

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 21, 2010

A. John Voelker
Acting Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2010AP504-CR

Cir. Ct. No. 2009CF293

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

LI ZHANG,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County:
DANIEL R. MOESER, Judge. *Affirmed.*

Before Vergeront, P.J., Higginbotham and Sherman, JJ.

¶1 PER CURIAM. Li Zhang appeals from a judgment, following a jury verdict, convicting her of three counts of fraud against a financial institution

contrary to WIS. STAT. § 943.82(1) (2007-08).¹ Zhang contends that the evidence at trial was insufficient to support the jury's verdict. We disagree and affirm.

BACKGROUND

¶2 In February 2009, the State charged Zhang with three counts of fraud against a financial institution. The State's first witness at trial was Neil Purtell, the manager of financial crimes for Associated Bank. Purtell testified that he had been the manager of financial crimes for Associated Bank for five and one-half years. Previously, Purtell served as a special agent with the FBI for thirty years, specializing in white collar crime and fraud.

¶3 Purtell testified that Zhang's business account at Associated Bank had a balance of \$87.34 in July 2008. Zhang deposited a check into her business account at Associated Bank on July 24, 2008, in the amount of \$4,936.52. The check was drawn on Zhang's Chase Bank credit card account. The next day, Zhang withdrew \$5,000 from a different bank branch. The check was returned to the bank unpaid by the credit card company, for a closed account or insufficient funds.

¶4 Purtell also testified that a check was deposited into the same business account on July 28, 2008, in the amount of \$19,893.25. The check was drawn on a credit card account at Advanta Bank Corporation.² The next day,

¹ All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

² Other evidence established that the Advanta credit card was under Zhang's ex-husband's name, that Zhang worked with her ex-husband, and that Zhang was authorized to sign the business's credit card checks on her ex-husband's behalf.

Zhang withdrew \$5,800 from the same bank branch. This check was also returned to the bank unpaid by the credit card company for a closed account or insufficient funds. As a result of those transactions, Associated Bank lost \$10,758.86.

¶5 Purtell testified as to several transactions for another business account at Associated Bank in Zhang's name. In July 2008, the balance of that account was \$770. On July 25, 2008, a deposit was made to that account in the amount of \$7,986.45. The check was again drawn on the Advanta credit card account. Several days later, Zhang withdrew \$5,000 from that account at a different branch. The same day, she withdrew \$3,700 from the account at yet another branch. The Advanta check was then returned to the bank unpaid by the credit card company for a closed account or insufficient funds.

¶6 Purtell also testified that a check was deposited in this same account on July 28, 2008, in the amount of \$19,789.56. This check was drawn on Zhang's First Equity credit card. The next day, Zhang withdrew \$4,980 from the account at a different branch. Again, the check was returned as uncollectible from the credit card company.

¶7 A final check was deposited into this account on July 30, 2008, in the amount of \$9,836.52. This check was once again drawn on the Advanta credit card account. This check, as well, was returned as uncollectible. Purtell testified that as a result of these transactions, Associated Bank suffered a loss of \$12,690.

¶8 Purtell testified that in his experience, use of different bank branches to deposit checks and withdraw funds can be an indication of fraudulent activity. He testified that he met with Zhang to discuss the overdrafts on her accounts, that Zhang indicated that she would contact Purtell to resolve the issue, and that Zhang never did so. Purtell also testified that Zhang's accounts were both business

accounts rather than personal accounts, and that funds deposited in business accounts are available more quickly than funds deposited in personal accounts.

¶9 The State's next witness was James Metras, a fraud investigator for Amcore Bank for the past twelve years. He testified that Zhang's account at Amcore had a balance of approximately \$69 in July 2008. On July 24, 2008, Zhang deposited a check into her account from the Advanta credit card account, in the amount of \$4,898.67. The next day, Zhang withdrew \$4,900 from the account at a different branch. The check was then returned to the bank from the credit card company unpaid. On July 26, 2008, Zhang deposited a check drawn on her Chase Bank credit card in the amount of \$9,789.32. That check was also returned to the bank unpaid from the credit card company. Metras testified that as a result of those transactions, Amcore suffered a loss of \$4,830.13.

¶10 The State also presented testimony by two police officers. Officer Bernie Albright testified that he interviewed Zhang regarding her banking transactions. Albright stated that Zhang told him that she believed she was at or near her credit limits on the credit card accounts. Officer Tara Heimerl testified that she also met with Zhang and discussed the banking transactions. Heimerl asked Zhang why she had chosen uneven amounts for her credit card check deposits, and Zhang told her she did not have a specific reason.

¶11 Zhang's ex-husband, Xiong Wei Zeng, testified on Zhang's behalf. Zeng testified that he obtained the Advanta credit card in his name for the business he and Zhang ran together. He stated that he gave Zhang permission to sign checks for that account. He stated that he received the credit card statements and made the required payments. He gave the credit card checks to Zhang, telling her she could use them, and he believed at that time the account was still good.

¶12 Zhang also testified on her own behalf. She stated that she managed the business she ran with her ex-husband. In early 2008, the business was having cash flow problems. Zhang stated that she used the cash advance credit card checks to pay the bills for the business. She stated that there was no preset limit on the Advanta credit card account, which she understood to mean that there was no limit to the amount she could draw on the account, but that if her balance was over \$1,000 she would be charged a fee and pay a higher interest. She believed that if she went over her limit on her Chase credit card, she would be charged a fine and pay a higher interest.

¶13 Zhang testified that when she wrote the credit card checks, she expected the checks to be honored by the credit card companies. She also stated that before she withdrew funds, she asked the bank tellers whether the funds were available. She said that she thought the banks verified that the credit card companies would honor the checks before making the funds from those checks available. She also explained that she used different bank branches based on their convenience to her home, work, or other activities.

¶14 Zhang testified that she attempted to pay back the bank, including speaking with Purtell about a payment plan, and that Purtell initially indicated the bank would negotiate a payment plan with her and then stated they would not. On cross-examination, the State elicited testimony from Zhang that she knew from running a business that if a check does not clear, it causes problems for the recipient of the check.

¶15 The jury returned guilty verdicts on all three counts. Zhang appeals.

STANDARD OF REVIEW

¶16 We review the sufficiency of the evidence to sustain a conviction for whether “the evidence, viewed most favorably to the state and the conviction, is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt.” *State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). Thus, if there was any reasonable basis for the fact finder to “draw[] the appropriate inferences from the evidence adduced at trial to find the requisite guilt, [we] may not overturn a verdict even if [we] believe[] that the trier of fact should not have found guilt based on the evidence before it.” *Id.* at 507.

DISCUSSION

¶17 Zhang argues that the evidence at trial was insufficient to support the jury’s verdict. Specifically, Zhang contends that the State did not present any evidence that Zhang obtained money from the bank by use of a fraudulent scheme.³

¶18 Zhang asserts that the only facts at trial supporting the State’s argument that Zhang obtained money from the banks using a fraudulent scheme were the following: Zhang used different branches of the banks to deposit and withdraw funds, and she knew that she was at or near her credit limit when she wrote the checks on the credit card accounts. Zhang contends that this evidence

³ See WIS. STAT. § 943.82(1) (elements of “fraud against a financial institution” are that the defendant “obtain[ed] money ... owned by or under the custody or control of a financial institution,” and did so “by use of any fraudulent device, scheme, artifice, or monetary instrument”).

does not establish that Zhang knew that the checks would not be honored; that Zhang testified that she did not know the checks would not be honored, which was supported by credit card material indicating the cards had no preset limit; and that the State presented no evidence to rebut Zhang's testimony. Thus, Zhang asserts, the State's evidence was insufficient as a matter of law to support the jury's guilty verdict. We disagree.

¶19 It is true, as Zhang asserts, that the State did not provide any direct evidence that Zhang knew that the checks would not be honored by the credit card companies when she deposited them in her accounts and then withdrew the funds. It is also true, as Zhang asserts, that Zhang presented evidence of her innocence: her testimony that she did not, in fact, know that the credit card checks would not be honored. However, “[i]t is well established that a finding of guilt may rest upon evidence that is entirely circumstantial and that circumstantial evidence is oftentimes stronger and more satisfactory than direct evidence.” *Poellinger*, 153 Wis. 2d at 501. While the jury might have believed Zhang's testimony and reached a verdict of not guilty, we cannot say, as a matter of law, that it was required to do so. *See Cogswell v. Robertshaw Controls Co.*, 87 Wis. 2d 243, 250, 274 N.W.2d 647 (1979) (the fact finder is the ultimate arbiter of a witness's credibility).

¶20 The circumstantial evidence before the jury—that Zhang knew she was at or near her credit limits; that she deposited checks drawn on the credit card accounts in random, uneven numbers and then withdrew funds in round figures from different branches, which experts recognize as indicative of fraudulent conduct; and that she had experience in business and knew the ramifications of writing checks that would not be honored—was enough for the jury to infer that Zhang knew the checks would not be honored by the credit card companies.

Although this is not the only inference the jury could have drawn from the evidence, it is one reasonable inference. We therefore have no basis to disturb the jury's verdict. Accordingly, we affirm.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

