STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1102

State of Minnesota,
Respondent,

vs.

Jeffrey Leo Hayes,
Appellant.

Filed July 18, 2011
Affirmed
Peterson, Judge

Rice County District Court
File No. 66-CR-08-368

Lori Swanson, Attorney General, Charles O. Roehrdanz, Assistant Attorney General, St. Paul, Minnesota; and

G. Paul Beaumaster, Rice County Attorney, Faribault, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Jodie L. Carlson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Minge, Judge; and Muehlberg, 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

PETERSON, Judge

In this appeal from the district court's declaration of a second mistrial after jurors were unable to reach a unanimous verdict, appellant argues that the court erred in denying his motion for judgment of acquittal and ordering a third trial because the evidence was insufficient to support the charges of financial exploitation of a vulnerable adult, theft by swindle, and theft. We affirm.

FACTS

Appellant Jeffrey Leo Hayes was charged by complaint with one count each of financial exploitation of a vulnerable adult, theft by swindle, and theft by temporary control.[1] A jury trial began, but a mistrial was declared during voir dire because there were not enough people in the jury pool due to the number of challenges for cause that were granted and the number of prospective jurors with scheduling conflicts. Appellant agreed to the mistrial.

The case was then tried to a jury, with the following evidence presented at trial:

The victim's medical condition

In November 2005, the victim called a friend and said that she was moving from California back to Minnesota. On December 26, the friend went to California to help the victim with the move. On arriving at the victim's home, the friend immediately noticed

[1] Following a contested omnibus hearing, the district court granted appellant's motion to dismiss the theft charges for lack of probable cause. On the state's motion, the district court reopened the omnibus hearing and allowed the state to submit additional evidence on the victim's mental capacity. Following the reopened hearing, the district court reinstated both theft charges.

that the victim was behaving unusually. Behaviors that caused the friend concern included the victim leaving food cooking on the stove when she went to her bedroom and forgetting that she had withdrawn $36,000 from a bank account. The friend flew to Minnesota with the victim and helped the victim open a bank account, in which the $36,000 was deposited. The victim continued to act in a confused manner while staying at the friend's home.

The friend contacted the administrator of a local assisted-living facility and took the victim there. The administrator, a long-time friend of the victim's, testified about confusion shown by the victim that caused the administrator to conclude that the victim had memory deficits. As part of the admission process, a doctor evaluated the victim on January 6, 2006. A mental-status exam indicated that the victim had moderate to severe dementia. The doctor concluded that the victim was unable to live on her own and take care of her basic needs and incapable of making financial decisions or understanding written instructions. The doctor diagnosed the victim with dementia, likely Alzheimer's type, classified her as a vulnerable adult, and prescribed a medication used to treat dementia-type illnesses. The doctor examined the victim again on February 6 and noted no improvement in her condition.

Appellant's involvement

Shortly after the victim arrived in Minnesota, appellant, whose mother is the victim's sister, and his parents came to Minnesota. The victim's niece testified that she, appellant, and his parents discussed their concerns about the victim's inability to care for herself due to her mental condition and addressed the option of a power of attorney and

who could act for the victim under a power of attorney. The niece testified that several people, including appellant and the friend who helped the victim move back to Minnesota, were mentioned. The niece testified that she contacted an attorney, K.C., whose name she found in a phone book, and she thought that K.C. said yes when asked if she represented people with "this type of illness and disease." Appellant and his parents left Minnesota a few days later. The niece testified that, at that time, the family had not made a final determination regarding a power of attorney and that they planned to do an informal background check on the friend to determine whether she would be suitable. The niece testified that because the victim was safe and her needs were being met at the assisted-living facility, there was not an immediate need for the power of attorney.

On January 16, appellant and his mother returned to Minnesota and brought the victim to K.C.'s office, where the victim filled out a form granting appellant power of attorney. The powers granted to appellant included the power to self-gift. K.C. met with the three as a group and did not talk to the victim alone. The meeting lasted a little less than two hours. K.C. was not told that the victim had been diagnosed with Alzheimer's. K.C. testified that during the meeting they discussed the medical-assistance period of ineligibility and gifting.

Initially, K.C. denied telling appellant that it would be appropriate to gift $22,000 to himself and his wife for medical-assistance financial planning. But after both parties rested, testimony was reopened to allow K.C. to testify about a document that she found in her computer when she was reviewing the case following her testimony. The document states:

> I, [the victim], hereby instruct [appellant], my attorney-in-fact, to make gifts of $11,000 each to [appellant] and [his wife] at the earliest convenience. In addition, I request [appellant] to make gifts of $200 each month to himself, [his mother], or other individuals as I may otherwise instruct.

A copy of the document signed by the victim and dated January 17, 2006, was admitted into evidence during appellant's testimony. K.C. did not recall preparing the document but testified that no one else could have done so because the only other person with access to her computer was her nine-year-old daughter, who used it to play games. K.C. testified that she had been treated for depression beginning in 2006 and suffered from memory problems during that period.

The niece testified that she did not know that appellant and his mother had returned to Minnesota until after they left again and she learned from the victim's friend that appellant had been granted power of attorney. The niece later learned that appellant had withdrawn the victim's money from the bank in Minnesota and transferred it to an account in Missouri, where appellant lived. The niece testified that she called appellant and asked him to return the victim's money, but he refused.

An employee at the bank in Minnesota where the victim had her account testified that appellant and his mother came into the bank and requested information about the victim's account. The bank employee told them that, without a power of attorney, he could not give them the information unless the victim was present and gave her permission. Appellant and his mother came to the bank a second time, this time with the victim and a power of attorney, and the employee provided the information requested by

appellant. After returning to Missouri, appellant requested that the money in the victim's account be transferred to an account in Missouri. After receiving a letter of authorization, the bank transferred $36,346 from the victim's account to a checking account that had been opened in appellant's name at a US Bank office in Missouri. Between January 28 and February 1, appellant transferred $22,000 from the US Bank checking account into his and his wife's personal accounts.

Guardianship/conservatorship and criminal proceedings

The victim returned to her assisted-living facility from an outing with appellant and his mother and, after they left, she accused them of stealing her checkbook, which was not found among her personal belongings. The assisted-living facility administrator then contacted Rice County Social Services to report possible financial exploitation of a vulnerable adult. Based on the administrator's report, Rice County Social Services began an investigation and hired attorney S.B. to initiate a guardianship/conservatorship proceeding.

In May 2006, S.B. sent a letter to appellant's attorney requesting that appellant return the victim's money. In October 2006, S.B. received a letter from appellant's attorney with a check for $2,629 enclosed. S.R., an investigator in the Medicaid Fraud Control Unit of the Minnesota Attorney General's office, reviewed the financial documentation and created a spreadsheet to summarize the transfers, expenses, and payments made using the victim's money. S.R. testified that none of the $22,000 transferred to appellant and his wife was used to provide supervision, food, clothing, or other benefits for the victim.

Following 15 hours of deliberation, the jury was unable to reach a unanimous verdict, and the district court granted a mistrial. The district court denied appellant's motion for a judgment of acquittal and ordered a new trial. This appeal under Minn. R. Crim. P. 28.02, subd. 2(2)(b)1, followed.

D E C I S I O N

"A motion for acquittal is procedurally equivalent to a motion for a directed verdict." *State v. Slaughter*, 691 N.W.2d 70, 74 (Minn. 2005). "The test for granting a motion for a directed verdict is whether the evidence is sufficient to present a fact question for the jury's determination, after viewing the evidence and all resulting inferences in favor of the state." *Id.* at 74-75. On review, an appellate court asks if the evidence was sufficient to support the conviction, an inquiry which considers "whether, under the facts in the record and any legitimate inferences that can be drawn from them, a jury could reasonably conclude that the defendant was guilty of the offense charged." *State v. Tscheu*, 758 N.W.2d 849, 857 (Minn. 2008) (quotations omitted).

Financial exploitation of a vulnerable adult

Minn. Stat. § 609.2335, subd. 1(1) (2004), states:

> Whoever does any of the following acts commits the crime of financial exploitation:
>
> (1) in breach of a fiduciary obligation recognized elsewhere in law, including pertinent regulations, contractual obligations, documented consent by a competent person, or the obligations of a responsible party under section 144.6501 intentionally fails to use the financial resources of the vulnerable adult to provide food, clothing, shelter, health care, therapeutic conduct, or supervision[.]

Appellant argues that the evidence was insufficient to prove intent. "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). A heightened scrutiny applies to an element proved by circumstantial evidence. *State v. Al-Naseer*, 788 N.W.2d 469, 474-75 (Minn. 2010). The circumstances proved must be consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis other than guilt. *Tscheu*, 758 N.W.2d at 857.

Appellant first argues that the evidence was insufficient to present a fact question on intent because the victim consented to the transfers of her money to appellant and his wife by signing the power-of-attorney form that expressly authorized self-gifting. In *State v. Campbell*, this court construed the intent element of Minn. Stat. § 609.2335, subd. 1(1), as follows:

> If the state can prove its allegation that respondent intentionally used L.C.'s financial resources for respondent's personal benefit, then respondent has necessarily "intentionally fail[ed] to use the financial resources" for L.C.'s care and basic needs. We conclude that the statute provides sufficient notice for an ordinary person to understand that, if he or she is in a fiduciary relationship with a vulnerable adult, he or she cannot spend the financial resources of the vulnerable adult on items unrelated to care or welfare of that adult without appropriate permission, especially when the items purchased principally benefit the fiduciary. We recognize that respondent asserts that L.C. approved of certain major expenditures. If L.C. did so consent and she was competent, such consent or approval would be a defense to the criminal charges.

756 N.W.2d 263, 274 (Minn. App. 2008), *review denied* (Minn. Dec. 23, 2008).

Under Minn. Stat. § 523.04 (2004), a signed power of attorney is presumed valid except as to those "who have actual knowledge that the power was not validly executed." Appellant argues that "[t]he evidence is undisputed that [appellant] did not know that [the victim] had dementia when she signed the power of attorney on January 16, 2006." But even if appellant was not aware of the dementia diagnosis, there was other evidence presented at trial that, if believed, would support an inference that appellant knew that the victim was incompetent to consent to the power of attorney.

Citing his own testimony, appellant also argues that the evidence was insufficient to prove intent because there is no evidence that he used the victim's money for his benefit and because all of the victim's needs were met. But a fact-finder "is free to question a defendant's credibility, and has no obligation to believe a defendant's story." *State v. Ostrem*, 535 N.W.2d 916, 923 (Minn. 1995).

Theft by swindle and theft by temporary control

> Whoever does any of the following commits theft . . . :
>
> (4) by swindling, whether by artifice, trick, device, or any other means, obtains property or services from another person; or
>
> (5) intentionally commits any of the acts listed in this subdivision but with intent to exercise temporary control only and:
>
> (i) the control exercised manifests an indifference to the rights of the owner or the restoration of the property to the owner[.]

Minn. Stat. § 609.52, subd. 2 (Supp. 2005).

Appellant argues that the evidence was insufficient to support convictions of the two theft charges because he did not know of the victim's diagnosis when the power of attorney was signed and, therefore, the power of attorney was valid. But as already addressed, even if appellant was not aware of the dementia diagnosis, there was other evidence presented at trial that, if believed, would support an inference that appellant knew that the victim was incompetent to consent to the power of attorney.

Citing his own testimony, appellant argues that the evidence was insufficient to support a theft-by-temporary-control conviction because the reason he refused to return the money when the victim became upset and requested it was because he was trying to help her qualify for medical assistance. But as already addressed, the fact-finder is not required to believe a defendant's version of events. Based on the evidence presented at trial and the legitimate inferences that can be drawn from the evidence, a jury could reasonably conclude that appellant is guilty of the offenses charged.

Affirmed.