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STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0385

State of Minnesota,
Respondent,

vs.

Stephen Frenz,
Appellant.

Filed December 21, 2020
Affirmed
Kalitowski, Judge[*]

Hennepin County District Court
File No. 27-CR-19-77

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Jonathan P. Schmidt, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Robert D. Richman, St. Louis Park, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Slieter, Judge; and Kalitowski, 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

KALITOWSKI, Judge

Appellant challenges his perjury conviction, arguing that (1) insufficient evidence supports the conviction because the state failed to prove he was under oath, and (2) the district court abused its discretion in instructing the jury as to the oath element. We affirm.

FACTS

Appellant Stephen Frenz owned and managed multiple apartment buildings in Minneapolis. In early 2016, a group of tenants in one of the buildings formed a neighborhood organization that initiated a tenants' remedies action against Frenz and two of his companies. Frenz moved for summary judgment, arguing that the organization did not have standing because it lacked authorization from a majority of occupied units in the building. He supported the motion with a notarized affidavit, in which he, "being duly sworn," stated:

> 1. I am a Defendant in the above-captioned matter. I have personal knowledge of the facts attested to in this Affidavit.
>
> 2. At the time the above-captioned Complaint was filed on January 20, 2016, eleven units were occupied at the Property[.]
>
> 3. As of today, only ten units are occupied at the Property given that [F.D.] and [M.I.] moved out of the Property on February 29, 2016.
>
> 4. [M.A.-R.] moved out of the Property on November 2, 2015.

The notary's signature indicated that the affidavit was "[s]ubscribed and sworn to before [him]." The organization presented evidence calling the veracity of the affidavit into doubt,

and Frenz withdrew it. He substituted a version with paragraphs 2 and 3 redacted and withdrew his standing challenge.

Respondent State of Minnesota subsequently charged Frenz with perjury. At trial, the state presented evidence that Frenz knew his sworn affidavit contained false statements material to the tenants' remedies action. Frenz countered with the notary's testimony that he would not have administered Frenz an oath because it was not his practice to do so. The jury found Frenz guilty. Frenz appeals.

D E C I S I O N

I. Sufficient evidence supports Frenz's perjury conviction.

When a defendant challenges the sufficiency of the evidence to sustain a conviction, this court analyzes the record "to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did." *State v. DeRosier*, 695 N.W.2d 97, 108 (Minn. 2005) (quoting *State v. Fields*, 679 N.W.2d 341, 348 (Minn. 2004)). We assume the jury believed the state's witnesses and disbelieved any contrary evidence. *State v. Olhausen*, 681 N.W.2d 21, 25 (Minn. 2004).

Perjury is defined, in relevant part, as making "a false material statement" that the declarant did "not believ[e] . . . to be true" in "any writing which is required or authorized by law to be under oath." Minn. Stat. § 609.48, subd. 1 (2014). The state must prove "that a formal oath [was] administered by a court-designated individual." *State v. Mertz*, 801 N.W.2d 219, 222 (Minn. App. 2011). But the oath need not take any particular form so long as the party taking the oath "go[es] through some . . . formality" indicating that he

"consciously asserts or affirms the truth of the fact to which he gives testimony." *State v. Day*, 121 N.W. 611, 613 (Minn. 1909); *see* Minn. Stat. § 609.48, subd. 2 (2014) (prohibiting perjury defense that "the oath or affirmation was taken or administered in an irregular manner"). An oath may be in writing, with a notary's signature and official stamp certifying that the document was "[s]ubscribed and sworn." Minn. Stat. § 358.09 (2014). When the signatures on an affidavit are proved "it is presumed that it was actually sworn to by the person whose signature is subscribed as affiant," although the presumption may be rebutted by contrary evidence. *State v. Madigan*, 59 N.W. 490, 492 (Minn. 1894).

Frenz argues that the evidence cannot support a finding that he was under oath when he signed the affidavit because the notary gave uncontradicted testimony that he did not administer an oath. But the jury was not obligated to accept that testimony. The jury determines the weight and credibility of each witness's testimony. *State v. Bliss*, 457 N.W.2d 385, 390 (Minn. 1990). It is "not required to accept uncontradicted testimony if the surrounding facts and circumstances afford reasonable grounds for doubting its credibility." *Am. Bank of St. Paul v. City of Minneapolis*, 802 N.W.2d 781, 789 (Minn. App. 2011) (quotation omitted). The jury had ample reason to doubt the notary's testimony.

The notary acknowledged during his testimony that he worked for Frenz for 15 years; their long-term relationship provided him an incentive to give testimony favorable to Frenz's defense. And his denial that he administered Frenz an oath is inconsistent with the other evidence. Both the notary and Frenz indicated on the affidavit that Frenz was "sworn." Frenz is a frequent litigant who has similarly signed many other affidavits,

indicating that he understood he was consciously asserting the truth of the statements attested to in the affidavit. That assertion that he was "sworn" and attesting to the truth of the affidavit's contents is further demonstrated by his submission of the affidavit to the court as admissible evidence in support of his motion for summary judgment. *See* Minn. R. Civ. P. 56.03(d) (providing that an affidavit supporting summary judgment set out facts "that would be admissible in evidence"); Minn. R. Evid. 603 (requiring that every witness declare he will "testify truthfully"). On this record, we conclude sufficient evidence supports the jury's determination that Frenz was under oath when he knowingly made false material statements in his affidavit.

II. The district court did not abuse its discretion in instructing the jury.

This court reviews a district court's jury instructions for an abuse of discretion. *State v. Huber*, 877 N.W.2d 519, 522 (Minn. 2016). We consider the instructions as a whole to determine whether they fairly and adequately explain the law, without misstating the law. *Id.*

Frenz argues that the district court misstated the law because it failed to inform the jury that a formal oath is required. We disagree. The district court told the jury, consistent with the standardized instructions for perjury, that the state was required to prove that "the defendant made the alleged statement under oath" and "the defendant knew that he was under oath." *See* 10A *Minnesota Practice*, CRIMJIG 22.04 (2015). The court also provided the jury guidance in determining whether the state proved these elements. It explained that "sworn means to be placed under oath." *See* Minn. R. Gen. Prac. 15(a) (requiring that an affidavit be "signed, sworn, and notarized"). It recited the standard form

of an oath that a notary is expected to administer, *see* Minn. Stat. § 358.07(10) (2014), but also explained that a written oath may be indicated by the notary's inclusion of particular language on the affidavit, *see* Minn. Stat. § 358.09. And it recited the principle that an irregular oath is not a defense to perjury, *see* Minn. Stat. § 609.48, subd. 2, without implying that the absence of an oath could be overlooked as a mere irregularity. These instructions accurately explain the law regarding affidavits and oaths.

Frenz also contends that the district court abused its discretion by declining to instruct the jury that "an oath is given to awaken the witness's conscience and impress his mind with the duty to tell the truth." Such an instruction would have been consistent with the language of Minn. R. Evid. 603. But neither that rule nor any other authority requires the district court to provide the jury that specific language. The district court did not abuse its discretion by employing alternative language that amply conveyed the role of an oath in committing the affiant to telling the truth. Based on our careful review of the record, we conclude the district court's instructions fairly and accurately explained the law of perjury in a manner appropriate for the jury to weigh the charge before it.

Affirmed.