STATE OF MINNESOTA
IN COURT OF APPEALS
A11-356

State of Minnesota,
Respondent,

vs.

Tamika Latoi Suttles,
Appellant.

Filed June 11, 2012
Affirmed
Rodenberg, Judge

Ramsey County District Court
File No. 62CR101465

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

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Jill Clark, Golden Valley, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Johnson, Chief Judge; and Ross, Judge.

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

RODENBERG, Judge

Appellant Tamika Suttles challenges a jury's guilty verdict convicting her of three counts of aiding and abetting third-degree burglary, arguing that (1) there was insufficient evidence; (2) cumulative errors denied her a fair trial; and (3) *Brady* violations warrant a

new trial. Because we find that there was sufficient evidence, that appellant was not denied a fair trial due to cumulative errors, and that there were no *Brady* violations, we affirm.

FACTS

On December 6, 2009, Officer Jonathan Gliske of the St. Paul Police Department responded to a call of an alarm going off at 4:15 a.m. at a business on the corner of University and Raymond. The building had three businesses on the first floor: the Edge Café to the west, an art studio in the center, and Sharrett's Liquors to the east. Above the businesses were residential apartments. In the back of the building was a parking lot.

When Officer Gliske pulled up to the back of the building, he encountered appellant waiting outside of her car, and she began to act nervous when she saw him. She told him that her car broke down and that she had "to pee." Because appellant continued to act suspiciously, Officer Gliske secured her in the back of his squad car. T.N. then called down from his third-floor apartment above the businesses and said that another person was still inside the building. Officer Gliske observed that the back door leading to the basement of the building was broken, and he waited for backup to arrive. While he was waiting, Jermaine English started to come out of the building, but he turned around and ran back in, apparently in response to seeing Officer Gliske.

Once backup arrived, Officer Gliske entered the building from the same door that English had attempted to exit. He observed that the stairs led only to the art studio's basement, but the wood paneling on the walls that separated the basements of the businesses had been broken. Officer Gliske then received a call on his radio that the

perpetrators were in the liquor store and wanted to surrender. Officer Gliske and the other police officers made their way to the liquor store and apprehended English and Daniel Drljic.

During the course of the investigation, English told Sergeant Tyrone Strickland of the St. Paul Police Department that appellant and Drljic were not involved with the burglary. English told Sergeant Strickland that he knew a white male named Joe who owed him money from a time when they had smoked crack together. He said that Joe would not pay him, so he asked Drljic to come along as muscle. English said that Joe did not have the money, but that instead he would give English some items in the storage locker in the basement. English then called appellant because there were too many items to carry and he needed a ride. Sergeant Strickland investigated "Joe" and determined that such a person did not exist.

English subsequently pleaded guilty to one count of third-degree burglary. There was no offer from the state on sentencing, but in exchange for the plea of guilty the state agreed not to file any additional charges. During his allocution, English stated that he made up the story about Joe. He implicated Drljic and appellant as the masterminds of the burglary. Drljic and appellant were tried together. After a seven-day trial, the jury found Drljic guilty of three counts of second-degree burglary and three counts of third-degree burglary. The jury found appellant guilty of three counts of aiding and abetting third-degree burglary. Appellant and Drljic brought motions to vacate the verdicts and for a new trial, which the district court denied. Initially, both Drljic and appellant appealed, but Drljic's appeal was subsequently dismissed by this court.

D E C I S I O N

I.

A. Sufficiency of evidence at trial

Appellant claims that there was insufficient evidence for conviction. When this court considers a claim of insufficient evidence for conviction, this court's review is "limited to a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did." *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). In conducting our review, 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 court will not disturb the verdict "if the jury, acting with due regard for the presumption of innocence and for the necessity of overcoming it by proof beyond a reasonable doubt, could reasonably conclude that a defendant was proven guilty of the offense charged." *Staunton v. State*, 784 N.W.2d 289, 297 (Minn. 2010).

First, appellant contends that there was insufficient evidence to establish the requisite intent to commit the burglary. Burglary requires intent to steal or commit any felony or gross misdemeanor while in a building. Minn. Stat. § 609.582, subd. 3 (2008). Intent is a state of mind that can be proved by inferences drawn by the fact-finder from the totality of the circumstances. *State v. Marsyla*, 269 N.W.2d 2, 5 (Minn. 1978).

Appellant correctly notes that the aiding-and-abetting convictions rest upon circumstantial evidence. We use a heightened scrutiny in circumstantial-evidence cases to determine "whether the reasonable inferences that can be drawn from the

circumstances proved support a rational hypothesis other than guilt." *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010) (quotation omitted). There must be a complete chain that, when this court views 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." *State v. Taylor*, 650 N.W.2d 190, 206 (Minn. 2002). But this court will not overturn a conviction based on mere conjecture, because it is not the state's burden to remove all doubt, but rather to remove all reasonable doubt. *Al-Naseer*, 788 N.W.2d at 473. To assess the sufficiency of the evidence, this court identifies the circumstances proved and then independently examines the reasonableness of all the inferences that might be drawn from those circumstances. *State v. Hanson*, 800 N.W.2d 618, 622 (Minn. 2011).

The state presented evidence regarding the following circumstances: First, English testified that he discussed with appellant and Drljic what they were planning before the burglary. Second, when Officer Gliske arrived at the scene, appellant acted nervous and said that her car broke down and that she had "to pee." Later, appellant told Officer Gliske that her car was fine and that she was there to pick up some people who were going to pay her, but she had no idea what they were doing. Third, the police found a crowbar, a gooseneck crowbar, a wonderbar (a flat crowbar), and a bolt cutter in a black duffle bag in the trunk of appellant's car, all of which are tools capable of producing the damage to the building observed at the scene. Fourth, the police found items that belonged to the art studio in the trunk of appellant's car. Fifth, when Officer Gliske frisked appellant, he found a roll of duct tape and gloves in her pockets, and appellant did

not have any reasonable explanation for these items. Finally, T.N., an eyewitness, saw appellant drive her car to where Officer Gliske located it, saw two people get out of the car and disappear for five to ten minutes, and then saw them both return with items that they put into the car. T.N. also saw one person return to the building while appellant stayed at the car and then observed Officer Gliske pull up and begin questioning appellant.

Appellant's counsel vigorously advocated at trial by presenting other circumstantial evidence. She argued that T.N. was the person English identified as "Joe," and that there was police inattention and misconduct. Appellant's argument is that the jury should have believed circumstantial evidence she offered at trial. But we assume, as we must, that the jury did not believe any of the contrary evidence that appellant presented. Based on the totality of the circumstances, there is a complete chain of evidence that leads directly to the guilt of appellant.

Second, appellant contends that there was no evidence that she entered the building. Because appellant was convicted of aiding and abetting third-degree burglary, it is not necessary to her conviction that the state prove that she actually entered the building. Aiding and abetting only requires that appellant aid or conspire with English or Drljic. *See* Minn. Stat. § 609.05, subd. 1 (2008). The police apprehended and arrested both English and Drljic in the liquor store. Because aiding and abetting only requires actions complicit in the commission of the crime, there is sufficient evidence to support the conviction, even if appellant did not enter the building herself.

B. Sufficiency of evidence at omnibus hearing

Appellant contends that the district court erred by reopening the record after the omnibus hearing was complete to allow the state to introduce police reports that appellant never had the opportunity to review. Appellant argues that without the police reports, the state did not have sufficient evidence to establish probable cause. But any motion to dismiss the charges for lack of probable cause at a pretrial hearing is irrelevant following a defendant's conviction. *State v. Holmberg*, 527 N.W.2d 100, 103 (Minn. App. 1995), *review denied* (Minn. Mar. 21, 1995). "The standard for the sufficiency of the evidence to support a conviction is much higher than probable cause. If [appellant] could show on appeal that probable cause is lacking, [s]he would necessarily prevail on a claim of insufficiency of the evidence." *Id.* (citation omitted).

II.

Appellant contends that there were cumulative errors at trial that denied her a fair trial. "Cumulative error exists when the cumulative effect of the errors and indiscretions, none of which alone might have been enough to tip the scales, operate to the defendant's prejudice by producing a biased jury." *State v. Penkaty*, 708 N.W.2d 185, 200 (Minn. 2006) (quotation and ellipses omitted). Appellant identified fifteen alleged errors in her brief. During oral argument, appellant's counsel asserted that her strongest argument was that the district court improperly threatened English with perjury before he testified.

When this court examines whether a witness was improperly threatened with perjury, the dispositive question is whether the interference with a witness's decision to testify was substantial. *State v. Graham*, 764 N.W.2d 340, 349 (Minn. 2009). When a state actor gives a witness a warning against self-incrimination, it cannot exert such

distress as to prevent the witness from making a free and voluntary choice on whether to testify. *Id.* While each case is "extremely fact specific," factors include "the manner in which the prosecutor or judge raises the issue, the language of the warnings, and the prosecutor's or judge's basis in the record for believing the witness might lie." *Id.* at 350 (quotations omitted). This court reviews the findings of fact for clear error and the legal conclusions based on those facts de novo. *See United States v. True*, 179 F.3d 1087, 1089 (8th Cir. 1999).

When the state called English as a witness to testify against appellant and Drljic, the issue arose of whether English would assert his Fifth Amendment right and whether he would commit perjury. English had previously pleaded guilty to third-degree burglary for his involvement, but he was still within the time period to appeal his conviction. English's attorney was worried about a possible perjury prosecution in the event that any of English's testimony conflicted with his earlier sworn testimony in support of his plea of guilty. The day before English was to take the stand, he informed the district court that he would assert his Fifth Amendment privilege to preserve his option to appeal. The district court then discussed the issue of providing English with immunity to neutralize any self-incrimination concerns. The state argued for use immunity, where English could face perjury charges if it were determined that he lied on the stand. English's attorney argued for transactional or complete immunity, which would cover any perjury stemming from English's testimony. The district court granted use immunity.

When English took the stand, the district court explained his rights and the scope of the immunity. The district court explained, "I want you to understand that the state is

asking me to grant you immunity so that the statements you make here cannot be used later for any kind of prosecution. The only exception is, of course, for perjury."

English's attorney then stated,

> I stand on the record previously made. Mr. English has asserted Fifth Amendment. Immunity has been granted. We have asked for complete immunity or transactional immunity. The court has declined that request. I made a record earlier today that I don't believe Mr. English could be prosecuted for prior statements he may have made. The only way he can be prosecuted for perjury is from this point forward, from the granting of immunity forward.

This court has carefully reviewed and considered the exchange between the court and English, and the timing and circumstances of that exchange. The district court was obligated to explain to English his rights and the scope of his immunity. That is exactly what the district court did. English's attorney was also there and made sure that he understood his rights. The record does not reflect any improper suggestions from the court as to what his testimony ought to be. The district court did not threaten or accuse English of lying in any way. The district court properly explained his rights and properly cautioned him that his testimony must be truthful. The district court did not err. Appellant's argument that the district court threatened English has no merit, yet appellant identified it as the district court's most egregious error when asked during oral argument.

Appellant contends that the district court clerk discussed jurors' schedules ex parte and that it was a substantive matter because the jurors were discharged based on that information. "Communication between a judge and a jury on a substantive matter without the defendant's presence or consent may be reversible error." *Leake v. State*, 737

N.W.2d 531, 537 (Minn. 2007). After carefully reviewing the record, appellant's allegations are mere suspicions that fail to establish any improper communication between the judge and jury. Because appellant's allegations find no basis or support in the record, there was no error.

Appellant further contends that the district court improperly dismissed two jurors because of their schedules. All criminal felony cases must be decided by a twelve-member jury. Minn. Const. art. I, § 6. If a principal juror becomes unavailable to serve before the jury is released for deliberation, then the principal juror may be replaced by an alternate. Minn. R. Crim. P. 26.02, subd. 9. Here, before the jury was released for deliberations, two jurors told the district court that they had scheduling conflicts that would interfere with their deliberations. The district court released both jurors and replaced them with alternates. Because the jury consisted of twelve jurors and because releasing a juror is a matter of court procedure over which the district court has broad discretion, there was no error. *See State v. Mems*, 708 N.W.2d 526, 533 (Minn. 2006).

We have carefully reviewed the record regarding the other errors that appellant asserts in her brief, and we find that they are equally meritless. All of the district court's rulings were within its discretion, and the record reveals no abuse of that discretion. *See id.*

III.

Appellant contends that she is entitled to a new trial because the state failed to disclose exculpatory evidence. "[T]he suppression by the State, whether intentional or not, of material evidence favorable to the defendant violates the constitutional guarantee of due

process." *Walen v. State*, 777 N.W.2d 213, 216 (Minn. 2010) (citing *Brady v. Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194, 1196–97 (1963)). Evidence is material if it "tends to negate or reduce the defendant's guilt." Minn. R. Crim. P. 9.01, subd. 1(6). To meet its constitutional obligations, the state must disclose any written or recorded statements, any written summaries of oral statements, and the substance of any oral statements that are known to the state. Minn. R. Crim. P. 9.01, subd. 1(2). For a defendant to establish a *Brady* violation, she must show: (1) the evidence is favorable to the accused by being exculpatory or impeaching; (2) the evidence was suppressed by the state, either willfully or inadvertently; and (3) the accused was prejudiced as a result. *Pederson v. State*, 692 N.W.2d 452, 459 (Minn. 2005). This is a constitutional issue, which we review de novo. *State v. Heath*, 685 N.W.2d 48, 55 (Minn. App. 2004), *review denied* (Minn. Nov. 16, 2004).

A. The audio statement of appellant

Appellant contends that the state failed to disclose the audio statement that appellant gave to the police. The district court found in its post-verdict order that the state gave notice to appellant that the tape was not of good quality and was incomplete, only lasting one minute and nineteen seconds. The state provided this tape to appellant. Because the state disclosed the tape, there is no *Brady* violation.

B. T.N.'s address and his girlfriend's contact information

Appellant contends that the state failed to disclose T.N.'s updated address and T.N.'s girlfriend's contact information. With respect to T.N.'s updated address, the

district court found in its post-verdict order that appellant had a copy of T.N.'s subpoena, which lists his address. Therefore, the state disclosed T.N.'s address.

With respect to T.N.'s girlfriend's contact information, the district court ruled that it was not relevant during the trial. That determination was not only within the district court's discretion, it was correct. *See State v. Nunn*, 561 N.W.2d 902, 906–07 (Minn. 1997) (noting that district courts have broad discretion in evidentiary rulings). The record does not support the argument that the girlfriend possessed any relevant information. Because nonrelevant evidence is not material, there was no *Brady* violation. *See Walen*, 777 N.W.2d at 216; Minn. R. Crim. P. 9.01, subd. 1(6).

C. Meeting with English

Appellant contends that the state failed to disclose properly that it met with English after he had pleaded the Fifth, but before he had been granted immunity. The district court found in its post-verdict order that the state did provide appellant with a summary of the meeting. Appellant acknowledges this in her brief, stating, "Defense stumbled upon this during trial—too late to make appropriate use of it." But once the disclosure is made, it is up to appellant to make proper use of the information. Because the state complied with the rules of criminal procedure, there was no *Brady* violation.

D. The police supplement

Appellant contends that the state failed to disclose a supplemental report written by Officer Thomas Menton, who was one of the responding officers that night. But Sergeant Strickland testified that he examined all of the reports created for the case, and there was no report from Officer Menton. Because the report does not exist, there was no *Brady* violation.

Affirmed.