STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0192

State of Minnesota,
Respondent,

vs.

Anthony Baumgartner,
Appellant.

Filed May 6, 2008
Affirmed
Hudson, Judge

Cook County District Court
File No. CR-05-12

Lori Swanson, Attorney General, James B. Early, Assistant Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2134; and

Timothy Scannell, Cook County Attorney, 411 West Second Street, Grand Marais, Minnesota 55604 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Paul J. Maravigli, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, Minnesota 55104 (for appellant)

Considered and decided by Hudson, Presiding Judge; Worke, Judge; and Collins, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

HUDSON, Judge

On appeal from his conviction of second-degree burglary of a banking business, appellant argues that (1) a money-exchange business does not fall within the meaning of the statutory definition of the term "banking business" as used in Minn. Stat. § 609.582, subd. 2(b) (2004); (2) the evidence was insufficient to support the jury's verdict; and (3) the district court committed plain error by failing to sua sponte instruct the jury on an element of the offense. Because (1) a money-exchange business falls within the purview of Minn. Stat. § 609.582, subd. 2(b); (2) the evidence was sufficient to support the jury's verdict; and (3) appellant waived any argument regarding the jury instructions by failing to object at trial, we affirm.

FACTS

The facts of this case are largely undisputed. In March 2005, appellant Anthony Baumgartner and two of his friends drove from Duluth to Grand Portage. On the way, they decided to burglarize Ryden's Border Store (Ryden's) in Grand Portage. The three arrived at the hotel at the Grand Portage Lodge and Casino, ate a meal, and went to sleep.

Early the next morning, the men drove to Ryden's. They made sure no one was around and then used pry bars to break in. Once inside, they found a large amount of Canadian and American dollars, as well as rolls of coins. The men grabbed the money, ran back to their van, returned to the hotel to collect their belongings, and drove back to Duluth. The men stole approximately $20,000 in Canadian currency and $24,000 in American dollars.

Cook County charged appellant with second-degree burglary in violation of Minn. Stat. § 609.582, subd. 2(b) (2004) (burglarizing a building that contains a "banking business"), and second-degree burglary in violation of Minn. Stat. § 609.582, subd. 2(d) (2004) (possessing a tool to gain entry).

On the morning of his jury trial, appellant moved to dismiss the charge of burglary of a banking business and argued that Ryden's was not a "banking business" under section 609.582, subdivision 2(b). The district court denied appellant's motion.

The jury heard evidence from several witnesses, including the owner of Ryden's, the president of a local bank, and one of the other men who committed the burglary. Shannon Hicks (Hicks), one of the owners of Ryden's, testified that the store, which is located one-half mile from the Canadian border, provides a money-exchange service for people traveling between Canada and the United States. Hicks explained that the store had to keep "in excess of [$]50,000" on hand for its money-exchange business and that the store "call[s] the bank every day, sometimes a couple [of] times a day to keep track of the [exchange] rate." Hicks also testified that Ryden's occasionally exchanges money for local banks: "[S]ometimes banks call me . . . to exchange their Canadian [money]. . . . I've been called by banks in Duluth, . . . the Grand Marais Credit Union, the Silver Bay Credit Union. Places like that."

Michael Lavigne (Lavigne), the president of the Grand Marais State Bank, also testified. He explained that foreign money exchange is a "for-profit-type business" and that "there is no particular license you have to get to exchange money." Lavigne stated that: "[T]here's a lot of people in the banking business . . . there's credit unions . . .

savings and loans . . . pay-day loan operations . . . money exchange businesses . . . pawn shops . . . a myriad of things . . . there's lots of competition in the banking business." Lavigne explained the difference between a typical retail business and a money-exchange business such as Ryden's: "[R]etail businesses wouldn't be keeping much Canadian. . . . [T]hey'd sell it as quick as they got it. They're not in that business. They don't exchange dollars for dollars. If they take Canadian money in, it's for purchase of an item, so they're not exchanging money." Lavigne also testified that, in his opinion, Ryden's money-exchange service is a part of the banking business: "It's the same thing we do at the bank."

At the close of the state's case, appellant again moved to dismiss the charge of burglary of a banking business. The district court denied appellant's motion and concluded that whether Ryden's is a banking business was a fact issue for the jury. Appellant decided not to exercise his right to testify and did not present any witnesses. The jury returned guilty verdicts on both counts.

At sentencing, appellant moved for an acquittal on both counts. Appellant argued that (1) there was insufficient evidence to show that appellant had actually entered the building or taken the money; and (2) there was insufficient evidence to show that Ryden's was a banking business. The district court denied appellant's motions and stated that the phrase "banking business" is one "that is capable of ordinary understanding by the jury." The district court sentenced appellant to the presumptive 51-month sentence. This appeal follows.

D E C I S I O N

On appeal, appellant only challenges his conviction for second-degree burglary of a banking business in violation of Minn. Stat. § 609.582, subd. 2(b) (2004). Appellant first argues that, as a matter of law, money-exchange businesses such as Ryden's do not fall within the meaning of the statutory definition of the term "banking business." We disagree.

"Construction of a criminal statute is a question of law subject to de novo review." *State v. Colvin*, 645 N.W.2d 449, 452 (Minn. 2002). Penal statutes should be strictly construed, and such statutes "may not be interpreted to create criminal offenses that the legislature did not contemplate." *Id.*

Section 609.582, subdivision 2(b), provides that

> Whoever enters a building without consent and with intent to commit a crime, or enters a building without consent and commits a crime while in the building, either directly or as an accomplice, commits burglary in the second degree and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than $20,000, or both, if:
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> . . . .
>
> (b) the portion of the building entered contains a banking business or other business of receiving securities or other valuable papers for deposit or safekeeping and the entry is with force or threat of force.

Neither chapter 609 nor section 609.582 defines "banking business."

Words in a statute that have no special definition or technical meaning are to be given their "common and approved usage." Minn. Stat. § 645.08(1) (2004). The

American Heritage Dictionary defines a "bank" as "[a] business establishment in which money is kept for saving or commercial purposes or is invested, supplied for loans, or exchanged." *The American Heritage Dictionary* 145 (3d ed. 1996). We conclude that a money-exchange business falls within the statutory meaning of the phrase "banking business" as it is used in Minn. Stat. § 609.582, subd. 2(b).

Appellant next argues that even if a money-exchange business falls within the definition of "banking business," there was insufficient evidence for the jury to find that Ryden's qualifies as such a business. We disagree.

In considering a claim of insufficient evidence, this court's review is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the jurors to reach the verdict that they did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). This court assumes the jury believed the state's witnesses and disbelieved contrary evidence. *State v. Asfeld*, 662 N.W.2d 534, 544 (Minn. 2003). The court will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476–77 (Minn. 2004).

Here, the jury heard evidence showing that Ryden's regularly exchanged Canadian and American dollars for both private individuals and banks, and that Ryden's kept large amounts of both currencies, in excess of $50,000, on the premises specifically for its money-exchange business. The jury also heard the testimony of the president of a local bank who stated that other organizations besides banks are involved in the banking

business and that he believed that Ryden's was a banking business. Taking the evidence in the light most favorable to the jury's verdict, we conclude that there was sufficient evidence to support the jury's verdict.

Appellant also argues that the district court plainly erred when it failed to, sua sponte, provide the jury with a definition of the term "banking business." Appellant failed to object to the jury instructions at trial, and we decline to address this argument. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998) (stating that review of unobjected-to errors is discretionary); *see also State v. Sletten*, 664 N.W.2d 870, 875 (Minn. App. 2003) (holding that issue not preserved for appeal when not raised before district court), *review denied* (Minn. Sept. 24, 2003).

Affirmed.