

IN THE SUPREME COURT OF IOWA
Supreme Court No. 23-0819
Black Hawk County No. SRCR246554

STATE OF IOWA,
Plaintiff-Appellee,

vs.

SARAH RAE BERG,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR BLACK HAWK COUNTY
THE HONORABLE PATRICK WEGMAN, JUDGE

APPELLEE'S BRIEF

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. Whether Berg's right to speedy indictment was violated.

Authorities

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State v. Bruegger, 773 N.W.2d 862 (Iowa 2009)
State v. Edwards, 571 N.W.2d 497 (Iowa Ct. App. 1997)
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Iowa Code § 714.1
Iowa R. Crim. P. 2.33(2)(a)

II. Whether sufficient evidence supports the conviction.

Authorities

State v. Buman, 955 N.W.2d 215 (Iowa 2021)
State v. Crawford, 972 N.W.2d 189 (Iowa 2022)
State v. Donahue, 957 N.W.2d 1 (Iowa 2021)
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Iowa Code § 715A.6(1)(a)
Iowa Code § 715A.6(1)(b)
Iowa Code § 715A.6(2)(c)

ROUTING STATEMENT

The Court should transfer this matter to the Court of Appeals for application of existing legal principles. Iowa R. App. P. 6.1101(3).

STATEMENT OF THE CASE

Nature of the Case

Following a trial on the minutes before the Honorable Patrick Wegman in the District Court for Black Hawk County, the court found Sarah Berg guilty of unauthorized use of a credit card, in violation of Iowa Code section 715A.6(2), an aggravated misdemeanor. Berg appeals.

Course of Proceedings

The State does not contest the defendant's statement of the procedural history of this case. Iowa R. App. P. 6.903(3).

Facts

Sarah Berg, 24, worked for Casey's. She activated three gift cards from the store without paying for them, for a total value of \$700. Berg then used the cards to buy merchandise. Minutes of Testimony, Dkt. No. 17; Conf. App. 6–22. Berg admitted doing this—she “panicked because [she] needed to buy groceries for [her] kids and didn't know what else to do.” *Id.*; Conf. App. 20. She tried to void the cards after activating them but “it didn't work.” *Id.* In the Minutes

of Testimony are sales receipts showing Berg rang up the gift cards at Casey's. *Id.*; Conf. App. 15, 18. In one instance she "spent" \$500 in "cash," per the receipt, to buy two gift cards. *Id.*; Conf. App. 18. One of those was a Casey's gift card with the final four digits 7247. *Id.* The next day, Berg used a Casey's gift card with the final four digits 7247 to buy \$59.67 worth of gas and food at Casey's. *Id.*; Conf. App. 16.

On July 21, 2022, Berg was "escorted to the police department." *Id.*; Conf. App. 11. She was issued a citation for fourth-degree theft. *Id.*; Conf. App. 8. The police "completed the necessary paperwork." *Id.*; Conf. App. 11. The police considered Berg under arrest. *Id.*; Conf. App. 12. She was given a summons to appear. *Id.*; Conf. App. 8. The next day, Berg was formally charged with theft in the fourth degree. Complaint, Dkt. No. 1; App. 6–7; see Iowa Code §§ 714.1, .2. Her initial appearance was August 9. Record of Initial Appearance, Dkt. No. 4; App. 8–10. On October 5, Berg moved to dismiss for lack of speedy indictment. Motion to Dismiss, Dkt. No. 7; App. 11–12. Before hearing on that motion, the State filed a trial information charging Berg with a different offense, unauthorized use of a credit card. Trial Information, Dkt. No. 9; App. 13–14; see Iowa Code § 715A.6(2).

Following hearing, Berg’s motion to dismiss was denied. Order (10/21/22), Dkt. No. 14; App. 15–16.

The matter proceeded to trial on the minutes, after which Berg was found guilty of unauthorized use of a credit card for a value less than \$1,500. Criminal Verdict, Dkt. No. 22; App. 25–28. The parties stipulated to a sentence: a fine of \$855, surcharge (both suspended), court costs, 120 days in jail (suspended), one year of informal probation, and restitution (if any). Plea Agreement, Dkt. No. 28; App. 29; Order of Disposition, Dkt. No. 29; App. 30–34. Berg timely appealed. Notice of Appeal, Dkt. No. 31; App. 35.

ARGUMENT

I. Berg’s right to a speedy indictment was not violated.

Preservation of Error

The State does not contest error preservation.

Standard of Review

This Court reviews “interpretations of the speedy indictment rule for errors at law.” *State v. Williams*, 895 N.W.2d 856, 860 (Iowa 2017). Constitutional claims are reviewed de novo. *State v. Bruegger*, 773 N.W.2d 862, 869 (Iowa 2009).

Merits

When an adult is arrested for the commission of an offense . . . and an indictment is not found against the defendant within 45 days, the court must order the prosecution be dismissed unless good cause to the contrary is shown. For purposes of this rule, the 45-day period commences for an adult only after the defendant has been taken before a magistrate for an initial appearance or a waiver of the initial appearance is filed.

Iowa R. Crim. P. 2.33(2)(a). An “arrest” is completed when the defendant is taken before a magistrate for an initial appearance.

Williams, 895 N.W.2d at 867. An “indictment” includes a trial information. *State v. Lies*, 566 N.W.2d 507, 508 (Iowa 1997). An indictment is found when it is filed. *State v. Schuessler*, 561 N.W.2d 40, 42 (Iowa 1997). The 45-day mandate is limited to the offense or offenses for which the defendant is arrested. *State v. Smith*, 957 N.W.2d 669, 676 (Iowa 2021); *State v. Eichorn*, 325 N.W.2d 95, 96 (Iowa 1982); *State v. Sunclades*, 305 N.W.2d 491, 494 (Iowa 1981); *State v. Wright*, No. 12-2138, 2014 WL 956064, at *6 (Iowa Ct. App. Mar. 12, 2014); *State v. Edwards*, 571 N.W.2d 497, 499 (Iowa Ct. App. 1997); *State v. Waters*, 515 N.W.2d 562, 566 (Iowa Ct. App. 1994). It does not extend “to a different offense not charged in the complaint related to the arrest.” *Edwards*, 571 N.W.2d at 499.

The question thus becomes, are these different offenses? *See* Appellant’s Br. at 18–22. They are. Their elements differ substantially. *Compare* Iowa Code § 714.1, *with id.* § 715A.6; *see also State v. Jeffries*, 430 N.W.2d 728, 730–31 (discussing test for lesser included offenses invoking elements of each). They relate to different acts. The theft occurred when Berg rang up the gift cards—Berg stole \$700 worth of gift cards, which is more than \$300 but less than \$750. The unauthorized use of a credit card occurred when Berg used a Casey’s gift card the next day. It would not be impossible for someone to be charged with both crimes. *Cf. State v. McKettrick*, 480 N.W.2d 52, 57–58 (Iowa 1992). They are not “alternative means of committing a single offense.” *State v. Abrahamson*, 746 N.W.2d 270, 276 (Iowa 2008). The theft does a harm to Casey’s, while the unauthorized-use charge concerns itself with Berg’s later purchases made with the unauthorized gift cards. Berg committed the theft when she activated the cards; she used a credit card without authorization when she made purchases with them. The sentences for the two crimes are different: fourth-degree theft is a serious misdemeanor while unauthorized use of a credit card for less than \$1,500 in value is an aggravated misdemeanor. *See* Iowa Code

§§ 714.1, 715A.6. Taken together, these facts evince a legislative intent to treat these two crimes differently. *See, e.g., State v. West*, 924 N.W.2d 502, 506 (Iowa 2019) (discussing “primacy of legislative intent”).

These are different offenses, with different elements, requiring different evidence. Because of that, there is no speedy indictment violation as to the offense charged in the trial information. Berg’s claim fails.

II. Sufficient evidence supports the conviction.

Preservation of Error

When a defendant proceeds to trial and is convicted of a crime, “[t]he trial itself raises the issue of the sufficiency of the evidence, and the verdict is the decision on the issue.” *State v. Crawford*, 972 N.W.2d 189, 198 (Iowa 2022). The State does not contest error preservation.

Standard of Review

The Court reviews the sufficiency of the evidence for correction of errors at law. *State v. Donahue*, 957 N.W.2d 1, 7 (Iowa 2021). The evidence is viewed in the light most favorable to the State, “including legitimate inferences and presumptions that may fairly and reasonably be deduced from the record evidence.” *Id.* The Court’s

evaluation asks whether “the finding of guilt is supported by substantial evidence in the record.” *State v. Kelso-Christy*, 911 N.W.2d 663, 666 (Iowa 2018). “Substantial evidence exists when the evidence would convince a rational fact finder the defendant is guilty beyond a reasonable doubt.” *State v. Buman*, 955 N.W.2d 215, 219 (Iowa 2021) (internal marks omitted).

Merits

A person commits the offense of unauthorized use of a credit card if they use a credit card for the purpose of obtaining property or services with knowledge that (1) the credit card is stolen or forged, (2) the credit card has been revoked or canceled, or (3) for any other reason the use of the credit card is unauthorized. Iowa Code § 715A.6(1)(a). It is an affirmative defense to the third alternative “if the person proves by a preponderance of the evidence that the person had the intent and ability to meet all obligations to the issuer arising out of the use of the credit card.” Iowa Code § 715A.6(1)(b). In this context, a credit card “includes a debit card or access device used to engage in an electronic transfer of funds through a satellite terminal.” Iowa Code § 715A.1(1).

Here, sufficient evidence exists to support the conviction. Berg used a credit card for the purpose of obtaining property when she used the ill-gotten Casey's gift card to buy food and gas. Berg admitted using the card to buy food for her family, and there is sufficient corroborating evidence beyond her confession. *See State v. Polly*, 657 N.W.2d 462, 467 (Iowa 2003) ("Corroboration need not be strong nor need it go to the whole case so long as it confirms some material fact connecting the defendant with the crime."). The four digits of the card Berg used to buy goods match the four digits of the card she stole the day prior. The sales receipt for the groceries lists the purchasing "guest" as Sarah Berg. Berg confessed to "need[ing] to buy groceries," and did in fact buy groceries.

At the time she used it, the card was stolen or otherwise unauthorized, satisfying either the first or third alternative. Berg admitted stealing the cards from Casey's. There are sales receipts showing that she rang the cards up. She did not pay for them. The receipt for the Casey's gift card says it and another gift card were purchased for \$500 in cash. A reasonable inference to draw from this information is that Berg needed to offer some method by which she "bought" the fraudulently obtained cards, and she believed "cash"

would raise the least alarm. There was no cash. Indeed, it makes little sense to exchange fungible cash into less fungible gift cards for oneself.

There was no showing Berg had the intent and ability to meet all obligations to the issuer arising out of her use of the card. Berg acquired the cards one day and spent some of the funds on them the next. There is some suggestion in the record that Berg regretted her decision—she notes she tried to “void” her acquisition of the cards and one of the sales receipts supports this contention, showing a voided attempt. But, one, regret is not the same as the “intent and ability” to meet her obligations related to them, and two, her ostensible regret is called into serious doubt by the use of the card the next day. Furthermore, with gift cards, there is no easy way to meet one’s obligations. There is no “account” one can easily “pay back.” This suggests Berg’s inability to meet her obligations arising out of her use of the card.

The value of the cards acquired was less than \$1,500, so the value of the property Berg could have acquired with them must also be less than \$1,500. The sales receipts show that. No contention is made that Berg used stolen cards to buy property valued at more than

\$1,500. The aggravated-misdemeanor version of the offense was the correct one to charge. *See* Iowa Code § 715A.6(2)(c).

Sufficient evidence supports the conviction. This Court should affirm.

CONCLUSION

For the reasons stated above, this Court should affirm.

REQUEST FOR NONORAL SUBMISSION

The State requests nonoral submission.

Respectfully submitted,

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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 **1,895** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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