IN THE COURT OF APPEALS OF IOWA

No. 9-503 / 88-463

FILED
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CLERK SUPREME COURT

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STATE OF IOWA,

Appellee,

vs.

WENDELL D. McHENRY,

Appellant.

Appeal from the Iowa District Court for Black Hawk County, Robert E. Mahan, Judge.

The defendant appeals from his conviction following a trial to the court for theft in the first degree. He challenges the sufficiency of the evidence to support the conviction. **AFFIRMED.**

Raymond E. Rogers, State Appellate Defender, for the appellant.

Thomas J. Miller, Attorney General; Sarah J. Coats, Assistant Attorney General; and Theodore R. Stone, Assistant County Attorney, for the appellee.

Heard by Donielson, P.J., and Sackett and Habhab, JJ.

DONIELSON, P.J.

Morris Reese, a resident of Alaska, wished to invest in rental housing in order to reduce his income tax obligations. He contacted his nephew Wendell McHenry, an Iowa resident, who had previous experience in managing rental properties. The two made an arrangement whereby Reese would send money to McHenry and he would use the money to purchase, maintain and manage Waterloo rental properties for Reese's corporation.

Reese subsequently accused McHenry of misappropriating to his own use some of the cash sent by Reese for real estate investments. McHenry denied any misappropriation, and he suggested Reese was confused by his practice of paying for repairs and improvements in cash and then writing himself a check from the corporate funds for reimbursement. Reese contended McHenry's checks to himself were thefts and that no legitimate cash outlays had occurred to warrant such reimbursements.

McHenry was charged with two counts of theft in the first degree. His case was tried to the court which acquitted him of one count and found him guilty of the other. He was sentenced to a prison term for one count of first-degree theft pursuant to Iowa Code sections 714.1(2) and 714.2(1). McHenry has appealed from his conviction. He challenges the sufficiency of the evidence to prove he misappropriated any money from Reese.

Error with respect to the sufficiency of the evidence to support defendant's conviction, was preserved by defendant's motion for acquittal at the conclusion of the State's evidence. State v. Miles, 346 N.W.2d 517, 519 (Iowa 1984). We will uphold a verdict where there is substantial evidence in the record tending to support the charge. State v. Wheeler, 403 N.W.2d 58, 60 (Iowa App. 1987). The standards governing a challenge to the sufficiency of the evidence are well established:

> 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. Direct and circumstantial evidence are equally probative so long as the evidence raises "a fair inference of guilt and [does] more than create speculation, suspicion, or conjecture." It is necessary to consider all the evidence in the record and not just the evidence supporting the verdict to determine whether there is substantial evidence to support the charge. Substantial evidence means evidence which would convince a rational factfinder that the defendant is guilty beyond a reasonable doubt.

Id. (citations omitted).

Viewing the evidence in the light most favorable to the State, the trial court could reasonably have concluded McHenry misappropriated his uncle's funds. Unaccounted for rental proceeds, inflated remodeling estimates, and the same-day transactions involving withdrawals from the corporate account and deposits into McHenry's personal accounts constitute highly probative evidence of McHenry's thefts from his uncle.

The trial court was faced with assessing the credibility of numerous witnesses who testified about remodeling and maintenance performed by McHenry and payments he made in conjunction therewith. It is the task of the fact finder to resolve questions of fact and assess the credibility of the witnesses. State v. Dahlstrom, 224 N.W.2d 443, 448 (Iowa 1974). A fact finder is not required to accept a defendant's version of the facts. State v. Wilkens, 346 N.W.2d 16, 20 (Iowa 1984). A finding of guilt is binding on an appellate court unless it is without substantial support in the record or is clearly against the weight thereof. Dahlstrom, 224 N.W.2d at 448. It was within the realm of the trial court's fact finding role, to determine the State's version of the events was more credible and believable than the evidence presented by defendant. There was substantial evidence from which the trial court could conclude beyond a reasonable doubt defendant misappropriated funds belonging to his uncle.

AFFIRMED.