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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1700**

State of Minnesota,
Respondent,

vs.

Robert Charles Mantia,
Appellant.

**Filed September 24, 2012
Affirmed
Collins, Judge***

Beltrami County District Court
File No. 04-CR-10-2473

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

Timothy R. Faver, Beltrami County Attorney, Randall R. Burg, Assistant County
Attorney, Bemidji, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Stauber, Presiding Judge; Chutich, 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.

UNPUBLISHED OPINION

COLLINS, Judge

Appellant challenges his conviction of felony theft following a bench trial, arguing that the entirely circumstantial evidence is insufficient to prove his guilt beyond a reasonable doubt. Because the reasonable inferences from the evidence are consistent with appellant's guilt and exclude any other rational hypothesis, and because appellant's pro se arguments are without merit, we affirm.

FACTS

In May 2010, S.S., an asset-protection manager for Home Depot Inc., was informed that J.L., a cashier at the Home Depot store in Bemidji, was allowing shoppers to leave the store with merchandise without paying for it. S.S. and Bemidji police officers reviewed cash-register receipts and store surveillance videos from four days in April and May 2010. They observed that, on each of those days, a shopper went to J.L.'s cash register with various items of merchandise. On each occasion, one or more low-priced items were scanned for purchase, but other items either were not scanned or were scanned and then "item corrected" by J.L. to void the sale of the items. On three of the days, the purchased items were paid for by using a gift card that had been given to J.L. by the store. The shopper then left the store with all of the items.

Based on the surveillance videos, S.S. concluded that the shopper was the same person on each of the four days—a male of medium-to-heavy build wearing similar clothing. One of the police officers described the shopper as a heavysset, white male. The shopper's race, eye color, hair color, height, and facial features could not be determined

from the videos. In the video from one of the days, the shopper can be seen shaking his right leg back and forth while waiting to check out.

The surveillance videos do not continuously track the shopper from J.L.'s cash register to the store's parking lot. However, in surveillance videos of the parking lot from three of the days, within minutes of the time the shopper left J.L.'s cash register, a person of similar appearance can be seen leaving the store pushing a shopping cart and placing items of merchandise into an older-model, blue pickup-truck with white pin-striping and a white toolbox across the bed. On one of the days, the same truck is seen driving through the parking lot a few minutes after the shopper left the store. The license-plate number cannot be seen in any of the surveillance videos. Based on the similarities of clothing and the items seen in the shopping carts, S.S. concluded that the person who carted items out of the store and loaded them into the truck was the shopper seen at J.L.'s cash register.

A police officer went to where J.L. was believed to reside, in a complex of townhomes and an apartment building. In the parking lot of the apartment building, the officer saw a blue, 1974 Ford pickup-truck with white pin-striping and a white toolbox across the bed. The police identified appellant Robert Mantia, with a near-by address, as the registered owner of the truck.

The police went to Mantia's address and spoke with him. Mantia stated that he had known J.L. for about a year. When asked about tools from Home Depot and whether he could bring them to the police department, Mantia replied that he knew where most of them were. In a later interview, Mantia told police that he knew J.L. from Home Depot,

but denied being the person who had stolen items from the store. J.L.'s driving record was obtained, which showed her address as being the same as Mantia's.

The state charged Mantia with felony theft. Following a bench trial at which S.S. and Bemidji police officers testified, the district court found Mantia guilty. In its order, the court acknowledged that the state's case was based entirely on circumstantial evidence. The district court noted that (1) Mantia's truck matched the one shown in the store surveillance videos and that the truck "is distinctive and unique, making it highly unlikely that there would be many matching its description in Bemidji;" (2) at trial Mantia was seen shaking his right leg and his attorney explained that Mantia's legs go numb and that he needs to shake them out when it happens, and in one surveillance video the shopper can be seen shaking his right leg in similar fashion; (3) the shopper seen in the videos and Mantia appear to be of similar height, weight, and build; and (4) Mantia knew J.L. and shared a residential address with her. The district court found that, when viewed as a whole, the evidence formed a "complete chain" that could, beyond a reasonable doubt, lead to only one conclusion: Mantia is guilty as charged. This appeal followed.

D E C I S I O N

Mantia argues that the circumstantial evidence presented at trial is insufficient to sustain the guilty verdict. When reviewing a sufficiency-of-the-evidence claim, an appellate court must determine whether, given the facts in the record and any legitimate inferences that can be drawn from those facts, the trier-of-fact could reasonably conclude that the defendant is guilty of the offense charged. *State v. Ulvinen*, 313 N.W.2d 425,

428 (Minn. 1981). The appellate court views the evidence in the light most favorable to the verdict and assumes that the trier-of-fact believed the state's witnesses and disbelieved any contrary evidence. *State v. Moore*, 481 N.W.2d 355, 360 (Minn. 1992).

Circumstantial evidence is entitled to as much weight as any other type of evidence, 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). Circumstantial evidence must do more than give rise to suspicion of guilt; it must point unerringly to the defendant's guilt. *State v. Scharmer*, 501 N.W.2d 620, 622 (Minn. 1993). "Convictions based on circumstantial evidence will be sustained only when the reasonable inferences from such evidence are consistent with [the] defendant's guilt and inconsistent with any rational hypothesis except that of guilt." *State v. Drieman*, 457 N.W.2d 703, 711 (Minn. 1990). Stated another way, a conviction based on circumstantial evidence will be sustained "only where the facts and circumstances disclosed by the circumstantial evidence form a complete chain which, in the light of the evidence as a whole, leads so directly to the guilt of the accused as to exclude, beyond a reasonable doubt, any reasonable inference other than that of guilt." *State v. Wahlberg*, 296 N.W.2d 408, 411 (Minn. 1980).

A conviction based on circumstantial evidence will not be overturned on the basis of mere conjecture. *State v. Lahue*, 585 N.W.2d 785, 789 (Minn. 1998). The state does not have the burden of removing all doubt, but of removing all reasonable doubt. *State v. Hughes*, 749 N.W.2d 307, 313 (Minn. 2008). Possibilities of innocence do not require

reversal of a verdict as long as the evidence taken as a whole makes such possibilities seem unreasonable. *State v. Ostrem*, 535 N.W.2d 916, 923 (Minn. 1995).

In this case, the circumstances of the theft show that the shopper and J.L. knew each other because they acted cooperatively and the shopper used J.L.'s gift card to purchase some items. The store surveillance videos depicted the shopper as a male with a medium-to-heavy build, who on one occasion is seen shaking his right leg back and forth while waiting to check out at J.L.'s cash register. The surveillance videos of the parking lot show that a person matching the shopper drove an older-model, distinctive blue pickup-truck with white pin-striping and a white tool box across the bed.

The state introduced evidence of Mantia's connections to J.L.: Mantia admitted to police that he had known J.L. for about a year; Mantia's pickup truck was located in the vicinity of J.L.'s residence; and, the address shown in J.L.'s driving record matched Mantia's address. The district court observed that Mantia's height, weight, and build are similar to the shopper and, at trial, Mantia was noticed shaking his right leg back and forth in a manner similar to the shopper. Also, evidence showed that Mantia owned a blue, 1974 Ford pickup-truck with white pin-striping and a white toolbox across the bed, similar to the one seen in the surveillance videos of the Home Depot parking lot.

It is not entirely impossible that someone other than Mantia may exist who is associated with J.L., whose physical characteristics and clothing match those of Mantia, and who has access to a pickup truck with distinctive features similar to that seen in the surveillance videos. However, we see no fault in the district court determining such a possibility to be remote and unreasonable; the state was not required to remove all doubt

of Mantia's guilt, but only to eliminate all reasonable doubt. Having painstakingly reviewed this record, we are satisfied that the circumstantial evidence forms a complete chain that points unerringly to Mantia's guilt and excludes, beyond a reasonable doubt, any reasonable inference to the contrary.

In his pro se supplemental brief, Mantia challenges the credibility of the police officers and their trial testimony. But credibility and the weight to be given to the testimony of individual witnesses are for the trier-of-fact to determine, and not for this court to review. *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). Mantia also argues that the district court judge held a personal prejudice against him, demonstrated by the use of certain movie quotations in the order. In assessing whether a judge should have been disqualified due to personal bias or prejudice, "the question is whether an objective examination of the facts and circumstances would cause a reasonable examiner to question the judge's impartiality." *State v. Burrell*, 743 N.W.2d 596, 601 (Minn. 2008). Having objectively examined the whole of the facts and circumstances of this case, we are satisfied that there is no reasonable question as to the district court judge's impartiality solely on the basis asserted by Mantia.

Affirmed.