NOTICE

*This is a summary disposition issued under Alaska Appellate Rule 214(a). Summary dispositions of this Court do not create legal precedent. See Alaska Appellate Rule 214(d).*

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

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| JACK EDWARD BENN,<br><br>Appellant,<br><br>v.<br><br>STATE OF ALASKA,<br><br>Appellee. | Court of Appeals No. A-13675<br>Trial Court No. 3AN-18-12571 CR<br><br>SUMMARY DISPOSITION<br><br>No. 0335 — July 26, 2023 |

Appeal from the Superior Court, Third Judicial District, Anchorage, Michael R. Spaan, Judge.

Appearances: Doug Miller, Law Office of Douglas S. Miller, under contract with the Office of Public Advocacy, Anchorage, for the Appellant. Alex Engeriser, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Treg R. Taylor, Attorney General, Juneau, for the Appellee.

Before: Allard, Chief Judge, and Wollenberg and Terrell, Judges.

Jack Edward Benn was convicted, following a jury trial, of two counts of second-degree theft of an access device and one count of fraudulent use of an access device after he paid for a hotel room and attempted to buy alcohol and cigarettes using two debit cards that did not belong to him.[1] On appeal, Benn argues that there was insufficient evidence presented at trial to support his two theft convictions.

[1] AS 11.46.130(a)(7) and AS 11.46.285(b)(3), respectively.

To prove that Benn committed theft of the debit cards under the State's theory of the case, the State was required to show that he obtained the cards with the intent to "appropriate" them.[2] The term "appropriate" in this context means to "exercise control over property of another, permanently or for so extended a period or under such circumstances as to acquire the major portion of the economic value or benefit of the property."[3] Benn argues that his conduct — briefly possessing the debit cards and using them to make purchases at the request of a friend — was insufficient to prove that he intended to acquire the major portion of their economic value or benefit.

When we review a claim of insufficient evidence, this Court views the evidence — and all reasonable inferences from that evidence — in the light most favorable to upholding the jury's verdict.[4] We then ask whether a reasonable juror could have concluded that the defendant was guilty beyond a reasonable doubt.[5]

In this case, Benn testified that his friend told Benn that he had "cards to play with." The friend then gave Benn one debit card so that he could pay for a hotel room; Benn used the card to pay for the room and then returned it to his friend. Later, the friend gave Benn a different debit card so that he could get a taxi and go buy alcohol and cigarettes. Benn used this debit card to pay for the taxi ride, but was intercepted by police at the grocery store before he had made any further purchases. The police found the second debit card, and a receipt for the hotel room purchase using the first debit card, in Benn's pocket.

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[2] AS 11.46.100(1) (defining "theft"); *see also* AS 11.46.130(a)(7) (proscribing theft of an "access device"); AS 11.81.900(b)(1) (defining "access device").

[3] AS 11.46.990(2)(A).

[4] *Iyapana v. State*, 284 P.3d 841, 849-50 (Alaska App. 2012) (citing *Morrell v. State*, 216 P.3d 574, 576 (Alaska App. 2009)).

[5] *Id.*

As the State points out on appeal, although Benn claimed that he thought the cards belonged to his friend, the evidence and inferences presented at trial suggest the contrary. Benn knew that his friend was unemployed, homeless, and had no identification documents. The debit cards did not have Benn's friend's name on them — they contained the name of another person entirely — and Benn had observed his friend unsuccessfully attempt to use the cards at various hotels.

We conclude that this evidence is sufficient to demonstrate that Benn intended to appropriate the two debit cards when he took them from his friend and used them to make purchases.[6]

The judgment of the superior court is AFFIRMED.

[6] Benn also asserts that the "major portion of the economic value or benefit" of debit cards must be measured by the amount of money in the linked bank accounts (that could be accessed using the cards). *See* AS 11.46.990(2)(A). But there is no support for this interpretation in our case law, and he offers no statutory history or other persuasive authority indicating that this is what the legislature intended in this context. Indeed, the State did not substantively address this argument in its briefing, and Benn did not file a reply brief. We accordingly decline to address this argument.