This opinion is nonprecedential except as provided by Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0257

State of Minnesota,
Respondent,

vs.

Christopher Charles Ward,
Appellant.

Filed February 1, 2021
Affirmed
Ross, Judge

Hennepin County District Court
File No. 27-CR-19-13322

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Jordan W. Rude, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Julie Loftus Nelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Segal, Chief Judge; Ross, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

Police arrested Christopher Ward outside a department store and found stolen checks, credit cards, and drivers' licenses in his possession after a store manager reported that, for the second time in three days, Ward was trying to buy merchandise with stolen credit cards. Ward appeals from his conviction of identity theft, arguing that the state was required to charge him only with the lesser crime of financial-transaction-card fraud on the theory that the elements of both crimes are identical and that he can be tried only for the more specific charge. Because the crimes are not identical, we affirm.

FACTS

Video surveillance cameras at multiple retailers in Minneapolis and Edina recorded Christopher Ward on a shopping spree spanning four days in April 2019. Ward's extravaganza involved more than $3,000 in completed purchases and many failed purchases, including one intended to book an Airbnb vacation. Other video cameras recorded Ward lurking around or entering secured areas of other businesses, where more than 24 employees or owners discovered that someone had stolen their cash, credit cards, fuel cards, checks, insurance cards, and drivers' licenses. These businesses included several restaurants, a bakery, a bank, a dental office, and a chiropractic clinic. Ward went from place to place—shopping and pilfering the transactional and identification cards—in a Volkswagen stolen from St. Paul.

Ward's excursion ended after a Macy's manager reported that the man who had made fraudulent purchases three days earlier was back making another one. Edina Police caught up with Ward near the store and arrested him. He told police falsely that his name is "Rory," a name that matched a stolen license he was carrying. In addition to assorted goods that Ward had just illegally purchased and the stolen driver's license, Ward was carrying eight stolen credit cards, two stolen insurance cards, and $745 in cash. The stolen car that he drove there contained four blank stolen checks on four different accounts, four stolen credit cards, one stolen casino card, a stolen Sam's Club card, and $2,850 in cash.

Another stolen license was on the ground outside the car. These assorted cards, checks, and licenses in his possession had been stolen from at least 15 people.

The state charged Ward with identity theft, motor-vehicle theft, financial-transaction-card fraud, and possession or sale of stolen or counterfeit checks. Ward unsuccessfully moved the district court to dismiss the identity-theft charge, arguing that this offense and the financial-transaction-card-fraud offense rest on the same elements but carry different penalties, requiring that he be subject to prosecution only for the lesser of the two, which is financial-transaction-card fraud. Ward pleaded guilty to auto theft, and the state dismissed the charges for credit-card fraud and possessing stolen checks. The parties agreed to hold a stipulated-evidence bench trial for identity theft, after which the district court found Ward guilty and sentenced him to serve 132 months in prison.

Ward appeals.

DECISION

Ward challenges his conviction of identity theft, maintaining that the district court should have dismissed the charge as a matter of law. We review this legal challenge de novo. *See State v. Murphy*, 545 N.W.2d 909, 914 (Minn. 1996). Ward contends that the state could not prosecute him for the "general" crime of identity theft because that offense is elementally the same as, but less circumstantially specific than, financial-transaction-card fraud and carries a heavier penalty. The argument fails.

Ward's challenge faces a presumption that the prosecutor generally has wide discretion to charge a defendant "under any statute that the defendant's acts violate." *State v. Chryst*, 320 N.W.2d 721, 722 (Minn. 1982). Ward's contention hangs on an exception to that rule, which is that if two criminal statutes, “one general and one specific, conflict because they have the same elements but differing penalties,” the prosecutor may not charge the defendant under the general offense unless the legislature indicated its intent for that approach. *State v. Craven*, 628 N.W.2d 632, 635 (Minn. App. 2001), *review denied* (Minn. Aug. 15, 2001). This limit on prosecutorial-charging discretion occurs only when, in every conceivable circumstance, the conduct that violates the more-specific statute also would violate the general statute. *See Chryst*, 320 N.W.2d at 772. We need not consider any other conceivable circumstance here, because some of Ward’s criminal conduct violates only the identity-theft statute.

It is true, as Ward argues, that the two offenses reflect some degree of overlap. But they are fundamentally different. The financial-transaction-card-fraud statute involves “any instrument or device . . . issued . . . for the use of the cardholder in obtaining credit, money, goods, services, public assistance benefits, or anything else of value,” Minn. Stat. § 609.821, subd. 1 (2018), and a person violates it if he “uses or attempts to use” that instrument or device “to obtain the property of another,” *id.*, subd. 2(1) (2018). By contrast, the identity-theft statute prohibits the mere possession of another person’s identification “with the intent to commit, aid, or abet any unlawful activity.” Minn. Stat. § 609.527, subd. 2 (2018). In a way, the identity-theft statute is, as Ward maintains, more general than the statute prohibiting credit-card fraud, and this might merit further thought if credit-card fraud were his only illegal conduct. But his misconduct was broader in a way that would lead a prosecutor to recognize that the identity-theft statute is more suited to his crime.

Only the identity-theft statute covers Ward's possession or use of *all* of the stolen items found in his possession. This includes his possession of those identifying items not issued for financial transactions, such as the insurance cards and drivers' licenses. Because one of those licenses belonged to a man whose first name was Rory, the same name Ward gave as his own, the prosecutor would reasonably infer that Ward possessed another person's identity intending to use it to aid in the unlawful activity of misidentifying himself to police. *See* Minn. Stat. § 609.506, subd. 1 (2018) (criminalizing falsely identifying oneself to law enforcement). And although Ward's possessing the stolen, blank checks without yet having actually used or attempted to use them to obtain property likewise would not by itself violate the credit-card-fraud statute, his possessing them with his apparent intent to use them later arguably violated the identity-theft statute. The prosecutor was therefore not restricted to charge only for the credit-card violations, and the district court therefore appropriately rejected Ward's legal theory.

Affirmed.