STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2204

State of Minnesota,
Respondent,

vs.

Monique N. Alexander,
Appellant.

Filed April 29, 2008
Affirmed
Ross, Judge

Hennepin County District Court
File No. 04066983

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

Michael O. Freeman, Hennepin County Attorney, Donna J. Wolfson, Assistant County Attorney, C-2000 Government Center, 300 South Sixth Street, Minneapolis, MN 55487 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Benjamin J. Butler, Assistant Public Defender, 540 Fairview University North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Lansing, Presiding Judge; Peterson, Judge; and Ross, Judge.

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

ROSS, Judge

Monique Alexander appeals her conviction of theft by swindle for her involvement in a fraudulent money-order scheme. Alexander argues that the court committed reversible error when it instructed the jury to distinguish intent from motive and clarified that good motive alone is not a defense. She also contends that there was insufficient evidence of her intent to defraud. Because we conclude that the district court did not err when instructing the jury and that the evidence was sufficient to support the jury's determination of guilt, we affirm.

FACTS

This case concerns Monique Alexander's involvement in a money-order scheme with Christopher Lee. The couple became romantically involved a few months after they met in 2002. Alexander worked as a bank teller at Soo Line Credit Union, and she is experienced in the processing of money orders. In September 2002, Lee asked Alexander to cash a money order drafted to her in the amount of $999.99. Alexander claims that she believed that the draft was legitimate because it had all of the copies that normally accompany a money order. Lee told Alexander that he needed her to cash the money order because he did not have a driver's license. Alexander cashed the money order at a branch of U.S. Bank, where she had a checking account. She gave Lee the cash.

A few days later, Lee asked Alexander to cash another money order for him. The second money order was for $999.96. Alexander again complied and gave Lee the cash. Within days, Lee asked Alexander to buy a money order in the amount of $900. Lee

insisted that Alexander purchase the money order at the U.S. Bank in the IDS Center in downtown Minneapolis. Alexander did so. Lee asked Alexander to hold the money order for him, but the next day he called Alexander and told her that he did not need it. Alexander cashed the money order at Soo Line and returned the $900 to Lee.

A few days after Lee asked Alexander to purchase the $900 money order for him, he asked to her to cash a $900 money order. Alexander did so. Alexander cashed a fourth money order in the amount of $999.76 for Lee one week after that. So in less than two weeks, from September 25, 2002, to October 7, 2002, Alexander cashed four money orders for Lee, totaling $3,899.71. All four money orders that Alexander cashed were traced to U.S. Bank teller Luciana Collins, who had issued the money orders fraudulently. Collins followed a simple scheme, making it appear as if another legitimate money-order purchase had been cancelled so that the bank would issue two money orders but receive the necessary funds to cover only one of them. Alleged acquaintances such as Lee or Alexander would therefore receive and cash money orders that had been acquired without the supporting funds. On October 5, 2004, Hennepin County Attorney's Office charged Alexander with one count of theft by swindle.

The case was tried to a jury, which found Alexander guilty. Alexander appeals, contending that one of the district court's jury instructions was given in error and that the evidence was insufficient to convict her of theft by swindle.

D E C I S I O N

I

Alexander contends that the district court committed prejudicial error when it instructed the jury that good motive is not a defense and that Alexander's motive was immaterial except insofar as the jury considered evidence of her motive in determining her intent. The argument is not persuasive.

District courts have considerable latitude in choosing jury instructions. *State v. Mahkuk*, 736 N.W.2d 675, 681 (Minn. 2007). An instruction is in error if it materially misstates the law. *Id*. at 682. Even if it is erroneous, this court will not reverse a conviction based on the error if the erroneous instruction was harmless. *State v. Hall*, 722 N.W.2d 472, 477 (Minn. 2006). We will deem an erroneous jury instruction to be harmless if we conclude beyond a reasonable doubt that the error had no significant impact on the verdict rendered. *Id.*

Alexander argues that the instruction is erroneous on its face because it conflates evidence of motive and evidence of intent. And she contends that the instruction must have caused the jury to believe that it could not consider evidence of motive in determining her intent. We review jury instructions in their entirety to determine whether they fairly and adequately explain the law of the case. *State v. Flores*, 418 N.W.2d 150, 155 (Minn. 1988). The text of the entire jury instruction at issue here reads as follows:

> Intent and motive should not be confused. Motive is what prompts a person to act or fail to act. Intent refers only to the state of mind with which the act is done or omitted.

> Personal advancement, financial gain, political reasons, religious beliefs, or moral convictions are recognized motives for human conduct. These motives may prompt one person toward voluntary acts of good and another toward voluntary acts of crime.
>
> Good motive alone is not a defense where the act done or omitted is a crime. Thus, the defendant's motive is immaterial, except insofar as you may consider evidence of motive in determining the element of intent.
>
> 10 *Minnesota Practice*, CRIMJIG 7.11 (2006).

As the state points out, this instruction does not require jurors to consider motive in determining intent. Rather, the instruction guides jurors to consider motive only as evidence of intent. The jury instruction is not facially erroneous.

Alexander also contends that the district court abused its discretion because it gave this instruction when this case did not call for it. We review a district court's decision to give a particular jury instruction for an abuse of discretion. *State v. Blasus*, 445 N.W.2d 535, 542 (Minn. 1989). A party is entitled to a jury instruction if the evidence produced at trial supports the instruction. *Hall*, 722 N.W.2d at 477. The district court queried whether either party wanted the instruction. The state then requested the instruction, and Alexander objected on the basis that the instruction was ambiguous and confusing. The court ruled that Alexander had presented a significant amount of evidence of purportedly innocent reasons why she cashed the four money orders. Because the district court determined that this evidence might potentially confuse motive and intent, it reasoned that the instruction would assist the jury. The district court therefore gave the instruction.

The district court's decision to give the instruction was sound. Alexander's defense was that although she cashed the money order, she lacked any criminal intent

when she did so. She testified that she met Lee at the Brookdale Mall and that, a few months later, the two began dating. She testified that she knew nothing about him or his background and that she saw no basis for suspicion. She told the jury that she had seldom dated before becoming involved with Lee and that she was essentially so overcome by a desire for a relationship that she was blind to his misconduct. And although she admitted that she thought it was odd that Lee gave her the money orders, she maintained that it was not until after she had cashed all four that she became suspicious. She claimed ignorance about the underlying scheme and that she did not notice the illegal conduct. In her opening statement and closing argument, Alexander's attorney contended that Alexander was an innocent dupe, comparing Alexander to the victim of a date rape under the influence of an incapacitating drug. Because Alexander presented a defense that she was motivated naively by romance rather than by an intent to intentionally swindle U.S. Bank, it was not an abuse of discretion for the district court to instruct the jury that motive is distinct from intent and that evidence of Alexander's motive may be applied only to determine intent.

II

Alexander also contends that the evidence was insufficient to convict her of theft by swindle. We review a claim of insufficiency of the evidence to determine whether the jury could reasonably conclude that the defendant is guilty of the offense charged beyond a reasonable doubt in light of the facts in the record, construing all the legitimate inferences in favor of conviction. *Davis v. State*, 595 N.W.2d 520, 525 (Minn. 1999). We assume that the jury believed the state's witnesses and disbelieved contrary evidence.

State v. Vick, 632 N.W.2d 676, 690 (Minn. 2001). When reviewing a conviction based on circumstantial evidence, this court reviews whether the evidence "form[s] a complete chain which, in 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. Schneider*, 597 N.W.2d 889, 895 (Minn. 1999) (quotation omitted). The facts in this record and the legitimate inferences derived from those facts support the jury's findings of Alexander's guilt.

To convict Alexander of theft by swindle, the state had to prove four elements beyond a reasonable doubt: (1) that U.S. Bank gave cash to Alexander because of the swindle; (2) that Alexander acted with the intention of obtaining possession of the cash for Lee; (3) that Alexander's act was a swindle, defined as cheating another by deliberate scheme; and (4) that Alexander's act occurred during the period alleged in the complaint, from September 25, 2002 to October 4, 2002. *See* Minn. Stat. § 609.52, subd. 2(4) (2006); *see also* 10 *Minnesota Practice*, CRIMJIG 16.10 (2006). Alexander admitted that she cashed the four money orders within a very short period to obtain money to give to Lee, and she did not refute the dates on which those transactions occurred. She denied knowing that the money orders were fraudulent. But she admitted that she found it strange that Lee gave her four money orders to cash, which were just under the non-reportable maximum of $1,000, even though she testified that she "didn't have a clue" about the scheme and that she saw no "red flags." The jurors learned that Alexander was an experienced bank teller who was aware of the process involved in money-order transactions. And they learned that on at least one occasion, Alexander agreed to visit the

specific window of Luciana Collins within moments of Lee making a money-order "purchase" at Collins's window. Jurors were also aware of Alexander's ongoing personal relationship with Lee at the time of the transactions.

Viewing these facts in the light most favorable to the verdict, the jury clearly discredited Alexander's claim that she did not intend to swindle U.S. Bank when she cashed the four money orders. Although the evidence is not overwhelming, our level of deference to the jury's credibility determinations and to its role as factfinder leads us to affirm.

Affirmed.