

IN THE COURT OF APPEALS OF IOWA

No. 9-1047 / 09-0416
Filed March 10, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

BRIAN EDWARD REYNOLDS,
Defendant-Appellant.

Appeal from the Iowa District Court for Muscatine County, Paul L. Macek,
Judge.

Reynolds appeals his convictions for theft and forgery. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Bradley M. Bender,
Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney
General, Gary Allison, County Attorney, and Susan R. Krisko and Becky S.
Goettsch, Assistant County Attorneys, for appellee.

Considered by Eisenhauer, P.J., Potterfield, J., and Huitink, S.J.*

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

EISENHAUER, P.J.

After a bench trial in November 2005, Reynolds was found guilty of first-degree theft and forgery. In April 2008, the Iowa Supreme Court reversed his convictions and remanded for a new trial. After a jury trial in January 2009, Reynolds was convicted of one count of first-degree theft and four counts of forgery. On appeal Reynolds argues there is insufficient evidence to support his convictions, and alternatively argues he received ineffective assistance of counsel. We affirm.

I. Insufficient Evidence.

At the conclusion of the State's evidence, Reynolds unsuccessfully moved for a judgment of acquittal claiming insufficient evidence on the knowledge and intent elements of the charges. This motion was not renewed. Therefore, error is waived. *Mueller v. St. Ansgar State Bank*, 465 N.W.2d 659, 660 (Iowa 1991).

II. Ineffective Assistance of Counsel.

In the alternative, Reynolds argues failure to preserve error on his insufficient evidence claims constitutes ineffective assistance of counsel. In order to prevail on his claims of ineffective assistance of counsel, Reynolds must show (1) counsel failed to perform an essential duty, and (2) prejudice resulted. See *State v. Lane*, 726 N.W.2d 371, 393 (Iowa 2007). His inability to prove either element is fatal. See *State v. Greene*, 592 N.W.2d 24, 29 (Iowa 1999). We evaluate the totality of the relevant circumstances in a de novo review. *Lane*, 726 N.W.2d at 392.

We normally preserve ineffective-assistance-of-counsel claims for postconviction relief proceedings. *State v. Reynolds*, 670 N.W.2d 405, 411 (Iowa 2003). Direct appeal is appropriate, however, when the record is adequate to determine as a matter of law the defendant will be unable to establish one or both of the elements of the ineffective-assistance claim. *Id.* Here, the record is adequate to resolve this issue on direct appeal.

Trial counsel has no duty to make a meritless motion. See *State v. Griffin*, 691 N.W.2d 734, 737 (Iowa 2005). Therefore, we consider the sufficiency of the evidence to support the jury's verdict. The jury's verdict is binding unless there is an absence of substantial evidence in the record to sustain it. *Fenske v. State*, 592 N.W.2d 333, 343 (Iowa 1999). Substantial evidence is evidence upon which a rational finder of fact could find a defendant guilty beyond a reasonable doubt. *State v. Rohm*, 609 N.W.2d 504, 509 (Iowa 2000). "When reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the State, including legitimate inferences and presumptions which may fairly and reasonably be deduced from the evidence in the record." *State v. Leckington*, 713 N.W.2d 208, 213 (Iowa 2006).

Reynolds claims the knowledge and intent elements of the offenses were not supported by sufficient evidence. For first-degree theft, the State must prove either: (1) Reynolds took possession or control of money belonging to Central State Bank (CSB) with the intent to deprive the bank of the money; or (2) Reynolds passed counterfeit money orders, representing them to be valid, and knowingly deceived CSB by creating or confirming the bank's belief the money

orders were valid when Reynolds knew they were not. Iowa Code §§ 714.1, .3 (2003). For the forgery charges, the State must prove Reynolds knew the money orders were false and intended to defraud CSB. Iowa Code § 715A.2(1)(b), (c).

The evidence “in the light most favorable to the State,” reveals Reynolds exchanged messages in an internet chat room with Tessy from Nigeria. Tessy sent Reynolds money orders for him to cash, keep some of the proceeds, and return the remaining cash to her.

On December 17, 2004, shortly after US Bank opened, Reynolds presented six money orders for \$950 each to manager/teller Paige Bales. Reynolds had an account at the bank. Bales thought it was unusual to have money orders for an amount close to the \$1000 money order limit. Additionally, Bales knew Reynolds, thought it was unusual for him to have \$5700, and asked him where he got the money orders. Reynolds responded he got them from modeling. Suspicious, Bales told Reynolds she would not cash them immediately, but would utilize a nine-day hold. When Reynolds indicated he was not happy about the hold, Bales explained “there are scams out there and we just want to make sure these are good money orders.” Reynolds “debated a little bit,” and Bales stated the hold would protect him “because he would be on the hook for the money.” Reynolds deposited the money orders with the bank subject to the hold.

Within the hour, Reynolds called Bales and told her he had found someplace to cash the money orders and he wanted them back. Bales returned the money orders to Reynolds.

Reynolds took the money orders across the street to CSB and cashed two of them. While Reynolds did not have an account there, he had a vehicle loan with CSB. Reynolds applied \$200 from each money order to his vehicle loan and received the balance in cash. In the afternoon Reynolds returned to CSB and cashed four money orders. From each Reynolds made \$100 in loan payments and received \$850 in cash. Reynolds did not tell the tellers at CSB he had tried to cash the money orders at US Bank.

Two days later, on December 19, 2004, Reynolds chatted online about having spent \$2000 with \$900 to go. In a separate internet chat message to Tessy, Reynolds stated he was sorry “all our money is gone” and “it probably got stolen.” On December 20, Reynolds told Tessy the money is gone and he could not even pay his bills. That same day Reynolds deposited money for his employer with a US Bank teller and then sought out Bales in her bank office. Reynolds brought up the money orders and told Bales how he received them—from a model, a woman in Africa, who wanted to come stateside. Bales told Reynolds it was a scam.

On December 29, Reynolds informed Tessy he had not received her letter and asked her to resend a Federal Express tracking number. On December 30, 2004, Tessy sent him a tracking number. Also on December 30, Reynolds cashed five money orders for \$950 each at CSB. Reynolds used two money orders to pay off his vehicle loan and received cash for the balance. Reynolds received cash for the other three money orders.

On December 31, Tessy sent eight messages to Reynolds repeatedly asking if he had cashed the checks and requesting he send money to her. The messages continued on January 1, 2005. Reynolds did not respond.

On January 24, 2005, Reynolds contacted the Muscatine police and reported he had been a victim of identity theft. On January 28, Reynolds told Tessy he lost the previous money in the stock market, but he would help her cash future checks "without mistakes."

On January 31, Reynolds cashed \$6000 in money orders at CSB. On the same day, Detective Tovar talked with Reynolds in response to Reynolds's identity theft complaint. In addition to discussing his complaint, Reynolds told Tovar he had received money orders from a Nigerian woman he met over the internet in a chat room. Reynolds stated he was supposed to cash the money orders and send some of the money back through a Western Union wire transfer. Reynolds explained he took the money orders to US Bank to cash, but they would not cash them directly and were going to hold them. Reynolds told Tovar he had checked out the money orders at US Bank and they told him they were O.K. Reynolds stated he cashed them at CSB, but did not explain why he walked across the street to cash them at CSB after US Bank had allegedly confirmed they were good.

On February 2, Helena Schmidt of CSB contacted Reynolds at work after she learned from the Federal Reserve the money orders were counterfeit. Reynolds stated he did not know the money orders were invalid and he would make it right. Reynolds explained to Schmidt the money orders came from a

Nigerian model he met in a chat room and he sent her most of the cash. Reynolds stated he had already mailed her the cash from the January 31 transaction in a bubble-wrap envelope, but he did not remember the address. Reynolds stated he would come to the bank on Monday, but he did not. Reynolds did not repay the bank.

On February 3, 2005, Detective Tovar and Schmidt talked and Tovar learned Reynolds had cashed fraudulent money orders. On February 7, Detective Tovar met with Reynolds and asked what he had done with the money from the Nigerian money orders. Reynolds responded he had mailed the money back to Nigeria. Based on his experience, Detective Tovar thought this was suspicious because the scammers consistently request the money be returned through the money wire system "because that is positive cash at anyplace . . . there's a Western Union station" and the money can be picked up anonymously. Upon further questioning, Reynolds explained he mailed the cash in a bubble-wrap envelope from a mailbox by the mall and the postage to Nigeria was more than ten dollars. Detective Tovar contacted the post office and determined mailing the money to Nigeria would require considerably less postage than ten dollars.

On February 8, six days after CSB told Reynolds the money orders were counterfeit; he was online with "Jessie" and encouraged her to use money order transactions. When Jessie asked Reynolds if this was legal, he told her to ask the Nigerian supplier and save the chats. He also told Jessie he had asked the bank teller to check them out, which "covered my ass right there."

During a search of Reynolds's home on February 10, the police recovered a typed letter from Tessy instructing Reynolds to send money via a Western Union transfer. Detective Tovar interviewed Reynolds during the search. Reynolds changed his story about what he had done with the money, stating he had mailed the money to Nigeria from a Mailboxes, Etc. Detective Tovar later determined Reynolds had mailed items for his employer at the Mailboxes store, but a mailing to Nigeria from the location Reynolds identified was not done by Reynolds.

During this interview, Reynolds also changed his story about the information he received when he took the money orders to US Bank. For the first time he told Detective Tovar a US Bank employee had told him they were scams and the bank would not release any funds for up to ten days until they had verification the money orders were real. Reynolds stated the tellers at CSB told him the money orders were okay. Reynolds changed the subject when Tovar asked him about the most recent \$6000 in money orders.

Detective Tovar's investigation also revealed Reynolds had been spending large sums of cash in different places.

During the trial, Reynolds stated he was shocked the money orders were counterfeit and he thought he "was helping somebody out and earning some honest money" himself. Reynolds explained the CSB teller told him she was trained in "counterfeit financial instruments" and looked over each money order before cashing them. Reynolds changed his story on the mailing process yet again. This time he stated he mailed the money in three separate mailings to

John Black at a New York address, but stated he did not keep the letter from Tessy containing Black's address. Reynolds assumed John was forwarding the money to Tessy and he did not recall telling Tovar he had mailed the cash to Nigeria. He could not explain why Tessy kept asking about the money or why he gave her different excuses during his chats with her.

Additionally, Reynolds admitted encouraging Jessie to get involved with money orders even after he had been told the ones he received were counterfeit. Reynolds admitted to keeping more of the cash than Tessy intended, but claimed it was not more than \$1000 over the intended amount.

When viewing the evidence in the light most favorable to the State, we conclude a rational trier of fact could have found Reynolds guilty of theft and forgery. "Jurors do not abandon their common knowledge about the affairs of the world when they enter the jury box." *State v. Manning*, 224 N.W.2d 232, 236 (Iowa 1974). The record demonstrates Reynolds made inconsistent statements and got caught trying to scam the scammer for personal gain. The record as a whole reflects Reynolds knew the money orders were fraudulent, and he believed he could not be found liable because he did not create the money orders and because the bank willingly cashed them. Because substantial evidence supports the jury's verdict, his attorney had no duty to make a meritless motion concerning the sufficiency of the evidence.

We have considered the additional issues raised and issues not specifically addressed are without merit.

AFFIRMED.