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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1847**

State of Minnesota,
Respondent,

vs.

Timothy Alan Campbell,
Appellant.

**Filed December 17, 2012
Affirmed in part, reversed in part, and remanded
Ross, Judge**

St. Louis County District Court
File No. 69DU-CR-06-1216

Lori Swanson, Attorney General, Peter D. Magnuson, Assistant Attorney General, St. Paul, Minnesota; and

Mark S. Rubin, St. Louis County Attorney, Duluth, Minnesota (for respondent)

Steven J. Wright, Special Assistant State Public Defender, Minneapolis, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Stoneburner, Judge; and
Ross, Judge.

UNPUBLISHED OPINION

ROSS, Judge

This case arose after a Duluth police officer reported that his brother—also a Duluth police officer—had been pilfering funds from their mother, who was suffering

from dementia. The report led to criminal charges and a guilty verdict. Appellant Timothy Campbell challenges his felony convictions of financial exploitation of a vulnerable adult under Minnesota Statutes section 609.2335 (2002), failure to pay personal income tax under section 289A.63, subdivision 1(b) (2002), (2004), and filing fraudulent tax returns under section 289A.63, subdivision 2(a) (2002), (2004). He argues that the circumstantial evidence was not sufficient to support his convictions and that the district court sentenced him excessively. We affirm in part because the evidence supports his convictions of exploiting a vulnerable adult and filing fraudulent tax returns. We reverse in part and remand because the evidence does not support his conviction of failure to pay income taxes and because he received more than one sentence for the same criminal behavior.

FACTS

The state charged Campbell with multiple fraud-related criminal counts after his brother Scott reported what he suspected to be Campbell's theft from their mother, Lois. The jury heard evidence of the following facts at Campbell's trial.

Timothy Campbell and his brother Scott were police officers in the Duluth Police Department, and, at one time, Campbell worked in the financial crimes unit. Beginning in 2002, Scott, along with Lois's romantic acquaintance, Jack Fawcett, noticed that Lois had become more forgetful and less expressive. She lost substantial weight, was delusional, and was not caring for herself. Lois was hospitalized. Psychiatrist Tracy Tomac told the sons that Lois had uncorrectable dementia and should move to an assisted-living facility. Lois adamantly opposed assisted living and wanted to remain independent.

After Lois was released from the hospital, she moved in with Scott. Scott researched and visited assisted-living facilities. He told Campbell that Lois had accumulated wealth and they discussed the cost of her care. According to Scott, Campbell was angry about the potential cost. Lois became angry and moved in with Fawcett when she learned that Scott had explored placing her in an assisted-living facility.

Lois then met with attorney Jean Johnson, who had executed a power-of-attorney (POA) naming Scott as attorney-in-fact. Lois wanted to revoke that POA and name Campbell instead. Johnson described Lois as nervous and showing considerable signs of aging. Johnson agreed to revoke the POA that named Scott as attorney-in-fact, but she did not believe that Lois was competent to execute a new POA naming Campbell. Johnson testified that Campbell called her and told her to go through with the paperwork anyway, but she refused. Around this same time, Scott removed himself from Lois's bank accounts at Lois's request.

Campbell and Lois met with attorney Michael Gerlach in February 2003. Gerlach executed a statutory short-form POA and a general durable POA naming Campbell as Lois's attorney-in-fact. Lois and Campbell began sharing bank accounts. Over the next 18 months, they opened accounts together and Lois added Campbell to her other accounts as a signer. Campbell never contributed financially to the accounts, but he could access and use the funds unilaterally.

Trouble with Lois's finances soon arose. Lois contacted Melanie Ford, an attorney who had drafted her will, three months after Lois named Campbell in her POAs. She was

already upset that he had been taking money from her bank account without her permission, and she mentioned problems removing him from the account. Scott became concerned about Lois's finances later, during the summer of 2004. Lois informed him that Campbell had purchased a car using her funds without her knowledge. Scott testified that she cried over this transaction, but she did not want him to do anything about it for fear it would destroy Campbell's police career. Fawcett, on the other hand, confronted Campbell. He testified that Campbell claimed that Lois had given him permission to buy the car. Fawcett did not press the issue. But he noticed the funds in Lois's account were going "down and down and down." He approached her twice about it, and she reacted angrily.

Lois was hospitalized in August 2004 and was later moved to a nursing home, diagnosed with leukemia. Gerlach released Lois's POAs after Campbell altered them that Lois needed assistance, allowing Campbell to act as Lois's attorney-in-fact. Campbell handled the paperwork to admit Lois into the nursing home.

Scott met with Sergeant Michael Tusken, Campbell's supervisor at the Duluth police department, and other department officials to discuss Campbell's involvement with Lois's finances. Scott produced documents supporting his concerns. Sergeant Tusken never interviewed Lois because she had dementia and Scott told him that, to protect Campbell, she would not cooperate in the investigation.

Scott and Lois met with attorney Karen Olson. Olson testified that Lois was concerned about where her money had gone, wanted to revoke her POA naming Campbell as her attorney-in-fact, and sought to execute a new POA naming Scott.

Believing Lois to be lucid during the meeting, Olson complied. Scott and Lois learned that only \$700 remained in Lois's account, down from \$90,000 the previous year when Campbell took over as attorney-in-fact. Lois was distraught.

Lois died soon afterward, in November 2004. The state charged Campbell with three counts of theft by false representation and three counts of financial exploitation of a vulnerable adult. The district court dismissed the three counts of theft by false representation and the remaining three counts went to the jury. The jury could not reach a verdict and the district court declared a mistrial. It deemed the exploitation-of-a-vulnerable-adult statute unconstitutionally vague as applied and dismissed those charges. This court reversed that decision and remanded for a new trial. *State v. Campbell*, 756 N.W.2d 263, 276 (Minn. App. 2008), *review denied* (Minn. Dec. 23, 2008).

The state amended its complaint, charging Campbell with three counts of financial exploitation of a vulnerable adult, two counts of failure to pay personal income tax, and two counts of filing a fraudulent tax return. A new jury heard the evidence and found Campbell guilty on all counts. The district court sentenced Campbell to 28 months in prison but stayed the execution of imprisonment conditioned on probation terms for a period of six years. Campbell now appeals his convictions and sentence.

D E C I S I O N

On appeal, Campbell urges us to reverse his convictions because, he asserts, the trial evidence is insufficient to support them. He also maintains that he should not have been separately sentenced for both failing to pay taxes and for filing fraudulent tax returns because the conduct supporting those convictions for each year constitutes a

single behavioral incident and can support only a single sentence. Both contentions have some merit.

I

We first address Campbell's claim of insufficient evidence. This claim requires us to analyze the record to determine whether the evidence, considered in the light most favorable to the conviction, is sufficient to support the jury's guilty verdict. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). A conviction based on circumstantial evidence merits stricter scrutiny as compared to convictions based on direct evidence. *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). As in direct-evidence cases, we defer to the jury's acceptance of the proof of the circumstances proved as well as the jury's rejection of conflicting evidence. *State v. Hanson*, 800 N.W.2d 618, 622 (Minn. 2011). But in circumstantial-evidence cases, we will independently examine the reasonableness of all inferences drawn from the circumstances proved, including those consistent with a hypothesis other than guilt. *Al-Naseer*, 788 N.W.2d at 473–74. We will sustain the conviction only if all the circumstances proved are consistent with the hypothesis of guilt and inconsistent with any rational hypothesis other than guilt. *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010). No deference is given to the jury's choice between reasonable inferences. *Id.* at 329–30. We apply this standard to Campbell's convictions.

A. Financial Exploitation of a Vulnerable Adult

A caregiving person is guilty of financial exploitation of a vulnerable adult if he breaches a fiduciary obligation recognized elsewhere in law by intentionally failing to use

the financial resources of the vulnerable adult to provide her with food, clothing, shelter, health care, therapy, or supervision. Minn. Stat. § 609.2335, subd. 1(1). To justify a conviction, the state must prove three elements: (1) existence of a recognized fiduciary obligation, (2) breach of that obligation, and (3) intent to violate the obligation by failing to use the vulnerable adult's financial resources for her care. *See id.*; *Campbell*, 756 N.W.2d at 275. *Campbell* challenges the first two elements.

1. *The evidence is sufficient to find a recognized fiduciary obligation.*

Campbell's counsel on appeal retreated from the brief and conceded at oral argument that the record supports the jury's finding that a fiduciary obligation existed between Lois and *Campbell*. The concession is well-founded. The Minnesota Multi-Party Accounts Act provides that a joint account belongs to the parties in proportion to the net contributions of each, unless there is clear and convincing evidence of a different intent. Minn. Stat. §§ 524.6-203, 6-214 (2002). In *Campbell*, we acknowledged that fiduciary obligations do not necessarily exist between joint-account holders. 756 N.W.2d at 271–72, 273. We listed some of the factors that may bear on the question. *Id.* at 271–72, 273. The following circumstances establish the fiduciary obligation in this case: Lois named *Campbell* as an alternate personal representative in her will and as a joint healthcare agent; Lois added *Campbell* to her bank accounts; Lois and *Campbell* opened accounts together; Lois made *Campbell* her attorney-in-fact for a period after her diagnosis of dementia; Lois was prescribed medication to treat paranoia, delusions, and insomnia; Lois became increasingly forgetful; Lois needed to be placed in assisted living and was prohibited from driving; *Campbell* was financially sophisticated generally as a police

officer and particularly as an investigator in the financial crimes unit; Campbell never contributed to the accounts he shared with Lois; all of the funds in the shared accounts came from Lois's social security and survivor's benefits; Campbell received a letter from Gerlach's law firm delineating his responsibilities as Lois's attorney-in-fact in her POA; and the accounts were created for convenience, not to convey a gift or create a right of survivorship. The circumstances proved at trial on the first element are consistent with a hypothesis of Campbell's guilt; the only rational inference is that Campbell had a fiduciary obligation to Lois's benefit.

2. *The evidence is sufficient to find breach.*

Because the evidence supports the jury's finding that Campbell had a fiduciary obligation to Lois arising from the joint nature of the accounts, to find breach, the jury must also have received evidence that Campbell made personal use of account funds that he did not contribute. Campbell argues that the evidence supports the allegedly reasonable innocent hypothesis that Lois and Campbell became joint account holders to protect her independence at a time when Scott was contemplating placing her in assisted living.

This argument does not persuade us because it misses the point. It is undisputed that Campbell never contributed any funds to the joint accounts. So any nonconsensual use for his own benefit breaches his fiduciary obligation. Heidi Hunter, an investigative auditor for the attorney general's office, summarized Campbell's activity on Lois's accounts. She told the jury that his withdrawals included the following: the purchase of airline tickets for a trip to Las Vegas that Lois did not take; the \$28,983.37 expenditure to

purchase and license a new car; the purchase of building materials for Campbell's home-remodeling project; a child-support payment that Campbell owed; cash withdrawals, including one for \$11,977.12; and checks written from Lois's account for funds that were deposited into Campbell's personal account. It requires no further discussion either to credit as indisputable the jury's implicit conclusion that these transactions were only to benefit Campbell, or to hold that they belie Campbell's argument that they somehow protected Lois's interest in remaining independent.

3. *The evidence is sufficient to find that Campbell acted without competent consent.*

Campbell concedes by waiver and expressly through counsel that the record supports the jury's finding that Campbell acted without Lois's consent. The trial evidence amply supports the concession.

B. The Tax Offenses

Campbell argues that the evidence is insufficient to sustain the tax convictions. Our review of the record leads us to hold that the evidence was sufficient to sustain his conviction of filing fraudulent or false returns, but not sufficient to sustain his conviction of failure to pay income taxes.

1. *The evidence is sufficient to find that Campbell filed tax returns known by him to be fraudulent or false concerning a material matter.*

A person is guilty of felony filing of a fraudulent or false tax return by filing a return "known by the person to be fraudulent or false concerning a material matter." Minn. Stat. § 289A.63 subd. 2(a). No Minnesota cases have examined the "known"

standard as applied to filing of a fraudulent or false return. This court interprets and construes statutes to capture the intent of the legislature. *See* Minn. Stat. § 645.16 (2010); *State v. Holmes*, 719 N.W.2d 904, 907 (Minn. 2006). We look to the plain meaning of the statute, and, in the absence of statutory definitions, we will rely on the obvious meaning of the terms. *State v. Iverson*, 664 N.W.2d 346, 350–51 (Minn. 2003). The obvious meaning of “knowing” is consistent with the dictionary definition of “knowledge.” “Knowledge” is defined as “[a]n awareness or understanding of a fact or circumstance; a state of mind in which a person has no substantial doubt about the existence of a fact.” *Black’s Law Dictionary* 950 (9th ed. 2009).

The state produced two witnesses to testify to Campbell’s knowledge on the tax charges. Anne Scherer, a tax accountant who prepared tax returns for Lois and Campbell, testified that she “believe[d]” she prepared Timothy’s individual tax returns for tax years 2003 and 2004, as well as his business taxes. She described her “standard procedure” when meeting with every client, which included several questions on income. John Doty, an income tax auditor for the Minnesota Department of Revenue, reviewed Campbell’s tax returns for tax years 2003 and 2004. Doty testified that Campbell had additional sources of income that he did not report on his tax returns. According to Doty, Campbell reported \$25,322 in taxable income in 2003, but he also had income of \$71,590 from Lois’s accounts. After making certain adjustments and other estimates, Doty concluded that Campbell owed \$5,433 in taxes in 2003. Doty applied the same analysis to his 2004 tax return, determining that Campbell reported only \$26,043 in taxable income but had

additional income from Lois of \$36,096. Doty concluded that Campbell owed \$2,594 in taxes for 2004.

We hold that the evidence is sufficient to convict Campbell of filing returns known by him to be fraudulent or false concerning a material matter. The circumstances proved are consistent with the inferences that he was aware and understood that his tax returns were materially incorrect when he filed them. Only a rational hypothesis of guilt follows the circumstances proved.

2. *The evidence is insufficient to find that Campbell willfully failed to pay taxes.*

A person is guilty of felony failure to pay personal income taxes if he is “required to pay or to collect and remit a tax [and] willfully attempts to evade or defeat a tax law by failing to do so when required.” Minn. Stat. § 289A.63, subd. 1(b). No Minnesota case has examined the “willfulness” standard of tax evasion. “Willful” is “voluntary and intentional, but not necessarily malicious,” and “willfulness” is “(1) the fact or quality of acting purposely or by design; deliberateness; intention. . . . (2) The voluntary, intentional violation or disregard of a known legal duty. Also termed legal willfulness.” *Black’s Law Dictionary* 1737 (9th ed. 2009) (emphasis in original). “Willfulness does not necessarily imply malice, but it involves more than just knowledge.” *Id.*

The legislature has encouraged us to look to “former law,” such as “laws upon the same or similar subjects,” when seeking meaning for terms that are not explicit. Minn. Stat. § 645.16 (2010). We observe that the federal failure-to-pay law is similar to Minnesota’s in that it criminalizes willful failure to pay taxes. 26 U.S.C. §§ 7201, 7203.

We therefore look to, and find particularly helpful, the Supreme Court’s interpretation of that federal statute. In *Cheek v. United States*, the Court interpreted “willfully” as it appears in the federal tax context. 498 U.S. 192 (1991). The *Cheek* Court acknowledged that Congress “softened the impact” of the common law presumption that every person knows the law, particularly in the tax context, by making certain tax laws specific-intent crimes. 498 U.S. at 199–200. Because of their complexity, the Court recognized an exception to the traditional presumption. *Id.* at 200. It gave criminal tax offenses “special treatment” and held that the standard for willfulness is “the voluntary, intentional violation of a known legal duty.” *Id.* at 200–01.

We apply this standard here and hold that there is not sufficient evidence to convict Campbell of willful failure to pay taxes. The state proved no circumstances that Campbell knew he had a legal duty to pay taxes on the unreported funds and that he voluntarily and intentionally failed to do so. Scherer’s testimony is not definite. She could not recall specifically meeting with Campbell. Although she has a standard procedure and standard advice on income, including the duty to report illegal income, she did not testify that she informed Campbell about his duty to report and pay taxes on funds he obtained from Lois. The state focuses on the amount of improperly unreported income, contending that willfulness was proven. But the amounts alone cannot establish that Campbell knew he had a legal duty to pay taxes on the funds as income. The state also contended at oral argument that the POAs executed by Lois in February contained restrictions on self-gifting, leaving the jury free to conclude that Campbell knew he had a duty to report. But the statutory short-form power of attorney only referred to Minnesota

Statutes section 523.24 as the self-gifting limitation, and neither the POAs nor section 523.24 indicates what the tax-payment duties are for joint-account holders.

We do not suggest that Campbell had no duty to report income and pay taxes as proven at his trial. We hold only that the circumstantial evidence does not prove willfulness under the standard of willfulness that applies in criminal tax cases. Because rational inferences other than guilt may arise from the circumstances proved, the evidence is insufficient to support Campbell's conviction. We therefore reverse the failure-to-pay convictions.

II

Campbell also contests the district court's imposition of concurrent sentences for the two tax offenses, arguing that they were committed during a single behavioral incident. The state agrees and concedes this issue. Because of this concession and because we reverse Campbell's convictions for willful failure to pay income taxes, the sentence for his convictions arising from that statute must be vacated and a corrected sentence issued by the district court.

Affirmed in part, reversed in part, and remanded.