

IN THE COURT OF APPEALS OF IOWA

No. 0-276 / 09-0877
Filed May 26, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

INAAM JASSEM HASHEM AL-YASIRI,
Defendant-Appellant.

Appeal from the Iowa District Court for Johnson County, Douglas S. Russell, Judge.

Defendant appeals her convictions for identity theft and theft in the second degree. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Stephan J. Japuntich, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Elisabeth S. Reynoldson, Assistant Attorney General, Janet M. Lyness, County Attorney, and David V. Tiffany, Assistant County Attorney, for appellee.

Considered by Vaitheswaran, P.J., Doyle, J., and Mahan, S.J.* Tabor, J., takes no part.

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

MAHAN, S.J.**I. Background Fact & Proceedings**

In December 2005, Hana Hassan purchased a GMC Envoy. She financed the purchase through the University of Iowa Community Credit Union. Documents at the time of the purchase show Hassan's address as 1711 A Ave. Northeast, Cedar Rapids. Roger McMorris, who was the boyfriend of Hassan's friend Inaam Al-Yasiri, co-signed a credit application and motor vehicle purchase agreement. In order to qualify for financing through the credit union, Hassan opened a savings account there, and McMorris also co-signed a document to open that account. Within a short period of time Hassan became unable to make payments on the vehicle, and she agreed that Al-Yasiri would take the vehicle and make the payments on it.

In November 2006 a checking account and Visa credit card account were opened under the name of Hana Hassan at the credit union. The documents were signed in block print, rather than in cursive, as had been used in the December 2005 documents. The documents to open these new accounts showed an address of P.O. Box 2777, Cedar Rapids. The post office box was rented by Al-Yasiri. The credit union suffered a loss on the accounts.

Hassan became aware in July 2007 that the checking and credit card accounts had been opened under her name. She reported the matter to the Iowa City Police Department. A search warrant was obtained for Al-Yasiri's home and vehicle. In the car officers found a fanny pack which contained Al-Yasiri's

driver's license and passport, the social security cards for her children, and a credit union membership card and Visa debit card in the name of Hana Hassan.

Al-Yasiri admitted to police officers that she was unable to write in cursive. She also admitted to using Hassan's identity to open the bank accounts. She claimed Hassan had agreed to permit her to open these accounts.

A jury found Al-Yasiri guilty of identity theft exceeding \$1000 and second-degree theft. She was sentenced to a term of imprisonment not to exceed five years on each charge, to be served concurrently. Al-Yasiri appeals her convictions.

II. Ineffective Assistance

Al-Yasiri contends she received ineffective assistance of counsel at her criminal trial. We review claims of ineffective assistance of counsel de novo. *State v. Bergmann*, 600 N.W.2d 311, 313 (Iowa 1999). To establish a claim of ineffective assistance of counsel, a defendant must show (1) the attorney failed to perform an essential duty, and (2) prejudice resulted to the extent it denied defendant a fair trial. *State v. Shanahan*, 712 N.W.2d 121, 136 (Iowa 2006). Absent evidence to the contrary, we assume that the attorney's conduct falls within the wide range of reasonable professional assistance. *State v. Hepperle*, 530 N.W.2d 735, 739 (Iowa 1995).

A. Al-Yasiri claims she received ineffective assistance because her trial counsel did not object to the admission of the State's exhibits on the grounds of the Confrontation Clause. These exhibits were: (1) credit application for the vehicle; (2) motor vehicle purchase agreement; (3) member application for a

credit union savings account; (4) member application for a credit union checking account; (5) Visa credit card application; (6) report showing cash withdrawals; (7) currency transaction report; (8) Visa debit card, credit union membership card, and Iowa driver's license; (9) bill for post office box; (10) Hassan's driver's license photograph; (11) Al-Yasiri's driver's license photograph; and (12) Visa billing statement.

Under the Confrontation Clause, a witness's testimony against a defendant is inadmissible unless the witness appears at trial, or if the witness is unavailable, the defendant had a prior opportunity for cross-examination. *Crawford v. Washington*, 541 U.S. 36, 61, 124 S. Ct. 1354, 1370, 158 L. Ed. 2d 177, 198 (2004). The constraints of the Confrontation Clause apply only to "testimonial statements." *Davis v. Washington*, 547 U.S. 813, 822, 126 S. Ct. 2266, 2273, 165 L. Ed. 2d 224, 237 (2006). Testimonial statements include those made under circumstances that would lead witnesses to objectively believe the statements might be used at trial. *Crawford*, 541 U.S. at 52, 124 S. Ct. at 1364, 158 L. Ed. 2d at 193.

The United States Supreme Court has stated:

Business and public records are generally admissible absent confrontation not because they qualify under an exception to the hearsay rules, but because—having been created for the administration of an entity's affairs and not for the purpose of establishing or proving some fact at trial—they are not testimonial.

Melendez-Diaz v. Massachusetts, ___ U.S. ___, ___, 174 S. Ct. 2527, 2539-40, 174 L. Ed. 2d 314, 329 (2009). In addition, the Iowa Supreme Court has determined a defendant's driving record was not testimonial where it "was

created *prior* to the events leading up to his criminal prosecution.” *State v. Shipley*, 757 N.W.2d 228, 237 (Iowa 2008). The court noted the “driving record would exist even if there had been no subsequent criminal prosecution.” *Id.*

The documents presented by the State in this case were not created for the purposes of trial. They were created as business records during the regular course of business. We conclude the documents were not testimonial, and the admission of the records did not violate the Confrontation Clause. Al-Yasiri did not receive ineffective assistance due to counsel’s failure to object to the documents on the grounds of the Confrontation Clause.

B. Al-Yasiri additionally claims defense counsel should have objected on Confrontation Clause grounds to the following testimony by Hassan:

Q. After that, did you learn that there was a checking account in your name? A. They told me that they needed \$10,000 and that’s from the credit that she issued—or that she got from the bank.

Q. And how did she get that money from the bank? A. They give me papers that she had put in her name and signed her name with her boyfriend. Yes.

Q. Do those papers indicate that she signed her name or your name? A. My name. She signed the checks, her boyfriend checks, in my name and then she withdrew the money. He wrote checks to her, but he does not have money in that bank.

It is not clear from Hassan’s testimony who the “they” is that she refers to in the answers to the first two questions. Al-Yasiri assumes this refers to the credit union. If this indeed is the case, a representative from the credit union, Jacki Kuepker, testified at the trial and could have been cross-examined on these issues. The third answer contains factual assertions by Hassan, who was being questioned at the time. We conclude Al-Yasiri has failed to show ineffective

assistance due to trial counsel's failure to object to Hassan's testimony on the basis of the Confrontation Clause.¹

C. Al-Yasiri asserts defense counsel should have objected to exhibits 6 and 7 on the grounds of hearsay. Generally, hearsay is not admissible. Iowa R. Evid. 5.802. "Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Iowa R. Evid. 5.801(c). The rules of evidence contain certain exceptions to the general rule of inadmissibility for hearsay. See Iowa Rs. Evid. 5.803, 5.804. A party seeking to present hearsay evidence has the burden of proving it falls within an exception to the hearsay rule. *State v. Long*, 628 N.W.2d 440, 443 (Iowa 2001).

Exhibit 6 is a cash withdrawal receipt showing \$7000 was withdrawn from Hassan's account at 1:17 p.m. on October 24, 2006, and another showing \$5000 with withdrawn at 4:22 p.m. that same day. Both of these receipts are signed "Hana Hassan" in block print. Exhibit 7 is a currency transaction report showing a total of \$12,000 was withdrawn from Hassan's account on October 24, 2006. Al-Yasiri claims the record fails to indicate the origin of these exhibits.

The State contends the exhibits were properly admitted as business records under rule 5.803(6). In *State v. Reynolds*, 746 N.W.2d 837, 842 (Iowa 2008), the Iowa Supreme Court held that to be admissible as business records there must be a showing "that the record be *made* by, or from information

¹ Al-Yasiri's appellate brief makes a bare statement that Hassan's testimony was hearsay. She cites no authority and makes no further argument on this issue. We conclude the issue has been waived. See Iowa R. App. P. 6.903(g)(3) ("Failure to cite authority in support of an issue may be deemed waiver of that issue.").

transmitted by, a person with knowledge.” The court concluded certain Federal Reserve bank reports were inadmissible because “there is no testimony from anyone with knowledge of how [the exhibits] were generated.” *Reynolds*, 746 N.W.2d at 843.

As noted above, a representative of the credit union, Kuepker, testified during the trial. Kuepker identified the receipts in Exhibit 6 as coming from the Coralville branch of the credit union and explained the purpose of the receipts. She stated signatures were required as part of the procedure when a person was withdrawing cash. Kuepker also identified Exhibit 7, the currency transaction report. She explained the credit union was required to submit such a report on cash transactions over \$10,000. We determine Kuepker’s testimony adequately exhibited knowledge that Exhibits 6 and 7 were generated by the credit union. We conclude the exhibits were admissible under the business records exception to the hearsay rule. Al-Yasiri has not shown ineffective assistance due to defense counsel’s failure to object to these exhibits on hearsay grounds.

III. Sufficiency of the Evidence

Al-Yasiri claims the district court should have granted her motion for judgment of acquittal and her motion for new trial because there was insufficient evidence in the record to show she was the person who improperly used Hassan’s identity or that she received money from this deception.

We review challenges to the sufficiency of the evidence in a criminal case for the correction of errors at law. *State v. Heuser*, 661 N.W.2d 157, 165 (Iowa 2003). The fact-finder’s verdict will be upheld if it is supported by substantial

evidence. *Id.* at 165-66. Substantial evidence means evidence that could convince a rational fact finder that the defendant is guilty beyond a reasonable doubt. *State v. Shortridge*, 589 N.W.2d 76, 80 (Iowa Ct. App. 1998). We view the evidence in the light most favorable to the State. *State v. Padavich*, 536 N.W.2d 743, 751 (Iowa 1995).

We conclude there is substantial evidence in the record to support the jury's verdict. The applications to open a checking account and obtain a credit card were signed in block print. The cash withdrawal slips were signed with Hassan's name in block print. Al-Yasiri admitted she could not write in cursive. The address used in the application was a post office box rented by Al-Yasiri. A debit card and membership card issued by the credit union were found in a fanny pack with Al-Yasiri's driver's license. Furthermore, Al-Yasiri admitted to officers that she had used Hassan's name to open the accounts. The credit union suffered a loss on these accounts.

Additionally, the district court did not abuse its discretion in denying the motion for new trial. We find the jury's verdict is not contrary to the weight of the evidence. *See State v. Ellis*, 578 N.W.2d 655, 659 (Iowa 1998).

We affirm Al-Yasiri's convictions for identity theft exceeding \$1000 and theft in the second degree.

AFFIRMED.