

IN THE COURT OF APPEALS OF IOWA

No. 3-794 / 12-1860
Filed September 18, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JUAN OZUNA-CONTRERAS,
Defendant-Appellant.

Appeal from the Iowa District Court for Sioux County, James D. Scott,
Judge.

A defendant challenges the sufficiency of the evidence supporting the
court's findings of guilt on three forgery counts. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Dennis D. Hendrickson,
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney
General, and Coleman McAllister, County Attorney, for appellee.

Considered by Eisenhauer, C.J., and Vaitheswaran and Doyle, JJ.

VAITHESWARAN, J.

A district court found Juan Ozuna-Contreras guilty of one count of identity theft and three counts of forgery. On appeal, Ozuna-Contreras challenges the sufficiency of the evidence supporting the court's findings of guilt on the forgery counts.

As a preliminary matter, Ozuna-Contreras asserts that, because this issue was not raised in the district court, he must bring the challenge under an ineffective-assistance-of-counsel rubric. To the contrary, "in a bench trial the defendant is *not* required to move for a judgment of acquittal to preserve error on a sufficiency of the evidence claim." *State v. Petithory*, 702 N.W.2d 854, 856 (Iowa 2005). "[W]hen a criminal case is tried to the court, a defendant may challenge the sufficiency of the evidence on appeal irrespective of whether a motion for judgment of acquittal was previously made." *State v. Abbas*, 561 N.W.2d 72, 74 (Iowa 1997). Our review of the district court's findings of guilt is for substantial evidence. *State v. Sutton*, 636 N.W.2d 107, 110 (Iowa 2001).

The district court framed the elements of the first forgery count as follows:

1. On or about November 7, 2011, in Sioux County, Iowa, the defendant did make, complete, execute, or authenticate an I-9 employment verification form.
2. Without Juan Miguel Bautista Rosario's authority the defendant made the I-9 employment verification form appear to be the act of Rosario.
3. The defendant knew the act would facilitate a fraud or injury.
4. The I-9 employment verification form was a document prescribed by statute as evidence for an authorized stay in the United States or for employment within the United States.

The second two forgery counts were slightly different. These counts did not require proof of elements 1 and 2 above. Instead, they required the State to

prove that Ozuna-Contreras “possessed” a social security card and State of Oregon identification card in the name of Juan Miguel Bautista Rosario “which had been made, executed, completed, issued, authenticated, or transferred so that it purported to be the act of another who did not authorize the act.”

Ozuna-Contreras takes issue with the sufficiency of the evidence supporting the finding that he lacked authorization to use Rosario’s name. He asserts “there was zero evidence of any kind—circumstantial or direct—to support any conclusion regarding Rosario’s authorization or lack thereof.” The State concedes there was no direct evidence in the form of testimony from Rosario stating he did not authorize the use of his name on the three documents. The State nonetheless contends that the absence of authorization could be inferred from circumstantial evidence, as the district court found. We agree with the State.

An employee of the Department of Homeland Security, Brett Stanley, testified that a car was stopped based on a suspicion that the driver was in the country illegally. During the stop, Stanley had a conversation with one of the passengers, who turned out to be Ozuna-Contreras. Ozuna-Contreras admitted he did not have the right to be “legally present in the United States.”

Stanley contacted Ozuna-Contreras’s employer and obtained I-9 information, which verifies an employee’s right to legally work in the United States. See 8 C.F.R. § 274a.2 (2011). Included with the I-9 form was a copy of a social security card and Oregon identification card in the name of Juan Miguel Bautista Rosario. According to Stanley, the social security number was valid and

assigned to another person, as was the Oregon identification number, although the Oregon card was “not a valid card.”

Stanley determined that there was a real person named Juan Miguel Bautista Rosario who lived in Ohio. He also determined that Ozuna-Contreras’s finger prints did not match Rosario’s. Finally, he expressed certainty that Ozuna-Contreras was in fact Ozuna-Contreras and not Rosario in non-work-related circumstances.

The human resources manager of Ozuna-Contreras’s employer confirmed that he signed an I-9 employment form for a person he believed to be Rosario. He also testified that “Rosario” handed him a social security card and Oregon identification card inscribed with Rosario’s name. When asked to point out “Rosario” in the courtroom, he identified Ozuna-Contreras.

This evidence amounts to substantial circumstantial evidence in support of the district court’s finding that Ozuna-Contreras lacked Rosario’s authorization to use his name on employment documents. Accordingly, we affirm the court’s findings of guilt on the three forgery counts.

AFFIRMED.