

IN THE COURT OF APPEALS OF IOWA

No. 8-447 / 07-1449
Filed July 16, 2008

STATE OF IOWA,
Plaintiff-Appellant

vs.

MIKAEL CHARLES HAMPTON,
Defendant-Appellee.

Appeal from the Iowa District Court for Tama County, Kristin L. Hibbs,
Judge.

The State appeals the district court's dismissal of a forgery charge against
Mikael Hampton. **AFFIRMED.**

Thomas J. Miller, Attorney General, Martha Boesen and Mary Tabor,
Assistant Attorneys General, Brent D. Heeren, County Attorney, and Richard R.
Vander Mey, Assistant County Attorney, for appellant.

Mark C. Smith, State Appellate Defender, and Nan Jennisch, Assistant
Appellate Defender, for appellee.

Considered by Miller, P.J., and Vaitheswaran and Eisenhauer, JJ.

VAITHESWARAN, J.

The State appeals the district court's dismissal of a forgery charge against Mikael Hampton.

I. Background Facts and Proceedings

The facts derived from the trial information and minutes of evidence are taken as true for purposes of a motion to dismiss. *State v. Gonzalez*, 718 N.W.2d 304, 307 (Iowa 2006). Those facts are as follows.

An officer with the Tama County Sheriff's Office stopped a vehicle. Hampton was the passenger in the vehicle but, when asked by the officer, he identified himself as Jeffrey Kowalzek. Hampton stated he was from North Carolina and presented the officer with a birth certificate and social security card for Jeffrey Kowalzek. He told the officer that he did not have an identification card because he lost his license in North Carolina for failure to pay fines. A dispatcher advised the officer that the passenger could not be identified through North Carolina records. The officer then asked Hampton if he had a billfold. Hampton handed it to the officer, who found a receipt with the name "Mikael Hampton."

The State charged Hampton with forgery, in violation of Iowa Code sections 715A.2(1) and (2)(a)(4) (2005). The State asserted Hampton did

unlawfully and willfully fraudulently use, possess or utter a writing, to wit: a social security card in the name of Jeffrey Kowalzek, deceased, . . . knowing that said writing was forged by altering, completing, authenticating, issuing or transferring to be the act of another without their permission.

Hampton moved to dismiss the trial information. He asserted, “The minutes do not indicate that the State is in possession of any information or evidence that would prove the documents in Defendant’s possession were forged” The district court granted the motion to dismiss, stating “[T]here appears to be no evidence that the social security card had been forged as defined in section 715A.2(1)(a) or (b).”

On the State’s appeal, the sole issue we must decide is whether the court erred in concluding that the facts alleged in the trial information and minutes of evidence amounted to forgery as a matter of law. *Gonzalez*, 718 N.W.2d at 309.

II. Analysis

Iowa Code section 715A.2 (1) states:

1. A person is guilty of forgery if, with intent to defraud or injure anyone, or with knowledge that the person is facilitating a fraud or injury to be perpetrated by anyone, the person does any of the following:
 - a. Alters a writing of another without the other’s permission.
 - 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.
 - c. Utters a writing which the person knows to be forged in a manner specified in paragraph “a” or “b”.
 - d. Possesses a writing which the person knows to be forged in a manner specified in paragraph “a” or “b”.

The State maintains that the district court only considered subsection (a) and did not consider subsections (b) and (c).¹ We disagree.

¹The State does not argue that subsection (d) applies.

A necessary predicate to a charge under any alternative of section 715A.2(1) is an altered writing. Iowa Code § 715A.1(1) (defining “writing”). Subsection (a) addresses the clear case of an alteration of a writing without someone’s permission. Subsection (b), while broader and fraught with some ambiguity, refers to the transfer of “a writing so that it purports to be the act of another who does not authorize that act” The word “it” in this sentence can only refer to the term “writing” preceding it. Therefore, this subsection charges a crime where the writing purports to be the writing of another who did not authorize it. Subsection (c) criminalizes the uttering of “a writing which the person knows to be forged in a manner specified in paragraph ‘a’ or ‘b’.” Subsection (d) criminalizes the possession of a writing “which the person knows to be forged in a manner specified in paragraph ‘a’ or ‘b’.”

The history and interpretation of the statute support this reading. Iowa’s statute is a verbatim adoption of the Model Penal Code, section 224.1. See *State v. Phillips*, 569 N.W.2d 816, 819 (Iowa 1997). As the explanatory note to the Model Penal Code states, “[T]he prohibited conduct is drafted so as to focus the offense upon falsity as to genuineness or authenticity, rather than upon the falsity of any statement contained in a legitimate document.” The legislature is presumed to have intended the statute to have the same meaning as explained in the comments to the model law. *Phillips*, 569 N.W.2d at 819. The Iowa Supreme Court has emphasized that this is indeed the focus, stating forgery is a crime that “affects the genuineness of the instrument.” *State v. Calhoun*, 618 N.W.2d 337, 338 (Iowa 2000).

Notably, the State appears to concede that forgery generally refers to “the false making or material alteration, with intent to defraud, of a writing.” The State also appears to concede that the Social Security card Hampton used was a genuine card. It simply argues that Hampton “transfer[red]” the card within the meaning of subsection (b) and “utter[ed]” the card within the meaning of subsection (c). These arguments ignore the remaining language of those subsections, which focuses on the predicate act of altering a writing.

We agree with the district court that the facts stated in the final information and minutes do not implicate the genuineness or authenticity of a document. The minutes presume that the Social Security card used by Hampton was genuine. As the district court pointed out, the crux of the charge is that Hampton used this genuine card to misrepresent his identity. These facts could implicate the crime of identity theft but they do not implicate the crime of forgery. See Iowa Code § 715A.8(2) (“A person commits the offense of identity theft if the person fraudulently uses or attempts to fraudulently use identification information of another person, with the intent to obtain credit, property, services, or other benefits.”). Accordingly, the district court did not err in granting Hampton’s motion to dismiss.

AFFIRMED.