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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A18-2003**

State of Minnesota,  
Respondent,

vs.

Nadeem Malik,  
Appellant.

**Filed April 13, 2020  
Affirmed  
Smith, Tracy M., Judge**

Hennepin County District Court  
File No. 27-CR-18-2769

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Mark V. Griffin, Senior Assistant County Attorney, Morgan Kunz, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Jesson, Judge; and Smith, Tracy M., Judge.

**UNPUBLISHED OPINION**

**SMITH, TRACY M.,** Judge

In this direct appeal from final judgment, appellant Nadeem Malik argues that his conviction for wrongfully obtaining public assistance under Minn. Stat. § 256.98, subd. 1

(2012), must be reversed because (1) the conviction is barred by the three-year statute of limitations because the state charged him with the offense in January 2018 and failed to prove that he was ineligible for public assistance in January 2015; (2) the evidence is insufficient to prove that he was ineligible to receive public assistance because the state did not introduce evidence of his net income; and (3) the state failed to prove that he acted with intent to defeat the purposes of every public assistance program listed in Minn. Stat. § 256.98, subd. 1, which, he argues, is an element of the statute. Malik also argues that the district court's restitution order must be reversed because the district court failed to consider his ability to pay \$59,242 in restitution. We affirm.

## **FACTS**

On January 31, 2018, the state charged Malik with the theft crime of wrongfully obtaining public assistance in violation of Minn. Stat. § 256.98, subd. 1(1). The complaint alleges that the offense took place on and between August 1, 2012, and January 31, 2015. After a jury trial, the jury found Malik guilty of the charged offense and determined that the amount of his theft exceeded \$5,000. At sentencing, the district court stayed imposition of a sentence for ten years and ordered Malik to pay restitution of \$59,242, in installments of \$500 per month, to Hennepin County. The following facts were presented at trial.

### **1. *Malik's first application for public assistance***

Malik first applied for public assistance in August 2012 after losing his job at EOS Metals. On August 9, 2012, he submitted a combined application form for benefits through Hennepin County, applying for Supplemental Nutrition Assistance Program (SNAP) benefits and health care assistance for himself and his family, which includes his wife and

three children. Eligibility for both programs depends on the applicant's income. For SNAP, there is no asset limit affecting eligibility. For medical assistance, there was a household-asset limit, but only for parents; children cannot be disqualified based on household assets. At Malik's trial, a few county human-services representatives testified regarding asset and income classification for the purposes of public-assistance eligibility. They explained, for example, that stocks and cash in bank accounts are generally considered assets but retirement accounts are typically not considered assets unless they are cashed out. If stocks are traded and the gains withdrawn, those gains may be considered income. Irregular gifts and loans are typically not considered income.

When Malik applied for assistance in August 2012, his monthly income needed to be below \$3,599 to qualify for SNAP and below \$6,303 to qualify for medical assistance. The combined application form asked whether he was self-employed or expecting to receive income from self-employment "this month or next month." He answered "no." In a follow-up interview with a county eligibility worker, Malik confirmed that answer. The eligibility worker testified that, had Malik disclosed self-employment, Malik would have been instructed to fill out a self-employment report. The self-employment report asks the applicant to list all their business income and expenses by month. The eligibility worker testified that if a reported self-employment enterprise is new, he asks the applicant for three months of this data and then takes an average to determine income for the purposes of benefits eligibility. If the self-employment enterprise is more established, though, he asks for the previous year's tax return and looks at the annual net income, "divide[s] by 12," and uses that amount as a monthly average for the purposes of benefits eligibility. The

eligibility worker also testified that his office has a specialty team of self-employment case workers. But because Malik answered “no” for self-employment, the eligibility worker did not give him a form or refer him to that team.

The combined application form also contained questions about household expenses and assets. Malik indicated that he had a monthly mortgage payment of \$1,200 and that he had bank accounts and either stocks, bonds, or annuities. When the county requested verification of these items, Malik provided bank statements for his personal accounts and a document regarding his retirement account. Malik’s application for SNAP benefits was approved for the household, and his application for medical assistance was approved for his children but not for Malik and his wife.

**2. *Malik’s reporting and recertification for public assistance from January 2013 to July 2014***

In order to continue receiving SNAP benefits and medical assistance, a recipient is subject to a six-month review and an annual recertification. Six months after the initial approval, the county mails a document to the recipient that asks them to report any changes and requests new verification of income. One year after the initial approval, the recipient must fill out a recertification application, which looks exactly like the initial application. Malik filled out the six-month review form on January 24, 2013. He again answered “no” when asked whether he is self-employed. He also answered “no” when asked if he owns any stocks, bonds, retirement accounts, or other assets. To remain eligible, his monthly income needed to be below \$3,714 for SNAP benefits and below \$6,303 for medical assistance. Malik’s family continued receiving both.

Malik applied for annual recertification on July 5, 2013, and filled out a new combined application from. Again, he denied being self-employed. He reported a monthly household income of \$0. To be eligible at this time, his monthly income needed to be below \$3,791 for SNAP benefits and below \$6,433 for medical assistance. His family continued receiving assistance. On July 23, 2013, though, Malik received a request for verification of information from the county, which asked for bank statements for his wife’s checking and savings accounts. He received this request because the county’s debt-establishment unit—which works on overpayment claims in benefits cases—had discovered information about Malik’s family or finances that it did not think had been reported to the agency.<sup>1</sup>

On January 1, 2014, Malik filled out the next six-month report. He again denied being self-employed, reported a monthly household income of \$0, and continued receiving benefits.

On July 5, 2014, Malik again applied for annual recertification. He again answered “no” to being self-employed and reported \$0 in income. He reported having household cash, checking, or savings in the amount of \$712 and a monthly mortgage payment of \$1,160. He also reported that he had received a one-time gift of \$1,200 from his brother to help pay his bills. He answered “no” to the question asking whether he has any stocks, bonds, or annuities. A few days later, Malik met with an eligibility worker regarding his application, and the eligibility worker asked him to explain how he was meeting his family’s monthly expenses with no income. Malik indicated that he had received the \$1,200

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<sup>1</sup> It is unclear from the record whether Malik provided the debt-establishment unit with any responsive documents upon this request.

gift from his brother and that he was using savings and credit cards. This eligibility worker also testified that, had Malik reported self-employment income, he would have then asked Malik for verification of any gross income and expenses to determine his net income. The eligibility worker also testified that he is currently on the county's self-employment team and emphasized the importance of accurate reporting to the process of assessing benefits eligibility for self-employed workers.

**3. *County's verification request and termination of Malik's public-assistance benefits***

On December 15, 2014, the county sent Malik another verification request. The request form stated that the county had received information from the state that Malik had an undisclosed Scottrade account and had made an estimated \$949,130 in stock trades while receiving public assistance. On December 22, 2014, Malik delivered a signed release of information for his Scottrade account to the county. On December 29, 2014, the debt-establishment unit submitted a fraud referral form regarding Malik's receipt of public assistance to the county's fraud unit for further investigation. The form noted a "preliminary overpayment" estimate of \$59,242.67, for Malik's receipt of \$15,859 in SNAP benefits and \$43,383.67 in medical assistance from August 2012 through January 2015.

Meanwhile, on January 5, 2015, Malik submitted another six-month report to renew his benefits. For self-employment, he reported \$800 in expected annual income from "buying and selling used cars." He also reported owning stocks with Scottrade. To qualify for SNAP, his monthly income had to be below \$3,838, and to qualify for medical

assistance, his monthly income had to be below \$3,491. In February 2015, Malik's SNAP benefits were terminated because the county had not received verification of his income. Malik appealed that decision, and a hearing took place on March 10, 2015.

**4. *Malik's appeal hearing following the termination of his benefits***

Malik's appeal hearing was held before a human services judge.<sup>2</sup> A county appeals representative attended on behalf of the county, and that same representative testified at Malik's trial. The appeal hearing was audio recorded, and the recording was entered as evidence and played for the jury.

At the appeal hearing, Malik reported that he had \$40,000 to \$50,000 in his Scottrade account, and that the \$949,000 figure represented total trades. He said he had only taken \$30,000 out of the account and that he gave it all to his brother. He stated that he had made income from day trading in 2013 but had losses in 2014 and 2015. Malik went on to reveal that he owned a company called Orient International and that he had owned it since 2005. He also stated that he had purchased a cell phone company a few weeks before the hearing for about \$7,000.

The county appeals representative repeatedly asked Malik at the hearing how he pays his family's living expenses when he allegedly has zero income. He was continually evasive. When pressed by both the representative and judge, though, Malik eventually

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<sup>2</sup> Human services judges are appointed by the commissioner of human services pursuant to Minn. Stat. § 256.045, subd. 1 (2018). They conduct agency hearings for appeals arising from an array of programs administered by the department of human services, including hearings for appeals of a person's reduction or termination of public assistance. *Id.*, subd. 3(a)(1) (2018).

stated that he had borrowed \$50,000 from his brother, borrowed from a line of equity, borrowed \$25,000 from his brother-in-law, and borrowed \$10,000 from a friend. He later stated that he has two lines of credit: a home equity line for \$35,000 and a small business line for \$50,000 to \$55,000. He also admitted that he failed to report to the county that he had cashed out his retirement account in 2012. The human services judge instructed Malik to send the county verification of everything that he had disclosed at the hearing.

The appeals representative testified at trial that, after the appeals hearing, Malik sent her many documents and that, based solely on his reported current income, the county reinstated his SNAP benefits. She testified that she did not look at assets “or the transfer of money back and forth,” as “the fraud unit had gotten involved at that point.”

#### **5. *The fraud-unit investigation***

After the debt-establishment unit submitted Malik’s case to the fraud unit at the end of December 2014, the case was assigned to investigator Amanda Lange. Lange was the state’s primary witness at trial, describing her investigation and findings for the jury. Her investigation revealed the following.

#### **Orient International**

At the beginning of her investigation, Lange checked the secretary of state records to see if Malik had any business holdings and found his privately owned company, Orient International. Orient International sells scrap metal. The metal is bought in the U.S. and then sold or traded overseas. Lange visited the address that the secretary of state records listed for Orient International and found only an old warehouse. The owners of the warehouse told Lange that there had never been a scrap metal business there.

### **Malik's personal and business financial accounts**

Next, Lange served search warrants on U.S. Bank, Wells Fargo, Scottrade, Think Bank, and American Express, requesting all records for accounts related to Malik. In response, she learned that, at U.S. Bank, the accounts related to Malik included (1) an account for Orient International, (2) a personal account, (3) a joint account with his wife, (4) an account for his wife, (5) a money market savings account, and (6) an account for "Mobile Repair Hub." Malik also had an equity line of credit, a small business line of credit, and four credit cards with U.S. Bank. At Wells Fargo, the responsive accounts were (1) a checking account for Orient International, (2) a savings account for Orient International, (3) a business market rate savings account for Orient International, (4)-(5) two accounts for Mobile Repair Hub, and (6) a credit card. Think Bank had no accounts responsive to the warrant. The state entered the bank records from all of these accounts as evidence at trial. It also entered account statements from Saturna Capital regarding Malik's retirement account. The Saturna Capital records showed that Malik had funds wired out for early distribution once in July 2012 (in the amount of \$12,000) and twice in September 2012 (in the amounts of \$19,832 and \$13,170). Lange cross-referenced these transactions with the bank account statements and found that the July distribution was deposited in Malik's personal U.S. Bank account and that both September distributions were deposited into his Orient International U.S. Bank account.

Lange summarized her review of all of the transactions in Malik's business and personal bank accounts for the jury, in part, by presenting an exhibit listing every "third party" deposit into any of these accounts between August 1, 2012, and December 3, 2014.

Malik frequently transferred money back and forth between his business and personal checking accounts and lines of credit, but Lange did not include these “internal transfers” in this summary exhibit. She explained that she tracked the money going in and out of all the accounts, and where it was coming from, to avoid any duplications. This summary exhibit showed the following deposits into the Orient International U.S. Bank account between September 2012 and November 2014:

09/07/12	13,170.70	Saturna Capital (401K) <sup>3</sup>
09/07/12	19,831.87	Saturna Capital (401K)
09/21/12	14,000.00	Gwala Import Export
09/26/12	32,745.50	Endless Solutions
10/03/12	1,086.64	Gwala Import Export
02/28/13	14,581.82	American Family Insurance (accident settlement)
03/08/13	6,599.70	Consumer Loan Service
06/14/13	25,000.00	cash-out: Scottrade
07/30/13	25,000.00	cash-out: Scottrade
09/20/13	12,000.00	cash-out: Scottrade
10/08/13	13,174.00	Rajput International General Trading
12/30/13	11,517.50	DOD Surplus, Scottsdale, AZ
02/21/14	131.20	General Metals, Chicago
05/02/14	25,000.00	BB&T Wilson (Maleeha Hassan) —loan
11/17/14	10,000.00	Faisal Masood—loan

The summary exhibit also showed \$19,426.97 worth of deposits from third-party sources into Malik’s personal U.S. Bank account between August 1, 2012, and December 3, 2014, and it showed the following deposits into his Orient International Wells Fargo account:

09/25/12	100.00	cash
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<sup>3</sup> Lange explained that she included the Saturna transfer, even though it is arguably an internal transfer, because, when the retirement account was “sitting as an asset,” it did not count against public assistance eligibility but, once cashed out, it became income that does count.

10/10/12	25,000.00	cash—Saleem Mafik
10/15/12	35,586.00	AL Raffay General Trading
10/23/12	49,335.00	AL Futooh Trading and Ren. Deira
10/25/12	12,781.41	Scottrade
10/31/12	341.70	Gem Iron & Metal
11/05/12	32,498.00	AL Raffay General Trading
11/13/12	61,318.74	HSBC Bank Middle E/Abm.Corp
11/19/12	31,511.27	HSBC Bank Middle E/Abm.Corp
12/06/12	31,285.68	HSBC Bank Middle E/Abm.Corp
12/10/12	31,513.67	HSBC Bank Middle E/Abm.Corp
12/11/12	15,710.00	Westpac Banking Co/Dubai Exchg
12/17/12	4,096.00	AL Raffay General Trading
01/03/13	18,776.00	AL Raffay General Trading
01/07/13	58,189.15	HSBC Bank Middle E/Abm.Corp
01/28/13	50,247.15	HSBC Bank Middle E/Abm.Corp
01/31/13	98,390.00	United Bank Limited/Asia Trader
02/06/13	2,000.00	cash
02/11/13	25,000.00	cash—Saleem Malik
02/25/13	17,313.41	HSBC Bank Middle E/Abm.Corp
02/26/18	34,334.72	Emirates Nbd Bank/Cannon Enterprises
03/11/18	18,495.74	HSBC Bank Middle E/Abm.Corp
03/13/13	32,943.00	Barclays Bank/Shrezi Exchg
03/18/13	36,376.72	Emirates Nbd Bank/Cannon Enterprises
03/21/13	17,795.17	Alfa Exchg/Dhajani Trading
03/25/18	38,940.97	HSBC Bank Middle E/Abm.Corp
04/03/13	15,535.39	Alfa Exchg/Dhajani Trading
04/18/13	13,759.37	HSBC Bank Middle E/Abm.Corp
07/09/13	15,787.72	Emirates Nbd Bank/Cannon Enterprises
01/17/14	22,948.00	KS Metal Trader
02/21/14	23,929.00	National Westmin/AS Express Service
05/12/14	37,701.11	Alfa Exchg/Rajput International General Trading
05/22/14	5,000.00	Professional Drivers Corp.
05/29/14	2,760.00	Bank of America/Liquidity Capital Assets
06/26/14	15,590.11	Alfa Exchg/Rajput International General Trading

07/24/14	500.00	cash
11/14/14	50,000.00	cash

Lange added up all of the third-party deposits made into the above accounts associated with Malik between August 1, 2012, and March 9, 2015, and found that they totaled \$1,262,345.75. Lange acknowledged, though, that she could not provide an accounting of the money that Malik paid to obtain the scrap metal for Orient International. In other words, while her total shows gross income, she was unable to subtract business expenses to reach a net income for the business.

The state also entered as evidence two Wells Fargo business-account applications filled out by Malik, one in 2012 and one in 2014, where Malik listed himself as the sole owner of Orient International and reported \$2,000,000 in annual gross sales for the year 2011.

Lange also prepared an exhibit tracing transfers between the Orient International U.S. Bank account and Malik's personal accounts. The spreadsheet shows money moving between the Orient International account and Malik's personal checking accounts, credit card accounts, lines of credit, and Scottrade account between September 7, 2012, and January 30, 2015. Lange balanced out all of the transactions and found that the net amount of money Malik transferred out of Orient International into his personal accounts during this time period was \$190,192.06. She divided this number by the total amount of months reflected (29 months) to reach an average of \$6,558.35 per month.

### **Malik's stock trading activity**

Lange also served a search warrant on Scottrade for accounts related to Malik, and Scottrade reported two accounts. The state entered into evidence the account records produced by Scottrade, and Lange testified about her review of these records. Lange conceded that she had a “hard time determining exactly how much activity goes on with Scottrade” and stated that she was mainly concerned with how much money Malik was *withdrawing* from Scottrade. The account records showed that Malik created a Scottrade account on March 26, 2013, by depositing \$20,000 from his Orient International U.S. Bank account. Lange testified about some of the specific stock trades in the records—for example, observing that Malik bought 200 shares of Tesla on May 24, 2013, for \$19,000 and then sold the same 200 shares a few days later for \$20,500. Lange observed that there were many buy and sell transactions from 2013 to March 2015 and estimated a total gain of \$41,711 in this time period. The bank statements for the Orient International U.S. Bank account show deposits from Scottrade of \$25,000 on June 14, 2013; \$25,000 on July 30, 2013; and \$12,000 on September 20, 2013.

### **Malik's household spending**

Lange also testified about Malik's household spending. She went through, for example, several bank statements from Malik's U.S. Bank account that appeared to be his primary personal account. She highlighted the months of August 2012, January 2013, and July 2013 and described the expenses for “standard family things” (such as restaurants, gas stations, Target, Menards, etc.) reflected in those statements. In August 2012, the Maliks paid about \$831 with a debit card and paid another \$2,534.44 to American Express, from

this account. In January 2013, they paid about \$911 with a debit card and \$1,068.74 to American Express. In July 2013, they had similar expenses and paid about \$1,358 with a debit card and \$2,572 to American Express. Lange testified that the above three statements were “very typical” of all the bank statements for this account. She also testified in more detail about the charges on the American Express card (again, for “everyday things”) and agreed that Malik would take money from the Orient International account, put it into a personal account, and use that to pay off his American Express card.

Lange also noted an atypical bank statement from Malik’s primary personal account for October 5 through November 6, 2013. The total “other withdrawals” that month were \$10,279.71, and many of the purchases were made in Pakistan. Lange explored this further and found a check for \$8,000 made out to Dar El Salam from Orient International on May 31, 2013, with the memo “Hajj 2013 Prog2A.” Another check for \$12,060 was made out to Dar El Salam from Malik’s primary personal account, with the check’s memo indicating that it was for the remaining amount due for Nadeem and his wife’s Hajj. Hajj is a religious trip to Mecca. These checks, along with the Maliks’ bank account activity, showed that Malik and his wife spent at least \$20,000 on this trip while they were receiving public assistance.

Other expenses that Lange highlighted included \$13,767 out of the Orient International U.S. Bank account to purchase a 2007 Lexus in March 2013, a \$5,000 donation out of the Orient International account (but with a handwritten note next to the company name that says “Nadeem Malik”) to the Islamic Cultural Community Center in

September 2013, and \$7,000 out of the Orient International account to purchase Quality Wireless in February 2015.

The jury found Malik guilty, and the district court stayed imposition of a sentence for ten years and ordered Malik to pay \$59,242 in restitution to the county.

This appeal follows.

## D E C I S I O N

### **I. Malik’s conviction is not barred by the three-year statute of limitations.**

Appellate courts “review de novo the construction and application of a statute of limitations, including the law governing the accrual of a cause of action.” *State v. Carlson*, 845 N.W.2d 827, 832 (Minn. App. 2014). Here, the applicable statute of limitations provides that the complaint “shall be . . . filed in the proper court within three years after the commission of the offense.” Minn. Stat. § 628.26(k) (2012). The wrongfully-obtaining-public-assistance statute further provides that “[t]he continued receipt of assistance to which the person is not entitled . . . as a result of any of the acts, failure to act, or concealment described in this subdivision shall be deemed to be continuing offenses from the date that the first act or failure to act occurred.” Minn. Stat. § 256.98, subd. 1. Because wrongfully obtaining public assistance is a continuing offense, the limitations period does not begin to run until the wrongful conduct ceases. *See State v. Lawrence*, 312 N.W.2d 251, 253-54 (Minn. 1981); *see also Black’s Law Dictionary* 1186 (9th ed. 2009) (defining “continuing offense” as “[a] crime . . . that is committed over a period of time, so that the last act of the crime controls when the statute of limitations begins to run”).

On January 31, 2018, the state charged Malik with one count of wrongfully obtaining public assistance. The complaint alleges that Malik wrongfully obtained assistance “on and between August 1, 2012 through January 31, 2015.” Thus, if Malik continued to receive assistance to which he was not entitled through January 31, 2015, the statute of limitations does not bar his conviction.

Malik argues that, while the state may have proved (1) that he intentionally concealed the existence of Orient International on January 5, 2015, in his six-month report to renew his benefits, and (2) that he continued to receive benefits through January 2015, the state did not prove that Malik *was not entitled to the benefits* that he received in the month of January 2015. This argument overlaps with Malik’s sufficiency-of-the-evidence argument, which we address next. Underlying both is his contention that the state failed to prove a key element of wrongfully obtaining public assistance—namely, that the assistance obtained was assistance to which he was not entitled. *See* Minn. Stat. § 256.98 subd. 1. Here, he makes this argument specific to the month of January 2015, arguing that none of the evidence suggested that he had income that put him over the eligibility limits for SNAP and medical assistance *that month*.

Malik accurately notes that the state did not provide a precise account or estimate of his income in the month of January 2015. Rather than going month by month, the state presented evidence about the total gross income of Orient International over the charged 30-month period, followed by evidence that, based on all the deposits and withdrawals from Orient International’s U.S. Bank account, Malik moved an average of \$6,558.35 per month from that business account into his personal accounts. Had Malik disclosed the

existence of Orient International to the county, he would have been required to fill out sheets reporting all monthly business income and expenses. On appeal, he interprets this reporting requirement to mean that self-employed individuals either receive or do not receive benefits each month depending on their income *that month*. But the record does not support this interpretation. To the contrary, an eligibility worker testified that, if an individual has an ongoing business, benefits eligibility is determined by taking their net income amount from the previous tax year and dividing by twelve. This accords with the nature of self-employment, particularly in businesses like Malik's, where large amounts of money are expended in one month to obtain scrap metal before the metal is then sold at a profit in another month.

During the charged period, the maximum monthly income for SNAP eligibility ranged from \$3,599 to \$3,838, and the monthly maximum income for medical assistance ranged from \$3,449 to \$6,433. The jury heard testimony that, during the charged period, Malik moved an average of \$6,558.35 from Orient International's business account into his personal accounts, that Malik concealed the existence of Orient International on January 5, 2015, in his six-month report to renew his benefits, and that Malik continued to receive benefits through January 2015. On this record, the jury could reasonably determine that Malik continued to receive assistance to which he was not entitled through January 31, 2015. The statute of limitations accordingly does not bar his conviction.

**II. The evidence is sufficient to prove that Malik obtained assistance to which he was not entitled.**

To evaluate the sufficiency of the evidence, “appellate courts carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted.” *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016) (quotation omitted). The appellate court must view the evidence “in the light most favorable to the verdict, and it must be assumed that the fact-finder disbelieved any evidence that conflicted with the verdict.” *Id.*<sup>4</sup> Whether a defendant’s conduct meets the definition of a particular offense presents a question of statutory interpretation that is reviewed de novo. *State v. Hayes*, 826 N.W.2d 799, 803 (Minn. 2013).

Malik was convicted of wrongfully obtaining public assistance in violation of Minn. Stat. § 256.98, subd. 1(1). That statute provides, in relevant part:

Subdivision 1. **Wrongfully obtaining assistance.** A person who commits any of the following acts or omissions with intent to defeat the purposes of [list of statutory sections regarding various public assistance programs] is guilty of theft . . . :

(1) obtains or attempts to obtain . . . by means of a willfully false statement or representation, by intentional concealment of any material fact, or by impersonation or other fraudulent device, assistance or the continued receipt of assistance . . . to which the person is not entitled or assistance greater than that to which the person is entitled; . . .

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<sup>4</sup> Appellate courts apply a separate standard of review when the conviction depends on circumstantial, rather than direct, evidence. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017). Neither party argues that circumstantial evidence is at issue here, so we do not apply that standard.

Minn. Stat. § 256.98, subd. 1(1). Malik does not argue that the state failed to prove that he obtained public assistance by means of a willfully false statement or representation. He argues that the state failed to prove that he obtained assistance “to which [he] is not entitled or assistance greater than that to which [he] is entitled.”

Malik relies on *Kind Heart Daycare, Inc. v. Comm’r of Human Servs.*, 905 N.W.2d 1 (Minn. 2017). In *Kind Heart*, the supreme court interpreted the plain language of Minn. Stat. § 256.98, subd. 1(3) (2016), which provides that a person wrongfully obtains public assistance if he or she “obtains or attempts to obtain . . . the receipt of payments to which the individual *is not entitled* as a provider of subsidized child care, or by furnishing or concurring in a willfully false claim for child care assistance.” (Emphasis added.) There, a provider of subsidized child care had reported that children from low-income families were present at the child-care facility when they were not. *Kind Heart*, 905 N.W.2d at 4. The Minnesota Department of Human Services determined that the provider had wrongfully obtained public assistance in violation of Minn. Stat. § 256.98, subd. 1(3), and revoked the provider’s license.<sup>5</sup> *Id.* at 4-5. The provider appealed, arguing that the daycare was “entitled to” the payments received because the number of children from low-income families that were *actually* present still made it eligible, and so it had not wrongfully obtained public assistance within the meaning of the statute. *Id.* at 10. The supreme court determined that “the amount of assistance a person is ‘entitled to’ refers to the amount of assistance the

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<sup>5</sup> *Kind Heart* did not involve a criminal action, but rather an administrative decision by the department. *See Kind Heart*, 905 N.W.2d at 1. Thus, the burden of proof was different, but the supreme court analyzed the substantive standard of law by reference to the same statute at issue here for the criminal offense. *Id.*

person was eligible for absent the misrepresentation.” *Id.* It reasoned that “[t]he statute’s provisions plainly contemplate that a person is liable for wrongfully obtaining public assistance payments only to the extent that payments are received to which the person is not entitled and which would not have been received absent the concealment or misrepresentation.” *Id.*

Assuming that the same definition of “entitled to” under subpart (3) of Minn. Stat. § 256.98, subd. 1 (2012), applies to subpart (1) of the same subdivision, which the state does not contest, the state needed to prove that Malik obtained assistance that he would not have received absent his concealment or misrepresentation. Malik argues that the state failed to do so. Specifically, he argues that in order to show that his scrap-metal business made him ineligible for the public assistance he received, the state needed to establish his self-employment *net* income, not just his *gross* income. It did not do so, he argues, because it did not produce any evidence regarding Orient International’s expenses.

The state responds by saying that it proved that, over the charged period, Malik withdrew from an Orient International account and deposited into his personal accounts a total of \$190,000, for an average of \$6,558 per month. The state then argues that Malik had “an income of \$6,558 per month,” which exceeded the eligibility cap, even at its highest, to receive the public assistance that he received. The state also points to evidence of Malik’s spending to bolster its argument that it proved that he was ineligible for public assistance, saying the evidence showed that “he was spending thousands of dollars per month on purchases at Kowalski’s, Target, a vacation, restaurants, a \$20,000 trip to Saudi Arabia, and other expenses.”

It is undisputed that the state showed that Malik was the sole owner of a business, Orient International, and that his business had large amounts of money coming into its accounts from third-parties. Lange testified that the approximate gross amount of money received into all of Malik’s business and personal accounts from outside sources between August 1, 2012, and March 9, 2015, was \$1,262,345.75. Though Malik intermingled funds from his personal and business accounts in a way that made it difficult to calculate exactly how much money he “paid” himself out of Orient International, Lange estimated that Malik transferred a net monthly average of \$6,558.35 from Orient International’s U.S. Bank account into his personal accounts during the charged period and that he used this money to pay his household expenses. The state presented evidence to corroborate this, showing that Malik consistently paid his mortgage and other expenses, purchased a vehicle, and spent over \$20,000 on a trip during the time period in which he was reporting to the county that he had no income. From these facts, we conclude that the jury could “reasonably conclude that the defendant was guilty beyond a reasonable doubt of the [charged] offense.” *Griffin*, 887 N.W.2d at 263. We therefore hold that the evidence was sufficient to support Malik’s conviction of wrongfully obtaining public assistance.

**III. The state did not need to prove that Malik acted with a specific intent to defeat the purpose of every public assistance program listed in Minn. Stat. § 256.98, subd. 1.**

Malik makes two arguments that turn on interpretation of the statute he was charged with violating—Minn. Stat. § 256.98, subd. 1. First, quoting the statute, Malik argues that the evidence was insufficient to prove all the elements of the crime of wrongfully obtaining public assistance because the state did not prove that he committed the requisite acts “with

the intent to defeat the purposes of sections 145.891 to 145.897, the MFIP program formerly codified in sections 256.031 to 256.0361, the AFDC program formerly codified in sections 256.72 to 256.871, chapters 256B, 256D, 256J, 256K, or 256L, *and* child care assistance programs.” Minn. Stat. § 256.98, subd. 1 (emphasis added). He argues that the use of the conjunctive word “and” in the statute means that, to be convicted under Minn. Stat. § 256.98, subd. 1, a person must have intended “to defeat the purposes of *all* the sections listed in the statute.” (Emphasis added.) He asserts that the state offered no evidence that he intended to defeat, for example, the purposes of Minn. Stat. § 145.891 (2012), known as the “Maternal and Child Nutrition Act of 1975,” which include assuring access to quality maternal and child health services and reducing infant mortality. *See* Minn. Stat. § 145.88 (2012).

Second, employing the same reasoning—that the offense requires an intent to defeat the purposes of all of the public programs listed in the statute—Malik argues that the district court improperly instructed the jury on the elements of the offense and that this was reversible error. We address both arguments.

**A. Sufficiency of the evidence**

To resolve the specific sufficiency-of-the-evidence argument here, we must first interpret the statute. *See State v. Vasko*, 889 N.W.2d 551, 556 (Minn. 2017) (deciding the appellant’s statutory-interpretation question before analyzing the sufficiency of the evidence). “The first step in statutory interpretation is to determine whether the statute’s language, on its face, is ambiguous. In determining whether a statute is ambiguous, [courts] will construe the statute’s words and phrases according to their plain and ordinary

meaning.” *Christianson v. Henke*, 831 N.W.2d 532, 536 (Minn. 2013) (citation and quotations omitted). “A statute is ambiguous only if it is subject to more than one reasonable interpretation.” *State v. Thonesavanh*, 904 N.W.2d 432, 435 (Minn. 2017). If a statute is ambiguous, canons of construction may be applied to resolve the ambiguity. *Id.* “Resort to legislative history to interpret a statute is generally appropriate only where the statute itself is ambiguous.” *In re Welfare of Children of J.B.*, 782 N.W.2d 535, 545 (Minn. 2010).

The relevant portion of Minn. Stat. § 256.98, subd. 1, reads:

Subdivision 1. **Wrongfully obtaining assistance.** A person who commits any of the following acts or omissions with intent to defeat the purposes of sections 145.891 to 145.897, the MFIP program formerly codified in sections 256.031 to 256.0361, the AFDC program formerly codified in sections 256.72 to 256.871, chapters 256B, 256D, 256J, 256K, or 256L, and child care assistance programs, is guilty of theft and shall be sentenced under section 609.52, subdivision 3, clauses (1) to (5):

(1) obtains or attempts to obtain, or aids or abets any person to obtain by means of a willfully false statement or representation, by intentional concealment of any material fact, or by impersonation or other fraudulent device, assistance or the continued receipt of assistance, to include child care assistance or vouchers produced according to sections 145.891 to 145.897 and MinnesotaCare services according to sections 256.9365, 256.94, and 256L.01 to 256L.15, to which the person is not entitled or assistance greater than that to which the person is entitled;

(2) . . . ; or

(3) . . . .

Malik argues that the plain language of the statute is not ambiguous and that the conjunctive “and” in the opening paragraph unambiguously requires that the state prove that the defendant acted with the intent to defeat the purposes of every public assistance

program listed, regardless of the form of public assistance received. He argues that the use of the plural form of “purposes” bolsters this interpretation. The state does not specify whether it believes that the statute is ambiguous but argues that the use of the word “and” simply “recognizes that all of these public assistance programs are part of a larger overarching program to provide support to needy residents.” The state also appears to assert that the disputed language can be read as a mere “introduction” and that subparts (1) to (3) provide the actual elements of the crime.

We conclude that the statute is ambiguous. On its face, the phrase using the word “and” can be read to require a specific intent to defeat the purposes of all listed programs regardless of which program’s funds are at issue, or the subdivision can be read as a whole to require that the accused intended to receive assistance to which they knew they were not entitled under subpart (1). Canons of construction are thus appropriate to discern legislative intent. *See Thonesavanh*, 904 N.W.2d at 435.

We begin with examining prior judicial construction of the statute at issue. *See* Minn. Stat. § 645.17(4) (2018) (“[W]hen a court of last resort has construed the language of a law, the legislature in subsequent laws on the same subject matter intends the same construction to be placed upon such language.”). A review of caselaw shows that, although no court has specifically addressed the “and” in Minn. Stat. § 256.98, subd. 1, courts have addressed the intent element of the crime of wrongfully obtaining public assistance more generally, determining that the “welfare fraud statute . . . includ[es] the element of intent to defraud.” *Hill v. State*, 483 N.W.2d 57, 62 (Minn. 1992) (citing *State v. Ibarra*, 355 N.W.2d 125, 129 (Minn. 1984)). In *Ibarra*, the supreme court stated that to convict the

defendant under the 1982 version of Minn. Stat. § 256.98, the state needed to prove the following elements: “(1) She obtained assistance; (2) She was not entitled to this assistance at all, or in the amount she was seeking, and that she knew this; (3) She made a false representation and intended thereby to obtain assistance; (4) The value of the excess assistance was more than \$2,500.” 355 N.W.2d 125, 129 (Minn. 1984). And in *Hill*, the supreme court stated that the elements of wrongfully obtaining public assistance under the 1990 version of Minn. Stat. § 256.98 are “knowingly obtaining or attempting to obtain assistance to which one is not entitled by means of a willfully false statement or by intentional concealment of the material fact or by other fraudulent device.” 483 N.W.2d at 62.

The legislature has amended Minn. Stat. § 256.98 many times, though, and the 1982 and 1990 versions interpreted by the supreme court both differ from the 2012 version at issue here.<sup>6</sup> In 1982, the statute did not have subdivisions or subparts and read:

WRONGFULLY OBTAINING ASSISTANCE; THEFT. A person who obtains, or attempts to obtain, or aids or abets any person to obtain by means of a wilfully false statement or

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<sup>6</sup> The first version of Minn. Stat. § 256.98, enacted in 1971, read:

PUBLIC WELFARE; WRONGFULLY OBTAINING ASSISTANCE; MISDEMEANOR. Whoever obtains, or attempts to obtain, or aids or abets any person to obtain by means of a wilfully false statement or representation, or by impersonation or other fraudulent device, assistance to which he is not entitled, or assistance greater than that to which he is entitled . . . *with intent to defeat the purposes of sections 245.21 to 245.43, 256.13 to 256.43, 256.49 to 256.71, 256.72 to 256.87, or chapter 256B*, shall be guilty of a misdemeanor.

1971 Minn. Laws ch. 550, § 1, at 1003 (emphasis added).

representation, by intentional concealment of a material fact, or by impersonation or other fraudulent device, assistance to which he is not entitled or assistance greater than that to which he is entitled . . . *with intent to defeat the purposes of sections 256.12, 256.72 to 256.872, chapter 256B*, is guilty of theft and shall be sentenced pursuant to section 609.52, subdivision 3, clauses (1), (2) and (5).

Minn. Stat. § 256.98 (1982) (emphasis added). The list of statutes cited did not include the “and” at issue here—in fact, it contained neither “and” nor “or.” *See id.* By 1990, the statute had been amended to include seven subdivisions, the first of which read:

Subdivision 1. **Wrongfully obtaining assistance.** A person who obtains, or attempts to obtain, or aids or abets any person to obtain by means of a willfully false statement or representation, by intentional concealment of a material fact, or by impersonation or other fraudulent device, assistance to which the person is not entitled or assistance greater than that to which the person is entitled, . . . *with intent to defeat the purposes of sections 256.12, 256.72 to 256.871, and chapter 256B, or all of these sections* is guilty of theft and shall be sentenced pursuant to section 609.52, subdivision 3, clauses (2), (3)(a) and (c), (4), and (5).

Minn. Stat. § 256.98, subd. 1 (1990) (emphasis added). The 1990 version of the statute did include an “and,” but it was followed by “or all of these sections.” *See id.*

The structure of the current version of Minn. Stat. § 256.98, subd. 1, which divides subdivision 1 into subparts, was created by a 1997 amendment. *See* 1997 Minn. Laws ch. 85, art. 5, § 8, at 660; 1997 Minn. Laws 1st Spec. Sess. ch. 5, § 14, at 3396 (correcting Minn. § 256.98, subd 1, as amended by 1997 Minn. Laws ch. 85, art. 5, § 8, by moving part of the text out of subpart (2) and into the subdivision introduction). The resulting version of the statute lacked the disputed “and,” and instead read “with intent to defeat the purposes of sections 145.891 to 145.897, . . . 256D, 256J, *or* 256K, *or* all of these sections

...” Minn. § 256.98, subd 1 (1998) (emphasis added). In 1999, the legislature again amended the statute to reflect changes to where certain assistance programs were codified, and this amendment inserted the “and” that is now disputed here, while also removing the “or all of these sections” language. *See* 1999 Minn. Laws ch. 159, § 46, at 789. The legislature has amended Minn. Stat. § 256.98 again since 1999, but those amendments do not affect the disputed language.

Importantly, throughout all the amendments to Minn. § 256.98, the statute has always included the language about acting “*with intent to defeat the purposes of*” the listed statutory sections on various public assistance programs. Despite this language, the supreme court has held that the intent element of wrongfully obtaining public assistance is satisfied when the state shows that the defendant intended to obtain public assistance to which they knew they were not entitled. *See Hill*, 483 N.W.2d at 62 (explaining that the defendant must knowingly obtain assistance they are not entitled to by means of a willfully false statement or intentional concealment); *Ibarra*, 355 N.W.2d at 129 (explaining that the defendant must know they are not entitled to the assistance they are seeking and make a false representation with intent to obtain that assistance). If the legislature intended that the statute be read as Malik reads it, which requires that the state prove (1) the purpose of every public assistance statute listed in section 256.98 and (2) that the defendant intended to defeat all of those purposes, we presume that it would have clarified this intent in its subsequent amendments to the law in light of the consistent competing judicial interpretation. *See* Minn. Stat. § 645.17(4); *Licha v. N. Pac. Ry. Co.*, 276 N.W. 813, 818 (Minn. 1937) (“Laws readopted with a well-established meaning attached to them by

judicial construction are adopted with that meaning and construction.”). This is especially true given the extreme consequence of Malik’s interpretation, which is that the state would have to prove that he intended to violate the purposes of programs that are listed in the statute but no longer exist, such as “the [Aid to Families with Dependent Children] program formerly codified in sections 256.72 to 256.871.” Minn. Stat. § 256.98, subd. 1; 1997 Minn. Laws ch. 85, art. 1, § 74, at 586 (repealing sections 256.72 to 256.871). We do not believe that the legislature intended such a result.

Because the state was not required to prove that Malik intended to defeat the purposes of all listed public programs, but rather only the programs identified in subpart (1) in which he participated, the evidence was not insufficient to support the verdict.

#### **B. Jury instructions**

For the same reason, Malik’s argument that the district court erred in instructing the jury fails.

“[J]ury instructions must be viewed in their entirety to determine whether they fairly and adequately explained the law of the case.” *State v. Flores*, 418 N.W.2d 150, 155 (Minn. 1988). “An instruction is in error if it materially misstates the law.” *State v. Kuhnau*, 622 N.W.2d 552, 556 (Minn. 2001). When there is no objection to jury instructions at trial, the appellate court has discretion to “consider a claim of error on appeal if there was plain error affecting substantial rights or an error of fundamental law in the jury instructions.” *State v. Crowsbreast*, 629 N.W.2d 433, 437 (Minn. 2001) (quotation omitted); *see State v. Milton*, 821 N.W.2d 789, 807-08 (Minn. 2012).

The district court instructed the jury that the offense of wrongfully obtaining public assistance consists of five elements:

[F]irst, the defendant obtained public assistance.

Public assistance as used here includes both medical assistance and Supplemental Nutrition and Assistance Program; that's SNAP benefits.

Second, the defendant made statements or representations or intentionally concealed material facts regarding his income, employment, or assets.

Third, the defendant knew that the statements or representations were false or that the facts concealed were material.

Fourth, as a result, the defendant was not entitled to any assistance at all or received assistance of a greater amount than that to which he was entitled and he knew it.

And fifth, his act took place on or between August 1st, 2012 and January 31st, 2015 in Hennepin County, Minnesota.

*See 10 Minnesota Practice, CRIMJIG 16.69 (2015) (similarly outlining the five elements, though in a different order).*

Malik argues the instruction was plainly erroneous because it did not include a requirement that Malik intended to defeat the purposes of all of the public-assistance statutes listed in the statute. For the reasons described above, the district court's instruction of the jury in this case was consistent with prior caselaw regarding the elements of wrongfully obtaining public assistance and was not erroneous, much less a "plain error affecting substantial rights." *Crowsbreast*, 629 N.W.2d at 437.

**IV. The district court did not abuse its discretion by ordering Malik to pay \$59,242 in restitution.**

“A district court has broad discretion to award restitution, and the district court’s order will not be reversed absent an abuse of that discretion. The district court’s factual findings will not be disturbed unless they are clearly erroneous.” *State v. Andersen*, 871 N.W.2d 910, 913 (Minn. 2015) (citation omitted). “To determine ‘whether to order restitution’ and ‘the amount of restitution,’ a district court must consider the defendant’s ability to pay and the loss sustained by the victim of the crime.” *State v. Boettcher*, 931 N.W.2d 376, 380 (Minn. 2019) (quoting Minn. Stat. § 611A.045, subd. 1 (2018)).

Malik argues that the district court erred in ordering restitution because it failed to consider his ability to pay the \$59,242 loss sustained by the county. He claims that, although he was employed with a data center at the time of sentencing, his felony conviction will make it “impossible to pass a background check” so he will be unable to maintain gainful employment.

Appellate courts will affirm a district court’s restitution decision, even when a defendant claims a current inability to pay, if the district court considered the defendant’s ability to pay and ordered restitution in installments within the defendant’s ability to pay. *See State v. Maldi*, 537 N.W.2d 280, 285 (Minn. 1995). Here, the district court ordered that Malik pay the restitution in monthly installments of \$500. The information that the district court reviewed for sentencing included a sentencing memorandum from Malik that reported Malik was currently employed in information technology at a bank and had been

since 2015. Under these circumstances, we discern no abuse of discretion by the district court.

**Affirmed.**