

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BERNARD PAVONE,

Defendant-Appellant.

UNPUBLISHED

June 7, 1996

No. 174733

LC No. 93-007438

Before: MacKenzie, P.J., and Cavanagh and T.L. Ludington*, JJ.

PER CURIAM.

Defendant was convicted at a bench trial of issuing a non-sufficient funds check over \$200 contrary to MCL 750.131(3)(c); MSA 28.326(3)(c). He was sentenced to three years' probation, and appeals as of right. We affirm.

Here, defendant took a car to Red Holman GMC for engine repairs. The repairs were completed on March 15, 1993, and defendant paid for them with a personal check in the amount of \$3,234.24. Although the dealership's policy was not to accept personal checks for payment for services over \$500, the cashier testified that the personal check was accepted because it was made out with an imprinter and was thought to be a certified check. The following day defendant took the car back to the dealership because there was a leak in the transmission cooler line, which the dealership repaired free of charge. That same day a friend of defendant drove the car, stated that the car continued to have problems, and took it to Pilgrim Automotive Firestone for repairs. These repairs totaled \$2,500.38, for which payment was made in cash. Defendant testified that he had intended to deposit this cash into his bank account to cover the check written to Red Holman, but instead used the cash to pay Pilgrim Firestone. That same day, March 16, 1993, defendant stopped payment on the check written to Red Holman GMC.

* Circuit judge, sitting on the Court of Appeals by assignment.

On appeal, defendant argues that the trial court erred in finding sufficient evidence to prove an intention to defraud Red Holman GMC. We disagree and affirm.

When reviewing a challenge to the sufficiency of the evidence in a bench trial, this Court views the evidence in the light most favorable to the prosecution and determines whether there is sufficient evidence to justify a finding of guilt beyond a reasonable doubt by a rational trier of fact. *People v Legg*, 197 Mich App 131, 132; 494 NW2d 797 (1992).

A conviction for issuing an insufficient funds check requires proof of the following three elements: (1) intent to defraud, (2) the drawing of a check for the payment of money upon a bank, and (3) knowledge by the drawer of the check that the bank account has insufficient funds or credit for the payment of such check. *People v Chappelle*, 114 Mich App 364, 370; 319 NW2d 584 (1982). The evidence in this case established all three elements. Defendant's intent to defraud was shown by his action of stopping payment on the check made out to Red Holman GMC without making any other arrangements to pay Red Holman GMC for the work performed. Defendant also knew there were insufficient funds in his account to cover the check to Red Holman GMC. At the opening of business on March 15, 1993, the day defendant wrote the check to Red Holman, his account showed a balance of \$6.68. A deposit was made that day in the amount of \$350, but after banking fees and withdrawals were deducted, the balance remained at only \$86.68 at the close of business on March 15. A deposit of \$500 was made on March 16, but there were more deductions, leaving a balance at the end of the day of \$200.88. Even though defendant claims that he intended to deposit money into his account to cover the check written out to Red Holman, the money was not deposited and defendant was aware of that fact. It cannot be said that defendant did not know that he had insufficient funds in his account to cover the check. Accordingly, viewing the evidence in a light most favorable to the prosecution, we find sufficient evidence to justify defendant's conviction.

Affirmed.

/s/ Barbara B. MacKenzie

/s/ Mark J. Cavanagh

/s/ Thomas L. Ludington