STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1124

State of Minnesota,
Respondent,

vs.

Jack Duane Halverson,
Appellant.

Filed July 27, 2010
Affirmed
Peterson, Judge

Hennepin County District Court
File No. 27-CR-08-3769

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, J. Michael Richardson, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Michael F. Cromett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Lansing, Presiding Judge; Peterson, Judge; and Worke, Judge.

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

PETERSON, Judge

In this appeal from a conviction of receiving stolen property, appellant argues that (1) the evidence was insufficient to prove that he received stolen property; (2) testimony

that appellant was given a *Miranda* warning after being arrested constituted an impermissible comment on his silence and was reversible error; and (3) the district court erred by permitting the prosecutor to present testimony from appellant's mother, when she was without first-hand knowledge and when her information was irrelevant and/or highly prejudicial. We affirm.

FACTS

The complaint alleged that appellant Jack Halverson, aided and abetted by his wife, received stolen property in violation of Minn. Stat. §§ 609.52, subd. 3(2) (Supp. 2007), .53 (2006). The charge was tried to a jury.

Appellant, his wife, and their five children resided in a home in Medina. In November 2006, the first-lien holder on the property accelerated a loan, and appellant's brother, E.H., paid off the mortgage debts. Afterward, there was a lack of communication between appellant and E.H., and E.H. brought an eviction action against appellant and appellant's wife.

After numerous requests from appellant and his family, E.H. stopped the eviction action. E.H. entered into a lease agreement with appellant and appellant's wife, under which appellant and his family would reside in the Medina residence from February 1, 2007, though July 31, 2007. The lease stated, "Tenant shall convey by warranty bill of sale, and deliver to Landlord, all appliances currently located on the Premises and personal property with an aggregate estimated market value of $25,000.00 acceptable to Landlord, in Landlord's reasonable discretion, on or before February 8, 2007." The warranty bill of sale attached to the lease was dated February 20, 2007, and stated, "All

appliances currently located at the above-described property and the personal property listed on the attached supplemental page."

A second warranty bill of sale, also dated February 20, 2007, was introduced into evidence at trial. The second warranty bill of sale contained an additional handwritten clause: "[Appellant/appellant's wife] reserve the right to repurchase: Christopher Columbus 6,000, lion/cubs 3,000, Spelth 4,000, Misha Frid 15,000, Lazorati boat 4,000 ($32,000)." The handwritten clause also listed table chairs, bedroom set, hutch, and clock. E.H. identified the handwriting as appellant's handwriting and testified that the handwritten clause was added after the document was signed.

A notary, who worked with appellant's wife, denied notarizing the bill of sale with the handwritten notation but admitted that her notary stamp and signature were on the document. Regarding the bill of sale attached to the lease, the notary initially testified that she notarized appellant's wife's signature but, a few questions later, claimed that she did not recognize the document and denied notarizing appellant's wife's signature.

Appellant and his family vacated the residence in April or May 2007. E.H. changed the locks on the premises and, in June 2007, notified appellant by letter delivered by the police that appellant and his family were not allowed to be on the property anymore. At least four times between April and July 2007, E.H. told appellant that he was not to be on the property.

E.H. testified that on October 14, 2007, he went to the Medina residence and found that a window had been broken and numerous fixtures removed, including ten to 15 of the light fixtures, fireplace pillars, a sink and sink base, a washing machine, a dryer,

and a refrigerator. A videotape recorded by police at appellant's new residence was played at trial. E.H. identified items missing from the Medina residence on the videotape. E.H. testified that a hutch, a table, a safe, and a clock were also missing.

E.H. testified as to the value of missing items based on his seven years of experience as a landlord for other properties. E.H. testified that the light fixtures ranged in value from $100 up to about $500 to $600 each, the two pillars were worth between $400 and $600, a custom made sink base was valued at $500 to $800, the sink was $200 to $300, the washing machine and dryer were worth $400 to $600 each, and the refrigerator was valued at $1,500.

The jury found appellant guilty of receiving stolen property and that the value of the property was more than $5,000. The district court stayed imposition of sentence and placed appellant on probation for three years. This appeal challenging the conviction followed.

D E C I S I O N

I.

Appellant argues that the evidence was insufficient to prove that he received stolen property. 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). The reviewing court must assume that "the jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). The

reviewing 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 that the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

Appellant challenges the sufficiency of the evidence to prove E.H.'s ownership of the property involved in this case. On the videotape made by police at appellant's new residence, E.H. identified the following items as missing from the Medina residence: light fixtures, fireplace pillars, a sink and sink base, a washing machine, a dryer, and a refrigerator. E.H. testified that a hutch, a table, a safe, and a clock were also missing. In addition to this identification evidence, E.H.'s claim of ownership is supported by the purchase agreement, which refers to fixtures, by the lease agreement, which requires appellant to convey and deliver to E.H. "all appliances currently located on the Premises and personal property with an estimated market value of $25,000," and by the warranty bills of sale.

Appellant cites to the lack of documentation when the dispute about personal property first arose, the two different bills of sale, and the notary's testimony that she did not notarize the signatures as casting doubt on E.H.'s claim of ownership. Appellant also argues that E.H.'s "demeanor while testifying . . . demonstrated a total lack of credibility in any of the testimony he provided." Appellant's claims all go to the weight and credibility of evidence. "It is the jury's prerogative to determine both the weight and the credibility of the evidence. Inconsistencies in testimony and conflicts in evidence do not automatically render the testimony and evidence false and are not bases for reversal."

State v. Bakken, 604 N.W.2d 106, 111 (Minn. App. 2000) (citation omitted), *review denied* (Minn. Feb. 24, 2000).

Appellant had the opportunity to make to the jury at trial the argument that he now makes on appeal. Viewing the evidence in the light most favorable to the verdict, the evidence was sufficient to prove beyond a reasonable doubt that appellant received stolen property.

II.

The supreme court has held that it was error to admit testimony by a police officer "that he gave defendant a '*Miranda* warning,' which, the witness testified, included advising defendant that he had a right to remain silent and that anything he said might be used against him" when "[t]he officer's testimony was wholly gratuitous, serving no probative purpose whatever." *State v. Beck*, 289 Minn. 287, 292, 183 N.W.2d 781, 783 (1971). But the admission of this evidence can constitute harmless error. *State v. Dunkel*, 466 N.W.2d 425, 429 (Minn. App. 1991). When an appellate court reviews "a claimed violation of an accused's constitutional right [it] must independently evaluate the evidence to determine whether or not an average jury would have changed its verdict had the questioned statement been excluded." *Id.* at 429. To decide whether the admission of the evidence was harmless, the reviewing court must examine the entire record. *Id.*

After the officer testified that he arrested appellant and transported appellant and his wife to the police station, the prosecutor asked, "Then what – what did you do?" The officer replied, "I read each party their *Miranda* rights." Defense counsel objected. The

district court stated, "I think he can – You went to the police station." The officer answered "yes." The officer also testified:

> Q: OK. Did you have any – Other than what you briefly spoke about, did you have any other interaction with [appellant]?
> A: As far as conversation?
> Q: No. Just – Did you interact with them at all, not through conversation?
> A: Just the proper booking procedure that we go through.

We conclude that the officer's reference to the *Miranda* warning was harmless error because the reference was brief and innocuous, was not elicited by the prosecutor, and was not referred to again by the state. *See id.* (when determining whether reference to defendant's silence was harmless, factors to consider include whether reference was brief and innocuous, elicited by state, and referred to again by state). As to the reference to conversation, the testimony does not indicate whether a conversation took place and, thus, does not imply silence.

III.

"Evidentiary rulings are committed to the [district] court's discretion and will not be reversed absent a clear abuse of discretion." *State v. Litzau*, 650 N.W.2d 177, 182 (Minn. 2002). "Appellate courts largely defer to the [district] court's exercise of discretion in evidentiary matters and will not lightly overturn a [district] court's evidentiary ruling." *State v. Kelly*, 435 N.W.2d 807, 813 (Minn. 2006).

If the district court erred in admitting evidence, the reviewing court determines whether there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict. *State v. Post*, 512 N.W.2d 99, 102 n.2 (Minn. 1994). It

is the appellant's burden to show error and the prejudice resulting from the error. *State v. Loebach*, 310 N.W.2d 58, 64 (Minn. 1981).

Appellant argues that the district court erred in allowing, over objection, his mother to testify about his financial problems, personality changes, and family relationships. The supreme court has stated that "the prosecution may not attempt to establish the bad character of the defendant until the defendant has put that character in issue by offering evidence of good character." *State v. Sharich*, 297 Minn. 19, 23, 209 N.W.2d 907, 911 (1973).

The state does not claim that appellant put his character in issue and does not dispute that admitting the evidence was error but argues that the evidence was not prejudicial. We agree. There was other evidence of appellant's financial problems and the strained relationship between the brothers. There was also *Spreigl* evidence about a 2005 incident when appellant and his wife removed fixtures from property after they defaulted on a contract for deed and their interest in the home went back to the owner/seller. *See State v. Ness*, 707 N.W.2d 676, 685 (Minn. 2006) (stating that *Spreigl* evidence is admissible to show common scheme or plan). We conclude that there is no reasonable possibility that appellant's mother's testimony significantly affected the verdict.

Affirmed.