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STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1228

State of Minnesota,
Respondent,

vs.

Anthony Steven Kalland,
Appellant.

Filed May 26, 2020
Affirmed
Hooten, Judge

Renville County District Court
File No. 65-CR-17-386

Keith Ellison, Attorney General, Michael Everson, Assistant Attorney General, St. Paul, Minnesota; and

David Torgelson, Renville County Attorney, Olivia, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Abigail H. Rankin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Hooten, Judge; and Jesson, Judge.

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

HOOTEN, Judge

In this direct appeal from the judgment of conviction for bribery, appellant argues that the evidence was insufficient to prove beyond a reasonable doubt that he intended to influence the testimony of a witness. We affirm.

FACTS

Appellant Anthony Kalland was involved in two criminal cases in which a former romantic partner, S.R., was a victim. The first case was a 2015 charge in Mille Lacs County in which Kalland took S.R.'s vehicle without her permission. The second case was a 2017 charge in Renville County for burglary of S.R.'s home. One of the items stolen from S.R.'s home during the burglary was a watch.

In September 2017, while incarcerated in the Isanti County jail, Kalland made five phone calls on three separate days to his then-current romantic partner, K.C., to discuss the open warrant for his arrest based on the burglary charge. All of the calls were recorded.

In the first recorded call, Kalland told K.C. to try to get in contact with S.R. Kalland gave K.C. directions to drive to S.R.'s home. He told K.C. that "we have to get this f---ing warrant dropped from her," and instructed her:

> Just say, gotta be nice to her, say hey listen, [Kalland] needs this warrant dropped. He gave you that watch back, this is a big misunderstanding, you need to call Renville County. And if she gives you any grief, say ya know what, here's the deal, his family will give you a thousand dollars if you get this warrant dropped today. Cause they will, my mom and dad will give her a thousand dollars to get that warrant dropped.

He later told K.C. that if S.R. "gets the one in Mille Lacs County dropped, they'll give her five grand."

Two days later, Kalland called K.C. again. While on the phone with Kalland, K.C. drove to S.R.'s home. When K.C. arrived at S.R.'s home, she gave the phone to S.R. The following phone exchange occurred between Kalland and S.R.:

> KALLAND: Um, hey, you gotta call Renville County and get them charges dropped.
> S.R.: Ok.
> KALLAND: I, there's a warrant out for my arrest, I mean you have to do it like right now.
> S.R.: Ok.
> KALLAND: I'm in Isanti County Jail and they're holding me because I got a warrant in Renville County for this, those, for that watch.
> S.R.: Ok.
> KALLAND: I talked to two investigators over here, they said all you have to do is call Renville County and tell them you want the charges dropped, it was a misunderstanding, and that's it. And they have to drop them, tell them you won't, you will not pursue charges against me.
> S.R.: Ok.
>
> . . . .
>
> KALLAND: So I need you to use [K.C.'s] phone right now and call Renville County and get this done while she's still sitting there.
> S.R.: Ok, well actually its (inaudible) there's a specific officer . . .
> KALLAND: Hey, sweetie, whoever it is, you guys have to take care of it and I'll call you back in like 20 minutes because they'll let me go as soon as this warrant's dropped.
> S.R.: Ok.
> KALLAND: Oh, thank you so much [S.R.]. Another thing too, I got to talk to you about Mille Lacs County because my parents, my family's willing to pay you some good money to help me out on that deal.
> S.R.: Really?

> KALLAND: Really, like we're talking in the mid thousands, I'm talking five thousand dollars [S.R].
> S.R.: Ok.

Kalland called K.C. back later that day. K.C. was still with S.R., and Kalland spoke to S.R. again. S.R. told him that she would talk to the officer. Kalland told her that if she got the Mille Lacs County warrant dropped, his father would buy her a phone or phone minutes. He guaranteed that she would get $5,500 for getting both warrants dropped.

Two days later, Kalland called K.C. a fourth time about S.R. Kalland told K.C.:

> Just make sure this b---- f---ing, strong arm this b----, you just tell her, you say you know what [S.R.], you offered me s--- the other day, I know what the f---'s in that house, call these f---ing cops right now and get these charges dropped.

He told K.C. to "[t]hreaten her a--. Kick her, beat her a-- if you have to."

Following this call, K.C. went to S.R.'s home. K.C. "pound[ed] on [S.R.'s] door" and threatened to call the police. When no one answered, she went back to her vehicle and "laid on the horn . . . for a good three minutes." S.R.'s boyfriend came out of the house and told K.C. that S.R. was not home.

Kalland called K.C. again later that day, and K.C. told him what happened when she visited S.R. He told K.C., "[S]o she's going to show up to Court to f---ing press, follow through. . . . Oh, I'm going to f---ing burn this b---- honey, you have no idea. So, we got that to look forward to."

Following these events, the state charged Kalland with bribery under Minn. Stat. § 609.42, subd. 1(3) (2016). Kalland waived his right to a jury trial, and a bench trial was

held. Following trial, the district court found Kalland guilty of bribery. The district court sentenced Kalland to 29 months in prison.

Kalland appeals.

D E C I S I O N

Kalland argues that this court should reverse his conviction for bribery because the state did not provide sufficient evidence to support his conviction as the crime only pertains to influencing a witness's testimony, not influencing a person's statements to police.

In a criminal case, the state must prove every element of a crime beyond a reasonable doubt. *State v. Hage*, 595 N.W.2d 200, 204 (Minn. 1999). When reviewing the sufficiency of the evidence, we review "the record to determine whether the evidence, when viewed in the light most favorable to the conviction, [is] sufficient" to support the conviction. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989).

"Because the meaning of a criminal statute is intertwined with the issue of whether the State proved beyond a reasonable doubt that the defendant violated the statute, it is often necessary to interpret a criminal statute when evaluating an insufficiency-of-the-evidence claim." *State v. Vasko*, 889 N.W.2d 551, 556 (Minn. 2017).

Minn. Stat. § 609.42, subd. 1(3), provides that a person is guilty of bribery if that person:

> [O]ffers, gives, or promises to give, directly or indirectly any such benefit, reward, or consideration to a person who is a witness or about to become a witness in a proceeding before a judicial or hearing officer, with intent that the person's testimony be influenced thereby, or that the person will not appear at the proceeding.

Kalland argues that the charging statue only permits a conviction when an individual intends to influence a *witness's testimony*, and not merely when an individual intends to influence a person's statements to police. Kalland argues that the charging statute unambiguously "requires a future hearing conducted by a court at which the witness is expected to appear and speak under penalty of perjury."

But Kalland's reading of the statute effectively omits an important phrase—"about to become a witness." The statute does not require that a person be subpoenaed as a witness in an upcoming, scheduled proceeding. Instead, the statute requires only "a person who is a witness or about to become a witness." Minn. Stat. § 609.42, subd. 1(3).

We have already discussed the meaning of the phrase "about to become a witness" in *State v. Koon Meng Chan*, 393 N.W.2d 228 (Minn. App. 1986). In that case, the issue was whether appellant, as a person "about to become" a witness, requested a bribe and was therefore guilty of Minn. Stat. § 609.42, subd. 1(4) (1984). Because this was an issue of first impression, we relied on a case from the Kansas Supreme Court, *State v. Reed*, 516 P.2d 913 (Kan. 1973). *Koon Meng Chan*, 393 N.W.2d at 229–30. Adopting the reasoning from *Reed*, we stated:

> [A]ny attempt to so influence prospective witnesses that the truth will not be presented in anticipated litigation is a criminal offense . . . . [I]t would defeat the obvious intent of the legislature to restrict the application of such a statute to those persons already served with a subpoena or under legal process to appear in pending actions. To do so would put a premium on the early offering of bribes or threats to prospective witnesses. The corrupt purpose can be equally effected by offers made to those who are as yet only prospective or contemplated witnesses.

Id. at 230 (quoting *Reed*, 516 P.2d at 916). In that case, we ruled that appellant was "about to become" a witness, even though a case had not been commenced at the time of the bribery request. *Id.*

Based upon this caselaw, we conclude that the charging statute includes "prospective or contemplated witnesses," *id.*, as well as those who have been served a subpoena to testify.[1] In light of this meaning, we review the sufficiency of the state's evidence in convicting Kalland of bribery.

When reviewing the sufficiency of the evidence, we conduct "a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit" the factfinder to reach the verdict of guilty. *Webb*, 440 N.W.2d at 430. "A reviewing court will not disturb the [fact-finder's] verdict if the [fact-finder], acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude the defendant was guilty of the charged offense." *State v. Brandes*, 781 N.W.2d 603, 606 (Minn. App. 2010). Kalland argues that there was insufficient evidence to prove that he intended to influence S.R.'s testimony.

When a conviction is based on circumstantial evidence, *see State v. Johnson*, 616 N.W.2d 720, 726 (Minn. 2000) (stating that intent is usually proved circumstantially), the

[1] Because of our conclusion that S.R. was a "prospective or contemplated witness" and therefore within the purview of the bribery statute, we need not address Kalland's argument that the state raised a new theory on appeal that Kalland intended to cause S.R. to fail to appear in court. But, we note that the record reveals that the state made this same argument to the district court.

first step is to identify the circumstances proved. *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010).

The circumstances proved include the following: (1) Kalland was charged with two separate crimes in which S.R. was the victim; (2) Kalland spoke with S.R. twice and told her that he would give her $5,500 and a phone or phone minutes to "get [the] charges dropped"; (3) in each of five phone calls to K.C., Kalland told K.C. to tell S.R. that Kalland's family would give her money to get the charges dropped; and (4) S.R. understood Kalland to mean that she would "have to lie and say [she] made a false police report."

Our next step is to "examine independently the reasonableness of all inferences that might be drawn from the circumstances proved, including inferences consistent with rational hypotheses other than guilt." *Id.* at 473–74 (quotations omitted).

Kalland argues that the circumstances proved show that he "did not intend to influence [S.R.]'s testimony in a future proceeding because he did not intend for there to be any future proceedings, much less any at which [S.R.] would provide testimony." Conversely, the state argues that the "circumstances proved establish that [Kalland] intended to influence S.R.'s testimony or cause her not to follow through with providing testimony" and that Kalland "offered money and property to S.R. to avoid future inculpatory testimony."

Kalland's proposed inference is unreasonable. The record contains direct evidence that Kalland's intent to "get [the] charges dropped," thereby avoiding going to trial and the need for S.R. to testify against him. Therefore, it is reasonable to infer that his goal was to avoid a conviction by preventing S.R. from testifying against him. Thus, his assertion that

his only intent was to influence S.R.'s statements to the police, and not to influence her future testimony as a prospective witness, is unreasonable. Accordingly, we conclude that Kalland's conviction is supported by sufficient evidence.

Affirmed.