STATE OF MINNESOTA
IN COURT OF APPEALS
A06-1782, A07-1330

State of Minnesota,
Respondent,

vs.

Blake Vick,
Appellant,

and

Blake Thomas Vick, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed June 17, 2008
Affirmed
Hudson, Judge

Hennepin County District Court
File No. 04021212

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

Michael O. Freeman, Hennepin County Attorney, Michael Richardson, Assistant County Attorney, C-2000 Government Center, Minneapolis, Minnesota 55487 (for respondent)

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

Considered and decided by Toussaint, Presiding Judge; Hudson, Judge; and Schellhas, Judge.

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 two counts of aiding and abetting theft by swindle and two counts of aiding and abetting aggravated forgery, appellant argues that (1) the evidence at trial was insufficient to support his conviction because the state failed to prove that he had any criminal intent when he asked his girlfriend to sign mortgage papers that he believed were valid; and (2) the district court erred in ordering him to pay $45,404.22 in restitution, which represents the amount of the victim's attorney fees, because his actions did not directly cause that loss. Because the evidence was sufficient to support appellant's conviction and because the district court's restitution decision was not erroneous, we affirm.

FACTS

M.B. and Ronald James Adamson were married in 1986. During their marriage, M.B. and Adamson owned two houses in New Hope: one at 3404 Ensign Avenue North, and one a few houses away, at 3464 Ensign Avenue North. M.B. filed for divorce in 2003, and their divorce was finalized in November 2003. As part of the divorce settlement, M.B. was awarded both houses; M.B. was to live at 3464 Ensign with the couple's children and was to sell 3404 Ensign and split the proceeds with Adamson. But after the divorce, Adamson refused to leave 3404 Ensign and would not give M.B. access to the property.

In December 2003, Adamson broke into M.B.'s house at 3464 Ensign. M.B. called the police and Adamson was arrested. After Adamson was arrested, M.B., her sister, her friend, and a police officer went to the 3404 Ensign property. With the police officer's assistance, M.B. broke into the house and let the others in. Once inside, they discovered many pieces of mail addressed to M.B. at 3464 Ensign that Adamson had stolen, M.B.'s old driver's license, and mortgage closing papers for both properties. M.B. had not authorized the mortgages nor had she authorized anyone to sign mortgage papers in her name. M.B. reported the fraudulent mortgages to the New Hope Police Department. In April 2004, Adamson was killed by police after he stabbed himself with a knife, called 911, and then refused to put down the knife when police arrived.

In October 2004, after investigating the circumstances under which the mortgages were obtained, the state charged appellant Blake Vick, Adamson's nephew, with (1) two counts of aiding and abetting felony theft by swindle (over $2,500) in violation of Minn. Stat. § 609.52, subds. 2(4), 3(2) (2002); and (2) two counts of aiding and abetting felony aggravated forgery in violation of Minn. Stat. § 609.625, subd 1(1) (2002).

Appellant waived his right to a jury trial, and a court trial was held in January 2006. Appellant's girlfriend, Laurie George, testified regarding her involvement in the fraud. George explained that she first learned about the mortgage-refinancing plan from appellant on the afternoon of December 1, 2003:

> [Appellant] said that he had talked to his uncle and that they needed the money to buy Christmas presents for the children and that [M.B.] couldn't be at the closing because she was in treatment and asked if I would stand in for his wife while she was in treatment.

George testified that she was supposed to introduce herself as M.B. and sign the mortgage forms for the property at 3404 Ensign. George estimated that she signed 20 to 25 documents. George also testified that Adamson was going to give her and appellant money for helping him out.

A few weeks later, appellant told George that Adamson wanted them to participate in another mortgage refinancing because it had gone so well the first time and because he needed more money to pay for M.B.'s treatment. George testified that appellant told her that he "talked to [M.B.] too on the phone and she said could you please do this for us." George later admitted that when she first spoke to police, she did not tell them that appellant had received a call from M.B.

George testified that she never discussed the mortgage scheme with Adamson and that she got all her information from appellant. George also testified that she and appellant never discussed that what they were doing was illegal, but later George admitted that she had always known that what she was doing was wrong. George testified that she believed the idea to have her stand in for M.B. at the mortgage closings came from Adamson and that appellant was not present while the closing documents were signed and never told her to pose as M.B. But George also admitted that appellant expected her to turn over half of the money Adamson gave her to him.

M.B. testified that she had known appellant for quite a few years and knew that appellant and Adamson were "close." M.B. stated that she had never authorized appellant to take care of any business matters on her behalf, and she did not give him

permission to recruit another person to stand in for her at either mortgage closing. M.B. testified that she did not have any recollection of talking with appellant in November or December 2003.

The New Hope police detective who investigated the case testified that Adamson admitted concocting the mortgage-fraud scheme. The police detective also stated that in his initial interview, Adamson did not implicate either appellant or George in the crimes.

Appellant gave a taped statement at the New Hope Police Department on March 1, 2004, explaining how he got involved in the mortgage fraud. The tape recording of his statement was played for the district court during appellant's trial and a transcript of the statement was entered into evidence. During his statement, appellant told the police detective that his uncle told him that he needed to get a home loan, but that M.B. was not going to be available to sign the papers. Appellant's uncle asked him if he would ask his girlfriend, George, to stand in for M.B. because George looked like M.B. Appellant told the police that he had talked with M.B. on the phone and believed that "everything seemed like it was on the up and up." But appellant also told the police officer that he believed Adamson was "a master BSer" and that he is a little suspicious of "everything" he does with Adamson. Appellant stated that Adamson had "always kind of walked a fine line on the ethics as far as I'm concerned."

Following the presentation of state's case, appellant waived his right to testify and the defense rested without presenting any witnesses. After closing arguments, the district court made detailed findings from the bench. The district court found that George "testified credibly that the defendant enlisted her in the perpetration of this fraud.

[Appellant's] statement to the police suggesting that he was duped into this transaction by his uncle was not credible. [Appellant's] statement that he believed that [M.B.] approved these transactions is also not credible." The district court noted that "[appellant] admitted in his statement that he knew the Adamsons were having problems and were living apart" and found that "[s]ince he and his uncle were so close, it is not credible that he did not know that the divorce was final. . . . It is inconceivable that he could have believed that Ron Adamson and [M.B.] were cooperatively setting up this hoax notwithstanding their conflict." The district court then concluded that

> [appellant's] argument that Ron Adamson was the mastermind is clearly accurate, but [appellant] was not duped. He was not gullible. He knowingly and enthusiastically participated in the fraud knowing it was wrong, anticipating to benefit by receiving some of the fraudulently obtained proceeds. He elicited Laurie George's participation to carry out the fraud promising her a cut of the proceeds and encouraging her to help him out of his financial difficulties.

The district court also noted that "[appellant's] statement to the police was telling. As the prosecutor said, his spoken demeanor was revealing. Almost as soon as [the detective] began questioning him, he erupted in a torrent of words setting out his apparently well-rehearsed story."

The district court found that appellant had demonstrated several "indicia of consciousness of guilt," including (1) "his knowledge that Ron Adamson routinely engaged in suspicious and unethical activities"; (2) his knowledge that he would receive a commission for his participation in the fraud; (3) his attempt to distance himself from the fraud by dropping George off at the house and leaving before the mortgage closers

arrived; and (4) his instruction to Adamson to make out the commission check to George. The district court found appellant guilty of all four counts.

Because of the new mortgages on the two properties, M.B. incurred approximately $100,000 in additional debt. M.B. hired an attorney to help her address the fraudulent mortgages. In April 2005, the Hennepin County District Court issued an order that voided the fraudulently obtained mortgages and imposed constructive trusts that restored M.B. to the position she was in prior to these offenses.

The state moved for an order of restitution for M.B.'s out-of-pocket losses—the attorney fees she incurred as a result of the fraudulent mortgages. Appellant's attorney filed an affidavit with the district court indicating that appellant intended to challenge the requested restitution on the ground that M.B.'s losses were not "directly caused" by the conduct for which appellant was convicted.

A restitution hearing was held in June 2006. Neither appellant nor George attended the hearing, although both were represented by counsel. The district court issued a written order finding that "the prosecution has met its burden of demonstrating the amount of loss sustained by [M.B.] and the appropriateness of her request for restitution for her attorneys' fees and disbursement expenses." The district court ordered that appellant and George pay $45,404.22 in restitution, jointly and severally.

In September 2006, appellant appealed the June 2006 restitution order (No. A06-1782). In February 2007, appellant moved this court to stay his appeal of the restitution order pending completion of postconviction proceedings in the district court. In March 2007, this court granted appellant's motion to stay his appeal of the restitution order.

In April 2007, appellant moved for postconviction relief, arguing that there was insufficient evidence to support his conviction because there was no evidence that appellant had any criminal intent and that the district court had failed to make required written findings. In June 2007, the postconviction court denied appellant's motion for postconviction relief. The postconviction court found that the district court "could reasonably have concluded that [appellant] was guilty of the offenses charged beyond a reasonable doubt." In July 2007, appellant filed an appeal from the order denying his petition for postconviction relief (No. A07-1330), moved to reinstate his prior appeal, and moved this court to consolidate the two appeals. This court issued an order consolidating the two appeals. This appeal follows.

D E C I S I O N

I

Appellant argues that the evidence was insufficient to support his conviction for aiding and abetting theft by swindle and aiding and abetting aggravated forgery. Specifically, appellant argues that the state failed to show beyond a reasonable doubt "that he had any criminal intent when he asked his girlfriend to sign mortgage papers that he believed were valid." We disagree.

"The decisions of a postconviction court will not be disturbed unless the court abused its discretion." *Dukes v. State*, 621 N.W.2d 246, 251 (Minn. 2001). The court abuses its discretion if it misinterprets or misapplies the law. *State v. Babcock*, 685 N.W.2d 36, 40 (Minn. App. 2004), *review denied* (Minn. Oct. 20, 2004). "A postconviction court's factual findings will be sustained if they are supported by

sufficient evidence, but we independently determine the law as it applies to the facts." *Johnson v. State*, 733 N.W.2d 834, 836 (Minn. App. 2007) (citations omitted), *review denied* (Minn. Sept. 18, 2007).

In considering a claim of insufficient evidence, this court carefully examines the record to ascertain "whether the jury could reasonably find the defendant guilty given the facts in evidence and the legitimate inferences which could be drawn from those facts." *State v. Miles*, 585 N.W.2d 368, 372 (Minn. 1998). This court views the evidence in the light most favorable to the conviction. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). This court "review[s] criminal bench trials the same as jury trials when determining whether the evidence is sufficient to sustain convictions." *State v. Holliday*, 745 N.W.2d 556, 562 (Minn. 2008). The reviewing court "assum[es] the [factfinder] believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). Assessing a witness's credibility and weighing witness testimony is the exclusive province of the factfinder. *State v. Bliss*, 457 N.W.2d 385, 390 (Minn. 1990). We will not disturb the verdict if the factfinder, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476–77 (Minn. 2004).

To obtain a conviction, the state must prove "beyond a reasonable doubt all of the essential elements of the crime with which the defendant is charged." *State v. Ewing*, 250 Minn. 436, 442, 84 N.W.2d 904, 909 (1957). "[A] conviction based entirely on circumstantial evidence merits stricter scrutiny than convictions based in part on direct

evidence." *State v. Jones*, 516 N.W.2d 545, 549 (Minn. 1994). But "[w]hile it warrants stricter scrutiny, circumstantial evidence is entitled to the same weight as direct evidence." *State v. Bauer*, 598 N.W.2d 352, 370 (Minn. 1999). The circumstantial evidence must form a complete chain that, in view of the evidence as a whole, leads so directly to the defendant's guilt as to exclude beyond a reasonable doubt any reasonable inference other than guilt. *Jones*, 516 N.W.2d at 549. "[P]ossibilities of innocence do not require reversal of a jury verdict so long as the evidence taken as a whole makes such theories seem unreasonable." *State v. Ostrem*, 535 N.W.2d 916, 923 (Minn. 1995).

"Intent may be proved by circumstantial evidence including the defendant's conduct" and "may be inferred from events occurring before and after the crime." *Davis v. State*, 595 N.W.2d 520, 525–26 (Minn. 1999). It may also be inferred that "a person intends the natural and probable consequences of their actions." *State v. Johnson*, 616 N.W.2d 720, 726 (Minn. 2000).

In Minnesota, "[a] person is criminally liable for a crime committed by another if the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime." Minn. Stat. § 609.05, subd. 1 (2002). "To impose liability under the aiding and abetting statute, the state must show some knowing role in the commission of the crime by a defendant who takes no steps to thwart its completion." *Ostrem*, 535 N.W.2d at 924 (quotation omitted). "[A]ctive participation in the overt act which constitutes the substantive offense is not required, and a person's presence, companionship, and conduct before and after an offense are relevant circumstances from which a person's criminal intent may be inferred." *Id.*

A person is guilty of theft when he or she obtains property or services from another "by swindling, whether by artifice, trick, device, or any other means." Minn. Stat. § 609.52, subd. 2(4) (2002). "Theft by swindle requires the intent to defraud." *State v. Saybolt*, 461 N.W.2d 729, 735 (Minn. App. 1990), *review denied* (Minn. Dec. 17, 1990).

A person is guilty of aggravated forgery when he or she "falsely makes or alters a writing or object," intending to defraud, such that the writing or object "purports to have been made by another or by the maker or alterer under an assumed or fictitious name, or at another time, or with different provisions, or by authority of one who did not give such authority." Minn. Stat. § 609.625, subd. 1 (2002). Such writings or objects include those that "when genuine, legal rights, privileges, or obligations are created, terminated, transferred, or evidenced, or any writing normally relied upon as evidence of debt or property rights." *Id*., subd. 1(1).

Appellant maintains that the evidence is insufficient to show that he had any criminal intent because (1) there is no evidence that he had any reason to believe Adamson was stealing from M.B. and that it is "just as likely that [appellant] thought he was helping his uncle and aunt, just as he explained when he spoke to the detective" and (2) there is no evidence that he tried to hide his actions. The record contradicts appellant's assertions.

Appellant was close to Adamson, had known him for many years, and knew that M.B. and Adamson were having marital problems. At his uncle's behest, appellant recruited his girlfriend, George, to pose as M.B. knowing that George was to pretend to

be M.B. for the purposes of obtaining mortgages. Appellant brought George to Adamson's house on both December 1 and December 27. Appellant also admitted that he was always "a little suspicious" of Adamson's activities and believed that Adamson was "a master BSer" and "walked a fine line" ethically. Finally, appellant received monetary compensation for his role in the scheme. All of these facts support the district court's finding that appellant "knowingly and enthusiastically" participated in the offenses.

Furthermore, in his statement to the police, appellant admitted that he told Adamson to write the checks to George rather than to himself. And, as noted by the district court, although appellant told the police that he received a call from M.B. authorizing the mortgages before the December 1 transaction, George testified that the call did not take place until just before the December 26 transaction. These facts support the district court's finding that appellant tried to conceal his participation in the fraudulent transactions.

We conclude that there was sufficient evidence to support appellant's convictions for aiding and abetting theft by swindle and aiding and abetting aggravated forgery. The postconviction court did not abuse its discretion in denying appellant's petition for postconviction relief.

II

Appellant argues that the district court erred by ordering him to pay restitution in the amount of the victim's attorney fees because appellant's actions did not directly cause the victim's loss. We disagree.

A victim of a crime has the right to receive restitution that "include[s], but is not limited to, any out-of-pocket losses resulting from the crime." Minn. Stat. § 611A.04, subd. 1(a) (2002). Restitution is primarily intended to compensate the crime victim for losses by restoring the victim's original financial condition. *State v. Terpstra*, 546 N.W.2d 280, 283 (Minn. 1996). Overall, restitution is allowable only for "the victim's losses . . . directly caused by the conduct for which the defendant was convicted." *State v. Latimer*, 604 N.W.2d 103, 105 (Minn. App. 1999) (quotation omitted).

The district court has broad discretion in ordering restitution. *State v. O'Brien*, 459 N.W.2d 131, 133 (Minn. App. 1990). This court will not reverse a restitution order unless the district court abused its discretion. *State v. Tenerelli*, 598 N.W.2d 668, 671 (Minn. 1999). But whether to allow a particular item of restitution is a question of law subject to de novo review. *State v. Thole*, 614 N.W.2d 231, 234 (Minn. App. 2000).

If the offender intends to challenge the amount of restitution or specific items of restitution, he or she has the burden of production and must submit "a detailed sworn affidavit of the offender setting forth all challenges to the restitution or items of restitution, and specifying all reasons justifying dollar amounts of restitution which differ from the amounts requested by the victim or victims," but "[t]he burden of demonstrating the amount of loss sustained by a victim as a result of the offense and the appropriateness of a particular type of restitution is on the prosecution." Minn. Stat. § 611A.045, subd. 3(a) (2002). "A dispute as to the proper amount or type of restitution must be resolved by the court by the preponderance of the evidence." *Id*.

Appellant's attorney submitted an affidavit to the district court declaring that appellant intended to challenge the requested restitution because "[t]he attorney's fees and disbursement expenses incurred by the victim to restore her homestead and other real estate to the position she was in prior to the crimes were not losses directly caused by the conduct for which [appellant] was convicted." Appellant did not appear at the restitution hearing and did not submit any additional arguments or facts challenging the requested restitution.[1]

It took M.B. sixteen months and tens of thousands of dollars in attorney fees to be restored to the position she was in before appellant committed these offenses. M.B.'s losses resulted directly and solely from the fraudulently obtained mortgages.

Appellant maintains that his role in the offenses was "relatively minor." Even though appellant was not the "mastermind" of the plan to fraudulently obtain the mortgages, appellant played a key role in executing that plan—he recruited his girlfriend to impersonate the victim, he drove his girlfriend to and from the house where the mortgage fraud took place, and he benefitted financially from those transactions. Appellant participated in the chain of events which resulted in the fraudulent mortgages. Therefore, the behavior for which appellant was convicted was a direct cause of M.B.'s losses. *See e.g., State v. Anderson*, 405 N.W.2d 527, 531 (Minn. App. 1987) (holding

[1] The state suggests that appellant waived this argument on appeal because he failed to appear at the restitution hearing. But Minn. Stat. § 611A.045 requires only that the offender submit a detailed statement setting forth the reasons he or she opposes the restitution. And in *State v. Palubicki*, 727 N.W.2d 662, 665 n.3 (Minn. 2007), the Minnesota Supreme Court held that an affidavit that "[met] only the bare minimum definition of 'detailed'" because it only challenged restitution on the ground that it was "not allowable" was sufficient for appellate review.

that where appellant was convicted of receiving stolen property, his behavior was a "direct cause" of the theft-victim's losses even though appellant did not participate in the theft), *review denied* (Minn. July 22, 1987). We conclude that the district court did not err by ordering appellant to pay restitution in the amount of $45,404.22.

Affirmed.