STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0836

In the Matter of the Welfare of:
B. S. K., Child.

Filed June 9, 2009
Affirmed
Halbrooks, Judge

Olmsted County District Court
File No. 55-JV-07-12408

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Mark A. Ostrem, Olmsted County Attorney, David F. McLeod, Assistant County Attorney, 151 4th Street Southeast, Rochester, MN 55904 (for respondent)

Considered and decided by Toussaint, Chief Judge; Shumaker, Judge; and Halbrooks, Judge.

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

HALBROOKS, Judge

Appellant challenges the sufficiency of the evidence supporting the district court's finding of guilt in this juvenile proceeding and claims that the district court altered the burden of proof, requiring him to prove his innocence. We affirm.

FACTS

Appellant B.S.K. was charged with the felony theft of a laptop computer from a fellow student at Century High School. Appellant pleaded not guilty, and a court trial took place on March 4, 2008.

The state's first witness was the victim, A.L. A.L. testified that he brought his computer to school on October 22, 2007, and carried it in his backpack to his second-period gym class. Because the computer would not fit in his gym locker, A.L. left his backpack on the floor. When A.L. returned to the locker room, he discovered that his computer was missing. He did not give anyone permission to take the computer and did not know who might have taken it. A.L. testified that all of his classmates had been with him in gym class and that none of them had returned to the locker room during the class period.[1]

C.L., another student at Century High School, testified that during a school day in October 2007, he heard appellant say, "Oh, I found this computer. I—I found it in the woods and I can't believe the cops haven't found it yet." C.L. stated that he had overheard appellant in the hallway between classes from a distance of approximately five feet. C.L. later reported to Officer Gretchen O'Neil that appellant had found a stolen computer and put it in the woods. The district court found C.L.'s testimony credible but gave it little weight.

[1] There was testimony from an assistant principal that the locker rooms are open at the start of each class period but are locked by an attendant after the class has started.

Theresa Milene, appellant's second- and eighth-period teacher, also testified for the state. Milene gave appellant and another student, T.R., passes to go to the gym area during second period on the day in question to perform some make-up work. When the boys returned approximately 35 minutes later, Milene noticed "a lot of whispering" between them.

Toward the end of eighth period that day, Milene noticed appellant behaving suspiciously. Appellant, who was sitting approximately two or three feet from Milene, was folding a gray sweatshirt around what appeared to be a laptop computer. Appellant attempted to shield the object from Milene with his body, but she was able to see the size and shape of the object due to the fabric being pulled tightly around it. Milene was adamant that the object's shape was consistent with that of a laptop computer. The district court found: "Ms. Milene's testimony about the laptop being wrapped in the sweatshirt was credible. She was tested by [appellant]'s attorney on cross-examination and explained in several different ways how she could tell the object was a laptop as opposed to something else."

Milene saw appellant place the wrapped object in his backpack. Because she was aware that a laptop computer had been stolen from the boys' locker room earlier in the day, Milene called assistant principal Troy Prigge. Prigge sent a hall monitor to Milene's classroom. When the hall monitor arrived and told appellant to pick up his backpack and accompany her to Prigge's office, appellant picked up his backpack, opened the classroom door, and ran. Milene and the hall monitor gave chase.

Prigge also testified for the state. After Prigge sent the hall monitor to Milene's classroom, the hall monitor radioed him and said that appellant had left the building via the bus doors. Prigge then went out the bus doors and saw appellant running down a bike path away from the school and toward a wooded area. Prigge saw that appellant had a backpack over his shoulder. Prigge yelled at appellant to stop, but appellant kept running. When appellant returned to the school to board his bus, another assistant principal apprehended him. Prigge then met with appellant, who had a backpack but no sweatshirt and no computer. A few days after the theft, appellant approached Prigge in the hallway and said that he had "dibs" on the reward for the computer's return.

At some point after the theft was reported, Prigge and Officer O'Neil viewed security-camera footage to determine who had gone into the locker room during second period after class had begun. Prigge testified that he saw appellant and T.R. enter the locker room. Prigge also testified that when appellant left the locker room approximately five minutes later, his backpack looked "thicker." Officer O'Neil testified that appellant's backpack appeared "a little bigger" than when he had entered.

Officer James Bradley testified that he spoke to appellant on the afternoon of October 22, after appellant had returned to the building. Appellant told him that he ran from school because he didn't want to talk to Prigge. Appellant stated that he "might know" who took the computer but that he was not going "to rat them out." Appellant told Officer Bradley that as he was running away, he gave his sweatshirt to his brother C.K, who is also a student at Century High School. But C.K. told Officer Bradley that he had not seen appellant since the morning of October 22 at their home.

Appellant's first witness was T.R., who testified that he and appellant went to the gym area together during second period on October 22. A staff member opened the locker room for them. T.R. testified that the locker room was "big" and that appellant was on the other side of the locker room while they were changing. T.R. and appellant chatted, but T.R. was not looking at appellant while they changed. T.R. stated that he and appellant were the only people in the locker room, and that he (T.R.) did not take the computer.

Appellant's second witness was D.B., who testified that he and appellant were "friends sort of." D.B. saw appellant in the woods near the school during eighth period on October 22. D.B., who was walking on a bike path, saw appellant running toward him. According to D.B., appellant had a sweatshirt but no backpack. Appellant showed D.B. two cartons of cigarettes and told D.B. that "they" were chasing him. D.B. later saw appellant return from the woods and go in the direction of the buses. On cross-examination, D.B. testified that he did not know appellant to be a smoker. D.B. also stated that two weeks before trial appellant had asked him to testify and that he did not know that appellant was accused of the theft until appellant asked him to be a witness.

Appellant also testified. He stated that he did not see any computer in the locker room and did not take anyone else's possessions. Appellant also testified that during eighth period on October 22, he had two cartons of cigarettes in his sweatshirt. "A friend" bought the cigarettes for him, and appellant planned to give them to another friend because appellant did not smoke. Appellant stated that he ran from the hall monitor because he did not want to get in trouble for having the cigarettes. Appellant ran

out of the building and went to the woods, where he saw D.B. and showed him the cigarettes. He then placed the cigarettes and sweatshirt in the woods.

On cross-examination, appellant admitted that he had lied to Officer Bradley about giving the sweatshirt to his brother. Appellant further admitted that he had told Officer Bradley that he ran because he did not want to talk to Prigge, not because he was afraid of getting caught with cigarettes. Appellant denied telling Officer Bradley that he might know who took the computer and that he would not turn in that person. When asked why he did not tell Officer Bradley about D.B. being able to confirm his story about the cigarettes, appellant stated that he did not want the officer to find the cigarettes.

The district court found that appellant

> was not a credible witness. His story about the cigarettes was not revealed to anyone until the time of trial and he admitted lying to Officer Bradley when he was interviewed. Although he told Officer Bradley he might know something about the stolen computer, he refused to provide any of the information he claimed to know.

The district court found that appellant committed theft. A disposition hearing took place on April 10, 2008. The district court stayed adjudication of delinquency for up to six months and placed appellant on probation with conditions. The district court also issued a written dispositional order. On April 16, 2008, the district court issued formal findings of fact.

This appeal followed. This court granted respondent's motion to strike a reference in appellant's brief to information not part of the record on appeal that appeared "to have been offered by appellant as an attempt to present additional evidence to this court."

D E C I S I O N

I.

Appellant challenges the sufficiency of the evidence supporting the district court's finding of guilt. "On appeal from a determination that each of the elements of a delinquency petition ha[s] been proved beyond a reasonable doubt, an appellate court is limited to ascertaining whether, given the facts and legitimate inferences, a fact-finder could reasonably make that determination." *In re Welfare of T.N.Y.*, 632 N.W.2d 765, 768 (Minn. App. 2001) (quotation omitted). "The reviewing court cannot retry the facts, but must view the evidence in a light most favorable to the state and must assume that the jury believed the state's witnesses and disbelieved any contradictory evidence. These standards apply to the review of a jury trial as well as a court trial." *In re Welfare of J.G.B.*, 473 N.W.2d 342, 345 (Minn. App. 1991) (citation and quotation omitted).

Appellant is correct that there is no direct evidence linking the stolen computer to him. But while a finding based entirely on circumstantial evidence warrants stricter scrutiny than one based in part on direct evidence, circumstantial evidence is to be given the same weight as direct evidence. *See State v. Bauer*, 598 N.W.2d 352, 370 (Minn. 1999); *State v. Jones*, 516 N.W.2d 545, 549 (Minn. 1994). The circumstantial evidence must form a complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt. *Jones*, 516 N.W.2d at 549. The finder of fact is in the best position to evaluate circumstantial evidence, and its verdict is entitled to due deference. *See State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989).

Minnesota law provides that a person is guilty of theft if he or she "intentionally and without claim of right takes, uses, transfers, conceals or retains possession of movable property of another without the other's consent and with intent to deprive the owner permanently of possession of the property." Minn. Stat. § 609.52, subd. 2(1) (2006). Appellant argues that there is no "credible" evidence that he possessed the computer. Appellant appears to confuse "credible" evidence with "direct" evidence. Whether the evidence against appellant is credible is not at issue on appeal because this court must assume that the district court found the state's witnesses credible. As previously mentioned, the district court specifically found Milene and C.L. to be credible and appellant not to be credible. And while there is no direct evidence that appellant possessed the computer, the circumstantial evidence forms a complete chain sufficient to support appellant's guilt beyond a reasonable doubt.

Appellant does not dispute that a computer was stolen from the locker room during second period. The circumstantial evidence against him can be summarized as follows: (1) appellant admitted to being in the locker room during second period; (2) Prigge and Officer O'Neil testified that when appellant left the locker room, his backpack appeared thicker or bigger than when he entered; (3) Milene saw appellant wrapping a sweatshirt around an object which, due to its size and shape, she was certain was a laptop computer; (4) appellant fled when told to report with his backpack to Prigge's office; (5) appellant told Officer Bradley that he "might know" who could have taken the computer but that he was not going "to rat them out"; and (6) appellant told Prigge that he (appellant) had "dibs" on the reward for the computer's return. From this

evidence, a fact-finder reasonably could infer that appellant took the computer from A.L.'s backpack during second period.

Appellant, citing *State v. Hatfield*, 639 N.W.2d 372, 376 (Minn. 2002), also argues that the circumstantial evidence is insufficient because it supports a rational hypothesis other than his guilt—i.e., the evidence is consistent with appellant's fear of being caught with cigarettes at school. While appellant's explanation would account for his attempt to hide something from Milene, his flight from the premises that afternoon, and his refusal to tell Officer Bradley about the cigarettes, appellant's scenario is inconsistent with other evidence that supports his guilt. First, appellant's explanation does not account for the testimony that his backpack appeared thicker or bigger when he left the locker room than when he entered. Appellant testified that the cigarettes were given to him before school, not during second period. Second, appellant claims to have been hiding *two* cartons of cigarettes in his backpack, but Milene testified that she saw appellant wrap his sweatshirt tightly around a single object. Third, appellant's scenario does not explain his various comments indicating his involvement in the theft.

Appellant's final sufficiency-of-the-evidence argument is that the facts of his case are similar to those of *In re Welfare of S.S.E.*, 629 N.W.2d 456 (Minn. App. 2001). *S.S.E.* also involved a juvenile's delinquency adjudication of felony theft. 629 N.W.2d at 457. But this court did not reach the merits of the sufficiency-of-the-evidence issue in *S.S.E.* *Id.* at 462. We also note that there is considerable evidence here beyond appellant's mere opportunity to steal the computer.

We conclude the circumstantial evidence is sufficient to support appellant's adjudication for theft.

II.

Appellant also argues that the district court shifted the burden of proof and required him to prove his innocence. We disagree. The district court made it clear that it found appellant guilty because the evidence showed, beyond a reasonable doubt, that he had participated in stealing the computer. The district court did not state that it based its decision on any failure by appellant to present evidence or to exonerate himself. The district court's comment that appellant should have provided other information to law enforcement seemed to reflect a doubt that appellant was the only person involved in the crime, not that the state had failed to prove appellant's involvement.

Affirmed.