STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0782

State of Minnesota,
Respondent,

vs.

Marie Fierck Przynski,
Appellant.

Filed March 10, 2014
Affirmed
Chutich, Judge

Hennepin County District Court
File No. 27-CR-10-18266

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

Michael O. Freeman, Hennepin County Attorney, Michael Richardson, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Frederic K. Bruno, Samantha J. Schmidt, Bruno Law, Minneapolis, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Chutich, Judge; and Smith, Judge.

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

CHUTICH, Judge

Appellant Marie Przynski challenges her convictions for theft by swindle and forgery, contending that, as a matter of law, the state failed to prove these offenses

beyond a reasonable doubt. Przynski also asserts that the district court abused its discretion by identifying the potential victim or victims in its jury instructions. Because sufficient evidence supports her convictions and the district court appropriately instructed the jury, we affirm.

FACTS

Appellant Marie Przynski, a 26-year veteran the Minneapolis Police Department, was a member of the International Association of Women Police (IAWP), an organization created to support women police officers worldwide. IAWP had its annual conference in Minneapolis in 2010, and, in preparation for the event, it created a separate planning organization, the International Association of Women Police 2010 (IAWP 2010). IAWP provided IAWP 2010 with $2,500 to "cover start-up costs." IAWP 2010 was obligated to pay ten percent of all conference registration fees to IAWP and to return all remaining money to IAWP after the conference.

Przynski was originally a co-chair of the IAWP 2010 organization with Mylan Masson. Przynski and Masson opened a checking account for IAWP 2010 at City-County Federal Credit Union, and they were the signatories to the account. Although Masson was a co-chair and signatory to the bank account, Przynski had control over IAWP 2010's finances. Przynski "maintained control of the checkbook" and was responsible for "paying the bills that needed to be paid related to the conference." All of IAWP 2010's transactions were to be completed "via check."

Masson resigned as IAWP 2010 co-chair in fall of 2009, because Przynski was not creating the mandatory "written financial reports" and Masson did not "want to put

[herself] in jeopardy." Masson never exercised her rights as a signatory to IAWP 2010's checking account. After Masson's resignation, Przynski had "full responsibility" for IAWP 2010.

On December 9, 2009, Przynski worked to finish her IAWP 2010 responsibilities before going on vacation from December 10 through December 21. One of her tasks was to deposit $450 of registration fees into IAWP 2010's checking account at City-County Federal Credit Union. Przynski deposited $450 at the bank, but also withdrew $1,500 in cash from the account. Before leaving on vacation, Przynski also wrote a $1,100 check out of her personal checking account for her mortgage payment. Her personal checking account did not have enough money in it to cover the $1,100 payment, so she deposited $600 in cash into her personal account to cover the check.

While Przynski was on vacation, Officers Hilary Glasrud and David Palmer were assigned to complete IAWP 2010's financial report to send to IAWP. Glasrud received a phone call from IAWP's treasurer asking for payment from IAWP 2010 for ten percent of the registration fees it received for the conference. Lieutenant Kelly gave Glasrud permission to enter Przynski's office to retrieve the IAWP 2010 checkbook to take it to Masson to write a check to IAWP. When Glasrud retrieved the checkbook from Przynski's office, she found a deposit slip for $450 and a withdrawal slip for $1,500 in cash. Neither the deposit nor the cash withdrawal was documented in the checkbook's register.

Glasrud then contacted Kelly and Palmer about the withdrawal, and Palmer contacted Masson. Glasrud and Palmer took Masson to the City-County Federal Credit

Union because she was the only person aside from Przynski who was authorized to access IAWP 2010's bank account. Masson confirmed with the bank that a $1,500 cash withdrawal occurred on December 9. Masson then notified Inspector Eddie Frizell about the withdrawal because he was "next in line above Lieutenant Przynski." Palmer photocopied the checkbook's register and returned the checkbook to Przynski's office. When the register was photocopied, the last transaction listed was dated November 26, 2009.

Frizell met with Przynski on December 22, the day after she returned from her vacation. Frizell asked Przynski whether she made any transactions with IAWP 2010's bank account in the last 30 days, and she quickly responded, "No." She volunteered to show Frizell the IAWP 2010 checkbook and left his office, but she did not immediately return.

Instead, Przynski went to her personal bank, withdrew $1,500 in cash, and then went to City-County Federal Credit Union and deposited $1,500 in cash into the IAWP 2010 checking account. Frizell called Przynski to ask where she was, and Przynski responded that she was leaving the City-County Federal Credit Union. Frizell contacted Deputy Chief Travis Glampe, and Glampe and several officers from the Minneapolis Police Department's internal affairs office arrived at the precinct to meet Przynski. When Przynski returned to the precinct, she was relieved of duty by Glampe. Przynski refused to give the IAWP 2010 checkbook and records to the officers.

After Przynski was relieved of duty, she created a new checkbook register for the IAWP 2010 account. Przynski recorded the old entries into the new register, but also

added the $450 deposit and $1,500 withdrawal from December 9, and the $1,500 deposit on December 22. Next to the notation for the $1,500 withdrawal on December 9, Przynski wrote "mail/bulk"; next to the notation for the $1,500 deposit from December 22, Przynski wrote "mailing deferred." During the discovery process, Przynski's counsel disclosed the new checkbook register with other financial records to a paralegal in the Hennepin County Attorney's Office.

Przynski was charged with one count of theft by swindle and four counts of forgery. *See* Minn. Stat. §§ 609.52, subds. 2(4), 3(3)(a), .63, subd. 1(6) (2008). A jury trial then ensued.

Przynski testified that she withdrew $1,500 in cash from the IAWP 2010 account on December 9 to give to Glasrud and Palmer to pay for IAWP 2010's bulk mailing expenses while she was on vacation. Przynski explained that she later agreed to delay the IAWP 2010 mailing plans, so Glasrud and Palmer no longer needed the $1,500. Przynski explained that she deposited $600 of her own money into her personal checking account before leaving for vacation to cover the $1,100 check she wrote to pay her mortgage. She also testified that she initially lost the $1,500 she withdrew on December 9 from IAWP 2010's account and made the $1,500 deposit on December 22 out of her personal funds to make up for losing IAWP 2010's money.

Glasrud, Palmer, Masson, Frizell, and Glampe testified about their involvement with IAWP and IAWP 2010 and their interactions with Przynski during December 2009, and a paralegal from the Hennepin County Attorney's Office testified about her receipt of the new checkbook register from Przynski's counsel. Contrary to Przynski's explanation

for the $1,500 withdrawal, Glasrud, Palmer, and Masson all testified at trial that no bulk mailing was scheduled for December or in the future. IAWP 2010's financial records were admitted at trial, including the photocopy of IAWP 2010's checkbook register made by Palmer while Przynski was on vacation and the second checkbook register created by Przynski after being confronted about the $1,500 withdrawal. Records from Przynski's personal bank account were also admitted into evidence.

After the jury convicted Przynski of all five counts, this appeal followed.

D E C I S I O N

I. Sufficiency of the Evidence

When reviewing the sufficiency of the evidence supporting a conviction, our review is limited to a thorough analysis of 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. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We review a sufficiency-of-the-evidence claim by determining whether legitimate inferences drawn from the record evidence would allow a factfinder to conclude that the defendant was guilty beyond a reasonable doubt. *State v. Pratt*, 813 N.W.2d 868, 874 (Minn. 2012). We assume "that the jury believed all of the state's witnesses and disbelieved any evidence to the contrary." *State v. Chambers*, 589 N.W.2d 466, 477 (Minn. 1999). This court "will not disturb the verdict if the jury, acting with due regard for the presumption of innocence" and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offenses. *Bernhardt v. State*, 684 N.W.2d 465, 476–77 (Minn. 2004) (quotations omitted).

Reversal is proper, however, "if facts proving an essential element of the offense are left more to conjecture and speculation than to reasonable inference." *State v. DeRosier*, 695 N.W.2d 97, 108 (Minn. 2005).

A. Theft by Swindle

Przynski claims that the evidence at her trial was insufficient as a matter of law to sustain her conviction for theft by swindle because the evidence did not show that she acted with the requisite intent to use the $1,500 from the IAWP 2010 account for herself. Because sufficient evidence proves that Przynski intentionally took the $1,500 from the IAWP 2010 account for her personal use, we affirm her conviction.

Under Minnesota Statutes section 609.52, subdivisions 2(4) and 3(3)(a), it is a felony for a person to "obtain[] property or services from another person" with a value between $1,000 and $5,000 "by swindling, whether by artifice, trick, device, or any other means[.]" To prove theft by swindle, the state must show: "(i) the owner of the property gave up possession of the property due to the swindle; (ii) the defendant intended to obtain for himself or someone else possession of the property; and (iii) the defendant's act was a swindle." *State v. Pratt*, 813 N.W.2d 868, 873 (Minn. 2012).

A swindle is defined as "the cheating of another . . . by a deliberate artifice or scheme" and "requires a showing of affirmative fraudulent or deceitful behavior." *State v. Flicek*, 657 N.W.2d 592, 598 (Minn. App. 2003) (quoting 10 *Minnesota Practice*, CRIMJIG 16.10 (1999)). A "swindler" is "[a] person who willfully defrauds or cheats another." *Id.* (quoting *Black's Law Dictionary* 1010 (7th ed. 1991)). In addition, "[t]heft

by swindle requires the intent to defraud," and "[i]nherent in the intent requirement is that a swindler must act affirmatively to defraud another." *Id.*

Intent can be logically inferred from the totality of the circumstances. *See State v. Raymond*, 440 N.W.2d 425, 426 (Minn. 1989). "Intent may be proved by circumstantial evidence, including drawing inferences from the defendant's conduct . . . and the events occurring before and after the crime." *In re Welfare of T.N.Y.*, 632 N.W.2d 765, 769 (Minn. App. 2001) (citing *Davis v. State*, 595 N.W.2d 520, 525–26 (Minn. 1999)).

We apply a two-step analysis to determine whether circumstantial evidence was sufficient to support a conviction because "[a] conviction based on circumstantial evidence . . . warrants heightened scrutiny." *State v. Al-Naseer*, 788 N.W.2d 469, 473–74 (Minn. 2010). First, we identify the circumstances proved, deferring to the jury's acceptance of these facts and assuming that the jury rejected all contrary facts. *State v. Silvernail*, 831 N.W.2d 594, 598–99 (Minn. 2013). Second, we determine whether the circumstances proved are inconsistent with any rational hypothesis other than guilt. *Id.* at 599. "We give no deference to the fact finder's choice between reasonable inferences." *Id.* (quotation omitted). To sustain a conviction, the circumstances proved "must form a complete chain that, in view of 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." *Al-Naseer*, 788 N.W.2d at 473 (quotation omitted).

Applying the first step of the circumstantial-evidence analysis, the state proved the following circumstances concerning Przynski's intent to commit theft by swindle: (1) Przynski withdrew $1,500 in cash from the IAWP 2010 bank account on December 9,

the day before she went on vacation, despite the understanding that all of IAWP 2010's financial transactions were to be conducted through writing checks; (2) Przynski did not have enough money in her personal account to cover the $1,100 mortgage-payment check she wrote that same day, and she deposited $600 in cash into her personal account before leaving on vacation; (3) when asked about the IAWP 2010 bank account, Przynski denied making any transactions within the last 30 days; (4) after being confronted, Przynski rushed to her personal bank to withdraw $1,500 in cash and immediately deposited $1,500 into IAWP 2010's bank account; (5) no legitimate IAWP-2010-related purpose existed for Przynski's $1,500 cash withdrawal on December 9.

Turning to the second step of the circumstantial-evidence analysis, where we "examine independently the reasonableness of all inferences that might be drawn from the circumstances proved," *Al-Naseer*, 788 N.W.2d at 473–74, the circumstances proved support the inference that Przynski intended to take the $1,500 from IAWP 2010 for her personal use. Given the circumstances proved, it is not reasonable to believe Przynski's claim that she did not intend to take the money for herself and "merely failed to inform other IAWP 2010 members of her decision regarding bulk mailing and the $1,500 withdrawal." Her claim is implausible when the evidence shows that, against IAWP 2010's policies, she withdrew cash from IAWP 2010's bank account before going on vacation, no legitimate IAWP 2010 business reason existed for the withdrawal, her personal bank account lacked sufficient money to cover a check she wrote that same day, she made a $600 cash deposit into her personal bank account before going on vacation,

and, after returning from vacation, she lied about making transactions with the IAWP 2010 bank account.

Przynski contends that her conviction should be reversed based on this court's ruling in *State v. Flicek*, 657 N.W.2d at 598–99. In *Flicek*, this court found no probable cause to support an indictment of theft by swindle where appellants failed to disclose delinquent utility accounts to the city council. *Id.* at 598. The *Flicek* court specifically found, however, that appellants had no duty to disclose all delinquent accounts. *See id.* Przynski's affirmative conduct of taking cash from IAWP 2010's bank account in violation of IAWP 2010's policy without a justifiable IAWP-2010-related reason for the withdrawal distinguishes her situation from the facts in *Flicek*. Because the only rational inference consistent with the circumstances proved at trial is that Przynski intentionally took the $1,500 from IAWP 2010's bank account for her personal use, we hold that sufficient evidence exists to sustain her conviction.

B. Forgery

Przynski next maintains that the evidence supporting her four convictions for forgery is insufficient because the state did not prove that she falsified IAWP 2010's checkbook register or that she "had the requisite intent to injure, mislead, or induce to action any purported victim." The state responds that sufficient evidence supports the four convictions of forgery, and we agree.

Minnesota Statutes section 609.63, subdivision 1(6), states that a person is guilty of forgery if she acts "with intent to injure or defraud" and "without authority of law, destroys, mutilates, or by alteration, false entry, or omission, falsifies any record,

account, or other document relating to a person, corporation, or business, or filed in the office of, or deposited with, any public office or officer." To convict a person of forgery, the state must prove beyond a reasonable doubt at trial that (1) the defendant falsified a document, (2) the "document must relate to a person, corporation or business, or be filed in a public office," (3) and the defendant acted with "[i]ntent to injure or defraud." *State v. Williams*, 396 N.W.2d 840, 844 (Minn. App. 1986).

We conclude that sufficient evidence at trial proved that Przynski falsified IAWP 2010's checkbook register and intended to mislead IAWP 2010 and the Hennepin County Attorney's Office. Przynski created a second checkbook register for the IAWP 2010 bank account after being confronted on December 22 about her $1,500 cash withdrawal, and she added three entries to the second checkbook register that were not present in the original register: the December 9 $400 deposit; the December 9 $1,500 withdrawal; and the December 22 $1,500 deposit. Next to the December 9 $1,500 withdrawal, she wrote, "mail/bulk," and next to the December 22 $1,500 deposit, she wrote, "mailing deferred." Glasrud and Palmer testified that IAWP 2010 had no plans to do bulk mailing, and Glasrud, Palmer, and Masson all testified that no legitimate reason justified Przynski's $1,500 cash withdrawal. This testimony, which on appellate review must be taken as true, shows that Przynski falsified the IAWP 2010 checkbook register by making a second register, adding the three entries, and adding the "mail/bulk" and "mailing deferred" notations to her second copy of the register.

Because Przynski's "intent to injure or defraud" was supported with circumstantial evidence at trial, we again apply the two-step analysis of *Al-Naseer* to determine whether

the evidence was sufficient to sustain Przynski's conviction. *See* 788 N.W.2d at 473–74. First, the circumstances proved at trial were: (1) Przynski created a second checkbook register for the IAWP 2010 bank account after being confronted about the withdrawal; (2) Przynski added three entries to the second checkbook register for the December 9 $400 deposit, the December 9 $1,500 withdrawal, and the December 22 $1,500 deposit; (3) next to the December 9 $1,500 withdrawal, she wrote, "mail/bulk," and next to the December 22 $1,500 deposit, she wrote, "mailing deferred;" (4) Przynski had no legitimate reason to write "mail/bulk" or "mailing deferred" on the second register because IAWP 2010 had no bulk mailing plans; and (5) Przynski's counsel sent a copy of the second checkbook register to the Hennepin County Attorney's Office during the discovery process for this case.

Second, we consider whether any reasonable inferences may be drawn from the evidence that are inconsistent with Przynski's guilt. *Id.* at 474. Przynski claims that she never made false entries into the second IAWP 2010 checkbook register and that her second register was "truthful and made for the purpose of ensuring the accuracy and completeness of the record." This explanation is improbable because Przynski created the new register with the bulk mailing notations, IAWP 2010 had no plans for bulk mailing at the time of Przynski's $1,500 cash withdrawal, paying for something in cash from the IAWP 2010 account rather than by check was inappropriate, and Przynski's counsel submitted the new register to the county attorney's office as part of discovery. Because the only rational inference available with the circumstances proved is that Przynski falsified the second register to mislead IAWP 2010 and/or IAWP and the

Hennepin County Attorney's Office, we hold, as a matter of law, that sufficient evidence existed to sustain Przynski's convictions for forgery.

II. Jury Instructions

Przynski states that the district court abused its discretion by "instructing the jury that the victim(s) of counts I, II, and III were IAWP and/or IAWP 2010" because "there was insufficient evidence to establish the true identity of the victim." Przynski explains, "[T]he district court's instruction that the victim(s) of Appellant's alleged theft by swindle and forgery were IAWP and/or IAWP 2010 precluded the jury from making the determination as to who, if anyone, was actually harmed by Appellant's acts." The state argues, by contrast, that sufficient evidence established that "IAWP and IAWP 2010 were interconnected entities in that IAWP 2010 was set up specifically to organize the IAWP conference." Because the record shows sufficient evidence existed for the district court to refer to the victim or victims as "IAWP and/or IAWP 2010," we hold that the district court did not abuse its discretion.

Where an objection is lodged at trial, we review jury-instruction challenges for an abuse of discretion. *See State v. Cole*, 542 N.W.2d 43, 50 (Minn. 1996). District courts are given "considerable latitude" in selecting language for jury instructions. *State v. Baird*, 654 N.W.2d 105, 113 (Minn. 2002). Jury "instructions must be read as a whole to determine whether they accurately describe the law." *State v. Earl*, 702 N.W.2d 711, 720 (Minn. 2005) (quotations omitted). "If the instructions, when read as a whole, correctly state . . . the law in language that can be understood by the jury, there is no reversible error." *State v. Laine*, 715 N.W.2d 425, 432 (Minn. 2006) (quotations omitted).

The district court did not abuse its broad discretion by instructing the jury that the victim or victims of Przynski's crimes could have been IAWP and/or IAWP 2010. At the end of the trial, the district court stated in its jury instructions, "The question is: Was the value of the funds given up by the IAWP and/or the IAWP 2010 more than $1,000?" This characterization of the possible victim or victims by the district court was supported by ample evidence presented at trial.

Palmer testified that IAWP was the "parent company" of IAWP 2010, and that when the 2010 conference ended, all of the money left in IAWP 2010's bank account was required to return to IAWP. Masson also testified that any money remaining in the IAWP 2010 bank account after the conference would return to IAWP. The record shows that IAWP 2010 was the immediate victim of Przynski's $1,500 withdrawal, but that IAWP would have also eventually suffered a loss. Based on the testimony of witnesses familiar with IAWP and IAWP 2010, sufficient evidence supported the district court's identification of "IAWP and/or IAWP 2010" as the potential victim or victims. No abuse of discretion occurred in doing so.

Affirmed.