

IN THE COURT OF APPEALS OF IOWA

No. 7-264 / 06-0734
Filed May 9, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JOSE GILBERTO MEDINA-HERNANDEZ,
Defendant-Appellant.

Appeal from the Iowa District Court for Woodbury County, Edward A. Jacobson, Judge.

Jose Gilberto Medina-Hernandez appeals his convictions for forgery and tampering with records, challenging the sufficiency of the evidence. **AFFIRMED.**

Robert Sikma, Sioux City, for appellant.

Thomas J. Miller, Attorney General, Martha Boesen, Assistant Attorney General, Patrick Jennings, County Attorney, and Mark Campbell, Assistant County Attorney, for appellee.

Considered by Mahan, P.J., and Eisenhauer and Baker, JJ.

BAKER, J.

Jose Gilberto Medina-Hernandez was convicted of forgery in violation of Iowa Code section 715A.2(2)(a)(4) (2003) and tampering with records in violation of section 715A.5. He appeals, challenging the sufficiency of the evidence to sustain his convictions. After reviewing the record and considering the arguments presented, we affirm the trial court with respect to both convictions.

I. Background and Facts

On November 17, 2004, Jose Gilberto Medina-Hernandez attempted to obtain a driver's license from the Iowa Department of Transportation's (DOT) Sioux City station. He claimed to be Miguel Angel Rodriguez and presented an expired driver's license from Louisiana, a social security card,¹ and utility bills as proof of residence. Based on suspicions regarding the genuineness of the social security card, Lavern Schossow, a fraud investigator with the DOT, questioned Medina-Hernandez, who admitted he was not Rodriguez. Schossow determined Medina-Hernandez provided false information and arrested him for forgery.

Medina-Hernandez was charged with forgery and with tampering with records. A bench trial was held on October 4, 2005. He was found guilty on both charges. He challenges the sufficiency of the evidence to sustain the charges.

II. Merits

Challenges to the sufficiency of evidence supporting a guilty verdict in a criminal case are reviewed for correction of errors at law. *State v. Fintel*, 689 N.W.2d 95, 99 (Iowa 2004); *State v. Webb*, 648 N.W.2d 72, 75 (Iowa 2002). A

¹ At trial, the State presented a certified document from the social security administration that established the social security number on the card had not been assigned to Miguel Angel Rodriguez.

verdict will be sustained if it is supported by substantial evidence. *Webb*, 648 N.W.2d at 75. Evidence is substantial if it would convince a rational fact finder that the defendant is guilty beyond a reasonable doubt. *Fintel*, 689 N.W.2d at 99. The evidence must raise a fair inference of guilt and do more than create speculation, suspicion, or conjecture. *Id.* at 100.

Medina-Hernandez contends there was insufficient evidence to establish his guilt because the State failed to prove that he did not have Rodriguez's consent to sign his name or use his driver's license and social security card.² He further contends that no evidence was presented to establish his legal name at the time of arrest or that he had not used Miguel Angel Rodriguez as an alias.

The elements of forgery are that the defendant

- (1) made, completed, executed, or transferred a writing purporting to be the act of another who did not authorize the act, and
- (2) with the specific intent to defraud or injure another person or financial institution or knew his act would facilitate a fraud or financial injury.

State v. Calhoun, 559 N.W.2d 4, 6 (Iowa 1997). Forgery is a class "D" felony if the writing is "[a] document prescribed by statute, rule, or regulation for entry into or as evidence of authorized stay or employment in the United States." Iowa Code § 715A.2(2)(a)(4).

We find, as did the trial court, that the evidence proves beyond a reasonable doubt that (1) the defendant is Medina-Hernandez, not Rodriguez, (2) the social security card Medina-Hernandez presented to the driver's license station was not

² Medina-Hernandez also contends that section 715A.2 is unconstitutionally vague because the manner in which the trial court interpreted and applied the statute did not give him a reasonable opportunity to know exactly what conduct is prohibited. Because this issue was not raised at the trial court level, we will not consider it on appeal. See *State v. Webb*, 516 N.W.2d 824, 828 (Iowa 1994).

valid, and he had no legal right to use it for any purpose, (3) Medina-Hernandez presented the card with intent to defraud, (4) the card is a document prescribed by statute for entry into or evidence of authorized stay or employment in the United States, and (5) Medina-Hernandez knew the document was forged.

Medina-Hernandez's contention regarding the State's failure to prove that he did not have Rodriguez's consent fails. We are satisfied the evidence was sufficient for the trial judge to find that Medina-Hernandez did not have authorization from Rodriguez to use the documents. The potential penalties to Rodriguez, had he consented to such use, weigh heavily in favor of upholding the trial judge's finding. See *State v. Acevedo*, 705 N.W.2d 1, 4-5 (Iowa 2005); see also *State v. O'Connell*, 275 N.W.2d 197, 205 (Iowa 1979) ("For purposes of proving guilt beyond a reasonable doubt, direct and circumstantial evidence are equally probative."). It is a misdemeanor to lend to or knowingly permit the use of a person's driver's license by another. Iowa Code § 321.216(2). Additionally, it is unlawful to "knowingly transfer[] an identification document, authentication feature, or a false identification document knowing that such document or feature was stolen or produced without lawful authority." 18 U.S.C. § 1028(a)(2); see also *U.S. v. Quinteros*, 769 F.2d 968, 970 (4th Cir. 1985) (holding social security cards are "identification documents" under 18 U.S.C. § 1028).

Additionally, because the social security number on the card had not been assigned to Rodriguez, even if he had consented to the use of the card, he could not have consented to the use of the number. Further, it is extremely unlikely the rightful holder of the social security number would have consented to Medina-Hernandez using the number. We are satisfied that the evidence produced was

sufficient for the trial judge to find that Medina-Hernandez “had no right, title, license or privilege to utilize that card for any purpose whatsoever.”

Medina-Hernandez’s contention in regard to lack of evidence of his legal name, or that he had not used Rodriguez as an alias, also fails. We agree with the trial court’s conclusion that there is no evidence in the record that the defendant’s true name is other than Jose Gilberto Medina-Hernandez. We also agree with the court’s conclusion that if he had changed his name, it would not have been necessary for him to present a counterfeit social security card to obtain an Iowa license. We therefore affirm the forgery conviction.

Medina-Hernandez also contends there was insufficient evidence to convict him of tampering with records because the record contains no evidence that he did not have the privilege to use Rodriguez’s name or was attempting to conceal any wrongdoing. To prove he tampered with records, the State had to prove that Medina-Hernandez knowingly falsified, destroyed, removed, or concealed “a writing or record, with the intent to deceive or injure anyone or to conceal any wrongdoing.” Iowa Code § 715A.5. The record shows that Medina-Hernandez signed the name of Miguel Angel Rodriguez to obtain an Iowa driver’s license. He was using the name Rodriguez to hide his true identity and his illegal status. The record contains sufficient evidence to support Medina-Hernandez’s conviction for tampering with records.

Sufficient evidence was presented to support the convictions for forgery and tampering with records. We therefore affirm.

AFFIRMED.