IN THE SUPREME COURT OF IOWA
Supreme Court No. 22-0892
Black Hawk County FECR238995

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

APPLICATION FOR FURTHER REVIEW

BRENNA BIRD
Attorney General of Iowa

MARTHA E. TROUT
Assistant Attorney General
Hoover State Office Building, 2nd Floor
Des Moines, Iowa 50319
(515) 281-5976
(515) 281-4902 (fax)
martha.trout@ag.iowa.gov

BRIAN WILLIAMS
Black Hawk County Attorney

ALISHA STACH
Assistant County Attorney

ATTORNEYS FOR PLAINTIFF-APPELLEE

FINAL

TABLE OF CONTENTS

QUESTION PRESENTED FOR FURTHER REVIEW

I. DID THE COURT OF APPEALS ERR IN REVERSING SLAUGHTER'S CONVICTION AND FINDING THERE WAS INSUFFICIENT EVIDENCE TO ESTABLISH HER INTENT TO DEFRAUD AND INSUFFICIENT EVIDENCE THAT SHE PLACED A "WAGER?"

STATEMENT SUPPORTING FURTHER REVIEW

The Court of Appeals erred in reversing Sydney Slaughter's conviction for gambling -- false claim of winnings. The Court of Appeals' decision conflicts with several decision of this court on several important matters. Iowa R. App. P. 6.1103 (1)(b)(1). The Court of Appeals incorrectly determined that the State failed to establish she had the intent to defraud, the court allowed impermissible expert testimony on what constitutes a "wager," and the evidence could establish Slaughter made the "wager" on the winning slot machine. *State v. Slaughter*, No. 22-0892, 2023 WL 5065187, at *1-8 (Iowa Ct. App. Aug. 9, 2023). First, the Court of Appeals failed to consider the evidence in the light most favorable to the State. *State v. Sanford*, 814 N.W.2d 611, 615 (Iowa 2012). Instead, the Court deferred to Slaughter's arguments that the evidence did not show she had the same intent to defraud that her boyfriend had. The State does not dispute it had to prove Slaughter had an intent to defraud. But the evidence need not show Slaughter had to have the same intent to defraud as McNeese in not paying his outstanding court debt and child support obligations. *State v. Kneedy*, 232 Iowa 21, 28, 3 N.W.2d 611, 615 (1942) (it is sufficient to

render a person guilty of aiding and abetting in a crime . . . *if he entertains the felonious and malicious intent himself or if he aids an abets the assault with knowledge that the perpetrator is actuated by such an intent*.)(emphasis added).

The Court of Appeals also erred when it found that Special Agent John Bergman improperly "provided an opinion on a legal standard essential to the charged offense." The Court of Appeals opinion fails to consider the obvious need to put the machine into play once the wager has been made. Putting money or tokens or credits in a slot machine is not enough. Nothing happens until the button is pushed and the machine goes into play. The agent's expertise in the area and knowledge of slot machine gambling assisted the jury in reaching its verdict. The Court of Appeals erred in finding that the agent's testimony was improper. This error led to the Court finding that there was insufficient evidence as to whether Slaughter placed the wager. The decision must be reversed.

STATEMENT OF THE CASE

Nature of the Case

The State seeks further review of a decision of the Iowa Court of Appeals. Iowa R. App. P. 6.1103.

Course of Proceedings

On March 24, 2021, the Black Hawk County Attorney charged Slaughter with one count of gambling – false claim of winnings, a violation of Iowa Code section 99F.15(4)(h), and punishable as a class D felony. Trial Info. FECRE238995 (3/24/21); Dkt. No. 13; App. 4-5. The case proceeded to trial in March of 2022, and a jury convicted Slaughter of the charged offense. Verdict Form (3/10/22); Dkt. No. 91; App. 10. The district court sentenced Slaughter to a five-year term of incarceration, suspended the sentence, and placed her on probation for a period of two to five years. Order Judg. and Sent. (5/23/22); Dkt. No. 102; App. 15-19.

Slaughter appealed her conviction. Not. of Appeal (5/26/22); Dkt. No. 104; App. 20. On appeal, Slaughter challenged the sufficiency of the evidence as to her specific intent to defraud and whether the evidence established she did not make a wager. *State v. Slaughter*, No. 22-0892, 2023 WL 5065187, at *1-8 (Iowa Ct. App. Aug. 9, 2023). She also claimed that her actions did not constitute a violation of section 99F.15(4)(h). *Id.* at *2-3. Finally, she claimed the court erred in overruling the objection to Agent Bergmann's testimony regarding what constitutes a "wager." *Id.* at *5-7.

The Court of Appeals rejected Slaughter's claim that her actions did not constitute a violation of section 99F.15(4)(h). *Id.* at *2-3. The Court of Appeals reversed her conviction and found that the evidence did not establish her intent to defraud. *Id.* at *3-5. The Court of Appeals also found that the agent's testimony regarding when a wager is placed was improper and that the evidence did not show she did not make a wager. *Id.* at *5-8. The Court of Appeals erred in reaching its result.

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 26:22-27: 3. The slot machines at the casino have different systems that alert the dispatchers to the jackpot. Tr. Vol. II 73:3-9. The dispatchers, in turn, relay the information to the slot machine attendants to check the machine and record the jackpot. Tr. Vol. II 73:3-9.

In this case, Danielle Sifrit, was the slot attendant on duty when the jackpot triggered. Tr. Vol. II 73:3-74:12. Sifrit walked over to the machine and inquired as to who won the jackpot. Tr. Vol. II 74:3-12. Slaughter was at the machine and Anthony McNeese was seated

at another machine two seats away. Tr. Vol. II 74:10-75:15. Slaughter claimed she was the person who "pushed the button" and won the money. Tr. Vol. II 74:10-75:15.

Sifrit started the paperwork for the jackpot. Tr. Vol. 75:7- 76:7. 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 75:7-76:7, 77:2-12, Exh. C1 (redacted); Dkt. No. 82; Conf. App. 4.

The form also includes spaces for the taxes on the winnings. Exh. C1 (redacted); Dkt. No. 82; Conf. App. 4. Five percent of the winnings are automatically deducted for state taxes. Tr. Vol. II 77:2-80:17, Exh. C1 (redacted); Dkt. No. 82; 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 80:13-81:12. Slaughter wanted the remaining 95% -- $3800 -- applied to federal taxes. Tr. Vol. II 81:8-82:22, Exh. C1 (redacted); Dkt. No. 82; 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 82:11-83:4. She asked the surveillance team to review the footage of the jackpot win. Tr. Vol. II 82:23-83:12. The surveillance team reviewed the video and determined that Slaughter did not win the jackpot. Tr. Vol. II 87:1-88:21. Rather, Anthony McNeese, who had arrived with Slaughter at the casino, actually won the jackpot. Tr. Vol. II 46:24-48:5. Surveillance videos showed 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 87:10-88:21, 113:8-114:20. McCarvel asked Slaughter if she won the jackpot. Tr. Vol. II 113:8-114:20. She appeared flustered by the question and admitted that McNeese won the jackpot and she claimed it for him. Tr. Vol. II 113:8-114:20.

The casino officials would not allow Slaughter to claim the jackpot and required McNeese to claim it. Tr. Vol. II 87:23-88:21, 113:20-114:20. 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 88:13-21. After the five percent deduction for state taxes, McNeese wanted the remaining 95% applied to his federal income tax. Tr. Vol. II 88:17-90:11, Exh. C2; Dkt. No. 83; Conf. App. 5.

ARGUMENT

I. THE COURT OF APPEALS ERRED IN REVERSING SLAUGHTER'S CONVICTION AND FINDING THERE WAS INSUFFICIENT EVIDENCE TO ESTABLISH HER INTENT TO DEFRAUD AND INSUFFICIENT EVIDENCE THAT SHE PLACED A "WAGER."

This court should grant further review for three reasons. First, the Court of Appeals misapplied the law when it required the State to establish that Slaughter had the same "intent to defraud" as her boyfriend, McNeese, when she claimed the jackpot. The law merely requires she has an "intent to defraud." Although her intent to defraud may be the same intent as McNeese, the law does not require it to be the same as long as the State establishes her own intent to defraud. Second, the court should grant review because the Court of

Appeals improperly found Agent Bergmann's definition of what constitutes a "wager" to be too narrow and a comment on the ultimate fact at issue. The Court of Appeals' decision fails to understand that a "wager" – in the context of a slot machine – does not occur without the machine being played. Finally, this court should grant review to determine whether the evidence supports a finding that she placed a wager when she was standing next to but did interact with the winning slot machine other than to slide over to sit in front of it after the jackpot registered.

A. Specific intent to defraud.

The Court of Appeals erred in finding that the State failed to prove she had the "intent to defraud." To prove the crime of gambling, false claim of winnings, the State had to prove:

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.

Jury Instr. 16; App. 8 (emphasis added). This crime contains an element of specific intent, that is, an intent to defraud.

The Court of Appeals relied on the definition of "intent to defraud" as set out in *State v. Hoyman*, 863 N.W.2d 1, 8 (Iowa 2015), to decide whether the State established this element. *Hoyman* defines an "intent to defraud" means to "mislead with the further purpose of obtaining some gain from the victim of deceit." *Id.*

Where the Court of Appeal erred was in finding that Slaughter's intent to defraud had to be the exact same intent to defraud as McNeese's. That is not required under Iowa law.

"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; Dkt. No. 90 at p. 20; App. 9. The instruction required the jury to find Slaughter's intent, not that of McNeese. Jury Inst. 19; Dkt. No. 90 at p. 20; App. 9. Although Slaughter's intent could be the

same as McNeese's, it does not have to be, as long as Slaughter had an intent to defraud.

It is a well-established principle that "specific intent is seldom capable of direct proof." *State v. Ernst*, 954 N.W.2f 50, 55 (Iowa 2021). When considering a sufficiency challenge, a reviewing court considers the evidence supporting the verdict in a light most favorable to the State, including all reasonable inferences that may be drawn from the evidence. *State v. Sanford*, 814 N.W.2d 611, 615 (Iowa 2012). The reasonable inference that can be drawn from the evidence in this case is that Slaughter had an intent to defraud when she claimed a jackpot she did not win because she did not play the slot machine that triggered the jackpot. The evidence established that 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). If Slaughter played the machine, there was no reason for McNeese to have moved over two seats. Moreover, her later admission to the slot machine attendant that she did not win the jackpot but claimed it for McNeese is evidence of her intent to defraud the casino. This is especially true

given that Slaughter won her own jackpot the day before and knew that there was a procedure the casino went through to verify the winner and to account for tax obligations. Tr. Vol. II 109:18-110:7.

But even if the court finds that an aider and abettor's knowledge of the principal's intent to defraud means that the aider and abettor must know of the actual reason the principal intends to defraud, the evidence still supports the jury's verdict. As the dissent aptly noted:

> So, here the circumstantial evidence in my view allows a jury to deduce that Slaughter attempted to claim money from the gambling game with the intent to defraud by avoiding the payment of those winnings towards McNeese's court-ordered offsets. *Ernst*, 954 N.W.2d at 55 (opining that circumstantial evidence, along with the reasonable inferences drawn from that evidence, is often part of proof of specific intent.) A jury could find from Slaughter's demeanor that she participated in a deception to access more cash and that she knew of the scheme. Why would she be so quick to claim the jackpot? How else can we rationalize her actions of moving into the seat and lying to the casino staff?

Slaughter, No. 22-0892, at *9. The dissent continued:

> Considering Slaughter's experience with jackpots and offsets, it does not take a large leap for a jury to conclude that when McNeese moved two chairs away after scoring the jackpot on the gambling machine and Slaughter quickly moved into the seat at the winning machine, the act was done to help McNeese avoid the imposition of the offsets, exceeding $40,000, against his winnings. The majority is not persuaded that a jury could infer from the close association between McNeese and Slaughter and Slaughter's act of taking McNeese's seat that she had the requisite specific intent. But there is more. Slaughter then falsely represents she scored the jackpot and, more

> importantly, then when confronted with the potential she committed a crime, took back the statement the jackpot was hers. A jury could find otherwise, true, but the circumstantial evidence here is substantial and supports this conviction that Slaughter aided McNeese to avoid his offsets against his winnings. *See State v. Dohlman*, 725 N.W.2d 428, 430 (Iowa 2006) ("Evidence is not insubstantial merely because we may draw different conclusions form [the evidence]; the ultimate question is whether it supports the finding actually made, not whether the evidence would support a different finding." (alteration in original) (citation omitted).

Slaughter, No. 22-0892, at *9. The dissent correctly analyzed this case under the law. The majority of the Court of Appeals failed to follow the law by analyzing the evidence in a light most favorable to the defendant, not the State. The Court of Appeals must be reversed.

B. Agent Bergmann's testimony on what constitutes a "wager."

The Court of Appeals also erred in finding that district court allowed Agent Bergmann to "offer a narrow definition focused on the action that triggered the slot machine's spin." *Slaughter*, No. 22-0892, at *7. The Court of Appeals found that his "definition confined the term to just one area where wagering occurs." *Id.* The Court of Appeals presumed that "a different action would constitute making a wager for horse races or sports betting." The Court then held that:

> Even under our liberal view of expert testimony, Bergman's opinion on when a wager is placed did not assist the jury in deciding if Slaughter violated the statute.

Slaughter, No. 22-0892, at *7. The Court of Appeals failed to appreciate the agent's expertise and knowledge under the particular facts of this case.

Although "wager" is not defined in chapter 99F, the Court of Appeals used the meaning of "wager" from *State ex rel. Turner v. Drake*, 242 N.W.2d 707, 709 (Iowa 1976). In that case, the court used "wager" interchangeably with "bet." *Id.* at 710. *Drake* defined a bet as "an agreement to pay something of value upon the happening or non-happening of a specified contingent event." *Id.* at 710. The Court of Appeals also referenced the definition of "wager" from other jurisdictions that were consistent with this idea. *See, e.g., Overturf v. Cal. Horse Racing Bd.*, 150 Cal. Rptr. 657, 660 (Cal. Ct. App. 1978) ("The noun 'wager' means 'something (as a sum of money) that is risked on an uncertain event.' " (citation omitted)); *State v. Amman*, 68 N.E.2d 816, 818 (Ohio Ct. App. 1946) ("A wager is something hazarded on the issue of some uncertain event ...." (citation omitted)); W. Va. Code § 29-22D-3 (2023) (" 'Wager' means a sum of money or thing of value risked on an uncertain occurrence.").. *Slaughter*, No. 22-0892, at *7. But, none of the definitions in these cases actually address the issue in the context of a slot machine. *Overturf*, 150 Cal.

Rptr. at 659 (case involved suspected bookmaking activities amount parimutuel employees at California race tracks); *Amman*, 68 N.E.2d at 817-18 ("placing a wager of money on the speed and endurance of a beast).

The Court of Appeals definition assumes that simply placing money, tokens, or credits into a machine constitutes a "wager." That is, when the money is placed in the machine, there is "an agreement to pay something of value upon the happening or non-happening of a specified contingent event." This "one size fits all" definition does not apply in all gambling situations. Simply by placing money or credits into a slot machine does not trigger the machine. Nothing will happen with that machine until a button is pressed to put the machine into the spin as the agent testified:

> [I]n 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 16:13-21. Without the machine being put into a spin, there may have been an attempt to wager, but there must be an additional act – pushing the button—for the "happening or non-happening of

the contingent event" to occur. Otherwise, there cannot be the happening or non-happening of the contingent event. The Court of Appeal's definition does not account for the entire act necessary to place a wager if a slot machine is the gambling device utilized. The Court of Appeals understanding of what constitutes a "wager" in this context is erroneous. This decision cannot stand.

C. Sufficiency of the evidence of a "wager."

Finally, the Court of Appeals erred in relying on its erroneous definition of "wager" and found there was insufficient evidence to establish Slaughter did not make the "wager." *Slaughter*, No. 22-0892, at *8. The Court of Appeals reached this erroneous belief after finding she and McNeese were "gambling in tandem" and "standing at the same machines." *Id.* The person who provided or placed the money in the machine is irrelevant in this context. As the dissent correctly noted, Slaugther told Sifrit that "McNeese had hit the jackpot and she was only claiming it for him." *Id.* at *10. If she truly believed she placed the wager, as she asserts on appeal, she could have volunteered that on the night in question. She did not. Rather, she admitted she did not hit the jackpot and the video evidence

supports that statement. Tr. Vol. II 113:8-114:20. The Court of Appeals' decision must be reversed.

CONCLUSION

The Court of Appeals decision reversing Slaughter's conviction is erroneous. Slaughter violated Iowa Code section 99F.15(4)(h). Her conviction must be reinstated.

REQUEST FOR ORAL SUBMISSION

The State requests to be heard in oral argument.

Respectfully submitted,

BRENNA BIRD
Attorney General of Iowa

MARTHA E. TROUT
Assistant Attorney General
Hoover State Office Bldg., 2nd Fl.
Des Moines, Iowa 50319
(515) 281-5976
martha.trout@ag.iowa.gov

CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **3,441** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

Dated: August 29, 2023

MARTHA E. TROUT
Assistant Attorney General
Hoover State Office Bldg., 2nd Fl.
Des Moines, Iowa 50319
(515) 281-5976
martha.trout@ag.iowa.gov