

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

JUNE 13, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62(1), STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 94-2312-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

ANDREW R. REYNOLDS,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Outagamie County: HAROLD V. FROEHLICH, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Andrew Reynolds appeals a judgment convicting him of theft under § 943.20(1)(b), STATS. He argues that the State presented insufficient evidence to justify the conviction. We reject that argument and affirm the judgment.

A jury convicted Reynolds of accepting money from Jeffrey VerHagen for investment purposes and converting the money to his personal use. VerHagen closed an IRA account and received a check for \$16,738.62. After talking with Reynolds, who was VerHagen's friend and insurance agent, VerHagen signed the check over to "A. R. Insurance Consultants, Inc." Reynolds endorsed the check "A. R. Reynolds Ins Consultants Inc. Andrew R. Reynolds" and deposited the money in his business account. Reynolds proceeded to use the money for his personal expenses and gambling.

The State presented sufficient evidence to support all of the elements of the offense charged. We must affirm the verdict if the jury, acting reasonably, could have found guilt beyond a reasonable doubt. Weighing the credibility of witnesses is exclusively the jury's province, and the verdict will be overturned only if, viewing the evidence most favorably to the State and the conviction, it is inherently or patently incredible, or so lacking in probative value that no jury could have found guilt beyond a reasonable doubt. *See State v. Poellinger*, 153 Wis.2d 493, 501, 451 N.W.2d 752, 755 (1990). The State was required to prove that Reynolds had possession of VerHagen's money because of his employment, that Reynolds intentionally used the money without VerHagen's consent and contrary to Reynolds' authority, that Reynolds knew that this use of the money was without VerHagen's consent and contrary to Reynolds' authority and that Reynolds used the money with intent to convert it to his own use. *See WIS J I—CRIMINAL 1444* (1994). VerHagen's testimony that he authorized Reynolds to invest the money for him in another IRA account and not for personal use, along with the bank records and Reynolds' testimony that he used the money for personal expenses and gambling, adequately support the conviction.

Reynolds contends that the money was a personal loan to him and that he was authorized to spend the money as he saw fit. As the arbiter of the credibility of the witnesses, the jury was free to reject that testimony. *Poellinger*, 153 Wis.2d at 503, 451 N.W.2d at 756. VerHagen's version of the transaction is more believable for many reasons. The amount of the check, including the last sixty-two cents, is an unusual amount for a personal loan. Other witnesses testified that VerHagen and Reynolds inquired about the annuity that VerHagen claims he intended to purchase with the money. VerHagen stood to incur substantial tax penalty if he failed to invest the money in another IRA account. VerHagen's divorce left him with very little cash, making it unlikely that he would lend Reynolds the money. Turning over

money for the purpose of an investment was consistent with past arrangements between VerHagen and Reynolds. Past loan agreements between VerHagen and Reynolds always involved a personal note or some kind of collateral.

Reynolds argues that the State failed to prove that he initially acquired the funds by misrepresentation. That is not an element of theft under § 943.20(1)(b), STATS. *See* WIS J I—CRIMINAL 1444 (1994).

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.