

**IN THE COURT OF APPEALS OF IOWA**

No. 9-088 / 08-0276  
Filed April 22, 2009

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**DANNY KENNETH COONLEY,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Black Hawk County, Thomas N. Bower, Judge.

Defendant appeals his conviction for forgery. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Stephan J. Japuntich, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas W. Andrews, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Jeremy Westendorf and James Katcher, Assistant County Attorneys, for appellant.

Heard by Vaitheswaran, P.J., and Eisenhauer and Doyle, JJ.

**EISENHAUER, J.**

Danny Kenneth Coonley appeals a forgery conviction on the grounds the district court erred by: (1) submitting a jury instruction for mistake of fact, (2) admitting certain business records as within the minutes of testimony, and (3) denying his motion for judgment of acquittal based on insufficiency of the evidence. We affirm.

***I. Background Facts and Prior Proceedings***

Coonley worked as the onsite manager for IFCO System's Cedar Falls pallet operation, located in a back corner of a Target Distribution Center warehouse. In late spring 2006, IFCO offered its pallet service employees the option of paying a weekly premium to obtain disability insurance through American Fidelity Insurance Company. Coonley and other employees enrolled believing payroll deductions would be five dollars per paycheck. However, once payroll deductions began, the employees realized \$12.44 was being deducted from each paycheck. As a result, Coonley and the other employees took steps to cancel the insurance and recoup the payments.

To terminate his disability insurance coverage, Coonley was directed to contact Wendy Mudra, the Human Resources Supervisor for IFCO. Mudra informed Coonley each employee needed to provide a written notice to cancel coverage. Mudra also informed Coonley by email that no refunds would be given, and asked whether Coonley and the other employees still wanted their coverage cancelled. Coonley replied to this email, "Yes Wendy we all do."

When Coonley arrived to work on September 6, 2006, a Target security guard handed him an envelope without saying anything. The envelope was addressed to Target – Cedar Falls, and contained a check for \$197.40 issued from IFCO payable to Target – Cedar Falls.

Coonley testified that he believed this check was reimbursement for his disability insurance overpayments. Therefore, he wrote his name on the payee line of the check above the words “Target Cedar Falls,” used his own signature to endorse it, and cashed it at his bank.

Shortly thereafter, IFCO saw the check and initiated an investigation. As a result of the investigation, Coonley was fired and referred to the local police for criminal prosecution.

Coonley was charged with forgery, in violation of Iowa Code section 715.A2 (2007). The matter was tried to a jury, and a guilty verdict was returned on June 5, 2007. Coonley appeals.

## ***II. Jury Instruction for Mistake of Fact***

Challenges to jury instructions are reviewed for correction of errors at law. *Summy v. City of Des Moines*, 708 N.W.2d 333, 340 (Iowa 2006).

Coonley challenged the mistake of fact jury instruction as not being applicable to the case. Coonley states his defense was not whether he mistakenly altered and signed the check, which he admits. Rather, he argues he never specifically intended to defraud or injure IFCO, and a mistake of fact instruction is not applicable to this element.

Mistake of fact is a defense to criminal intent where an honest and reasonable mistake precludes the existence of the mental state necessary to commit the crime. *State v. Freeman*, 450 N.W.2d 826, 828 (Iowa 1990). Mistake of fact is simply a defense, and the State has the burden of negating the defense once it is put in issue. 21 Am. Jur. 2d *Criminal Law* § 153, at 262 (2008); see also Iowa Criminal Jury Instructions 200.39 (2008) (which is the jury instruction used in this matter).

Coonley plainly raised the concept of mistake of fact as to his intent to defraud at trial when he asserted he wrongfully believed the check was intended for him. To support this assertion, Coonley introduced evidence he had contacted IFCO regarding his desire to cancel the disability insurance plan, IFCO had problems with payroll including misspelled names on company checks and checks being sent to the wrong places, and IFCO's problems with payroll had increased at the time of the incident because Coonley's supervisor had recently been fired. This is clearly an argument for mistake of fact. If the jury found this evidence credible and believed Coonley's actions to be an honest and reasonable mistake, then the jury would have had to have found him not guilty for lacking the requisite intent to defraud or injure IFCO. Accordingly, the trial court did not err in finding a mistake of fact jury instruction applicable. Rather, once the issue was raised and substantially supported by the evidence, the district court had a duty to fully and fairly instruct the jury regarding the issue. See *State v. Liggins*, 557 N.W.2d 263, 267 (Iowa 1996).

### **III. Admission of Evidence as Within the Minutes of Testimony**

Coonley next contends the district court erred in admitting into evidence State's Exhibit C, which were copies of business records indicating Coonley knew of the correct process for obtaining remuneration for expenses. He asserts this evidence was outside the minutes of testimony.

Evidentiary matters are reviewed for an abuse of discretion. *State v. Bennett*, 503 N.W.2d 42, 46 (Iowa Ct. App. 1993). In order to show an abuse of discretion, one generally must show that the court exercised its discretion "on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *State v. Blackwell*, 238 N.W.2d 131, 138 (Iowa 1976).

The State is required to file minutes of evidence for each witness and provide "a full and fair statement of the witness' expected testimony." Iowa R. Crim. P. 2.5(3). Although the minutes need not list each detail to which a witness will testify, the minutes must still provide defendant with a full and fair statement sufficient to alert him to the source and nature of the information against him. *State v. Ellis*, 350 N.W.2d 178, 181 (Iowa 1984). What constitutes a "full and fair statement of the witness' testimony" must be decided on a case-by-case basis. *State v. Walker*, 281 N.W.2d 612, 614 (Iowa 1979).

The minutes of testimony, in pertinent part, informed Coonley that Ken Gines, an employee of IFCO, would appear at trial and testify that he "is familiar with [IFCO's] record system and accounts payable" as well as "any other facts or circumstances relevant in this matter."

At trial, Ken Gines identified State's Exhibit C as being copies of business records showing the accounting reimbursement paperwork submitted by Coonley and the subsequent expense reimbursement check provided to Coonley shortly before this incident.

Although the minutes of testimony did not specifically include this evidence, the challenged evidence was consistent with the overall nature of the minutes of Gines' testimony. See *Ellis*, 350 N.W.2d at 182. The trial court did not abuse its discretion in determining that Ken Gines' testimony and State's Exhibit C were within the minutes of testimony.

#### ***IV. Motion for Judgment of Acquittal***

We review a trial court's ruling on a motion for judgment of acquittal for correction of errors at law. *State v. Reynolds*, 670 N.W.2d 405, 409 (Iowa 2003). Evidence is sufficient to withstand a motion for judgment of acquittal when, viewing the evidence in the light most favorable to the State and accepting all legitimate inferences fairly and reasonably to be deduced from the evidence in the State's favor, there is substantial evidence in the record to support each element of the crime charged. *State v. Williams*, 695 N.W.2d 23, 28 (Iowa 2005). "Evidence is substantial if it could convince a rational fact finder that the defendant is guilty beyond a reasonable doubt." *Reynolds*, 670 N.W.2d at 410 (quoting *State v. Bayles*, 551 N.W.2d 600, 608 (Iowa 1996)).

Viewing the record in the light most favorable to the State, we conclude there was substantial evidence to support the conviction, and affirm the judgment of the district court.

**AFFIRMED.**