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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1447**

State of Minnesota,
Respondent,

vs.

Vladimir Borkovskiy,
Appellant.

**Filed September 22, 2009
Affirmed
Peterson, Judge**

Olmsted County District Court
File No. 55-CR-07-4054

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

Mark A. Ostrem, Olmsted County Attorney, Katherine M. Wallace, Assistant County Attorney, Olmsted County Government Center, 151 Fourth Street Southeast, Rochester, MN 55904 (for respondent)

Marie L. Wolf, Interim Chief Appellate Public Defender, Benjamin J. Butler, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Johnson, Presiding Judge; Peterson, Judge; and Connolly, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from his conviction of theft over \$2,500, appellant argues that the evidence was insufficient because no evidence corroborated his confession. We affirm.

FACTS

K.C. was a regional loss-prevention auditor for O'Reilly Auto Parts. His duties included conducting audits of stores and reviewing cash refunds to prevent loss to the company through theft. On January 24, 2007, K.C. contacted the Rochester Police Department regarding approximately \$3,500 in suspected theft from the company's Rochester store. K.C. had noticed that the amount of cash refunds at the store was trending upward from the yearly average. K.C. examined the invoices for these refunds and noticed that appellant Vladimir Borkovskiy, an employee in the company's Rochester store, had handled many refund transactions. These transactions were accompanied by quantity-on-hand changes, which meant that an item was taken out of store inventory before the transaction to create a situation in which a part on the shelf was not in the inventory. The combination of cash refunds and quantity-on-hand changes indicated to K.C. that the transactions were fraudulent. K.C. testified that some of the invoices for the transactions had the required customer signatures, but most did not. He also noticed that many of the invoices repeatedly used the same customer information, such as name and address, which indicated that they were fraudulent.

K.C. believed that there were three or four possible employees who might have used appellant's employee number to make the transactions, but he narrowed it down to

appellant based on employee time records and when the transactions occurred. He met with appellant and asked him about the cash refunds. Appellant admitted to K.C. that he took money from cash refunds and kept the money for personal use. He acknowledged that, in order to make the theft more difficult to detect, he would do refunds for parts that were on the shelf but not in the computer inventory. Appellant agreed to sign all of the invoices for his fraudulent refunds. He also signed a written statement for K.C.

Appellant was charged with theft over \$2,500, in violation of Minn. Stat. § 609.52, subs. 2(1), 3(2) (2006). Following a court trial, he was found guilty and received a stayed sentence and five years probation. This appeal followed.

D E C I S I O N

“In considering a challenge to the sufficiency of the evidence, this court’s review is limited to determining whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to find the defendant guilty beyond a reasonable doubt.” *State v. Morin*, 736 N.W.2d 691, 697 (Minn. App. 2007), *review denied* (Minn. Sept. 18, 2007).

The Minnesota corpus delicti statute provides that “[a] confession of the defendant shall not be sufficient to warrant conviction without evidence that the offense charged has been committed[.]” Minn. Stat. § 634.03 (2006). “[T]he statute requires that the corroborating evidence show the harm or injury and that it was occasioned by criminal activity; it need not show that the defendant was the guilty party because the confession itself provides that link.” *In re Welfare of C.M.A.*, 671 N.W.2d 597, 601 (Minn. App. 2003). The elements of the crime must be “sufficiently substantiated by independent

evidence of attending facts or circumstances from which the [fact-finder] may infer the trustworthiness of the confession.” *In re Welfare of M.D.S.*, 345 N.W.2d 723, 735 (Minn. 1984) (quotation omitted).

The district court found that the invoices corroborated appellant’s confession. Appellant argues that the invoices are insufficient to corroborate the confession because they are “part and parcel of the confession” and “[n]othing on the face of the invoices was fraudulent.” The record demonstrates that the invoices, independent of the confession, provided evidence of the theft. K.C. testified that his suspicion was not based merely on the increase in refunds, but on the fact that refunds were matched with quantity-on-hand changes. He testified that “that is very indicative that probably those cash refunds are fraudulent.” He also testified that most of the invoices did not have a required customer signature and that very similar customer information was repeatedly used, “throwing a red flag” that the information was fraudulent. Therefore, the invoices demonstrate harm occasioned by criminal activity and provide independent evidence of the trustworthiness of appellant’s confession. *See C.M.A.*, 671 N.W.2d at 601; *M.D.S.*, 345 N.W.2d at 735.

Appellant also argues that the invoices are insufficient to corroborate the confession because they do not establish appellant as the perpetrator. But, as we have already stated, the corroborating evidence “need not show that the defendant was the guilty party because the confession itself provides that link.” *C.M.A.*, 671 N.W.2d at 601. Also, although K.C. testified that three or four other employees could potentially have been performing the transactions by using appellant’s employee number, he also testified

that he narrowed his investigation down to appellant because the transactions often occurred near the end of his shift when other employees were not working. On occasions when other employees were working when the transactions occurred, those employees were not working the next time a fraudulent transaction occurred. Therefore, the invoices and K.C.'s testimony are independent evidence of the facts and circumstances of the offense from which the district court could infer that appellant's confession was trustworthy.

Affirmed.