STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2108

State of Minnesota,
Respondent,

vs.

Harry Maddox, III,
Appellant.

Filed November 21, 2011
Affirmed
Halbrooks, Judge

Chisago County District Court
File No. 13-CR-09-1751

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

Janet Reiter, Chisago County Attorney, Beth A. Beaman, Assistant County Attorney, Center City, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Leslie J. Rosenberg, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Halbrooks, Judge; and Minge, Judge.

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

HALBROOKS, Judge

Appellant challenges his conviction of offering a forged check, arguing that there was insufficient evidence for the district court to find him guilty. Appellant also

challenges the district court's award of restitution on the ground that the amount exceeds his ability to pay. Because we conclude that the evidence was sufficient and that the district court properly considered appellant's ability to pay restitution, we affirm.

FACTS

On December 25, 2009, appellant Harry Maddox, III, and his female passenger attempted to pass checks at various gas stations and stores, first in St. Croix Falls, Wisconsin, and then in Taylors Falls, Minnesota. Officer Daniel Peters of the St. Croix Falls Police Department responded to calls reporting appellant's suspicious behavior. Deputy Dustin Swenson of the Chisago County Sheriff's Office subsequently located appellant in Taylors Falls pumping gas at the General Store gas station and determined that appellant offered an altered money order to pay for the gas. Appellant was charged with offering a forged check with a value less than $250.

Appellant agreed to a stipulated-facts trial, and the district court found him guilty. At sentencing, the General Store requested $70 in restitution, which the district court ordered to be taken out of appellant's prison wages. Appellant challenged the restitution order, claiming that he does not have the ability to pay restitution because he has not worked since 1985 and that his prison wages were not enough to meet his restitution obligation. Appellant asserted that he made $3 every two weeks, the prison took one-half of his wages, and he would only be incarcerated long enough to earn a small fraction of the required $70. The district court denied the restitution challenge. This appeal follows.

D E C I S I O N

I.

Appellant argues that there was insufficient evidence to convict him because the state failed to prove that he intentionally altered the money order or intentionally presented the money order for payment. When reviewing a claim of insufficient evidence, this court conducts a "painstaking analysis" of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient to permit the fact finder to reach the verdict that it did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989).

Because appellant did not stipulate at trial to the element of intent, the state had to prove it through circumstantial evidence. Intent is a state of mind that can be proved by inferences drawn by the fact-finder from the totality of the circumstances. *State v. Marsyla*, 269 N.W.2d 2, 5 (Minn. 1978). In analyzing a sufficiency-of-the-evidence claim in a circumstantial-evidence case, we must defer to the circumstances proved, but we "give no deference to the fact finder's choice between reasonable inferences." *State v. Anderson*, 784 N.W.2d 320, 329-30 (Minn. 2010). Using a heightened scrutiny in circumstantial-evidence cases, this court determines "whether the reasonable inferences that can be drawn from the circumstances proved support a rational hypothesis other than guilt." *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010) (quotation omitted). There must be a complete chain that, when this court views 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." *State v. Taylor*, 650 N.W.2d 190, 206 (Minn.

2002). But this court will not overturn a conviction based on mere conjecture, because it is not the state's burden to remove all doubt, but rather to remove all reasonable doubt. *Al-Naseer*, 788 N.W.2d at 473. To assess the sufficiency of the evidence, this court identifies the circumstances proved and then independently examines the reasonableness of all the inferences that might be drawn from those circumstances. *State v. Hanson*, 800 N.W.2d 618, 622 (Minn. 2011).

The circumstances stipulated to at trial establish that at 3:00 p.m. on December 25, 2009, Officer Peters went to the Holiday station in St. Croix Falls to put gas in his police cruiser. While there, Officer Peters observed appellant driving a grey Jeep Grand Cherokee. When the officer went inside to pay, the clerk told him that appellant and a female had attempted to purchase $250 worth of cigarettes with a check. The clerk refused the sale because the only identification they provided did not have a photograph on it.

Officer Peters subsequently received a call from a movie store in St. Croix Falls at 3:46 p.m. regarding a black male and female trying to cash a check. The movie-store employee indicated that they attempted to purchase movies by cashing a $100 traveler's check, but the employee refused to take it. The employee stated that they then left in a Jeep Grand Cherokee.

After hearing of appellant's suspicious behavior and description over his police radio, Deputy Swenson located and approached appellant's vehicle, which was then parked at a gas pump at the General Store in Taylors Falls; he notified Officer Peters. Deputy Swenson approached appellant and informed him that he needed to talk to him

regarding an incident in St. Croix Falls. When Deputy Swenson asked appellant if he had been in St. Croix Falls, appellant stated that he had not been there.

Officer Peters arrived approximately five minutes later and began questioning appellant, at which time Deputy Swenson went inside the General Store to speak with the store clerk. The clerk indicated that appellant came into the store and asked her if she would accept a $100 money order to pay for $30 worth of gas. She accepted the check and gave appellant $70 in change. The clerk gave Deputy Swenson the money order. Deputy Swenson testified that while the money order was in the amount of $100, if a person looked at it closely, the actual amount was for $1. In addition, the back of the money order showed how the amount should be printed, but the face of the money order did not comply with the instructions. As a result, Deputy Swenson concluded that the money order was fake or altered.

Appellant contends that although Deputy Swenson testified that the money order was not properly filled out, it does not prove that appellant knew the money order was altered. But appellant's argument is not persuasive when viewed in the totality of the circumstances. Based on our careful review of the record, we conclude that the circumstantial evidence was sufficient to permit the district court to reasonably infer that appellant intended to present an altered or forged money order and that any rational inference to the contrary was excluded.

Appellant made multiple efforts to pass checks. The only reasonable inference is that he knew the money order was altered. First, appellant and his female passenger attempted to use one check to purchase $250 worth of cigarettes at the St. Croix Falls

Holiday gas station. Appellant denied being in St. Croix Falls. Second, a man and woman matching their descriptions went to a movie store and asked if they could use a different, $100 traveler's check to make a purchase. Third, appellant and his female passenger drove to the General Store in Taylors Falls and used a third $100 money order to pay for gas. It is unreasonable to believe that appellant did not intend to offer a forged check or money order based on the chain of events. When he offered the money order at the General Store, it was at least the third check that he offered in as many places. Based on the totality of the circumstances, the evidence meets the heightened requirements that the circumstances proved at the district court do not support any rational hypothesis other than guilt. We therefore affirm the conviction.

II.

Appellant argues that the order for restitution to the General Store in the amount of $70 should be reversed because the district court did not properly consider appellant's ability to pay restitution through his prison wages. Minnesota law provides: "A victim of a crime has the right to receive restitution as part of the disposition of a criminal charge . . . against the offender if the offender is convicted." Minn. Stat. § 611A.04, subd. 1(a) (2010). "A request for restitution may include, but is not limited to, any out-of-pocket losses resulting from the crime." *Id.* "While the district court has broad discretion in granting restitution, the record must provide a factual basis for the amount awarded by showing the nature and amount of the losses with reasonable specificity." *State v. Thole*, 614 N.W.2d 231, 234 (Minn. App. 2000). In making this decision, this court "shall" consider "(1) the amount of economic loss sustained by the victim as a

result of the offense; and (2) the income, resources, and obligations of the defendant." Minn. Stat. § 611A.045, subd. 1(a) (2010). But "the statute does not require the court to make specific findings on an offender's ability to pay restitution." *State v. Nelson*, 796 N.W.2d 343, 347 (Minn. App. 2011). The statutes provide the district court with broad discretion to award restitution, which this court reviews for abuse of discretion. *State v. Tenerelli*, 598 N.W.2d 668, 671 (Minn. 1991).

Appellant stipulated to the General Store's loss, which was the $70 he received in change when he presented the altered $100 money order for $30 worth of gas.[1] Considering appellant's income, resources, and obligations to pay restitution, the district court reasoned:

> [Appellant] argues that he has been unemployed since 1985 and has been in and out of prison. However, [appellant] did state on the record at the restitution hearing that he earns prison wages, and the Order and Warrant of Commitment provides that the fees will be taken from prison wages. [Appellant] has the ability to pay restitution through his prison wages, and [appellant] therefore shall pay restitution to the victim in the amount of $70.00.

Because the district court considered appellant's ability to pay the $70 in restitution to the General Store, we conclude that the district court did not abuse its discretion.

Affirmed.

[1] The $30 worth of gas was not claimed presumably because appellant prepaid for the gas and Deputy Swenson started questioning him before he could pump the gas.