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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1709**

State of Minnesota,
Respondent,

vs.

Mansoor Akhtar,
Appellant.

**Filed June 10, 2013
Affirmed in part, reversed in part, and remanded
Kirk, Judge**

Hennepin County District Court
File No. 27-CR-11-32405

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

Susan L. Segal, Minneapolis City Attorney, Paula Kruchowski, Assistant City Attorney,
Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Jennifer Lauermann, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Ross, Judge; and Kirk,
Judge.

UNPUBLISHED OPINION

KIRK, Judge

Appellant challenges his convictions, under state law and city ordinance, of misdemeanor trespass, arguing that the evidence presented at trial is insufficient to support a guilty verdict. Appellant also argues—and respondent concedes—that the district court erred by reducing his jail credit by one day to satisfy his mandatory fine and surcharge obligations. We affirm appellant’s convictions, but reverse the district court’s jail-credit award and remand for the district court to correct this issue.

FACTS

On October 16, 2011, appellant Mansoor Akhtar entered his brother’s convenience store in LaSalle Plaza, in Minneapolis. Appellant, who is not an owner or employee of the store, began to take merchandise without paying for it. His brother asked him to return the items. Appellant refused, raising his voice. Believing that appellant was “disturbing the peace,” appellant’s brother asked appellant to leave. After several such requests, appellant exited the store but remained in LaSalle Plaza, near the store. Appellant’s brother, who was concerned that appellant would re-enter the store or disrupt customers while standing in front of the store, called the building’s security to have appellant removed from the building.

After talking with appellant’s brother, a security guard approached appellant and informed him “that he was being reported as an individual that had created a disturbance and he was requested to leave the building and had to leave.” After this interaction, appellant moved further away from his brother’s store but remained in LaSalle Plaza.

The security guard approached appellant a second time, 10 to 15 minutes later, and asked appellant to leave the building. Appellant replied that he was not going to leave. The security guard informed appellant that if he refused to leave, the guard would “trespass” appellant. Appellant said, “[T]hat’s okay, I’m not leaving, you can go ahead and trespass me.” The security guard then called the police, who responded to the scene. The security guard filled out a citizen’s arrest form and a police officer arrested appellant for trespassing.

Respondent State of Minnesota charged appellant with two counts of misdemeanor trespass, in violation of Minn. Stat. § 609.605, subd. 1(b)(3), and Minneapolis, Minn., Code of Ordinances (MCO) § 385.380(b)(1). Following a trial, the jury found appellant guilty as charged. The district court sentenced appellant to 90 days’ imprisonment, stayed for one year. As a condition of his probation, appellant was ordered to stay away from LaSalle Plaza. With appellant’s consent, the district court applied one of appellant’s two days of jail credit to satisfy his mandatory fine and surcharge obligations of \$128. This appeal followed.

D E C I S I O N

I. The evidence was sufficient to sustain appellant’s convictions of misdemeanor trespass.

Appellant argues that the evidence presented at trial is insufficient to sustain his convictions of misdemeanor trespass. When reviewing a challenge to the sufficiency of the evidence, we conduct a thorough analysis of the record to determine whether the jury reasonably could find the defendant guilty of the offense based on the facts in the record

and the legitimate inferences that can be drawn from those facts. *State v. Chambers*, 589 N.W.2d 466, 477 (Minn. 1999). In doing so, we view the evidence in the light most favorable to the verdict and assume that the jury believed the evidence supporting the guilty verdict and disbelieved any evidence to the contrary. *State v. Fleck*, 777 N.W.2d 233, 236 (Minn. 2010). We will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, reasonably could conclude that the defendant is guilty of the charged offense. *State v. Alton*, 432 N.W.2d 754, 756 (Minn. 1988).

Under Minnesota law, a person is guilty of misdemeanor trespass if the person intentionally “trespasses on the premises of another and, without claim of right, refuses to depart from the premises on demand of the lawful possessor.” Minn. Stat. § 609.605, subd. 1(b)(3) (2010). The Minneapolis Code of Ordinances prohibits a person from “intentionally enter[ing] or remain[ing] upon or within the land or property of another and, without claim of right, refus[ing] to depart therefrom on demand of a lawful possessor thereof or his or her agent.” MCO § 385.380(b)(1) (2013).

Appellant argues that the state failed to prove that he was on the premises without a claim of right.¹ Appellant asserts that he “complied with his brother’s initial request to leave” the convenience store and, after the security guard “asked him to leave,” he “moved even further away from” the store, “quietly sitting by a nearby water fountain in

¹ We note that appellant does not challenge the authority of his brother or the security guard to demand that appellant depart from the store or the building. Therefore, we assume that each qualifies as a “lawful possessor” for purposes of Minn. Stat. § 609.605, subd. 1(b)(3).

the LaSalle Plaza building.” But appellant misconstrues the record. Viewing the evidence in the light most favorable to the verdict, as we must, the record establishes that appellant first refused multiple demands by the convenience store owner—appellant’s brother—that he leave the store. Next, appellant disregarded the security guard’s initial demand that he leave LaSalle Plaza, remaining in the building for approximately 10 to 15 minutes. Finally, appellant refused the security guard’s second demand that he leave LaSalle Plaza, telling the guard to “go ahead and trespass [him].” On this record, the jury could reasonably conclude that appellant was on the premises without a claim of right. Thus, the evidence presented at trial is sufficient to sustain appellant’s convictions of misdemeanor trespass and appellant is not entitled to relief on this ground.

II. The district court erred by reducing appellant’s jail credit by one day to satisfy his financial penalties.

Appellant also argues that the district court erred by reducing his jail credit to satisfy his financial penalties. This argument requires interpretation of the rules of criminal procedure and is thus a question of law subject to de novo review. *State v. Johnson*, 744 N.W.2d 376, 379 (Minn. 2008).

Under Minnesota’s procedural rules, at sentencing, the district court must “[s]tate the number of days spent in custody in connection with the offense or behavioral incident being sentenced. That credit must be deducted from the sentence and term of imprisonment and must include time spent in custody from a prior stay of imposition or execution of sentence.” Minn. R. Crim. P. 27.03, subd. 4(B). The granting of jail credit is not discretionary with the district court. *Johnson*, 744 N.W.2d at 379. Additionally,

when the district court sentences a person convicted of a misdemeanor, the district court must impose a minimum fine and surcharge. Minn. Stat. §§ 357.021, subd. 6(a), 609.101, subds. 4(2), 5 (2010). Although these payments may not be waived, if the convicted person is indigent, the district court may authorize payment of the fine and surcharge in installments, and may permit the convicted person to satisfy the *fine* by performing community work service. Minn. Stat. §§ 357.021, subd. 6(c), 609.101, subd. 5 (2010).

Here, the district court found that appellant is entitled to two days of jail credit but, with appellant's consent, applied one of these days to satisfy his mandatory financial penalties of \$128. Appellant now challenges the district court's authority for such action. The state concedes that the district court lacked the discretion to grant appellant fewer than two days of jail credit, instead applying one day to appellant's financial obligations. We agree, and accept the state's concession. Accordingly, we reverse the district court's jail-credit award and remand the issue for the district court to grant appellant two days of jail credit and reinstate appellant's financial penalties.

Affirmed in part, reversed in part, and remanded.