plead anew to the charge.

I. BACKGROUND AND PROCEEDINGS.

On November 8, 2010, Davis attempted to pay for gas with two counterfeit ten-dollar bills. When it was brought to his attention that the bills were not real, Davis paid for the gas with his credit card. The store reported the incident to police, who made contact with Davis. Davis explained that he received four counterfeit ten-dollar bills from a drug supplier when he purchased marijuana. He explained he had already spent two of the bills and had returned the other two, the ones he got back from the gas station clerk, to the drug supplier to get a valid twenty-dollar bill. The officer asked whether he still had the marijuana. He

confirmed he still had it and let the officer inside his apartment to retrieve the drugs.

While inside the apartment, the officer observed two printers next to a computer, a merchandise box for a paper cutter, ivory-colored paper, and a crumpled up ten-dollar bill. When asked about the money, Davis claimed it was one of the “bad bills” and handed it to the officer. The officer obtained a search warrant and discovered the paper cutter under a sheet in the bedroom, three pages of photocopied ten-dollar bills with four bills per page, four real ten-dollar bills that matched the serial numbers on the photocopied pages and the crumpled up ten-dollar bill, and paper trimmings from a page of photocopied bills.

The case proceeded to a bench trial. The parties informed the court of Davis’s intent to plead guilty to the possession of marijuana charge. Instead of engaging in a plea colloquy before trial, the court decided to make a record on this charge when Davis testified. Davis acknowledged at trial that he had originally told the investigator the money was from his drug supplier, but it was actually part of a school project he was doing on the decriminalization of marijuana. He testified he was going to use the photocopied money as the front and back cover page of his project, but he had not yet completed the project when he was arrested. He explained he enlisted the help of a friend to do the project and that friend must have cut up one page of the printed money, stuck the counterfeit bills in his wallet, and taken his cash in exchange. He claimed to have not known the money was counterfeit when he attempted to pay for gas.

After defense counsel and the State concluded their examination of Davis regarding the forgery charge, the court engaged in the following colloquy regarding the possession charge:

THE COURT: Mr. Davis, before you step down, Count I in the Trial information originally charged you with Possession of Marijuana With Intent to Deliver; you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: And the attorneys informed me as to Count I, you intend to plead guilty to Possession of Marijuana, is that your understanding?

THE DEFENDANT: Yes, sir.

THE COURT: Are you stipulating that on or about November 9, 2010, you were in possession of marijuana in Dubuque County, Iowa?

THE DEFENDANT: Yes, sir.

No other discussion was held on the record with Davis with respect to the possession of marijuana charge. The court filed its order finding Davis guilty of possession of marijuana and forgery on September 1, 2011. Davis was sentenced to a fine of \$315 on the possession conviction and a five-year term of incarceration and a \$750 fine on the forgery conviction. Both fines and the prison term were suspended, and Davis was placed on probation for a term of two to five years. Davis appeals.

II. SCOPE OF REVIEW.

We review sufficiency-of-the-evidence claims for correction of errors at law. *State v. Acevedo*, 705 N.W.2d 1, 3 (Iowa 2005). We also review a claim of error in a guilty plea proceeding for correction of errors at law. *State v. Meron*, 675 N.W.2d 537, 540 (Iowa 2004).

III. SUFFICIENCY OF THE EVIDENCE.

When a challenge to the sufficiency of evidence is made, we review the record to determine whether substantial evidence supports the verdict. *State v. Ross*, 512 N.W.2d 830, 832 (Iowa Ct. App. 1993). We view all the evidence in the light most favorable to State, making all reasonable inferences. *Id.* Substantial evidence is evidence that would convince a rational trier of fact of the defendant's guilt beyond a reasonable doubt. *Id.*

Under Iowa Code section 715A.2(1)(b), a person is guilty of forgery

if, with the intent to defraud or injure 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.

Writing is defined in this chapter to include printing money. Iowa Code § 715A.1(1).

Davis asserts there was insufficient evidence of his intent to defraud to support his conviction for forgery. Davis claims his testimony at trial established the photocopied bills were part of a school project. He contends the bills were placed in his wallet by a friend, and he did not know he was offering the gas station clerk counterfeit money.

Evidence of specific intent, such as intent to defraud, can rarely be proven by direct proof. *State v. Walker*, 574 N.W.2d 280, 289 (Iowa 1998). However, it can be shown by "circumstantial evidence and the reasonable inferences drawn

from that evidence.” *Acevedo*, 705 N.W.2d at 5. In this case, the circumstantial evidence and reasonable inferences drawn therefrom provide substantial evidence of the intent to defraud.

When initially questioned about the counterfeit bills, Davis told officers he received four bills from his drug supplier. He claimed to have spent two of the bills at local merchants and returned two of the bills to the supplier in exchange for a valid twenty-dollar bill. However, minutes later while in his bedroom, the police officer found a crumpled-up, counterfeit bill, and Davis acknowledged it was one of the “bad bills.” In addition, the police found valid ten-dollar bills in Davis’s apartment that matched the serial number on the crumpled-up bill and on the bills found near the printer. It was not until trial, almost ten months later, that Davis first asserted the printed money was part of a school project that was placed in his wallet by a friend.

We agree with the district court’s reasonable inference that “[i]f the Defendant had made an honest mistake and had unknowingly attempted to negotiate the fake money, he would have certainly told the police such the very next day.” In addition, if the pages were meant to comprise the front and back cover of a school project, there would have been no need for a paper cutter to cut out the individual bills. Based on all the evidence presented at trial and viewing that evidence in the light most favorable to the State, we find sufficient evidence that Davis had the requisite intent to defraud.

IV. GUILTY PLEA.

Next, Davis asserts the district court erred in failing to conduct a proper guilty plea colloquy, as provided by Iowa Rule of Criminal Procedure 2.8(2), on the possession of marijuana charge. See *Meron*, 675 N.W.2d at 542 (“Absent a written plea of guilty describing all the matters set forth in the rule, noncompliance with oral requirements of the rule normally constitutes reversible error.”). The State concedes the error.

The dissent asserts Davis’s on-the-record admission was an adequate substitute for a plea colloquy under rule 2.8(2). However, we find the district court made insufficient findings and no conclusions of law relating to the marijuana charge. The order entered by the court recited:

Regarding Count I, the parties agreed prior to the commencement of trial that the Defendant would plead guilty to the lesser-included offense of Possession of Marijuana, pursuant to Iowa Code section 124.401(5). The Defendant acknowledged on the record that on or about November 9, 2010, he did possess marijuana in Dubuque County, Iowa. As such, the Defendant is hereby found guilty of Possession of Marijuana.

At sentencing, the parties and the court referenced Davis’s plea of guilty to the marijuana possession charge. No one recited that Davis was found guilty as a result of a trial. To permit this record to stand as sufficient would be tantamount to rewriting the guilty plea rule to now permit no more than a waiver of jury trial, followed by a stipulation of guilt by the defendant without any showing on the record that the stipulation (i.e. “plea”) was knowingly, intelligently,

and voluntarily made.¹ See *Meron*, 675 N.W.2d at 542. As we agree with the defendant and the State that the district court failed to conduct a proper guilty plea colloquy on the possession of marijuana charge and no written guilty plea was filed, we reverse the judgment and sentence, and remand the case to the district court where Davis should be given an opportunity to plead anew to the charge.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

Vogel, P.J., concurs; Danilson, J., concurs in part and dissents in part.

¹In the event the parties intended for the defendant to proceed to a bench trial on the stipulated minutes of evidence, the trial court must

(1) verify that the defendant has waived his right to a jury trial in accordance with Iowa Rule of Criminal Procedure [2.17(1)]; (2) confirm the extent of the factual record to which the parties are stipulating; and (3) 'find the facts specially and on the record,' separately state its conclusion of law, and render an appropriate verdict as required by Iowa Rule of Criminal Procedure [2.17(2)].

State v. Sayre, 566 N.W.2d 193, 196 (Iowa 1997). However, in this case the defense, the State, and the court all acknowledged that Davis intended to "plead guilty" to the possession charge. Therefore, the court "must adhere to the guilty plea procedures set forth in Iowa Rule of Criminal Procedure [2.8(2)(b)]. See *id.* "[A]t a minimum, an appellate court must be able to clearly ascertain from the record whether a defendant actually pled guilty or if he merely stipulated to a bench trial on the minutes." *Id.* Where we cannot clearly ascertain whether the adjudication of guilt came from a guilty plea or a bench trial on the minutes, we must reverse the conviction and remand for further proceedings. *Id.*

DANILSON, J. (concur in part and dissents in part)

I concur in all respects except with the conclusion that the court failed to conduct a proper plea colloquy. Here Davis waived his right to a jury trial, and during the trial to the court he testified, confessing via a stipulation that he was in possession of marijuana on November 9, 2010, in Dubuque County, Iowa. The court later entered an order stating, “[t]he defendant acknowledged on the record that on or about November 9, 2010, he did possess marijuana in Dubuque County, Iowa. As such, the Defendant is hereby found guilty of Possession of Marijuana.” Clearly, Davis was adjudicated guilty based upon his confession during the trial not on the basis of a guilty plea. Moreover, this manner of adjudication was discussed with counsel and the court at the outset of the trial. Counsel informed the court that the Davis would either enter a plea or admit his guilt. The court asked if Davis intended to testify. After being informed he would, the court asked if Davis would make the admission on the record, to which his attorney indicated affirmatively. Under these facts, there was no need for a plea colloquy. I would affirm.