

IN THE COURT OF APPEALS OF IOWA

No. 3-612 / 12-1433
Filed August 21, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MARK CHRISTOPHER REDD,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Joseph M. Moothart, District Associate Judge.

Mark Redd appeals his conviction for third-degree theft. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Patricia Reynolds, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, Thomas J. Ferguson, County Attorney, Shana Schwake, Assistant County Attorney, and Christopher Scott, Student Legal Intern, for appellee.

Considered by Eisenhauer, C.J., and Potterfield and Tabor, JJ.

EISENHAUER, C.J.

Mark Redd appeals his conviction for third-degree theft, in violation of Iowa Code sections 714.1 and 714.2 (2011). He argues insufficient evidence supports the knowledge element of his theft conviction. Because the State presented ample documentary evidence and testimony from which a jury could infer Redd knew the status of his account when he wrote checks, sufficient evidence supports his conviction.

I. Background Facts and Proceedings

On March 3, 2010, Redd and Amanda Mitts opened a checking account through Wells Fargo Bank. Redd deposited \$250 and directed his income—roughly \$700 per month in social security disability and supplemental security income—to be deposited in the account. Mitts, who was Redd’s live-in fiancée during spring 2010, had no income and contributed nothing to the account. Redd and Mitts had equal, unfettered access to the account.

Between March 20 and April 4, 2010, Mitts withdrew \$570 and wrote a check for \$144, and Redd wrote checks totaling \$838, causing the account to become overdrawn. An April 13, 2010 statement revealed a balance of -\$212.

Between April 20 and April 28, 2010, Redd wrote seven checks totaling \$264.27 to purchase fuel and various sundries from multiple Kwik Trip stores.¹ All seven checks were returned for insufficient funds. Wells Fargo notified Redd his account contained insufficient funds to pay on the instruments, and Kwik Trip contacted him to set up a payment plan. Although Redd told Kwik Trip he would

¹ Checks were paid to Kwik Trip and Kwik Star stores, both of which are owned by Kwik Trip, Inc. For purposes of this opinion, we will refer to all stores and the parent company as “Kwik Trip.”

repay the company in forty-dollar monthly increments beginning on June 3, 2010, over the next year, he never made any payments.

On June 3, 2011, the State filed a trial information charging Redd with theft in the fourth degree, in violation of Iowa Code sections 714.1(6) and 714.2(4). A jury trial began April 24, 2012.

On April 26, 2012, the State filed an amended trial information to enhance the original charge to theft in the third degree, alleging two previous theft convictions. The same day, the jury returned a guilty verdict for theft in the fourth degree. Redd acknowledged his previous convictions enhanced the charge to third-degree theft, and on July 18, 2012, he was sentenced to a term of imprisonment not to exceed two years, to run consecutive to his prison term for three unrelated revocation matters.² Redd appeals.

II. Scope and Standard of Review

We review a challenge to sufficiency of the evidence for correction of legal error. *State v. Schories*, 827 N.W.2d 659, 663 (Iowa 2013). “The essential question before the court on a challenge to sufficiency of the evidence is whether there was substantial evidence to support a guilty verdict beyond a reasonable doubt.” *State v. Kern*, 831 N.W.2d 149, 158 (Iowa 2013). Substantial evidence is that which would convince a rational fact finder the defendant is guilty beyond a reasonable doubt. *State v. Dewitt*, 811 N.W.2d 460, 467 (Iowa 2012).

We view the trial record in the light most favorable to the State, considering all evidence on record, not only that which favors the State. *Kern*,

² His sentence included a \$625 fine, plus surcharge; court costs; and 165 hours of community service in lieu of paying his court-appointed attorney fees.

831 N.W.2d at 158. To uphold the sufficiency of the verdict, the evidence presented must do more than raise speculation, suspicion, or conjecture; it must create a fair inference of guilt. *Id.*

III. Error Preservation

Redd asserts insufficient evidence supports his conviction, arguing the State did not show he knew his bank account contained insufficient funds when he drafted the seven checks. The State contends Redd's motion for judgment of acquittal did not specify his challenge to the knowledge element of the offense, thus he did not preserve error on appeal.

Generally, to preserve error on a claim insufficient evidence supports a criminal verdict, the defendant must move for judgment of acquittal identifying "the specific elements of the crime on which the evidence was claimed to be insufficient." *State v. Williams*, 695 N.W.2d 23, 27 (Iowa 2005). But an exception to this general rule exists when the record indicates the ground for the motion was obvious and understood by the district court and both parties. *Id.*

After the State rested, Redd moved for acquittal:

Your Honor, at this time we would ask that the court acquit Mr. Redd based upon the State's failure to present a case to the jury. Even in the light viewed most favorable to the State, the State has failed to prove each element of the offense against Mr. Redd.

While counsel's motion was broad, the only disputed issue at trial was whether Redd knew his account was overdrawn when he wrote the checks. Redd did not contest the elements of the crime aside from whether he knew his account held insufficient funds. Because he disputed only whether he knew the status of his account, we believe the district court and State were both aware his

motion for judgment of acquittal related to the knowledge element of the offense and error was preserved.

IV. Analysis

Redd argues his uncontroverted testimony that he is disabled, has memory problems, and is unable to count money supports the reasonable inference he thought his account held adequate funds to pay the checks when they were written. He also identifies Mitts's withdrawals and a complication with his social security deposits, both of which depleted the funds in the account and both of which he claimed to be unaware of, to support his claim.

The State highlights the documentary evidence showing the bank account was overdrawn before Redd began writing checks, in addition to the notices sent to his address alerting him to the insufficient funds. The State argues those exhibits, along with the testimony reinforcing them, provides sufficient evidence for a jury to determine Redd knowingly wrote bad checks.

Section 714.1(6) sets out the elements of theft, in relevant part: "A person commits theft when the person . . . [m]akes, utters, draws, delivers, or gives any check . . . and obtains property . . . if the person knows that such check . . . will not be paid when presented." Instruction 10A defined knowledge for the jury in the context of issuing checks: "For the defendant to know something means he had a conscious awareness that at the time he gave the check or checks to Kwik [Trip], they would not be paid by the bank because of insufficient funds."

Wells Fargo mailed Redd a statement on April 13, 2010, with an ending balance of -\$212.00. Redd then wrote seven checks to Kwik Trip between April 20 and April 28: two April 20 checks for \$35.23 and \$16.82; an April 21

check for \$26.83; an April 23 check for \$35.20; an April 24 check for \$21.33; and two April 28 checks for \$91.37 and \$37.49. Redd admits to writing the checks and does not dispute the specified dates or amounts, nor does he dispute any other charges on the account.

Wells Fargo generated several notices that Redd's account contained insufficient funds to pay these instruments, including an April 23 notice for his \$16.82 and \$35.23 checks, an April 26 notice for his \$26.83 check, an April 27 notice for his \$21.33 and \$35.20 checks, and an April 30 notice for his \$91.37 and \$37.49 checks. Wells Fargo sent another bank statement on May 13, 2010, showing an ending balance of -\$1532.00. All statements and notices were sent to Redd's home address.

Kwik Trip sent an email to Redd on May 4, 2010, alerting him to his debt. Documented in a recording played to the jury, Redd called Kwik Star the next day acknowledging he knew he had bounced checks and explaining his social security payment had not yet been deposited, but that he would begin sending forty dollars per month to repay his debt.

Redd testified he has "psychiatric issues," and "tend[s] to forget things." He explained because someone listed his name as an employee in an unnamed business, neither of his social security checks were deposited into his account. Redd testified he relied on Mitts to monitor the account because "I can't count money and take care of things like that." Redd denied receiving any notices from Wells Fargo and testified Mitts opened the mail and handled his finances. He attributed his failure to repay Kwik Trip to packing and moving to a new residence, which caused him stress, and he forget about the repayment plan.

Redd argues his testimony creates a reasonable inference he thought the checks would be paid. Citing *State v. Truesdell*, 679 N.W.2d 611, 618–19 (Iowa 2004), he asserts, “[w]hen two reasonable inferences can be drawn from the evidence, the evidence only gives rise to suspicion and is not sufficient to support guilt.”

The *Truesdell* court considered whether the quantity of cold relief medication possessed by the defendant showed his intent to use the product to manufacture a controlled substance. 679 N.W.2d at 618. Ruling the evidence was merely speculative and insufficient to support guilt, our supreme court holding differs from the proposition Redd seeks to support: “Under these standards, when two reasonable inferences can be drawn *from a piece of evidence*, we believe such evidence only gives rise to a suspicion, and, without additional evidence, is insufficient to support guilt.” *Id.* at 618–19 (emphasis added).

The record before us differs from *Truesdell*, where an element of the crime was predicated on a single piece of evidence. Here the State provided several pieces of evidence, through documentation and testimony, from which a jury could infer Redd knew the checks would bounce. While Redd testified he was unaware of the status of his account as he drew upon it, it is within the jury’s domain to resolve this inconsistent evidence:

Moreover, “[t]he function of the court, on a motion to direct a verdict of acquittal, is limited to determining whether there is sufficient evidence from which reasonable persons could have found the defendant guilty as charged. It is not the province of the court, in determining the motion, to resolve conflicts in the evidence, to pass upon the credibility of witnesses, to determine the plausibility of explanations, or to weigh the evidence; such matters are for the

jury Any inconsistencies in the testimony of a defense witness are for the jury's consideration, and do not justify a court's usurpation of the factfinding function of the jury."

Williams, 695 N.W.2d at 28 (quoting and adding emphasis to 75A Am. Jur. 2d *Trial* § 1026, at 573–74).

Regardless of Redd's testimony to the contrary, the question before us is whether the evidence, when viewed in the light most favorable to the State and with all reasonable inferences drawn in its favor, constitutes substantial evidence to support a finding on the knowledge element. See *id.* Because the State presented ample documentary evidence and testimony from which a jury could infer Redd knew the status of his account when he drafted the instruments, sufficient evidence supports his conviction.

AFFIRMED.