

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL JAMES SHAW,

Defendant-Appellant.

UNPUBLISHED

April 27, 2006

No. 261097

Cheboygan Circuit Court

LC No. 04-003019-FH

Before: White, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of check insufficiency of \$500 or more, MCL 750.131(3)(c), and was sentenced to probation for six months. He appeals as of right. We affirm.

Defendant challenges the trial court's jury instruction that allowed the jury to draw a permissive presumption concerning intent to defraud, an essential element of the charged offense, *People v Cimini*, 33 Mich App 461, 464; 190 NW2d 323 (1971). MCL 750.132 addresses proof of the intent to defraud:

As against the maker or drawer thereof, the making, drawing, uttering or delivering of a check, draft or order, payment of which is refused by the drawee, when presented in the usual course of business, shall be prima facie evidence of intent to defraud and of knowledge of insufficient funds in or credit with such bank or other depository, provided such maker or drawer shall not have paid the drawee thereof the amount due thereon, together with all costs and protest fees, within 5 days after receiving *notice* that such check, draft or order has not been paid by the drawee. [Emphasis added.]

Notice is not defined in the statute.

Over defendant's objection, the trial court instructed the jury as follows:

If you determine beyond a reasonable doubt that the defendant wrote or caused the check to be written, that he signed it, that the check was presented in the usual course of business, and that the bank refused to cash it, that the defendant received notice of nonpayment, and that the defendant did not pay the amount due

on the check and all costs and fees after -- within five days after he received notice of nonpayment. Then these facts, if not explained, are circumstances from which you may infer that the defendant intended to -- intended to defraud or cheat someone. However, you do not have to make this inference.

This instruction substantially comports to CJI2d 29.5.

Defendant argues that the term “notice” within the meaning of MCL 750.132 refers only to notice from a bank, and because there was no evidence that he received notice from his bank, the trial court should not have instructed the jury concerning the permissive inference.

This Court reviews claims of instructional error de novo. *People v Wilkens*, 267 Mich App 728, 736; 705 NW2d 728 (2005). This issue also implicates statutory interpretation, to which the following rules apply:

When construing a statute, our primary goal is to ascertain and give effect to the intent of the Legislature. To do so, we begin by examining the language of the statute. If the statute’s language is clear and unambiguous, we assume that the Legislature intended its plain meaning and the statute is enforced as written. Stated differently, a court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself. Only where the statutory language is ambiguous may a court properly go beyond the words of the statute to ascertain legislative intent. [*People v Phillips*, 469 Mich 390, 395; 666 NW2d 657 (2003) (citations and internal quotation marks omitted).]

Defendant argues that MCL 750.133 supports his view that *written* notice is necessary. That statute states:

Where such check, draft or order is protested, on the ground of insufficiency of funds or credit, the notice of protest thereof shall be admissible as proof of presentation, non-payment and protest, and shall be prima facie evidence of intent to defraud, and of knowledge of insufficient funds or credit with such bank or other depository.

Defendant argues that the reference to the “notice of protest” being admissible as evidence shows that documentary evidence was contemplated. He reasons that “[h]ad the Legislature contemplated notice that could be oral as well as documentary, it would have undoubtedly written that ‘*evidence of the notice . . . shall be admissible.*’”

We conclude that MCL 750.133 does not support defendant’s position. Both MCL 750.132 and MCL 750.133 address circumstances that are prima facie evidence of intent to defraud and knowledge of insufficiency. The former is premised on “notice” followed by nonpayment, and the latter on a “notice of protest.” Defendant’s argument implies that the two terms have the same meaning. However, if that argument is accepted, then the two provisions would essentially be redundant. If MCL 750.132 is to have any meaning at all, “notice” in that context must mean something other than “notice of protest.”

Finally, defendant asserts that in enacting MCL 750.132 in 1931, the Legislature likely had in mind a distinction made three years earlier in *Mellon-Wright Lumber Co v McNett*, 242 Mich 369, 372; 218 NW 709 (1928), concerning an unrelated statute, 1915 CL, § 6130.

This argument is flawed because it is premised on a misunderstanding concerning the legislative history of the statute. The predecessor to MCL 750.132, which was virtually identical to the current version, was enacted by 1919 PA 271, and was codified at CL 1929, § 12065. The provision was reenacted by 1931 PA 328, which was a codification of the state's criminal laws. See *Four Flags Cablevision v Maynard*, 145 Mich App 49, 52; 377 NW2d 339 (1985). Moreover, the statutory provision at issue in *Mellon-Wright Lumber Co, supra*, is too dissimilar to MCL 750.132 for the Court's holding in that decision to be useful in this matter.

In summary, MCL 750.132 is unambiguous and this Court will not read additional requirements into it. If the Legislature intended "notice" in MCL 750.132 to mean "notice of protest," it would have so specified. For these reasons, we reject defendant's claim of instructional error.

Affirmed.

/s/ Helene N. White
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot