STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2089

State of Minnesota,
Respondent,

v.

Victoria Elizabeth Tews,
Appellant.

Filed December 16, 2008
Affirmed
Toussaint, Chief Judge

Kandiyohi County District Court
File No. 34-CR-06-821

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Boyd A. Beccue, Kandiyohi County Attorney, Stephen J. Wentzell, Assistant County Attorney, 415 Southwest Sixth Street, P.O. Box 1126, Willmar, MN 56201 (for respondent)

John E. Mack, Mack & Daby, P.A., P.O. Box 302, New London, MN 56273 (for appellant)

Considered and decided by Toussaint, Chief Judge; Halbrooks, Judge; and Collins, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals 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

TOUSSAINT, Chief Judge

Appellant Victoria Elizabeth Tews challenges the sufficiency of the evidence upholding her misdemeanor theft conviction, contends that the district court was biased against her, and claims that the district court abused its discretion in requiring her to write a letter of apology as a condition of probation. Because the evidence at trial was sufficient to allow the jury to find appellant guilty, because the district court's conduct did not demonstrate bias against appellant, and because the district court did not abuse its discretion in requiring appellant to write an apology letter, we affirm.

D E C I S I O N

I.

Appellant, a former director of the Willmar Area Food Shelf, was convicted by a jury of misdemeanor theft for purchasing items for her personal use at grocery stores on food-shelf credit. Appellant contends that the jury's verdict was based entirely upon circumstantial evidence. She claims that nothing in the record indicates that any items were taken from the food shelf and that, since there is no direct evidence of theft, her convictions are based upon speculation and conjecture.

Generally, in considering a claim of insufficient evidence, this court's review is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the jurors to reach the verdict that they did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). 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). This is especially true when resolution of the matter depends mainly on conflicting testimony. *State v. Pieschke,* 295 N.W.2d 580, 584 (Minn. 1980).

But, "a conviction based entirely on circumstantial evidence merits stricter scrutiny than convictions based in part on direct evidence." *State v. Jones,* 516 N.W.2d 545, 549 (Minn. 1994). "While it warrants stricter scrutiny, circumstantial evidence is entitled to the same weight as direct evidence." *State v. Bauer,* 598 N.W.2d 352, 370 (Minn. 1999). The circumstantial evidence 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. *Jones,* 516 N.W.2d at 549. A jury is in the best position to evaluate circumstantial evidence, and its verdict is entitled to due deference. *Webb,* 440 N.W.2d at 430. Appellant argues that the evidence does not exclude, beyond a reasonable doubt, the inference that she purchased goods for the food shelf and not for her personal and family needs.

Minn. Stat. § 609.52, subd. 2(1) (Supp. 2005), provides that whoever "intentionally and without claim of right takes, uses, transfers, conceals or retains possession of movable property of another without the other's consent and with intent to deprive the owner permanently of the possession of the property" is guilty of theft. Appellant is correct that there is no direct evidence of theft here. But a review of the receipts showing appellant's purchases on food-shelf credit could have provided the jury with a reasonable inference that many of the items were to be used by appellant and her family and not by the food shelf or its clients. This inference was supported by the

testimony of the current president of the food shelf's board of directors and appellant's former assistant at the food shelf.

Appellant's former assistant demonstrated a working knowledge of the food shelf's daily operations and procedures during the time that appellant was director and testified that appellant's purchases would not have been used at the food shelf or distributed to clients. Circumstantial evidence also supports the jury's likely conclusion that appellant hid or destroyed the receipts so that neither the food shelf's accountant nor the board of directors would discover what looked like her personal shopping lists. The timing of appellant's purchases also supports the inference that she bought groceries for her personal use with food-shelf funds.

This court must defer to the jury's ability to judge credibility and the weight of the circumstantial evidence. In doing so, we conclude that circumstantial evidence in the record, taken as a whole, supports the jury's guilty verdict and excludes the inference that appellant purchased groceries on food-shelf credit for use at the food shelf or by "special needs" clients and not for her own personal use.

II.

Due process entitles a criminal defendant "to an impartial and disinterested tribunal." *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242, 100 S. Ct. 1610, 1613 (1980). Accordingly, a judge must have "no actual bias against the defendant or interest in the outcome of his particular case." *Bracy v. Gramley*, 520 U.S. 899, 905, 117 S. Ct. 1793, 1797 (1997). There is a presumption that a judge has discharged his or her judicial duties in a proper manner. *McKenzie v. State*, 583 N.W.2d 744, 747 (Minn. 1998).

First, appellant argues that the district court was biased against her because it "publicly humiliated counsel in front of the jury" at trial when it sustained the prosecutor's objection to a statement made by appellant's counsel during closing argument. In the middle of his closing, defense counsel said the following and began to write on the board: "[A]ssume, assume, assume. Assuming makes an ass out of you and me." After the prosecutor objected, the district court stated: "Erase that immediately [counsel]. . . . Jury's instructed to disregard any profanity, including the first three letters of the word just written on the board." Appellant contends that, instead of reprimanding her attorney in front of the jury, the district court "should have conducted a bench conference and simply granted a motion to strike."

Nothing in the record overcomes the presumption that the district court discharged its judicial duties properly by directing appellant's counsel to erase written profanity in the presence of the jury, and we find nothing in the district court's actions constituting bias against appellant. *See State v. Mems*, 708 N.W.2d 526, 533 (Minn. 2006) ("Prior adverse rulings by a judge, without more, do not constitute judicial bias."); *see also* Minn. R. Gen. Pract. 2.01(a) ("Dignity and solemnity shall be maintained in the courtroom."); Minn. R. Gen. Pract. 2.03(a) ("The lawyer . . . should at all times uphold the honor and maintain the dignity of the profession, maintaining at all times a respectful attitude toward the court."); Minn. R. Crim. P. 26.03, subd. 11(l) (stating that each party has right "to make appropriate objections and to seek curative instructions" during closing arguments).

Second, appellant claims that the district court was biased against her when, at sentencing, it denied her motion to stay her 20-day jail sentence pending appeal. But we have previously dealt with appellant's motion to stay her sentence in this court; we denied her request due to an insufficient record. Nothing in the record establishes that the district court was prejudiced against appellant when it ordered that she serve her sentence pending appeal.

Third, appellant objects to the district court's order that she issue a written apology to the food shelf, to be approved by her probation officer, as a condition of probation. Appellant argues that a coerced apology (because she denies committing theft) violates her right to remain silent on appeal, citing *People v. Fonseca*, 36 Cal. App. 4th 631, 42 Cal. Rptr. 2d 525 (Cal. Ct. App. 1995).[1]

"[I]t is both permissible and desirable to allow flexibility in implementing and administering the conditions that a district court imposes when sentencing a defendant, including conditions of probation." *State v. Meredyk*, 754 N.W.2d 596, 602 (Minn. App. 2008). Appellant can point to no authority recognizing a defendant's right to refuse to write an apology letter pending appeal. Appellant was found guilty, and she presents no authority preventing the district court from requiring her to write an apology as a condition of probation.

Affirmed.

[1] *Fonseca* concerns a requirement that a defendant testify against a codefendant pending his own appeal, not whether a defendant must comply with the requirement that he or she issue an apology pending appeal.