IN THE COURT OF APPEALS OF IOWA

No. 8-330 / 97-893

STATE OF IOWA,
Appellee,

vs.

LINDA REA EATON,
Appellant.

Appeal from the Iowa District Court for Johnson County, Kristin L. Hibbs, Judge.

The defendant appeals her conviction and sentence entered for first-degree theft. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Tricia A. Johnston, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney General, J. Patrick White, County Attorney, and Anne Lahey, Assistant County Attorney, for appellee.

Considered by Sackett, P.J., and Huitink and Vogel, JJ.

VOGEL, J.

Linda Rae Eaton appeals her conviction and sentence entered for first-degree theft. As we find sufficient evidence to support the jury's verdict, we affirm her conviction but preserve her claim of ineffective assistance of counsel for postconviction proceedings.

Background facts. In August of 1993, Eaton began working for Genevieve Coleman, then age eighty, as a home health care provider. At that time, Coleman had a revocable trust with an estate of approximately a half million dollars, with First National Bank serving as trustee. The trust provided that in the event Coleman became legally incapacitated, the trust would become irrevocable and the trustee would use the income and principal of the trust for her care, support, and comfort. Upon Coleman's death, the assets were to pass to various relatives.

In January of 1994, Eaton and Coleman devised a wage payment plan which was submitted and approved by trust officer Becky Seidl. In May of 1994, Coleman began to make requests to liquidate her assets and place large sums of money into her checking account. Seidl approved some of the transfers, but she or another trust officer persuaded Coleman not to make other transfers as they were not sound financial decisions.

In July of 1994, Eaton purchased a 1994 Ford Explorer (titled in Eaton's name) with a check for over $24,000 signed by Coleman, one day after Seidl transferred

$25,000 to Coleman's checking account per Coleman's request. In November 1994, Coleman asked to transfer another $25,000 into her checking account. Seidl, who became suspicious after the vehicle purchase, visited Coleman with another trust officer to discuss the matter. Coleman apparently withdrew her request for the transfer and agreed to have the bank take over payment of her bills. The next day, Eaton told Seidl that Coleman wanted to handle her own financial affairs and handed her a letter requesting liquidation of $100,000. Seidl declined to make the transfer and contacted Coleman's attorney and the police. An investigation ensued.

On December 11, 1994, Coleman signed a document drafted by Eaton which purportedly made Eaton the sole heir to her estate. On December 22, Seidl informed Coleman that she needed to see a doctor to determine if the disability clause of the trust agreement should be invoked. Coleman was evaluated by a neuropsychologist and a geriatric specialist in May 1995, both of whom determined that she was incapable of managing her financial affairs. In the meantime, Coleman, largely through Eaton, made several unsuccessful attempts to liquidate her assets, close her trust account at First National, and give Eaton power over her financial affairs.

In December of 1995, Eaton was charged with first-degree theft. The first jury trial resulted in a hung jury. After a second trial, the jury found Eaton guilty as charged. The court sentenced Eaton to an indeterminate ten-year term of

imprisonment, suspended it, placed her on probation, and ordered her to pay restitution. Eaton appeals.

I. Substantial evidence. Eaton argues the trial court should have granted her motion for judgment of acquittal because the State failed to prove she created, confirmed or failed to correct a false belief or impression pursuant to Iowa Code sections 702.9(1) & (2) (1995).[1] Eaton also contends the State failed to connect the alleged deception as to the trust account with the checks issued from the checking account.

We review substantial evidence claims on error. Iowa R. App. P. 4; *State v. Bayles*, 551 N.W.2d 600, 608 (Iowa 1996). We are bound by the jury verdict unless the verdict is not supported by substantial evidence. *State v. Lewis*, 514 N.W.2d 63, 65-66 (Iowa 1994). In making this determination, we must consider all the evidence in the light most favorable to the State. *State v. Robinson*, 288 N.W.2d 337, 340 (Iowa 1980). "Evidence is substantial if it could convince a rational fact finder that the defendant is guilty beyond a reasonable doubt. Direct and circumstantial evidence are equally probative." *Bayles*, 551 N.W.2d at 608. A jury verdict can rest on

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[1] As defined in Iowa Code sections 702.9(1) & (2) (1995), deception consists of knowingly:

> 1) Creating or confirming another's belief or impression as to the existence or nonexistence of a fact or condition which is false and which the actor does not believe to be true; [or] 2) Failing to correct a false belief or impression as to the existence or nonexistence of a fact or condition which the actor previously created or confirmed."

circumstantial evidence alone. *State v. Torres*, 506 N.W.2d 470, 472 (Iowa App. 1993). However, evidence which merely raises suspicion, speculation, or conjecture is insufficient. *Bayles*, 551 N.W.2d at 608.

Eaton contends the evidence shows she and Coleman truly believed the trustee was mismanaging the funds and that she was justified in believing the trust officers were acting outside the scope of their authority in denying Coleman's requests. However, we find substantial evidence that Eaton created or confirmed Coleman's belief that the bank was mishandling the trust account. Testimony by two attorneys and a professor of finance established that the bank was not mismanaging the trust in any way. Although Eaton denied making statements that the bank was stealing Coleman's money, there was testimony from several witnesses that established that Eaton was, at the very least, reinforcing Coleman's false beliefs in regard to the conduct of the trust officers.

We also find substantial evidence to connect Eaton's deception with the checks issued from the checking account. Before employing Eaton, Coleman took no active role in managing the trust funds. However, soon after hiring Eaton, Coleman made numerous requests to liquidate assets and transfer money out of the trust. Many of these requests were communicated through Eaton by phone, in-person requests and particularly though computer-generated letters drafted by Eaton. Moreover, Coleman on several occasions expressed confusion in regard to the purchase price of the Ford

Explorer,[2] the purpose of several checks written to Eaton, and the amount of money in her accounts at any given time. Viewed in a light most favorable to the State, we believe there was sufficient evidence to support the jury's finding.

II. Ineffective assistance of counsel. Eaton also asserts her trial counsel was ineffective for failing to request an instruction based on her defense theory that she had a claim of right to the property. The State argues that Eaton's claim fails for lack of prejudice because even if the instruction was given, there is no reasonable probability that the jury would have found that Eaton believed Coleman was competent to manage her own financial affairs or that there was any factual basis for such a belief.

Our standard of review as to the constitutional issue of effective assistance of counsel is de novo. *See State v. Havemann*, 516 N.W.2d 26, 28 (Iowa App. 1994). Generally, ineffective assistance of counsel claims are preserved for postconviction to allow trial counsel an opportunity to defend the charge. *State v. Pearson*, 547 N.W.2d 236, 241 (Iowa App. 1996). We depart from this preference is the record on direct appeal is sufficient to evaluate the merits of a defendant's ineffective assistance of counsel claim. *Id.* If not, we preserve the claim for postconviction proceedings so

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[2] When first asked if she knew she had purchased the vehicle, Coleman did not recall doing so and said she "would never do that." When questioned the next day, she said she understood that she had purchased the vehicle, but believed that it only cost "a couple thousand dollars."

the facts may be developed. *Id.* This also gives the allegedly ineffective attorney the opportunity to explain his or her conduct. *Id.*

We find the record on appeal is insufficient to make a determination on this claim, and therefore preserve the issue for postconviction relief.

Having considered all issues properly before us on appeal, we affirm the district court and uphold Eaton's conviction and sentence.

AFFIRMED.