STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1099

State of Minnesota,
Respondent,

vs.

Ronald William Beattie, Jr.,
Appellant.

Filed April 28, 2014
Affirmed
Rodenberg, Judge

Crow Wing County District Court
File No. 18-CR-11-5323

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

Donald F. Ryan, Crow Wing County Attorney, Candace Prigge, Assistant County Attorney, Brainerd, Minnesota (for respondent)

Marian Hasselbalch, Randall Tigue Law Office, Golden Valley, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Johnson, Judge; and Randall, Judge.[*]

[*] Retired judge of the Minnesota Court of Appeals, serving 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

RODENBERG, Judge

On appeal from his convictions of 35 counts of felony failure to file returns for or pay income, business withholding, and sales taxes, appellant Ronald William Beattie, Jr. argues that the evidence was insufficient to support the convictions, that the district court erred in not sentencing on the 35 counts as a "single behavioral incident," and that the district court abused its discretion in not granting a downward dispositional departure. We affirm.

FACTS

In August 2005, appellant began operating Risky Business Novelties and Videos in Brainerd. He organized the business as a subchapter S corporation, and in late 2005 or early 2006, appellant contacted B.A., a tax professional, to assist him with payroll and in filing his tax returns. Appellant and B.A. communicated primarily by telephone and email. Each pay period, appellant would inform B.A. of the hours each of his employees worked, and B.A. would calculate each employee's gross pay, federal withholdings, FICA, Medicare, state withholdings, other deductions, and net pay. B.A. would communicate her calculations by email and appellant would then deduct the indicated amounts from his employees' paychecks and issue each employee a check for the net pay. On three occasions—2006, June 2009, and January 2011—appellant also provided B.A. with documentation from which to prepare his taxes.

In 2011, the Minnesota Department of Revenue (MNDOR) received information that Risky Business was not submitting W-2 withholdings to the state. Further

investigation showed that MNDOR had no record of any tax payments from Risky Business since appellant opened the store in 2005. Between 2005 and 2010, MNDOR had mailed 21 notices to appellant that included "general correspondence, . . . payment vouchers, notification to file, to pay sales tax returns and demands to file sales tax returns." In December 2009, MNDOR notified appellant by letter that his sales-tax account was being deactivated because he had not reported any sales tax to the state.

After learning in 2011 that Risky Business was not filing returns or paying taxes, and having received no response from appellant to these mailings and notices, state agents obtained a search warrant authorizing the search of a garage rented by appellant and the seizure of documents concerning income and sales taxes. Investigators found a variety of business documents, including payment vouchers, a notification of past-due sales tax for the fourth quarter of 2006, and approximately seven boxes in which appellant kept receipts from Risky Business sales and bank slips. Each receipt indicated the payment type, the amount of taxable merchandize purchased, and the amount of sales tax paid to Risky Business by the customer. The receipts and bank slips were organized into envelopes, each containing receipts for one or two days. The receipts recovered in the search were from 2006 through 2009 and some from 2011. B.A. also provided investigators with the receipts appellant had given her. Those receipts were for sales made in 2005, 2006, and 2010.

Appellant was initially charged with 26 counts of tax evasion, including two counts under Minn. Stat. § 609.455 (2004). He moved to dismiss or, in the alternative, for a contested hearing to determine whether the state had established probable cause that

he had the requisite state of mind to have committed the charged offenses. The state sought and obtained an ex parte order freezing appellant's bank account. Appellant then moved to release these funds to him. The district court heard arguments concerning both probable cause and whether the funds in appellant's account should be released to him. The district court dismissed the counts relating to section 609.455 on the state's concession that they were improper, but it denied the balance of appellant's motion to dismiss after conducting the contested hearing, finding probable cause that appellant had the requisite state of mind to commit the charged offenses. Further, the district court denied appellant's motion to release the funds to him. Appellant and the state later agreed that the funds in appellant's account could be released to pay appellant's delinquent taxes, and on this basis the district court ordered the funds to be released to MNDOR.

On January 28, 2013, the state filed an amended complaint, charging appellant with 35 counts of felony tax evasion. Minn. Stat. § 289A.63, subd. 1 (2004), (2006), (2008), (2010).

While the charges pended, appellant hired C.F. to prepare his tax returns. C.F. obtained documents that were in the possession of appellant, B.A., and the bank and, after the charges were filed but before the trial began, he filed all of appellant's past-due returns for 2005 through 2010.

At trial, appellant stipulated that he was obligated to file the personal income tax returns and withholding and sales tax returns for Risky Business, that he did not file them, and that he did not pay the taxes when they were due. Appellant disputed that he

acted with the requisite mens rea, "willfulness." Concerning "willfulness," there was conflicting evidence at trial.

B.A. testified that, in order to file a tax return for appellant as a subchapter S corporation and to file appellant's withholding tax returns, she needed the following information: bank statements, a check register, how much appellant was paying himself, and Risky Business's total sales and expenses. She stated that appellant did not give her all of this information when they first met and that she had emailed and telephoned appellant requesting the missing information. The record confirms two such requests: First, on December 14, 2005, B.A. emailed appellant, "how many times have you paid yourself[?]"; and second, on March 26, 2009, B.A. emailed appellant:

> In order to do a profit and loss statement for your loan, I will also need the cash receipts and any cash payments to your vendor for 2006, 2007 and 2008. By seeing your check registers I might be able to do all of your payroll reports unless you paid a lot in cash!! Hopefully you can find some records so that I can get you current!!! If you can find any bank statements in your papers that will help too!

B.A. testified that, after she sent the second email, they scheduled a meeting, but appellant failed to appear. B.A. then sent another email to appellant stating: "I will finish 2005 before I come so that I can return the boxes that I have." B.A. had all of the information necessary for appellant's 2005 tax return compiled into a spreadsheet, but she never transferred the information into a tax return. B.A. testified that, in June 2009, B.A. went to Brainerd to get more information from appellant, and appellant provided all information that B.A. requested from him. At some point between 2006 and 2011, appellant authorized B.A. to obtain all information she needed directly from the bank.

B.A. testified that appellant never asked her about the status of his returns or showed concern about missing deadlines. But on cross-examination, B.A. testified that appellant had asked her to file his personal and business taxes and that he never asked her not to file them. B.A. also agreed on cross-examination that appellant had always given her every record for which she asked. B.A. testified that she and appellant "never talked about preparing sales tax," but she admitted that he did ask her to "take care of everything that had to do with his business and personal taxes."

S.H., a former girlfriend of appellant and a former employee of Risky Business, also testified at trial. She was a sales associate, but as part of her job she also copied checks for employees who needed proof of employment. She testified that, in September 2010, she told appellant that she "had noticed that there were no paychecks or check stubs written to the [state of Minnesota] or the Federal Government for the taxes that he takes out of our paychecks, and he laughed and said, 'what are they going to do, fine me?'" She stated that she raised this subject several times and appellant "would just laugh and shrug it off." In March 2011, appellant fired S.H. for leaving the store unattended, and she was thereafter unable to receive unemployment benefits because she was discharged for employment misconduct.

C.F. testified that, after appellant hired him, he prepared and filed appellant's tax returns as a sole proprietorship because that was how appellant was operating his business, despite his subchapter S corporate status. C.F. explained that, when filing tax returns as a sole proprietorship, the business owner need not report his salary. C.F. testified that he was unaware that B.A. did not file returns concerning payroll

withholdings until approximately one week before trial, when he saw the complaint. He had assumed that B.A. had taken care of payroll withholdings because that is typically the duty of someone hired to complete payroll and calculate withholdings.

Appellant testified that he had contacted B.A. multiple times about completing the tax returns. He testified that, when he would receive a notice from the state about delinquent taxes, he would call B.A. and send her the notice. Appellant testified that B.A. had calculated the amount appellant should be paying himself, and that he paid himself that amount if there was money left over in the account at the end of the month. However, appellant testified that, for the first few years, there was "hardly anything in the account." Appellant admitted transferring funds monthly from the Risky Business account to his personal bank account and used those funds to pay his mortgage.

After a two-day trial, the jury found appellant guilty of all counts. Appellant moved for a judgment of acquittal notwithstanding the verdict and for a new trial. The district court denied both motions.

At sentencing, appellant argued that the convictions all related to a single behavioral incident and argued for a downward dispositional departure, which the district court denied. The district court sentenced appellant on 18 counts to run concurrently. Appellant's longest sentence was 20 months. This appeal followed.

D E C I S I O N

I.

Appellant argues that the evidence is insufficient to establish that he willfully failed to satisfy his personal and business tax obligations from 2005 through 2011. In

considering a claim of insufficient evidence, we review the record to determine whether the evidence, viewed in the light most favorable to the verdict, is sufficient to allow the jurors to reach the verdict that they did. *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012). If a conviction is based on circumstantial evidence, however, we must apply a "heightened scrutiny" standard of review. *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). This heightened scrutiny requires us to consider "whether the reasonable inferences that can be drawn from the circumstances proved support a rational hypothesis other than guilt." *Id.* (quotation omitted). We 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 state relied entirely on circumstantial evidence to prove willfulness, the only element in dispute at trial.[1]

Appellant was convicted under section 289A.63, which provides:

> (a) A person required to file a return, report, or other document with the commissioner, who knowingly, rather than accidentally, inadvertently, or negligently, fails to file it when required, is guilty of a gross misdemeanor. A person required to file a return, report, or other document who willfully attempts in any manner to evade or defeat a tax by failing to file it when required, is guilty of a felony.
>
> (b) A person required to pay or to collect and remit a tax, who knowingly, rather than accidentally, inadvertently, or negligently, fails to do so when required, is guilty of a gross misdemeanor. A person required to pay or to collect and remit a tax, who willfully attempts to evade or defeat a tax law by failing to do so when required, is guilty of a felony.

[1] While appellant's statement to S.H. is direct evidence of knowledge of his obligation to pay taxes, it is circumstantial evidence of "willfulness."

Minn. Stat. § 289A.63, subd. 1 (2010).[2]

No published Minnesota caselaw analyzes what constitutes a "willful attempt" to evade or defeat a tax. And willful is not defined in Chapter 609 of the Minnesota Statutes.[3] The district court instructed the jury on the meaning of "willfully," stating that appellant "knew he had a legal duty to file returns and/or pay taxes and that he voluntarily and intentionally failed to do so." The court defined "intentionally," stating that appellant "either had a purpose to do the thing or cause the results specified or believes that the act, if successful, will cause that results." For each type of tax, the district court identified the elements of a felony violation: First, appellant "was required to [file a tax return or pay a tax obligation] for the preceding calendar year. . . . Second, [appellant] failed to [file that tax return or pay that tax obligation] for the preceding calendar year when required. . . . Third, the Defendant willfully attempted to evade or defeat [a tax obligation] by his failure to file the tax return as required."[4] There were no objections to the jury instructions and no plain error concerning the instructions is argued on appeal. Our sufficiency-of-the-evidence analysis is therefore guided and confined by the district court's instructions.

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[2] This statutory language has not been changed since 2004.

[3] "Willful" is a term developed at common law. *Morissette v. United States*, 342 U.S. 246, 252, 72 S. Ct. 240, 244 (1952). In abandoning the term "willful," the drafters of the Model Penal Code "recognized that the common law's approach to mens rea was often confused, unpredictable, and unprincipled." Ted Sampsell-Jones, *Mens Rea in Minnesota and the Model Penal Code*, 39 Wm. Mitchell L. Rev. 1457, 1459-60 (2013). Minnesota has not adopted the Model Penal Code, and still utilizes a number of common terms relating to mental state. *Id.* At 1457-58. At least one commentator has noted the resulting confusion in Minnesota's mens rea jurisprudence. *See id.* at 1466-69.

[4] Two other elements concerning the date and venue of the respective actions are not in dispute on appeal.

Minnesota law distinguishes between gross-misdemeanor and felony violations based on the taxpayer's purpose in failing to satisfy a tax obligation. When a person knows of a tax obligation, knows that he or she has failed to satisfy the obligation when required, but has no purpose to evade or defeat a tax in the future, the person is guilty of a gross misdemeanor. Minn. Stat. § 289A.63, subd. 1. A person is also guilty of a gross misdemeanor if the person has the intent to satisfy a tax obligation but does not satisfy it by the required date. *See id.* However, a felony violation occurs when a person knows of a tax obligation, has failed to satisfy the obligation when required, and the failure is accompanied by a purpose to attempt evasion of the tax obligation both presently and in the future. *Id.* In other words, a felony violation requires that the nonfiling person have the specific intent to purposefully evade the obligation now and in the future. Through this lens, we turn to whether the evidence presented at trial was sufficient to support the verdict.

"[*M*]*ens rea* elements of knowledge and intent can often be proved through circumstantial evidence and the reasonable inferences drawn therefrom." *United States v. MacPherson*, 424 F.3d 183, 189 (2nd Cir. 2005). In reviewing a conviction based on circumstantial evidence, we apply a two-step test. We first identify the circumstances proved in support of the conviction, giving deference to "the jury's acceptance of the proof of these circumstances as well as to the jury's rejection of evidence in the record that conflicted with the circumstances proved." *State v. Hanson*, 800 N.W.2d 618, 622 (Minn. 2011).

Taken in the light most favorable to the verdict, respondent proved the following circumstances relating to willfulness: Appellant did not file personal or business tax returns for the years 2005 through 2011 until after criminal charges were filed against him. During this time, appellant withdrew federal withholdings, FICA, Medicare, and state withholdings from his employees' paychecks for each pay period. He also collected sales tax from customers and deposited those funds in his own bank account. Appellant made monthly transfers from his business account to his personal account, using the funds to pay his mortgage. The funds withdrawn from employee paychecks and the funds collected as sales tax from customers of Risky Business were either spent by appellant or remained in his account(s). Although his tax professional, B.A., requested information and documents that were necessary for her to file appellant's tax returns, appellant did not supply her with all of the information she needed. Appellant received multiple notices from MNDOR concerning his failure to file tax returns and pay taxes. In a conversation with S.H., a then-employee of Risky Business, appellant responded to an inquiry about not paying taxes by stating, "What are they going to do, fine me?"

Much of appellant's brief is dedicated to identifying conflicting evidence that, he argues, gives rise to other reasonable inferences. But as noted above, we consider the evidence in the light most favorable to the verdict. *See Ortega*, 813 N.W.2d at 100. In this case, that requires that we consider that the jury believed certain of B.A.'s testimony (e.g., that appellant did not provide her with requested information), and that it disbelieved or discounted other of her testimony (e.g., that appellant asked B.A. to take care of "everything" and that appellant never declined any of B.A.'s requests for

information). And despite appellant's impeachment of S.H. at trial with evidence that he had fired her for leaving the store unattended, we must consider the jury to have believed S.H.'s testimony.

"The second step is to determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt." *State v. Silvernail*, 831 N.W.2d 594, 599 (Minn. 2013) (quotation omitted). In making this determination, "we do not review each circumstance proved in isolation" but instead consider the circumstances as a whole. *State v. Andersen*, 784 N.W.2d 320, 332 (Minn. 2010). "The [s]tate does not have the burden of removing all doubt, but of removing all reasonable doubt." *Al-Naseer*, 788 N.W.2d at 473. We independently examine the reasonableness of the possible inferences and "give no deference to the fact finder's choice between reasonable inferences." *Id.* at 473-74. To ensure that there is no reasonable doubt as to the defendant's guilt, there must be no reasonable inference inconsistent with guilt. *Id.* at 474.

Based on the circumstances proved by respondent, and reviewing the evidence in the light most favorable to the verdict, we conclude that the record admits of no reasonable inferences inconsistent with appellant's guilt. There was evidence that appellant did not provide B.A. with all information she needed to file his individual and business tax returns. Further, the record is consistent only with appellant having knowingly and intentionally withheld payroll deductions over many years, including taxes from his employees' paychecks each pay period. He also charged his customers sales tax but did not remit the collected sales tax to the state until after these charges were

filed. The unremitted sales tax alone accumulated in appellant's business account to over $217,000. Appellant's statement, "What are they going to do, fine me?" not only strongly suggests appellant's awareness of his tax obligations, but also his intention to continue to not pay these taxes. The only reasonable inference from that statement and the other circumstantial evidence believed by the jury is that appellant knowingly and intentionally failed to satisfy his tax obligations with the purpose of evading or defeating them.

There is an inherent difficulty in assessing the reasonable inferences the jury made when determining whether the requisite mens rea was present. *See State v. McCormick*, 835 N.W.2d 498, 505 & n.2 (Minn. App. 2013) (observing that deference to a jury's findings of fact on conflicting evidence is difficult when much of the evidence is circumstantial), *review denied* (Minn. Oct. 15, 2013). As the district court noted in its order denying appellant's motion for acquittal, defense counsel elicited testimony from B.A. that contradicted her statements made on direct examination. And S.H. was impeached on cross-examination. Moreover, C.F.'s testimony, if believed, could have led to a different verdict. But, our review does not require or even allow us to reweigh the evidence. We must defer to the jury's assessment of a witness's credibility, *State v. Green*, 719 N.W.2d 664, 673-74 (Minn. 2006), and we must assume that "the jury believed the state's witnesses and disbelieved any evidence to the contrary," *Moore*, 438 N.W.2d at 108. We conclude that the evidence was sufficient to permit the jury to find appellant guilty of felony tax evasion.

II.

Appellant argues that his violations were a single behavioral incident that extended over six years and, therefore, he should be sentenced on only one count. Minnesota Statutes section 609.035 (2010) "generally prohibits multiple sentences . . . for two or more offenses that were committed as part of a single behavioral incident." *State v. Ferguson*, 808 N.W.2d 586, 589 (Minn. 2012) (quotation omitted). When the facts are not in dispute, the decision whether multiple offenses are part of a single behavioral incident presents a question of law, which we review de novo. *Id.*

"The state has the burden to establish by a preponderance of the evidence that the conduct underlying the offenses did not occur as part of a single behavioral incident." *State v. Williams*, 608 N.W.2d 837, 841 (Minn. 2000). When analyzing "whether [multiple] intentional crimes are part of a single behavioral incident . . . we consider factors of time and place and whether the segment of conduct involved was motivated by an effort to obtain a single criminal objective." *State v. Bauer*, 792 N.W.2d 825, 828 (Minn. 2011) (quotation omitted).

The district court found the following three different types of violations were proved for each year: failure to file a return for or pay 1) income, 2) payroll withholding, and 3) sales tax. It concluded that each violation for each year was a separate behavioral incident because each involved a different type of tax with a different filing date and with a different payment deadline.

The state met its burden of proving that the offenses were not part of the same behavioral incident by establishing that the tax violations occurred on over 18 different

dates. *See Williams*, 608 N.W.2d at 841-42. The violations occurred on the day the tax returns and payments were due (income tax due on April 15 each year, withholding tax due quarterly each year, and sales tax due on February 5 each year). The offenses were committed over a six-year timespan but involved different tax obligations evaded on multiple dates.[5] Therefore, the district court properly sentenced appellant on 18 counts of tax evasion.

III.

A district court has broad discretion to determine whether to depart from a presumptive guidelines sentence. *State v. Gassler*, 505 N.W.2d 62, 69 (Minn. 1993). We "will not generally review a district court's exercise of its discretion to sentence a defendant when the sentence imposed is within the presumptive guidelines range." *State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010), *review denied* (Minn. July 20, 2010). Only in a "rare case" will we reverse a district court's refusal to depart and its imposition of the presumptive sentence. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

[5] We have previously upheld sentencing tax-evasion violations as separate behavioral incidents. *See, e.g.*, *State v. Edwards*, A05-0317, 2005 WL 1869764 at *3 (Minn. App. Aug. 9, 2005), *review denied* (Minn. Oct. 26, 2005). In *Edwards*, we affirmed a district court order sentencing a defendant on six counts of tax evasion: two counts of failure to pay corporate tax in 1997 and 1998 and four counts of failure to pay income tax in 1997, 1998, 1999, and 2000. *Id.* at *1. We held that "[t]here is no legal support for holding that Edwards's [convictions, including, but not limited to,] tax evasion offenses, occurring over a period of more than two years and involving multiple victims were a single behavioral incident." *Id.* at *3 (quotation marked omitted). We note that our analysis here is consistent with that used in *Edwards* concerning this issue, although our unpublished cases do not constitute precedent. *See* Minn. Stat. § 480A.08, subd. 3(c) (2012); *Gen. Cas. Co. of Wis. v. Wozniak Travel, Inc.*, 762 N.W.2d 572, 575 n.2 (Minn. 2009).

A sentence conforming to the guidelines is presumed to be appropriate, and departures may be made only in the small number of cases when substantial and compelling circumstances exist to support a sentence that is outside of the presumptive range. Minn. Sent. Guidelines II.D & cmt. II.D.03 (2010). "Substantial and compelling circumstances are those demonstrating that the defendant's conduct in the offense of conviction was significantly more or less serious than that typically involved in the commission of the crime in question." *State v. Jones*, 745 N.W.2d 845, 848 (Minn. 2008) (quotation and emphasis omitted).

Appellant argues that the district court abused its discretion in not considering his full repayment of taxes to be a compelling circumstance warranting a downward dispositional departure. He argues that repayment is a "substantial ground . . . [that] tend[s] to excuse or mitigate [his] culpability, although not amounting to a defense." *See* Minn. Sent. Guidelines II.D.2.a.(5). The district court found that appellant's having satisfied all outstanding tax obligations by the time of sentencing is not a compelling circumstance to support a downward departure. It also found that appellant's repayment was not voluntary and that appellant "initially contested the state's attachment on bank funds for the payment of owed taxes and only paid in full after he was formally charged with tax evasion." The district court further found that appellant's initial challenge to the state's attachment was "particularly egregious in light of the fact that these funds were used in part to remit the sales and withholding tax that [appellant] was supposedly holding in trust for the state."

The district court acted within its discretion in concluding that the satisfaction of appellant's tax obligations after being criminally charged is not a compelling circumstance justifying departure from the presumptive sentence upon conviction.

The district court also rejected appellant's argument that repayment should be used as a mitigating factor in this circumstance because defendants in the future will otherwise have no motivation to pay taxes that are owed to the state. We agree with the district court. Much of the unpaid tax here was deducted from employees' wages and collected from retail customers as sales tax. A person deducting payroll taxes from employees' paychecks and collecting sales tax from customers, then wilfully failing to pay those taxes to the state, can hardly be said to have compellingly demonstrated mitigation when payment is made after his crime has been detected. If appellant did not satisfy his tax obligations before he was convicted, the district court surely would have ordered him to do so through his sentence. The district court acted within its discretion in denying appellant's request for a downward dispositional departure.

We conclude that the evidence is sufficient to support appellant's convictions, that the district court properly sentenced appellant on 18 counts of tax evasion, and that the district court acted within its discretion in denying appellant's request for a downward dispositional departure.[6]

Affirmed.

[6] Because we affirm appellant's convictions and sentence, we do not reach appellant's motion to stay his sentence, which was renewed at oral argument.