IN THE COURT OF APPEALS OF IOWA

No. 9-686 / 08-1757
Filed October 7, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MITCHELL TERRELL SMITH,
Defendant-Appellant.

Appeal from the Iowa District Court for Washington County, Joel D. Yates, Judge.

The defendant appeals his conviction for prohibited gaming activities in violation of Iowa Code section 99F.15(4)(i) (2005). **REVERSED AND REMANDED.**

Mark C. Smith, State Appellate Defender, and Robert Ranschau, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, Barbara A. Edmondson, County Attorney, and Wyatt P. Peterson, Assistant County Attorney, for appellee.

Considered by Vaitheswaran, P.J., Mansfield, J., and Zimmer, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

MANSFIELD, J.

This case requires us to decide whether Iowa Code section 99F.15(4)(i) (2005) applies to a form of cheating at blackjack, where the player increases or "caps" his or her bet after seeing that he or she has a favorable hand. The issue presented is whether a casino patron who engages in this practice "claims, collects, or takes an amount of money or thing of value of greater value than the amount won." *See* Iowa Code § 99F.15(4)(i). Because we conclude that capping does not violate this specific subsection, we reverse the defendant's conviction and remand for dismissal of the trial information.

I. Facts.

On the evening of December 23, 2006, the defendant, Mitchell Terrell Smith, was playing blackjack at the Riverside Casino and Golf Resort. Smith had played blackjack at the same casino about a month before.

In the version of blackjack played at Riverside Casino, all players place their bets before the cards are dealt. Two cards are then dealt face up to each player. The dealer receives one card face up and one card face down. At this point, players are not allowed to add chips to their bet unless they are doubling down or splitting pairs.

Capping, a form of cheating, involves slipping one or more additional chips into one's bet after the cards have been dealt. Capping, in effect, allows the player to adjust his or her bet retroactively after learning that he or she will likely have a better hand than the dealer. Since a winning hand normally returns the amount that the player bet, a player who can increase his or her bet after observing the deal gains an unfair advantage.

Smith was seated next to the "third base" position at the table. This area is to the dealer's right, and is favored by individuals who want to engage in capping because they can do so more easily while the dealer is first addressing other players to his or her left.

A nearby "relief" dealer noticed that Smith appeared to be capping. He alerted his supervisor, and the surveillance video of Smith's table was reviewed. The video showed Smith on several occasions adding a chip to his wager stack after the cards had been dealt. On the video, Smith appeared to be acting deliberately, with a quick motion intended to escape the dealer's notice.

Smith was taken away from the gaming table and questioned by an Iowa Division of Criminal Investigation (DCI) agent. In his statement to the DCI, Smith admitted that he had been adding to his bets after the cards had been dealt, but denied he knew it was against the rules. He also wrote, falsely, in a statement, "I never played blackjack at a casino in my life." In fact, Smith later conceded, as shown by the Riverside Casino's electronic records, that he had played over two hours of blackjack at the same casino about a month before.

Smith was charged with prohibited gaming activities in violation of Iowa Code section 99F.15(4)(i). That provision makes it an offense if a person:

> Claims, collects, or takes, or attempts to claim, collect, or take, money or anything of value in or from the gambling games, with intent to defraud, without having made a wager contingent on winning a gambling game, or claims, collects, or takes an amount of money or thing of value of greater value than the amount won.

Smith went to trial before the court on May 22, 2008. On June 4, 2008, the district court issued a written ruling finding Smith guilty as charged. From his conviction, Smith appeals, arguing that his motion for judgment of acquittal

should have been granted because there was insufficient evidence that he committed the crime charged.

II. Analysis.

Sufficiency-of-the-evidence challenges are reviewed for correction of errors at law. *State v. Jorgensen*, 758 N.W.2d 830, 834 (Iowa 2008). The district court's findings of guilt are binding on appeal if supported by substantial evidence. *Id*. To the extent the issue presents a question of statutory interpretation, our review is for correction of errors at law. *Id.*

The State apparently concedes that Smith did not violate the first part of section 99F.15(4)(i) because he did not claim, collect, or take anything of value "without having made a wager contingent on winning a gambling game." In each of the nine instances where he capped his bet, Smith *did* make a wager. Rather, the State claims that Smith violated the second part of section 99F.15(4)(i) by claiming, collecting, or taking a thing of value "of greater value than the amount won." The State argues that by capping, Smith was able to collect "more than he legitimately won."

Smith, on the other hand, contends that he did not collect more than he won. While Smith may have won more chips than he was entitled to win if he had been following the rules of the game, he maintains that his chips reflected his actual winnings.

Upon our review, we agree with Smith's reading of the statute for several reasons. To begin with, when the text of a statute is plain and its meaning clear, we do not search for a meaning beyond the express terms of the statute. *State v. Schultz*, 604 N.W.2d 60, 62 (Iowa 1999). By its literal terms, section

99F.15(4)(i) applies to situations where the defendant claimed or collected more than his or her actual winnings. The relevant language reads: "of greater value than the amount won." The State is seeking to rewrite the statute as if it read: "of greater value than the amount *legitimately* won." That is a broader concept. We are not at liberty to expand the legislature's definition of a crime.

Furthermore, section 99F.15(4) contains a separate prohibition on cheating. Thus, the statute reads as follows:

> A person commits a class "D" felony and, in addition, shall be barred for life from excursion gambling boats under the jurisdiction of the commission, if the person does any of the following:
> . . . .
> (d) Cheats at a gambling game.
> . . . .
> (i) Claims, collects, or takes, or attempts to claim, collect, or take, money or anything of value in or from the gambling games, with intent to defraud, without having made a wager contingent on winning a gambling game, or claims, collects, or takes an amount of money or thing of value of greater value than the amount won.

According to Smith, "An argument could be made that defendant violated Iowa Code section 99F.15(4)(d) which prohibits cheating at a gambling game, but he did not violate section 99F.15(4)(i) as alleged in the trial information." We agree.

As a general rule, we interpret statutes to give effect to the entire statute and to avoid surplusage. *See* Iowa Code § 4.4(2). If section 99F.15(4)(i) covered any situation where the defendant claimed more than he or she "legitimately won," what would be the need for a separate prohibition on cheating in section 99F.15(4)(d)? Any cheating would already violate section 99F.15(4)(i). An interpretation that renders part of a statute superfluous is disfavored. *See*

State v. Palmer, 554 N.W.2d 859, 865 ("We will not interpret statutes in a way that makes portions of them meaningless.").

Furthermore, although the case law on provisions similar to section 99F.15(4)(i) is fairly sparse, this language does appear to be designed to cover situations where the defendant used some kind of fraud to collect more than he or she actually won at the game, rather than cheated at the game itself. Thus, in *People v. Kolaj*, No. 262205 (Mich. Ct. App. Oct. 26, 2006), the court upheld the defendant's conviction for violating Michigan Compiled Laws section 432.218(2)(j) where the defendant fraudulently altered non-winning tickets to make them appear to be winning tickets before having them cashed. Michigan Compiled Laws section 432.218(2)(j) is identically worded to Iowa Code section 99F.15(4)(i) and makes it a crime if the defendant:

> [c]laims, collects, takes, or attempts to claim, collect, or take money or anything of value in or from gambling games, with intent to defraud, without having made a wager contingent on winning a gambling game, or claims, collects, or takes an amount of money or thing of value of greater value than the amount won.

Iowa Code § 99F.15(4)(i), Mich. Comp. Laws § 432.218(2)(j).

Finally, we are mindful that criminal statutes are to be strictly construed with doubts resolved in favor of the accused. *State v. Schultz*, 604 N.W.2d 60, 62 (Iowa 1999); *State v. Williamson*, 570 N.W.2d 770, 772 (Iowa 1997).

For all these reasons, we hold that Iowa Code section 99F.15(4)(i) does not cover Smith's conduct in this case, and accordingly reverse the judgment and remand for dismissal of the charge.

REVERSED AND REMANDED.