

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20080377-CA
v.)	
)	F I L E D
Kidus Yohannes,)	(November 13, 2009)
)	
Defendant and Appellant.)	2009 UT App 328

Fourth District, Provo Department, 071402556
The Honorable Gary D. Stott

Attorneys: Margaret P. Lindsay, Spanish Fork, for Appellant
Mark L. Shurtleff and Jeanne B. Inouye, Salt Lake
City, for Appellee

Before Judges Greenwood, Orme, and McHugh.

GREENWOOD, Presiding Judge:

Defendant Kidus Yohannes appeals his jury conviction of unlawful acquisition, possession, or transfer of a financial transaction card, a third degree felony, see Utah Code Ann. § 76-6-506.3(1) (Supp. 2003), arguing that there was insufficient evidence that he had possession of the card or that he intended to use it. We affirm.

The standard of review for a sufficiency claim is highly deferential to a jury verdict. We begin by reviewing the evidence and all inferences which may be reasonably drawn from it in the light most favorable to the verdict. We will reverse a jury verdict for insufficient evidence only if we determine that reasonable minds could not have reached the verdict.

State v. Workman, 2005 UT 66, ¶ 29, 122 P.3d 639 (citations and internal quotation marks omitted). Thus, Defendant has a high hurdle to overcome to reverse the jury's verdict.

In June 2007, Defendant discovered that someone had vandalized his computer, necessitating repairs estimated to cost approximately \$100. Believing that his roommate, Sam Westfahl, had vandalized the computer, Defendant took it to the police station and formally accused Westfahl. The next day, Defendant was unable to find his car key and angrily accused Westfahl of taking it and, as a result, of forcing Defendant to pay for services of a locksmith. Westfahl and another roommate located Defendant's missing car key "a day or two later. . . . in an open bag belonging to Defendant."

At about the same time, Westfahl noticed that his debit card was missing. Westfahl normally kept this card in the bedroom he shared with Defendant, "in a drawer or on top of the cabinet." Initially thinking that he had simply misplaced it, Westfahl called the issuing bank to report the missing debit card. Later that same night, Westfahl called the police, not to report the missing card, but to discuss his unrelated suspicions about Defendant. Pursuant to a search warrant, the police searched Defendant's portion of the shared room the next day. During that search, Westfahl told the officers about the missing debit card. The officers later found Westfahl's debit card in the glove compartment of Defendant's car, three days after Westfahl discovered his card was missing. Defendant was charged with a third degree felony, and a jury trial took place. The jury convicted Defendant, and he now appeals.

Under Utah Code section 76-6-506.3, a person is guilty of a third degree felony if he or she "acquires a financial transaction card from another without the consent of the card holder . . . , or, with the knowledge that it has been acquired without consent, and with intent to use it in violation of Section 76-6-506.2." Utah Code Ann. § 76-6-506.3(1). Section 76-6-506.2 generally prohibits the unlawful use of financial transaction cards, specifically forbidding the "purchase or attempt to purchase goods, property, or services, by the use of a . . . stolen, or fraudulently obtained financial transaction card." Id. § 76-6-506.2(1). Thus, the State must make two showings in order to convict an individual under section 76-6-506.3: (1) non-consensual acquisition of another's financial transaction card and (2) intent to use the card in a statutorily prohibited manner.

Defendant argues that there was insufficient evidence upon which the jury could properly convict him of violating section 76-6-506.3, because the evidence was insufficient as to both his constructive possession of Westfahl's debit card and his requisite intent to use the card. Constructive possession is established where there is "a sufficient nexus between the accused and the [contraband] to permit an inference that the

accused had both the power and the intent to exercise dominion and control over the [contraband]." State v. Layman, 1999 UT 79, ¶ 13, 985 P.2d 911 (internal quotation marks omitted). And because "the existence of a sufficient nexus to prove constructive possession is a highly fact-sensitive determination," courts are not required to analyze a specific set of factors, but instead, must consider only "factors particularly relevant to the specific factual context" of the case at hand. Id. ¶ 14.

Relevant to Defendant's possession of Westfahl's debit card, the jury was presented with the following evidence: (1) Westfahl's debit card was found in the glove compartment of Defendant's locked car; (2) Defendant was the only person who had access to and control over the car; (3) Westfahl had never been in or had access to Defendant's car; (4) Defendant had access to Westfahl's debit card because Westfahl kept it in the bedroom he shared with Defendant; (5) Defendant's car was parked seven blocks from where he lived; and (6) Defendant was angry at Westfahl because he believed Westfahl had damaged his computer and hidden his car key. From the evidence introduced at trial, together with the reasonable inferences deduced therefrom, the jury could reasonably conclude that Defendant had both the intent and the power to exercise control over Westfahl's card, and thus, that he had constructive possession of the card.

Defendant further asserts that there was insufficient evidence for the jury to conclude that he intended to use Westfahl's debit card in a manner proscribed by the Utah Code, see Utah Code Ann. § 76-6-506.2 (Supp. 2003). Defendant points out that the card was not used while missing, no evidence was offered to show that Defendant attempted to use the card, and Defendant's fingerprints were not found on the card. Stated another way, Defendant argues that his conviction cannot stand because there was no direct evidence of his intent to use the card.

Nevertheless, "[s]ince the intent to commit [an offense] is a state of mind, [it] is rarely susceptible of direct proof," but instead "can be inferred from conduct and attendant circumstances in the light of human behavior and experience." State v. Robertson, 2005 UT App 419, ¶ 15, 122 P.3d 895 (internal quotation marks omitted). The jury was presented with evidence that Defendant was angry about the cost of repairing his computer and blamed Westfahl for having damaged his computer, and that Defendant also blamed Westfahl for his missing car key and the expense he incurred for a locksmith. In addition, the jury was aware that the card had only been missing for approximately three days when it was found in Defendant's car, thus giving Defendant limited opportunity to use the card. Defendant's conduct and the

"attendant circumstances" are sufficient for the jury to infer that Defendant intended to unlawfully use the card, see id. It is reasonable for the jury to have inferred, based on "human behavior and experience," see id., that Defendant, angry at the expense of the locksmith and computer repairs and suspicious that Westfahl was responsible for both, intended to use Westfahl's card to compensate himself for the damages he had suffered. The jury also could have inferred that Defendant kept the card in his vehicle so that it would be mobile and that he simply had not yet had a chance to use the card because it was discovered so quickly. We acknowledge that the evidence supporting the jury's determination that Defendant possessed the requisite intent is slim. Nevertheless, viewing the evidence in a light most favorable to the jury's verdict, we conclude that reasonable minds could have reached the verdict announced by the jury in this case based on the evidence introduced at trial and reasonable inferences based on that evidence. We therefore affirm Defendant's conviction. See State v. Workman, 2005 UT 66, ¶ 29, 122 P.3d 639.

Affirmed.

Pamela T. Greenwood,
Presiding Judge

WE CONCUR:

Gregory K. Orme, Judge

Carolyn B. McHugh, Judge