IN THE SUPREME COURT OF IOWA

STATE OF IOWA Plaintiff-Appellee, v. SYDNEY SLAUGHTER, Defendant-Appellant	Supreme Court No. 22-0892

APPEAL FROM THE IOWA DISTRICT COURT
FOR BLACK HAWK COUNTY
HONORABLE KELLYANN M. LEKAR, JUDGE (JURY TRIAL & SENTENCING)

APPELLANT'S BRIEF AND ARGUMENT

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CERTIFICATE OF SERVICE

On April 20, 2023, the undersigned certifies that a true copy of the foregoing instrument was served upon Defendant-Appellant by placing one copy thereof in the United States mail, proper postage attached, addressed to Sydney Slaughter, 2206 Kenrich Dr. SW, Apt 7, Cedar Rapids, IA 52404.

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Black's Law Dictionary, Revised 4th Ed., 1968, at page 203

Bouv. Law Dict. (8th Ed. (Rawle's Third Revision), 1914, at page 3414

Webster's New International Dictionary, 3d Ed. (1966)

38 Am.Jur.2d, Gambling, s 3, pages 108—109 (1968)

38 C.J.S. Gaming s 1c, page 43 (1943)

ROUTING STATEMENT

This case should be transferred to the Court of Appeals because the issues raised involve the application of existing legal principles. Iowa R. App. P. 6.903(2)(d) and 6.1101(3)(a).

STATEMENT OF THE CASE

Nature of the Case: Defendant-Appellant Sydney Slaughter appeals her jury trial conviction and sentence for Gambling, False Claim of Winnings, a Class D Felony in violation of Iowa Code § 99F.15(4)(h).

Course of Proceedings: By a March 24, 2021 Trial Information, the State charged Slaughter with Gambling – False Claim of Winnings, a Class D Felony in violation of Iowa Code § 99F.15(4)(h). Slaughter was alleged to have committed the offense either directly, by aiding and abetting, by conspiring with another, or by entering into a common scheme or design with another. (3/24/21 TI) (App. pp. 4-5). Slaughter pled not guilty. (4/5/21 Written Arraignment) (App. pp. 6-7).

A jury trial commenced on March 8, 2022. On March 10, 2022, the jury returned a verdict finding Slaughter guilty of the offense as charged. (Tr.Day1 1:1-25; Tr.Day3 33:4-34:6); (3/10/22 Verdict) (App. p. 10).

Slaughter filed a post-trial Motion for New Trial and in Arrest of Judgment, and the State filed a written resistance thereto. (4/13/22 Def.'s Mot. New Trial; 4/14/22 State's Resistance) (App. pp. 11-14). The defense motion was considered and overruled by the court at the time of sentencing. (Sent.Tr.2:20-5:11).

On May 23, 2022, the sentencing court imposed judgment against Slaughter for the offense of Gambling, False Claim of Winnings, a Class D Felony in violation of Iowa Code § 99F.15(4)(h). The court imposed an indeterminate 5 year sentence of incarceration, suspended that sentence, and placed Slaughter on formal probation for a period of 2-5 years. The court also suspended a $1,025 sentence plus 15% surcharge. Slaughter was also ordered to submit a DNA specimen for profiling, and barred for life from gambling

structures under the jurisdiction of the Gaming Commission pursuant to § 99F.15(4). (Sent.Tr.12:7-17); (5/23/22 Sentencing Order) (App. pp. 15-19).

Slaughter filed a May 25, 2022 Notice of Appeal. (5/26/22 NOA) (App. p. 20).

Facts: The instant prosecution pertained to a November 29, 2020 4:30 a.m. incident at Isle of Capri Casino. The State alleged that Slaughter had violated the statute by claiming she had won a jackpot at a machine her boyfriend McNeese had been playing. The State theorized her motive for claiming the jackpot had to do with allowing McNeese to avoid offset obligations. (Tr.Day2 6:23-7:17). The central issues at trial pertained to whether the State had proven (1) that Slaughter hadn't made a wager contingent on winning the gambling game, and (2) the existence of a specific intent to defraud. (Instruct.16) (App. p. 8); (Tr.Day3 17:1-25:20).

Iowa Division of Criminal Investigation (DCI) Special Agent John Bergman testified that a jackpot in an Iowa casino is defined as a single win of $1,200 or more. This creates a

taxable event that must be documented by the Casino, with the generation of an IRS form W-2G capturing gambling income. (Tr.Day2 p.9:17-11:4, 17:1-10, 20:11-23, 21:5-14, 52:1-18).

Whenever such a jackpot hits on a slot machine, the machine freezes up and requires human intervention in the form of a casino employee coming out to the machine. The employee identifies the winner claiming the jackpot, and completes with them a handwritten slot request form. That form collects the winner's name and Social Security Number, and allows them to make certain elections concerning tax withholdings as to their winnings. The casino automatically withholds 5% of the winnings for payment of Iowa Income taxes attributed to their social security number, a matter on which the winner has no discretion. However, the winner can elect the amount of federal tax withholdings, if any, that they wish to have taken out by the casino from 0% up to the remaining 95%. (Tr.Day2 17:1-20:10).

After the slot request form is filled out the employee takes it back to the employee computer area to process the jackpot payout. (Tr.Day2 19:13-17). When processing the jackpot, the casino employee is legally required to use the patron's social security number to check a State-run offset database which captures certain unpaid financial obligations (such as unpaid fines or child support). (Tr.Day2 21:17-21, 22:15-23:12). If the patron has an offset as determined by that database, some or all of the patron's after-tax winnings will be withheld and credited to that offset, before any payout is made to the patron. If the patron has designated the entire payout to go toward taxes, then no payment is withheld and credited toward the offset. In that circumstance, the patron receives a letter telling the patron that nothing was withheld and outlines the obligation amounts contained in the offset database. If the patron has not designated the entire post-state-tax payout to be paid toward federal taxes, then the net after-tax earnings are withheld toward payment of the offset, and only the amount remaining (if any) after satisfaction of the

offset is provided directly in payout to the patron. Again, the patron receives a one-page letter explaining why their payout has been reduced or why they are not receiving one, based on the offset. (Tr.Day2 24:22-26:8).

Casino surveillance videos from November 29, 2020 were pulled and placed into evidence at trial as State's Exhibits B2, B3, B4, B5, B6, and B7. (Tr.Day2 28:22-29:24). Video surveillance captured the entirety of McNeese and Slaughter's time at the casino, over a period of about two hours spanning from about 3:14 a.m.- 5:38 a.m. (Tr.Day2 39:5-12, 39:16-22, 58:17-59:15, 67:1-6). They arrived in a pickup truck, driven by McNeese in which Slaughter was a passenger. Slaughter was dropped off at the casino main entrance at approximately 3:14 a.m., and she went inside while McNeese parked the truck. McNeese then entered the casino through a different entrance. They each entered the casino floor at different times – McNeese entering at about 3:20 a.m. (Exhibit B3), and Slaughter entering at about 3:45 a.m. (Exhibit B4). Once on the casino floor, they are sometimes together and sometimes

not. They were also seen displaying signs of affection toward one another, with Slaughter at various times leaning into or hugging McNeese, sitting either in the same chair as him or on his lap in front of a slot machine. (Tr.Day2 36:15-37:21, 48:21-50:13, 59:16-60:3); (Exhibits B3 and B4). And there are times where they are both seen interacting with the same machine. See e.g., (Exhibit B2 Part 1, at 3:46:27-3:50:27 a.m.); (Exhibit B2 Part 1, at 04:50:30-04:58:44 a.m.); (Exhibit B2 Part 2, at 05:15:07-05:23:27 a.m.). For example, McNeese is visible interacting with a center machine for quite some time before Slaughter enters at approximately 3:46 a.m., to sit at and also interact with that same machine. Both McNeese and Slaughter appear to interact with that same machine for some time, before McNeese eventually walks to another machine. That same clip of video also appears to show various shuffling in purses and pockets, potentially depicting a sharing or exchange of funds between Slaughter and McNeese, just before McNeese moves to start playing another machine. (Exhibit B2 Part 1, at 3:30:15-3:50:27 a.m.).

The November 29 4:30 a.m. jackpot incident which is the basis of the instant prosecution was captured on surveillance video Exhibit B1 Part 1, with different views of the same captured on surveillance video Exhibits B5 and B6. (Tr.Day2 38:9-39:4, 46:2-8); (Exhibit B1 Part 1 at 04:26:06-04:31:26 a.m.; Exhibit B5 at 04:26:06-04:31:26 a.m.; Exhibit B6 at 04:28:31 a.m.-4:31:26 a.m.). That surveillance video captured McNeese's hands manipulating or interacting with a slot machine, with Slaughter standing just to the left of him at a gap where no machines stood. It is difficult to see if Slaughter's hands are also manipulating or interacting with the machine during this time. Following the jackpot, McNeese stood up from the machine and took a seat two machines down, while Slaughter sat down at the seat McNeese had just vacated. (Tr.Day2 41:5-42:6, 46:24-47:3, 47:19-48:8, 62:8-23, 69:9-21, 91:18-93:3); (Exhibit B1 Part 1 at 04:26:06-04:29:10 a.m.; Exhibit B5 at 04:26:06-04:29:10 a.m.; Exhibit B6 at 04:28:31 a.m.-4:29:10 a.m.).

Following the jackpot, slot attendant Danielle Sifrit Rademaker went over to the machine, and found Slaughter sitting in front of it and McNeese sitting two machines down. Rademaker asked who the winner had been, and Slaughter said she was. (Tr.Day2 73:14-74:12, 74:25-75:2, 93:4-11). Rademaker collected Slaughter's name, social security number, and other information on the slot request form, and had Slaughter sign that slip, before returning to the employee area to tend to processing the jackpot. (Tr.Day2 75:7-23); (State's Exhibit C1) (Conf. App. p. 4). After the mandatory 5% state-tax-withholding, Slaughter designated the entire remaining 95% of the jackpot winnings to go to federal taxes. (Tr.Day2 81:8-18); (Exhibit C1) (Conf. App. p. 4).

Rademaker returned to the employee area to process Slaughter's jackpot payout elections. But Rademaker thought she'd recalled McNeese, and not Slaughter, sitting at the machine when Rademaker had last walked by it a few minutes prior the jackpot. At her request, casino surveillance staff reviewed the surveillance footage from the time of the jackpot.

They reported back to Rademaker that McNeese had been sitting at the slot machine at the time the jackpot came through, and that he had switched seats with Slaughter prior to Rademaker's arrival at the machine. (Tr.Day2 74:13-24, 82:23-83:2, 87:10-14, 93:12-19).

Rademaker, her supervisor Jesse McCarvel, and the security supervisor then returned to the machine, and spoke with Slaughter and McNeese. McCarvel told Slaughter and McNeese he knew it wasn't Slaughter that won, that it was actually McNeese, and that McNeese would have to claim the jackpot. Rademaker then filled out a new slot request form with McNeese. Rademaker testified McNeese wasn't very happy, but that he did provide the necessary information. This second slot-request form for the November 29 jackpot – ultimately filled out by McNeese rather than Slaughter - was placed into evidence as State's Exhibit C2. (Tr.Day2 87:10-89:4, 108:19-21, 113:5-114:6, 116:19-117:22); (State's Exhibit C2) (Conf. App. p. 5). On this form, after the mandatory five-percent withholding for State taxes, McNeese had designated

the entire remaining 95% of the jackpot to go toward payment of federal taxes. (Tr.Day2 89:5-90:18, 94:17-96:21); (State's Exhibit C2) (Conf. App. p. 5).

Testimony established that Slaughter's offset obligations were taken care of shortly before the November 29th incident. Specifically, Slaughter's offsets had been fully paid from the proceeds of a $2,000 jackpot she'd won at approximately 8:30 p.m. on the night of November 28, 2020. (Tr.Day2 27:14-21). Shift Manager Jesse McCarville attended to that jackpot's payout, generating the offset letter and handing it to Slaughter. He testified he handed that offset letter to her, explained what it was, but had no further conversation with her. (Tr.Day2 115:7-25). His explanation to her would have consisted of the following

> Just kind of explains saying, hey, this is an offset, and it was money owed to the State. They require us, by law, to keep it, and basically, we get this letter, we hand it to them, there's a phone number on there they can call if they have any questions about it.

(Tr.Day2 119:2-8); (Tr.Day2 119:9-20). McCarville did not testify whether or not McNeese was present - either with Slaughter, or even at the casino itself - at the time of Slaughter's November 28 jackpot. He testified he "would have no clue" whether Slaughter would have told anyone else about her offset. (Tr.Day2 116:1-7). Documentation relating to Slaughter's November 28, 2020 jackpot was placed into evidence at trial as State's Exhibit D1. The offset letter handed to Slaughter following that November 28 jackpot was placed into evidence as State's Exhibit D2, and indicated that all of Slaughter's offsets were paid off from those proceeds. (Tr.Day2 109:8-113:4); (State's Exhibits D1, D2) (Conf. App. pp. 6-7).

At the time of the November 29 incident, McNeese still had offset obligations outstanding in the amount of forty-two to forty-three thousand dollars for unpaid court fees and child support. (Tr.Day2 27:22-28:9). A printout listing the various jackpots (e.g., single-event wins of $12,000 or more) won by McNeese between July 20, 2020 and November 29, 2020, was

placed into evidence at trial as Exhibit E1. (Tr.Day2 101:12-105:25); (State's Exhibit E1) (Conf. App. p. 8). This listing showed that McNeese won seven jackpots during this period: one jackpot on July 20, one jackpot on September 21, two jackpots on November 25, one jackpot on November 28, and one jackpot on November 29th (the last of which is the jackpot at issue in the instant prosecution). With the exception of one November 25 jackpot (for which he designated 0% to go to federal income taxes), he had designated 100% of the post-state-tax winnings from each the remaining six jackpots to go entirely to federal income taxes. (Exhibit E1) (Conf. App. p. 8).

A printout of McNeese's offset notification letter from the November 29, 2020 jackpot - the jackpot at issue in the instant prosecution, which was ultimately credited to him - was placed into evidence as State's Exhibit 2. (Exhibit E2) (Conf. App. p. 9). No copy of any offset letter generated in connection with McNeese's November 28 jackpot (e.g., the one hit the day before the instant incident) was placed into evidence at trial. While testimony indicated that the

generation and presentment to McNeese of a similar offset letter would have been standard policy in connection with McNeese's November 28 jackpot as well, no copy of any such letter from the November 28 jackpot was placed into evidence at trial, and no witness testified that they had tended to McNeese's November 28 jackpot payout or presented him with such letter at that time – much less whether they remembered Slaughter being present to witness the handing of such a letter to McNeese. Indeed, while the record indicates that Slaughter had won her November 28 jackpot around 8:30 p.m., the record does not establish the time of McNeese's own November 28 jackpot, and whether Slaughter was even present at the casino when that earlier jackpot had been won.

While the record indicates that McNeese was a frequent gambler, at least during the period from July 20, 2020 through November 29, 2020, it does not indicate that Slaughter was, or that she had been to the casino other than the period from the evening of November 28 through the early morning hours of November 29. There is no indication she

was present with McNeese during his earlier gambling excursions, or was in any way familiar with either his prior jackpots or his dispositions thereof on the jackpot payout forms.

Even during the period that McNeese and Slaughter are at the casino at the time of the November 29 incident, there are times they are within one another's immediate vicinity, but clearly other times when they are not. See e.g. (Exhibit B2 Part 1 at 01:54:46-04:46:20 a.m.) (showing McNeese alone, without Slaughter in the room or vicinity); (Exhibit B2 Part 1 at 04:13:30-04:26:09 a.m.) (same). And while the two are shown arriving at the casino together on the evening of November 28, there is no evidence in the record concerning the scope or duration of their relationship beyond that one evening – so as to indicate that Slaughter was entangled enough in McNeese's life to necessarily be aware of his outstanding debts or financial offset obligations.

Following the November 29 jackpot, Rademaker's supervisor informed Slaughter and McNeese that McNeese

would have to be the one to claim that jackpot. Neither McNeese nor Slaughter had said anything about why they had moved seats, or what was going through their heads as to the jackpot. (Tr.Day2 96:3-16). Agent Bergman acknowledged he could not say whether McNeese would have alerted Slaughter of the fact that he had offsets. (Tr.Day2 55:12-56:7). Radamaker similarly acknowledged that she couldn't say whether McNeese would ever have informed Slaughter that he had an offset. (Tr.Day2 94:4-16). McCarville similarly didn't know whether McNeese would have told anyone, including Slaughter, about his offset. (Tr.Day2 117:23-118:5). Casino Service Manager Akaesha Mergen similarly acknowledged that, while a casino employee would have handed an offset letter to Mr. McNeese after a win, she couldn't say whether McNeese would have shared the letter or its contents with Slaughter or anyone else. (Tr.Day2 101:6-8, 107:10-108:4).

Other relevant facts will be discussed below.

ARGUMENT

I. The evidence was factually insufficient to establish that Slaughter had a specific intent to defraud, or that she had knowledge that McNeese had a specific intent to defraud.

A. Preservation of Error: "[A] defendant need not file a motion for judgment of acquittal to challenge the sufficiency of the evidence on direct appeal." State v. Crawford, No. 19-1506, 972 N.W.2d 189, 198 (Iowa 2022). "[A] defendant who proceeds to trial and has been convicted of a crime has, in fact, preserved error with respect to any claim challenging the sufficiency of the evidence." Id.

B. Standard of Review: Challenges to the sufficiency of the evidence are reviewed for correction of errors at law. State v. Petithory, 702 N.W.2d 854, 856 (Iowa 2005).

C. Discussion: The State's theory of guilt was that McNeese had pushed the button on the machine triggering the jackpot, and then switched seats with Slaughter and had her claim the winnings. (Tr.Day1 6:24-6:14).

The Statute, however, requires not just that (1) a person make a false claim of winnings (e.g., claim something of value from the gambling game without having made a wager contingent on winning), but also that they (2) do so "*with intent to defraud*". Iowa Code § 99F.15(4)(h). The State alleged that the intent to defraud here centered on the desire to allow McNeese to avoid the offset which would apply to any winnings of his own, so that he and Slaughter could 'walk away with some money' that night. (Tr.Day1 6:15-7:6). However, when seeking to claim the jackpot, Slaughter had designated the entire amount to go to taxes, without electing to take any money payout that night. (Tr.Day2 81:8-18); (Exhibit C1) (Conf. App. p. 4). Additionally, when hitting jackpots in the day or days preceding the jackpot at issue, McNeese both (1) claimed the jackpot himself, and (2) had similarly designated the entire amount to go to taxes rather than electing to take any money payout that night. (Exhibit E1) (Conf. App. p. 8). And when McNeese ultimately did claim the November 29 jackpot at issue in the instant prosecution, he once again

designated the entire amount to go to taxes, without electing to take any money payout that night. (Exhibits E1, E2) (Conf. App. pp. 8-9).

The State theorized that Slaughter was aware of the outstanding offset which would be applicable to McNeese's winnings. But, while the fact that she'd just paid off her own offset might support that she was aware of the concept of offsets *generally*, the record evidence failed to establish that she was aware that *McNeese had any offset* outstanding against him.

The State pointed to the fact that McNeese had, in the day or days preceding the jackpot at issue, won other jackpots and would have been presented with information concerning his own outstanding offset. (Exhibit E1) (Conf. App. p. 8). However, there was no evidence presented that Slaughter had been present at the casino at all at the time McNeese had won these other jackpots, that even if present at the casino she had been standing with or by McNeese at the time of the jackpots (rather than being elsewhere in the casino), or that she would

have actually viewed McNeese's jackpot paperwork so as to become aware of the existence of offset obligations owing against him. Nor was there any evidence indicating that McNeese had informed her of the offset or (even assuming she had not in fact made a wager contingent on winning) indicated to her that his reason for having her claim the jackpot related to the offset or to any other intent to defraud. (Tr.Day2 55:12-56:7, 94:4-16, 101:6-8, 107:10-108:4, 117:23-118:5).

No copy of any offset letter generated in connection with McNeese's November 28 jackpot (e.g., the one occurring the day before the instant offense) was placed into evidence at trial. While testimony indicated that the generation and presentment to McNeese of an offset letter would have been standard policy in connection with McNeese's November 28 jackpot, no copy of any such letter from the November 28 jackpot was placed into evidence at trial, and no witness testified that they had tended to McNeese's November 28 jackpot payout or presented him with such letter at that time – much less whether they remembered Slaughter being present

to witness the handing of such a letter to McNeese. Indeed, while the record indicates that Slaughter had won her November 28 jackpot around 8:30 p.m., the record does not establish the time of McNeese's own November 28 jackpot, and whether Slaughter was even present at the casino when that earlier jackpot had been won. The record clearly demonstrates that McNeese was a frequent gambling, and he could well have visited the casino earlier in the day (or possibly on the night of November 27 into the early morning hours of November 28), without Slaughter.

Even during the period that McNeese and Slaughter are at the casino on the date of the November 29, 2020 incident, there are clearly times they are within one another's immediate vicinity and other times when they are not. See e.g. (Exhibit B2 Part 1 at 01:54:46-04:46:20 a.m.) (showing McNeese alone, without Slaughter in the room or vicinity); (Exhibit B2 Part 1 at 04:13:30-04:26:09 a.m.) (same). And while the two are shown arriving at the casino together on the evening of November 28, there is no evidence in the record

concerning the scope or duration of their relationship beyond that one evening – so as to indicate that Slaughter was entangled enough in McNeese's life to necessarily be aware of his outstanding debts or financial offset obligations.

While the record indicates that McNeese was a frequent gambler, at least during this time period, it does not indicate that Slaughter was, or that she had been to the casino other than the period from the evening of November 28 through the early morning hours of November 29. There is no indication she was present with McNeese during his earlier gambling excursions, or was in any way familiar with either his prior jackpots or his dispositions thereof on the jackpot payout forms. It could well be the case that McNeese's intention with regard to the November 29 jackpot was to secure some sort of financial gain – but there is no indication that such intention was either ever communicated to Slaughter, nor was ever independently held by her.

It is not enough to show that Slaughter made a claim to winnings that had actually been won by McNeese – it was

required that she did so either with an intent to defraud, or while knowing that McNeese had such intent to defraud. See e.g. (Jury Instruction 16) (App. p. 8) ("If Sydney Slaughter did not have the specific intent, or knowledge the others had such specific intent, she is not guilty."). Because there was insufficient evidence to establish that Slaughter had a specific intent to defraud, or that she had knowledge that McNeese had a specific intent to defraud, the record evidence fails to sustain Slaughter's conviction. Slaughter's conviction must now be reversed and remanded for dismissal.

II. The evidence was legally insufficient, as the circumstance where a winner passes his winnings to another to be claimed by the other is not encompassed by Iowa Code § 99F.15(4)(h).

A. Preservation of Error: "[A] defendant need not file a motion for judgment of acquittal to challenge the sufficiency of the evidence on direct appeal." State v. Crawford, No. 19-1506, 972 N.W.2d 189, 198 (Iowa 2022). "[A] defendant who proceeds to trial and has been convicted of a crime has, in

fact, preserved error with respect to any claim challenging the sufficiency of the evidence." Id.

B. Standard of Review: Challenges to the sufficiency of the evidence are reviewed for correction of errors at law. State v. Petithory, 702 N.W.2d 854, 856 (Iowa 2005).

C. Discussion: Even if the evidence was record evidence was factually sufficient to establish a specific intent for Slaughter to claim the winnings to assist McNeese in avoiding his offset obligations, such a circumstance is not encompassed by the statutory provision charged herein – Iowa Code § 99F.15(4)(h).

The intent to avoid offset obligations is instead covered by another provision, added by a 2022 statutory amendment. Iowa Code § 99F.15(4)(o) (2023) provides that a person committed a prohibited activity where the person "Knowingly or intentionally passes a winning wager or share to another person or provides fraudulent identification in order to avoid the application of a setoff as provided in section 99F.19." Iowa Code § 99F.15(4)(o) (2023).

An analogous by slightly different provision, Iowa Code § 99F.15(4)(n) (2023), was added under the same amendment, to cover the circumstance where winnings are passed to or claimed by a person other than the winner for the purpose of avoiding forfeiture as a voluntarily excluded person, pursuant to the processes established under § 99F.4(22). Iowa Code § 99F.15(4)(n) (2023).

The addition of these code provisions indicates that the circumstance where (1) there are actual winnings, and (2) a person other than the winner claims those winnings *with the knowledge and permission of the winner* (subsections (n) and (o)) is *different from* and *not included within* the separate statutory provision covering an intent to defraud (subsection (h)). Subsection (h) seeks to apply to circumstances where a person claims they won when they did not win, or where they claim they won an amount larger than they actually won – e.g., defrauding either the actual winner (if there was an actual winner) or defrauding the casino (if there was no actual winner or if they are seeking to claim more money than was

actually won). It does not cover a circumstance where winnings legitimately won by one person are passed to be claimed by another person.

Importantly, the two newer provisions which could potentially cover the prosecuted conduct (subsections (n) and (o)) were not added to the statute until 2022, well after the November 29, 2020 incident at issue in this prosecution. The statute as it existed and applied to Slaughter's prosecution did not cover this conduct. Thus, even if the record evidence at trial could support a factual finding that Slaughter knowingly claimed the jackpot with the intent to enable McNeese to avoid forfeiture of his winnings to his offset obligations, that conduct does not sustain a conviction under the charged provision. Slaughter's conviction must accordingly be reversed and remanded for dismissal.

III. The evidence was insufficient to establish that Slaughter did not make a wager contingent on winning the gambling game.

A. <u>Preservation of Error</u>: "[A] defendant need not file a motion for judgment of acquittal to challenge the sufficiency

of the evidence on direct appeal." State v. Crawford, No. 19-1506, 972 N.W.2d 189, 198 (Iowa 2022). "[A] defendant who proceeds to trial and has been convicted of a crime has, in fact, preserved error with respect to any claim challenging the sufficiency of the evidence." Id.

B. Standard of Review: Challenges to the sufficiency of the evidence are reviewed for correction of errors at law. State v. Petithory, 702 N.W.2d 854, 856 (Iowa 2005).

C. Discussion: The State theorized that Slaughter had violated the statute by attempting to claim the jackpot "without having made a wager contingent on winning" the gambling game. Slaughter's defense, however, noted that the record failed to establish that Slaughter had not in fact made a wager contingent on winning the gambling game.

First, portions of surveillance video capturing Slaughter and McNeese's interactions with the gambling machines over the course of the night indicate there are times at which both seem to be playing the same machine, each intermittently pushing the spin button and/or putting money into the

machine at issue. See e.g., (Exhibit B2 Part 1, at 3:46:27-3:50:27 a.m.); (Exhibit B2 Part 1, at 04:50:30-04:58:44 a.m.); (Exhibit B2 Part 2, at 05:15:07-05:23:27 a.m.). The portion of the surveillance video capturing the jackpot that is the subject of the instant prosecution depicts McNeese and Slaughter both standing in the immediate vicinity of the machine being played, and it is difficult to see whether only one or both parties are pushing the spin button on that machine. (Exhibit B1 Part 1 at 04:26:06-04:29:10 a.m.; Exhibit B5 at 04:26:06-04:29:10 a.m.; Exhibit B6 at 04:28:31 a.m.-4:29:10 a.m.).

Second, as emphasized by Slaughter's trial counsel, even assuming McNeese had been the one to push the spin button on the machine at the time of the jackpot, the record failed to establish where the money fed into the machine came from, as it could have been provided by Slaughter and amounted to her 'having made a wager contingent on winning' the gambling game. (Tr.Day3 20:7-21:24, 24:1-25:20). Indeed, there are times on the surveillance video Slaughter and McNeese appear to be shuffling in purses and pockets, potentially sharing or

exchanging funds to gamble with. See e.g., (Exhibit B2 Part 1, at 3:30:15-3:50:27 a.m.).

Under these circumstances, the record evidence was insufficient to establish that Slaughter did not make a wager contingent on winning the gambling game.

IV. The district court committed reversible error in overruling Slaughter's objection to the DCI Agent's testimony concerning his understanding of "wager".

A. Preservation of Error: Error was preserved by trial counsel's timely objection to the challenged testimony, and the trial court's overruling thereof. (Tr.Day2 15:21-16:8; Tr.Day2 97:16-98:22).

B. Standard of Review: Evidentiary trial objection rulings are reviewed for an abuse of discretion. Kurth v. Iowa Dep't of Transp., 628 N.W.2d 1, 5 (Iowa 2001).

C. Discussion:

During direct examination, the State elicited from DCI Agent Bergman:

Q So when is a wager actually placed?
Was that a confusing question? I apologize.

A No. Well, it --

[DEFENSE COUNSEL]: **Objection**, Your Honor. May we approach?

THE COURT: Sure.

(Whereupon an off-the-record discussion at sidebar was held, a record of which was previously waived by the parties.)

THE COURT: All right. **The objection is overruled. Counsel will make further record on that objection if we need to outside the presence of the Jury on one of our breaks.**

[Prosecutor], do you need the question back, or can we restate the question?

[PROSECUTOR]: Yes.

BY [PROSECUTOR]:
Q When is a wager actually placed?

A **A wager is placed -- in the context of a slot machine, the wager is placed when the machine is caused to go into its**, for lack of a better term, I'll say **spin.** So it could be when a button is pushed to cause that machine to play, or maybe in the case of a machine with a handle that's pulled, it would be when the handle is deployed. **It's not when the credits are inserted into the machine. It's when the button is actually pushed.**

Q So how do you determine who pushed the button?

A If there's a dispute, surveillance. The Casino Surveillance Department, in their systems, would be utilized to help determine that.

(Tr.Day2 15:21-16:25) (emphasis added). The matter was again addressed during cross-examination:

> Q So you would agree with me that casino policy and the law aren't necessarily the same?
>
> A The casino policies exist to help the casino comply with the various laws.
>
> Q But they're policies, and the actual letter of the law may not match up exactly; is that right?
>
> A They should be consistent with each other.
>
> Q But they may not be identical?
>
> A They're not intended to be identical.
>
> **Q Okay. Now, you told us that a wager is placed when the credits are deployed; correct?**
>
> **A Fair. Yes.**
>
> **Q And that is your opinion of when a wager is placed?**
>
> **A No, ma'am. There is -- there are case law that specifically defines when a wager is -- when a wager has occurred.**
>
> Q Well, you would agree with me, Agent, that it is not your job to tell the Jury today what the law they should follow is; is that right?
>
> A That's not my job.

Q So when you tell them that's when a wager is placed, you are not telling them that is the law they should be following. Is that fair to say?

A I'm telling them that in my 22 years of experience in my job, that's the definition of when a wager is placed.

(Tr.Day2 54:11-55:11) (emphasis added).

Later, while outside the presence of the jury, the following record was made concerning the Defense's objection to Agent Bergman's testimony, and the court's overruling thereof:

> THE COURT: Okay. Let's be seated.
> We are outside the presence of the Jury. Do either counsel wish to make a record at this time on any objection that was made? I'm not saying you should want to or don't want to, I just want to give you an opportunity to.
> [Defense Counsel], I think we did step out on an objection that you had. Is there any record – further record you would like to make?
> [DEFENSE COUNSEL]: Yes, Your Honor. **I would like to briefly summarize and put on the record, I did object to [the prosecutor's] question to Agent Bergman. She had asked him what constituted a wager. My objection was that it was an improper opinion. It would be asking him to determine a legal conclusion as one of the elements of the crime is whether or not a wager had been placed, and that was denied by the Court.**

THE COURT: Okay. [Prosecutor], any record you want to make in response to that?

[PROSECUTOR]: **The State did ask the Court to overrule that objection. The expertise of the witness on the stand, Special Agent Bergman, showed that he was not, in this case, testifying as to the ultimate issue of fact for the Jury to decide about whether Ms. Slaughter was the one who claimed it, but under what circumstances a bet is made generally, so it was just by way of general information.**

THE COURT: Okay, and my ruling was that, yes, this witness was testifying solely as to his knowledge and expertise concerning what constitutes a waiver [sic], not that he was being asked to answer the ultimate question, which was whether or not this particular Defendant had made a waiver -- or a wager. Sorry. And so that -- I think the case proceeded from there.

(Tr.Day2 97:16-98:22) (emphasis added).

During closing arguments defense counsel urged the jury to conclude reasonable doubt existed, as the State failed to prove Slaughter hadn't contributed to the funds played in the machine. (Tr.Day3 20:7-21:24, 24:10-25:20). In doing so, counsel urged the jury not to rely upon Agent Bergman's testimony concerning the meaning of a wager:

> Members of the Jury, these Jury Instructions are the law. This is the law that the Judge has instructed you to follow. Witnesses do not get to make the law. Witnesses do not get to tell you what the law is. So while Agent Bergman can sit up there and tell you that, in his opinion, a wager is when you press a button, that is not the law listed in these Jury Instructions.

(Tr.Day2 24:1-16). In response, the State argued during rebuttal closing argument:

> [McNeese is] the one who's playing it, and we all know, not just from the testimony of a 20-year veteran of DCI who does nothing but gaming for a living, that gambling means you've got the money in the machine you're sitting at, you're pushing the button.

(Tr.Day2 10-14).

Following the jury's guilty verdict, Slaughter's objection to Agent Bergman's testimony was renewed via a post-trial motion for new trial:

> 4. The jury should not have been allowed to hear evidence from the DCI agent regarding the definition of a wager.
>
> a. One of the elements of the offense of false claims of winning is that the Defendant had not made a wager contingent on winning. Because this was one of the elements, the term wager was therefore a term of art, requiring a legal definition.
>
> b. Wager was not defined anywhere in the jury instructions.

c. Defense objected to the DCI agent defining wager, stating that it was a legal determination that would invade the province of the jury and fall outside that witness's scope of expertise. The Court held that it was simply this witness's professional opinion.

d. However, when the witness was asked that it was his professional opinion he informed the jury that it was law.

e. The jury instructions and the Court are to provide the jury with the applicable law. In allowing the witness to define "wager", a legal term of art and an element of the offense, a witness was allowed to inform the jury of the law.

f. This prevented the Defendant from receiving a fair and impartial trial.

(4/13/22 Def.Mot.New Trial) (App. pp. 11-12).

The State's written resistance stated the following response:

5. The Defendant claims that the court's rulings on DCI Special Agent Bergman's testimony denied her a fair trial. Defendant does not cite authority for this assertion.

6. In [sic] Jury was instructed in Instruction No. 21 that "Words not explained in these instructions should be given their ordinary meaning." State v. White, 545 N.W. 2d 552, 555 (Iowa 1996). ("In the absence of a legislative definition of a term or a particular meaning in the law, we give words their ordinary meaning.")

7. The facts in this case show that the Defendant was standing next to the slot machine, not pushing any buttons nor pulling any levers on the slot machine, and not inserting any money into the slot machine. Under any definition, this cannot be considered "placing a wager." Nor does the Defendant does not cite any authority under which merely standing next to a slot machine could be considered "making a wager." The weight of the evidence clearly supported the verdict and the jury's guilty verdict is could clearly be rendered based on this evidence.

8. Additionally, Special Agent Bergman was allowed to testify about whether a wager was placed in this case based on his training and experience in the gambling industry. State v. Murphy, 451 N.W.2d 154, 156 (Iowa 1990) ("[I]t has long been held that a witness, either lay or expert, may testify to an 'ultimate fact which the jury must determine' Grismore v. Consolidated Prods., Co., 232 Iowa 328, 361, 5 N.W.2d 646, 663 (1942).... A contrary rule would, of course, lead to the absurd result of potentially excluding the most relevant testimony available. See Grismore, 232 Iowa at 346, 5 N.W.2d at 663." See also Iowa R. Civ. P. 5.704 ("An opinion is not objectionable just because it embraces an ultimate issue.")

(State's Resist. To Mot.New Trial) (App. pp. 13-14).

The defense motion for new trial was discussed at sentencing, and overruled by the district court:

[DEFENSE COUNSEL]: Yes, Your Honor. The defense had filed a Motion for New Trial.

THE COURT: All right. There is a pending Motion for New Trial -- let me navigate my way back to that here -- that Motion was filed on April 13 of 2022.

[Defense Counsel], you may proceed in your argument on that Motion.

[DEFENSE COUNSEL]: Thank you, Your Honor. Largely, our argument is contained within the written Motion. We do believe that the ruling regarding DCI -- the DCI Agent regarding the definition of a wager prevented Ms. Slaughter from receiving a fair and impartial trial. The DCI Agent was asked by the State what a wager was. Defense did object, saying that it was an improper opinion. That objection was overruled, and during that ruling, the Court did state that it was simply the Agent's opinion as to what a wager was based on his experience. The DCI Agent did not testify simply to his opinion, however. He went on to state to the Jury that there was case law about it and that it was the legal definition. Wager was not defined as a legal term. There was no jury instruction informing the Jury what it was. Therefore, to have allowed him to testify to a legal conclusion as to an element of the offense charged was improper and did deny Ms. Slaughter a fair and impartial trial, and we would, therefore, ask that our Motion for New Trial be granted.

Thank you.

THE COURT: Thank you, [Defense Counsel].

[Prosecutor]?

[PROSECUTOR]: Thank you.

We also filed a Resistance to the Defendant's Motion in Arrest of Judgment and Motion for New Trial, and the case law that we've cited shows that the Motion should not be granted.

Special Agent Bergman should be allowed to testify about whether a wager was placed based upon his training and experience, and the case law in Iowa Code Section – recited in the State's Resistance showed that

the persons who testified can testify as to an ultimate issue and an opinion is not objectionable just because it embraces an ultimate issue. The Jury ultimately did find the Defendant guilty and under nobody's definition of wager -- wagering or placing the wager can standing next to a machine, not putting any money in, and not pushing any buttons be considered wagering by anyone's definition, so we would ask you to overrule the Defendant's Motion.

THE COURT: All right. I have reviewed the Motion for New Trial, as well as the Resistance. I've heard the arguments of counsel. I do not believe that a Motion for New Trial or a Motion in Arrest of Judgment is proper in this matter. I do believe that the witness was satisfactorily allowed to testify on the issues before the Court, including the factual issues before the Jury, as well as touching on this issue concerning whether or not a wager had been made.

I would rely on whatever I said on the record at the time of trial concerning that testimony, and also, the arguments made by counsel for the State here today concerning the witness's qualifications that were established at the time of trial to provide that testimony. I believe that neither the weight of the evidence, nor the issue of the witness invading the province of the Jury concerning a legal question in any way supports a finding at this time by this Court that would require the granting of a motion for new trial or a motion in arrest of judgment. Therefore, those Motions are denied, and I intend to proceed with sentencing at this time.

(Sent.Tr.2:20-5:11).

The district court erred in overruling Slaughter's objections to Agent Bergman's testimony concerning the

meaning of "wager". The term is an essential element of the offense at issue, and is included in the marshalling instruction provided to the jury. See Iowa Code § 99F.15(4)(h); (Jury Instruct.16) (App. p. 8). Under the marshalling instruction, the State was required to prove that the money was claimed by Slaughter "without Sydney Slaughter having made a wager contingent on winning a gambling game." (Jury Instruct.16) (App. p. 8). There is no statutory definition of "wager", and the instructions did not further define that term. But as the State itself pointed out, the

> Jury was instructed in Instruction No. 21 that "Words not explained in these instructions should be given their ordinary meaning." State v. White, 545 N.W. 2d 552, 555 (Iowa 1996). ("In the absence of a legislative definition of a term or a particular meaning in the law, we give words their ordinary meaning.")

(4/14/22 State's Resist. to Mot.New Trial, p.2 ¶6) (App. p. 14).

In State ex rel. Turner v. Drake, 242 N.W.2d 707, 708-10 (Iowa 1976), the Iowa Supreme Court construed the meaning of "wager", as that term is generally understood and applied in the absence of a statutory definition. At issue in that case was

Iowa Code § 726.6, which applied to "Any person who records or registers bets or wagers". State ex rel. Turner v. Drake, 242 N.W.2d 707, 708 (Iowa 1976). Noting, "[t]he statute contains no definition of 'bet' or 'wager'", the Court went on to "construe these words according to their approved usage" based on how "those terms are generally understood and applied." Id. at 709. The Court "use[d] 'bet' and 'wager' interchangeably" for purposes of that statute. Id.

> Black's Law Dictionary, Revised 4th Ed., 1968, at page 203, defines 'bet' as: 'An agreement between two or more persons that a sum of money or other valuable thing, to which all jointly contribute, shall become the sole property of one or some of them on the happening in the future of an event at present uncertain, or according as a question disputed between them is settled in one way or the other.'
>
> Bouv.Law Dict. (8th Ed. (Rawle's Third Revision), 1914), p. 3414 contains this definition:
>
> > 'Wager: a bet; a contract by which two or more agree that a certain sum * * * shall be paid * * * to one of them on the happening or nonhappening of an uncertain event; * * * there must be a risk by both parties * * *; a bet is a wager, though a wager is not necessarily a bet.'

Webster's New International Dictionary, 3d Ed. (1966), puts it this way:

> 'Bet: something that is * * * staked * * * typically between two parties, on * * * any contingent issue * * *'

The rule is thus stated in 38 Am.Jur.2d, Gambling, s 3, pages 108—109 (1968):

> 'The term 'bet' is defined as the hazard of money upon an incident by which one or both parties stand to win or lose by chance. Other definitions of slightly different wording but similar import may be found. Most of them are based on the premise that both or all parties to the bet shall stand to lose by the chance. According to some modern authorities, however, this is not essential to constitute gambling, but it is enough that one of them stands to lose or win by such a chance.'

A similar definition is found in 38 C.J.S. Gaming s 1c, page 43 (1943).

[…]

It seems unnecessary to point out a bet is not unilateral. A man does not bet against himself. Someone must take the other side of an uncertain event to give a bet meaning. A bet is an agreement to pay something of value upon the happening or non-happening of a specified contingent event. […]

State ex rel. Turner v. Drake, 242 N.W.2d 707, 709-710 (Iowa 1976).

The plain meaning of wager would be satisfied upon a jury finding that Slaughter had any money at stake in the gambling game – including if she had contributed money used by McNeese to play the game, regardless of who (she or McNeese) actually pushed the button on the game. Moreover, under this plain meaning of wager, more than one person can have a stake in (wager on) the game – not just the individual that ultimately pushes the button of the machine. The instructions submitted to the jury, but-for the contrary testimony from Special Agent Bergman, would have permitted the jury to consider these plain meanings of the term "wager".

The objected-to testimony of Special Agent Bergman, however, effectively directed the jury to substitute for these plain and ordinary meanings of the term wager, the Agent's own proffered definition which he indicated was based on his expert understanding of gambling laws – e.g., that the person submitting a wager is the person who pushes the button,

without regard to who provided the money or credits to play the machine. This rendered wholly irrelevant one of Slaughter's primary theories of defense – that the State had not proven beyond a reasonable doubt that she had not made a wager contingent on winning the gambling game, where it failed to prove that she hadn't contributed some or all of the money or credits McNeese used to play the gambling machine. The district court erred in overruling Slaughter's objections to Special Agent Bergman's testimony, and Slaughter was prejudiced thereby. She must now be afforded a new trial.

CONCLUSION

For the reasons stated in Divisions I-III, Defendant-Appellant Slaughter respectfully requests that this Court reverse her conviction and remand for entry of a judgment of acquittal.

For the reasons stated in Division IV, Slaughter respectfully requests that this Court reverse her conviction and remand for a new trial.

NONORAL SUBMISSION

Oral submission is not requested unless this Court believes it may be of assistance to the Court.

ATTORNEY'S COST CERTIFICATE

The undersigned, hereby certifies that the true cost of producing the necessary copies of the foregoing Brief and Argument was $6.33, and that amount has been paid in full by the Office of the Appellate Defender.

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(f)(1) because:

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