IN THE SUPREME COURT OF IOWA
Supreme Court No. 22-0892

STATE OF IOWA,
Plaintiff-Appellee,

vs.

SYDNEY SLAUGHTER,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR BLACK HAWK COUNTY
THE HONORABLE KELLYANN M. LEKAR, JUDGE

APPELLEE'S BRIEF

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ROUTING STATEMENT

This case can be decided based on existing legal principles. Transfer to the Court of Appeals would be appropriate. Iowa R. App. P. 6.1101(3).

STATEMENT OF THE CASE

Nature of the Case

Sydney Slaughter appeals her conviction for gambling, false claim of winnings. The Honorable Kellyann Lekar presided over the trial in Black Hawk County, Iowa. The issues on appeal are whether sufficient evidence establishes her "intent to defraud," whether the evidence is legally sufficient to establish a violation of Iowa Code section 99F.15(4)(h), whether Slaughter made a "wager," and whether the DCI Agent testified as to the ultimate fact at issue.

Course of Proceedings

The State accepts the defendant's course of proceedings as adequate and essentially correct. Iowa R. App. P. 6.903(3).

Facts

Around 4:30 a.m. on the morning of November 29, 2020, Slaughter claimed a $4000 slot machine jackpot at the Isle of Capri casino in Waterloo, Iowa. Tr. Vol. II p. 26, line 22 through p. 27, line 3. The slot machines at the casino have different systems that alert

the dispatchers to the jackpot. Tr. Vol. II p. 73, lines 3-9. The dispatchers, in turn, relay the information to the slot machine attendants to check the machine and record the jackpot. Tr. Vol. II p. 73, lines 3-9.

In this case, Danielle Sifrit was the slot attendant on duty when the jackpot triggered. Tr. Vol. II p. 73, line 3 through p. 74, line 12. Sifrit walked over to the machine and inquired as to who won the jackpot. Tr. Vol. II p. 74, lines 3-12. Slaughter was at the machine and Anthony McNeese was seated at another machine two seats away. Tr. Vol. II p. 74, line 10 through p. 75, line 15. Slaughter claimed she was the person who "pushed the button" and won the money. Tr. Vol. II p. 74, line 10 through p. 75, line 15.

Sifrit started the paperwork for the jackpot. Tr. Vol. II 75, line 7 through p. 76, line 7. This paperwork includes filling out a form in triplicate that notes the date and time of the jackpot, the location of the machine on the casino floor, the amount of the jackpot, the casino patron's identification, signature, social security number, the slot attendant who recorded the jackpot, and another casino employee who verified the jackpot. Tr. Vol. II p. 75, line 7 through p. 76, line 7, p. 77, lines 2-12, Exh. C1 (redacted); Conf. App. 4.

The form also includes spaces for the taxes on the winnings. Exh. C1 (redacted); Conf. App. 4. Five percent of the winnings are automatically deducted for state taxes. Tr. Vol. II p. 77, line 2 through p. 80, line 17, Exh. C1 (redacted); Conf. App. 4. Sifrit inquired as to whether Slaughter wanted the remaining 95% to pay federal income tax or to be applied to any court-ordered offsets that she may have. Tr. Vol. II p. 80, line 13 through p. 81, line 12. Slaughter wanted the remaining 95% --$3800 -- to be applied to federal taxes. Tr. Vol. II p. 81, line 8 through p. 82, line 22, Exh. C1 (redacted); Conf. App. 4.

Sifrit, however, recalled a man sitting at the machine when she had walked by the winning machine a few minutes earlier. Tr. Vol. II p. 82, line 11 through p. 83, line 4. She asked the surveillance team to review the footage of the jackpot win. Tr. Vol. II p. 82, line 23 through p. 83, line 12. The surveillance team reviewed the video and determined that Slaughter did not win the jackpot. Tr. Vol. II p. 87, line 1 through p. 88, line 21. Rather, Anthony McNeese, who had arrived with Slaughter at the casino, actually won the jackpot. Tr. Vol. II p. 46, line 24 through p. 48, line 5. Surveillance videos show McNeese at the slot machine with Slaughter standing off to his left. Exh. B part 1 (4:28:32-4:28:55), Exh. B5 (4:48:32 – 4:28:55), Exh. B6

(4:28:40-4:31:26). When the machine triggered the jackpot, McNeese moved over two machines to the right while Slaughter sat in the chair in front of the winning machine. Exh. B part 1 (4:28:32-4:28:55), Exh. B5 (4:48:32 – 4:28:55), Exh. B6 (4:28:40-4:31:26).

Sifrit contacted her supervisor, Jesse McCarvel, and the security supervisor about Slaughter's claim. Tr. Vol. II p. 87, line 10 through p. 88, line 21, p. 113, line 8 through p. 114, line 20. McCarvel asked Slaughter if she won the jackpot. Tr. Vol. II p. 113, line 8 through p. 114, line 20. She appeared flustered by the question and admitted that McNeese won the jackpot and she claimed it for him. Tr. Vol. II p. 113, line 8 through p. 114, line 20.

The casino officials would not allow Slaughter to claim the jackpot and required McNeese to claim it. Tr. Vol. II p. 87, line 23 through p. 88, line 21, p. 113, line 20 through p. 114, line 20. McNeese was "not happy" that he won the jackpot but provided his name, social security number, and signed the form to claim the jackpot. Tr. Vol. II p. 88, lines 13-21. After the five percent deduction for state taxes, McNeese wanted the remaining 95% to be applied to his federal income tax. Tr. Vol. II p. 88, line 17 through p. 90, line 11, Exh. C2; Conf. App. 5.

ARGUMENT

I. SUFFICIENT EVIDENCE EXISTS IN THE RECORD TO ESTABLISH THE DEFENDANT HAD THE SPECIFIC INTENT TO DEFRAUD TO SUPPORT THE HER CONVICTION FOR GAMBLING, FALSE CLAIM OF WINNING.

Preservation of Error

The State does not contest error preservation on the motion for judgment of acquittal or the motion for new trial in light of *State v. Crawford*, 972 N.W.2d 189, 198 (2022).

Standard of Review

Sufficiency of the evidence claims are reviewed for correction of errors at law. *State v. Sanford*, 814 N.W.2d 611, 615 (Iowa 2012). In reviewing challenges to the sufficiency of evidence supporting a guilty verdict, courts consider all of the record evidence viewed "in the light most favorable to the State, including all reasonable inferences that may be fairly drawn from the evidence." *Id.*

Merits

To prove the crime of gambling, false claim of winnings, the court instructed the jury the State had to show:

1. On or about the 29th day of November, 2020, Sydney Slaughter or someone Sydney Slaughter aided and abetted, conspired with, or entered into a common scheme of design with, did claim, collect or take or attempt to claim, collect or take money from a gambling game.

2. Sydney Slaughter or someone Sydney Slaughter aided and abetted, conspired with, or entered into a common scheme of design with had the specific intent to defraud.

3. The money was claimed, collected or taken or was attempted to be claimed, collected or taken without Sydney Slaughter having made a wager contingent upon winning a gambling game.

If you find the State has proven all of the elements then Sydney Slaughter is guilty of Gambling, False Claim of Winnings. If the State has failed to prove any one of elements 1, 2, or 3, then you shall find Sydney Slaughter not guilty of Gambling, False Claims of Winnings.

Jury Instr. 16; App. 8. The court also instructed the jury that "specific intent" means:

> . . . not only being aware of doing an act and doing it voluntarily, but in addition, doing it with a specific purpose in mind.
>
> Because determining Sydney Slaughter's specific intent requires you to decide what she was thinking when an act was done, it is seldom capable of direct proof. Therefore, you should consider the facts and circumstances surrounding the act to determine Sydney Slaughter's specific intent. You may, but are not required to, conclude a person intends the natural results of her acts.

Jury Instr. 19; App. 9. The jury could reasonably infer that Slaughter had the "specific intent to defraud" when she claimed the jackpot that Anthony McNeese won.

The evidence established that Slaughter arrived at the casino with McNeese. Exh. B2 part 1 (3:14:20-3:14:54). He dropped her off at the front of the casino and he parked his truck and entered the casino through a different door. Exh. B2 part 1 (3:14:20-3:3:19:20) The two eventually meet up on the casino floor and play the slot machines near each other. Exh. B2 part 1 (3:46:20-4:44:07). For the next hour, Slaughter and McNeese interacted with one another while playing the slot machines. Exh. B2 part 1 3:46:20-4:44:07.

At 4:24, McNeese played the slot machines on row B of the "high limits" area. Tr. Vol. II p. 33, line 2 through p. 34, line 4, Exh. B2 part 1 (4:24:05-4:28:49). Slaughter stood next to McNeese and watched while McNeese played a slot machine. Exh. B2 part 1 (4:26:11-4:29:10). At 4:28:49, McNeese scored a jackpot and then moved to a different slot machine two seats away while Slaughter slid into the chair in front of the winning machine and claimed the jackpot. Exh. B2 part 1 (4:28:40-4:29:04). Slaughter claimed the jackpot by providing her name, identification, and social security number to the slot attendant. Tr. Vol. II p. 81, lines 4-23. After the casino applied the five percent share for state taxes, Slaughter had a choice as to where the remaining 95% of the jackpot went. Tr. Vol. II

p. 19, line 18 through p. 26, line 8. She could have applied it to federal taxes, to an offset, or if she did not have an offset, she could have collected the jackpot. Tr. Vol. II p. 19, line 18 through p. 26, line 8. Slaughter, however, did not have an offset. She won a jackpot the day before and paid off her existing obligation. Tr. Vol. II p. 109, line 18 through p. 110, line 7, Exhs. D1, D2; Conf. App. 6, 7. In the jackpot she claimed for McNeese, she applied the 95% remainder to federal taxes. Exh. C1 (redacted); Conf. App. 4.

If Slaughter collected the jackpot winnings, that meant that McNeese did not have to make the decision where to apply the winnings. This is important because McNeese had outstanding obligations for child support and a sizeable court debt in Linn County that totaled over $40,000. Tr. Vol. II p. 27, line 22 through p. 28, line 9. It makes sense that McNeese would gamble, win a jackpot, and then allow someone else to collect the jackpot. The inference to draw is that by having Slaughter collect the jackpot, McNeese could avoid paying the offset.

Slaughter makes much of the fact that there was little evidence that she knew about McNeese's outstanding court debt. The intent to defraud could apply to her aiding and abetting McNeese's avoidance

of his obligations but the intent to defraud is also evidenced by the fact that she knew she could not claim someone else's jackpot. Slaughter, like McNeese, had experienced in winning jackpots. Tr. Vol. II p. 109, line 18 through p. 110, line 7, pl. 111, line 14 through p. 113, line 4, Exhs. D1, D2; App. 6, 7. As discussed above, Slaughter won a jackpot the day before. Tr. Vol. II p. 109, line 18 through p,. 110, line 7, pl. 111, line 14 through p. 113, line 4, Exhs. D1, D2; App. 6, 7. She knew the process for collecting jackpots, the tax implications, and the offset. Tr. Vol. II p. 111, line 14 through p. 113, line 4. She knew that the winner had to collect the jackpot and her decision to collect the jackpot for McNeese was improper.

Likewise, the evidence also supports her knowledge that McNeese also had the intent to defraud. The reason that people go to casinos to gamble is for a chance to win money. When, as in this case, McNeese won the jackpot but did not claim it and asked her to claim it, a reasonable jury could infer that she knew what she was doing was wrong, thereby establish her knowledge of McNeese's intent to defraud. The evidence supports the jury's verdict.

II. THE EVIDENCE IS LEGALLY SUFFICIENT TO ESTABLISH THAT THE DEFENDANT'S CONDUCT VIOLATED IOWA CODE SECTION 99F.15(4)(h).

Preservation of Error

The State does not agree Slaughter preserved error on her claim. Slaughter cites to *Crawford* to support her claim that she need not preserve error because "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." *Crawford*, 972 N.W.2d at 198. But *Crawford* does not apply in this instance because Slaughter is not challenging whether the facts support crime. Rather, Slaughter argues that her conduct does not amount to a violation of the charged offense, Iowa Code section 99F.15(4)(h). On appeal she claims her actions in claiming the winnings to avoid his offset obligations "is not encompassed by the statutory provision charged herein. . ." Def. Brief at 33. She is, in essence, claiming that her conduct does not "constitute the offense charged" in the information. To preserve the claim for appeal, Slaughter should have filed a pretrial motion to dismiss. Iowa R. Crim. P. 2.11(6)(a); *State v. Majeres*, No. 01-1805, 2002 WL 31031048 at *2 (Sept. 11, 2002) (the issue before the court should have been whether the facts set forth in

the trial information and minutes constitute a crime). This claim presents a question of law for the court, not a question of fact for the jury. *Sweeney v. City of Bettendorf*, 762 N.W.2d 873, 880 (Iowa 2009). The claim should not be considered.

Standard of Review

Review is for correction of errors at law. *See generally Hedlund v. State*, 875 N.W.2d 720, 724 (Iowa 2016) (superseded on other grounds by Iowa R. Civ.P. 1.904(3) and (4) as stated in cmt.)

Merits

Next, Slaughter makes the novel argument that if the evidence was "factually sufficient to establish her specific intent to claim the winnings and assist McNeese in avoiding his offset obligations," the crime charged, section 99F.15(4)(h), did not apply. Def. Brief at 33. She bases this claim on the fact that a 2022 amendment to section 99F.15(4) added additional provisions that could apply to her conduct. Def. Brief at 32-35. One of the newly-added sections prohibits a person from:

> Knowingly or intentionally passes a winning wager or share to another person or provides fraudulent identification in order to avoid the forfeiture of any money or thing of value as a voluntarily excluded person pursuant to the processes established under section 99F.4, subsection 22.

Iowa Code § 99F.15(4)(n)(2023). The other provision prohibits a person from:

> 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). According to Slaughter, if these code sections were added after her conduct occurred and these sections "could potentially cover the prosecuted conduct," the statute used to prosecute her, section 99F.15(4)(h), did not apply to her conduct. Def. Brief at 35. This claim fails for three reasons.

First, section 99F.15(4)(h) covers Slaughter's conduct in that she attempted to claim the jackpot with the intent to defraud without making a wager. Tr. Vol. II p. 113, line 8 through p. 114, line 20. Her intent to defraud, can be established by her own conduct in knowingly claiming the jackpot. Tr. Vol. II p. 113, line 8 through p. 114, line 20. She initially lied to the slot machine attendant when she claimed the jackpot knowing she did not win it. Tr. Vol. II p. 113, line 8 through p. 114, line 20.

Second, the new provisions more accurately embrace McNeese's conduct, not hers. He was the one who passed his win to Slaughter to avoid having to pay his debts." Arguably, she could aid and abet his

actions, but at first blush, these sections would not necessarily cover her conduct.

Third, the fact that the legislature enacted more specific provisions – which were not in effect at the time Slaughter committed her crime – does not establish that her conduct did not constitute a violation of section 99F.15(4)(h). There are any number of provisions in the code that might overlap depending on the conduct in a particular instance. *State v. Zacarias*, 958 N.W.2d 573, 585 (Iowa 2021) (citing *State v. Alvarado*, 875 N.W.2d 713, 718 (Iowa 2016) (noting it is common for the same conduct to be subject to different criminal statutes)); *State v. Perry*, 440 N.W.2d 389, 391 (Iowa 1989) (recognizing that a defendant's conduct may violate more than one statutory provision). Simply because the legislature enacted new legislation that was more specific but overlaps with existing law does not mean that Slaughter did not violate section 99F.15(4)(h). Rather, the prosecutor, in exercising discretion, may select the offense to charge. *Alvarado*, 875 N.W.2d at 718 (citing *State v. Johns,* 140 Iowa 125, 131, 118 N.W. 295, 298 (1908) ("It often happens that a defendant, by the same criminal act, violates more than one criminal statute. And it is not true as a legal proposition that, if his criminal act

is covered by one statute, it cannot be covered by another.")). In this instance the jury correctly found Slaughter committed a violation of Iowa Code § 99F.15(4)(h). The legislature's subsequent creation of two additional crimes under subsection 99F.15(4) does not impact Slaughter's conviction nor should it indicate any retroactive inference of legislative intent.

III. SUFFICIENT EVIDENCE EXISTS IN THE RECORD TO ESTBLISH THAT THE DEFENDANT DID NOT MAKE A "WAGER."

Preservation of Error

The State does not contest error preservation on the motion for judgment of acquittal or the motion for new trial. *Crawford*, 972 N.W.2d at 198.

Standard of Review

Sufficiency of the evidence claims are reviewed for correction of errors at law. *Sanford*, 814 N.W.2d at 615. In reviewing challenges to the sufficiency of evidence supporting a guilty verdict, courts consider all of the record evidence viewed "in the light most favorable to the State, including all reasonable inferences that may be fairly drawn from the evidence." *Id.*

Merits

Slaughter also challenges to the sufficiency of the evidence and claims that the evidence did not show she "did not make a wager contingent on winning the gambling game." Def. Brief at 35. This claim is not supported by the record.

At trial, the State called Jesse McCarvel who, at the time of the incident, was a casino supervisor shift manager. Tr. Vol. II p. 106, line 13 through p. 109, line 3. On November 29, 2020, Danielle Sifrit, the slot attendant on duty, contacted him about a jackpot that did not seem right. Tr. Vol. II p. 113, lines 5-23. He told her to call surveillance which she did. Tr. Vol. II p. 113, lines 5-23. The surveillance team determined that Anthony McNeese, not Slaughter hit the jackpot. Tr. Vol. II p. 113, lines 5-23.

McCarvel and Sifrit returned to the winning machine to redo the paperwork for the jackpot. Tr. Vol. II p. 113, line 20 through p. 114, line 6. McCarvel described his conversation with Slaughter:

> I approached her, and I said, were you the one that had hit this jackpot? Like were you the one that had hit the button? She seemed really kind of flustered, kind of out of sorts. She said, I – I think so, and then I went on to explain to her that it is against the law to claim somebody else's jackpot due to, like, tax evasion, everything like that. And eventually, she ended up telling me, no, it was actually Anthony that had hit it; that she was claiming it for him.

Trial Tr. Vol. II p. 114, lines 10-20. This evidence establishes that Slaughter did not hit the button to win the jackpot. If she did not hit the button to win the jackpot, she did not make a wager as the statute requires. Moreover, the video surveillance supports this statement as Slaughter's arms do not appear to raise in any way to hit the button to make the wager. Exh. B5 (4:48:32 – 4:48:55), Exh. B6 (4:28:40-4:31:26).

Slaughter argues, however, that the surveillance video does not affirmatively show that McNeese made the wager as she and Slaughter are standing by the machine when the jackpot triggered. Def. Brief. at 36. The State disputes this claim. There are three separate videos from different locations. Exh. B part 1 (4:28:32-4:28:55), Exh. B5 (4:48:32 – 4:48:55), Exh. B6 (4:28:40-4:31:26). When considered together, these videos demonstrate that Slaughter did not make a wager on the slot machine when it triggered the jackpot. Exh. B part 1 (4:28:32-4:28:55), Exh. B5 (4:48:32 – 4:28:55), Exh. B6 (4:28:40-4:31:26). The jury watched the video and made its own determination as to what the videos showed. *State v. Liggins*, 557 N.W.2d 263, 269 (Iowa 1996) ("A jury is free to believe

or disbelieve any testimony as it chooses and to give as much weight to the evidence as in its judgment, such evidence should receive.") The guilty verdict demonstrates the jury did not believe Slaughter made a wager yet claimed the jackpot as her own. Her conviction must be affirmed.

IV. THE DISTRICT COURT CORRECTLY ALLOWED THE DCI AGENT TO TESTIFY ABOUT WHAT CONSISTUTES A "WAGER."

Preservation of Error

The State does not contest error preservation. Slaughter objected to the agent's testimony and obtained an adverse ruling. Tr. Vol. II p. 15, line 21 through p. 16, line 8, p. 97, line 16 through p. 98, line 22. *See Lamasters v. State*, 821 N.W.2d 856, 862 (Iowa 2012) ("It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal." (quoting *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002)).

Standard of Review

Evidentiary rulings are reviewed for an abuse of discretion. *State v. Neiderbach*, 837 N.W.2d 180, 190 (Iowa 2013).

Merits

The district court correctly overruled Slaughter's objection to Agent Bergman's testimony regarding when a wager is placed. The agent testified to his understanding of a "wager" given his experience in the gaming bureau of the Iowa Division of Criminal Investigation. As the district court noted, the agent did not testify as to the ultimate fact at issue but solely to his knowledge and expertise in the area.

Expert witnesses may provide the factfinder with an opinion that "embraces an ultimate issue to be decided;" but the witness may not express an opinion on the defendant's guilt or innocence. *State v. Smith*, 522 N.W.2d 591, 593 (Iowa 1994); *see* Iowa R. Evid. 5.704. A "fine line" often arises in specific intent crimes between an expert's "opinions which improperly express guilt or innocence in cases involving specific intent crimes and those which properly compare or characterize the defendant's conduct based on the facts of the case so as to assist the jury in understanding the evidence or to determine a fact in issue." *State v. Dinkins*, 553 N.W.2d 339, 341 (Iowa Ct. App. 1996). One formulation of the "line" is that although the expert may discuss how certain facts are associated with the party's theory generally, the expert cannot opine that the defendant possessed the

intent at issue. *See State v. Oppedal*, 232 N.W.2d 517, 524 (Iowa 1975) (narcotics officer could not testify to his opinion the defendant possessed a quantity of drugs with intent to deliver, such opinion was tantamount to permitting the witness to testify he had an opinion as to defendant's guilt).

After the district court denied Slaughter's objection, the prosecutor and Agent Bergman had the following exchange:

> PROSECUTOR: When is a wager actually placed?
>
> BERGMAN: 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.

Tr. Vol. I p. 16, lines 13-21. Slaughter contends Agent Bergman's testimony was improper because whether she placed a wager was an essential element of the offense and this testimony impacted her defense. Def. Brief at 48. Slaughter's claim lacks merit.

As set forth above, an expert witness may provide an opinion that "embraces an ultimate issue to be decided;" but the witness may not express an opinion on the defendant's guilt or innocence. *State v. Smith*, 522 N.W.2d 591, 593 (Iowa 1994). That is what occurred in

this case. Agent Bergman testified to his opinion on what constitutes a wager based upon his 22 years in enforcing gaming laws. Tr. Vol. II p. 54, line 20 through p. 55, line 11. Notably, this definition did not comment on whether Slaughter made a wager as that issue was left for the jury.

In Agent Bergman's opinion, a wager occurs when "the machine goes into a spin." Tr. Vol. I p. 16, lines 13-21. There was no evidence that a wager occurs by any other means. The surveillance video showed that Anthony McNeese, not Slaughter, placed the wager by pushing the button that caused the slot machine to go into its spin. Exh. B5 (4:48:32 – 4:28:55), Exh. B6 (4:28:40-4:31:26). That spin triggered the jackpot which Slaughter claimed. Exh. B5 (4:48:32 – 4:28:55), Exh. B6 (4:28:40-4:31:26). Thus, Agent Bergman's testimony provided an opinion only as to how a wager is placed. Again, he did not testify as to whether or not Slaughter placed the wager.

On appeal, Slaughter also claims that Agent Bergman's testimony foreclosed her ability to establish whether she placed a "wager" as that term is commonly understood. Slaughter argues there is no statutory definition of wager nor was one given in the

instructions. Def. Brief at 48. She then cites to several definitions and a 1976 case to support her claim that but for the testimony of Agent Bergman, the jury would have been permitted to consider these plain meanings. Def. Brief at 51. If Slaughter had a problem with the jury instruction, she could have objected to the instructions and offered the case or the definitions for the district court. She did not. Further, she is hard-pressed to claim prejudicial error when, on cross-examination, she offered no other definition of "wager" when she challenged the agent's testimony:

> DEFENSE COUNSEL: Okay. Now you told us that a wager is placed when the credits are deployed; correct?
>
> AGENT BERGMAN: Fair. Yes.
>
> DEFENSE COUNSEL: And that is your opinion of when a wager is placed?
>
> AGENT BERGMAN: No, ma'am. There is – there are case law that specifically defines when a wager is – when a wager has occurred.
>
> DEFENSE COUNSEL: Well, you would agree with me, Agent, that is not your job to tell the Jury today what the law they should follow is; is that right?
>
> AGENT BERGMAN: That's not my job.
>
> DEFENSE COUNSEL: 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?

> AGENT BERGMAN: 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. Vol. II p. 54, line 20 through p. 55, line 11. If Slaughter disputed the definition, she could have questioned the agent differently and inquired about other definitions or provided the district court with one of the definitions when discussing jury instructions. In fact, when discussing the motion for "directed verdict," counsel admitted "I haven't been able to find a case that says a definition of a wager." Tr. Vol. II p. 121, line 15 through p. 122, line 3. The court correctly overruled the objection to the agent's testimony.

Finally, Slaughter claims that the State failed to show that she had not "contributed some or all of the money or credits McNeese used to play the gambling machine." Def. Brief at 52. This claim does not impact the case because it does not meet the definition of wager that was before the jury. And, even if it did, the State was not required to disprove every possible scenario to establish her guilt. *State v. Ernst*, 954 N.W.2d 50, 57 (Iowa 2021) (the State need not discredit every other potential theory to be drawn from circumstantial evidence); *State v. Bentley*, 757 N.W.2d 257, 263 (Iowa 2008) (while the absence of direct evidence that the defendant abducted the victim

from her house cannot disprove the hypothesis that someone else removed the victim to the trailer, the State is not tasked with such an onerous burden). The district court correctly overruled the objection.

CONCLUSION

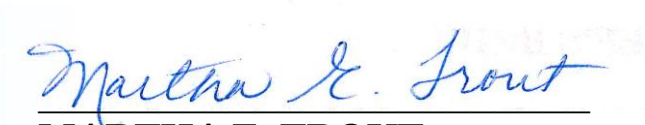
The defendant's conviction for gambling, false claim of winnings must be affirmed.

REQUEST FOR NONORAL SUBMISSION

This case involves routine challenges to the sufficiency of the evidence and the exercise of the district court's discretion. Oral argument is not necessary to resolve the claims. In the event argument is scheduled, the State requests to be heard.

Respectfully submitted,

BRENNA BIRD
Attorney General of Iowa



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