COURT OF APPEALS
DECISION
DATED AND FILED

March 2, 2016

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2015AP190-CR **Cir. Ct. No. 2011CF464**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JOANNE M. ANDERSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Walworth County: DAVID M. REDDY, Judge. *Affirmed*.

Before Reilly, P.J., Gundrum and Hagedorn, JJ.

¶1 PER CURIAM. Joanne M. Anderson appeals from a judgment of conviction entered after a jury found her guilty of receiving stolen property with a

value greater than $10,000, contrary to WIS. STAT. § 943.34(1)(c) (2013-14).[1] Anderson argues that the evidence presented at trial was insufficient to support the jury's guilty verdict. We disagree and affirm.

¶2 F.S. is the owner of Home Design Manufacturing Company. Concerned about the lack of money in the company accounts, F.S. asked his accountant, S.C., to conduct a cash flow analysis. S.C. discovered that between 2003 and 2008,[2] the company's office manager, Kari Sue Clark-Branton, wrote unauthorized checks from Home Design's accounts totaling more than $900,000. Over the years, Clark-Branton issued more than $500,000 worth of unauthorized checks to herself, and over $400,000 to a horse club, the Blue Hills Lippitt Morgans (the Club).

¶3 S.C. reported her initial findings to F.S, who discovered that Anderson, a former employee, was the owner and account holder for the Club. The unauthorized checks were sent to, signed, and deposited by Anderson. Anderson and Clark-Branton were close friends. Anderson had recommended Clark-Branton as her replacement and helped with her training in or around 1991, when Anderson left the company. The two shared an interest in horses and maintained their friendship after Anderson left and moved to northern Wisconsin.

¶4 F.S. confronted Clark-Branton and attempted to call Anderson, leaving about ten unreturned messages over the course of one week. Anderson's

[1] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

[2] S.C.'s analysis went back to 2001 and though there were fraudulent checks prior to 2003, the State opted to charge the period of time from 2003-2008.

phone was then disconnected, and she never responded to F.S.'s messages. On February 21, and 22, 2008, Anderson withdrew all funds from and closed the Club account. On February 28, 2008, F.S. received a faxed copy of a letter written from Anderson to Clark-Branton speaking of their "horse partnership" and that Anderson was making arrangements to sell the horses and to forward funds "as soon as they become available." Anderson testified that she wrote the letter because Clark-Branton was being pressured by F.S. to provide something in writing. Though Anderson never contacted F.S., she remained in contact with Clark-Branton as evidenced by a March 2008 email from Anderson telling Clark-Branton she was "extremely dear to my heart as can be, that will never change. Love Jo."

¶5 Anderson's deposition testimony was read into the trial record.[3] Though she admitted receiving and cashing the checks, she denied knowing they were never authorized by F.S.. She testified that she would call Clark-Branton, ask if Home Design was willing to sponsor various Club events, and inform Clark-Branton how much money was needed. Clark-Branton would then send Anderson a check in a Home Design envelope. Anderson acknowledged that Clark-Branton was the only person at Home Design with whom she discussed the various sponsorships and that she never provided Home Design with any documentation, receipts, or acknowledgment of their sponsorship. She testified she did not have anything in writing that would demonstrate she had ever used or promoted the company at events and that she never kept any record of the monies received from

[3] The deposition was made during the course of a civil lawsuit filed by F.S. against Anderson and Clark-Branton. Though the full deposition was not read to the jury, it was admitted into evidence and both parties invited the jury to consider the entire transcript as evidence.

Home Design. She stated the Club had a couple of other sponsors in the past ten years but could name only one, which, she added, had only provided product, not money. Anderson testified that she never reported the income received from Home Design to an accountant or tax preparer and that the last time she would have run shows with Home Design as a sponsor would have been in 2006. She stated that the last time she attended a show was in 2006 or 2007 and estimated that it cost her about $3400.

¶6 At trial, the jury learned that a few months prior to leaving Home Design around 1991, Anderson made an unauthorized purchase of personal items at a gas station by charging them to the company's running account. The officer who arrested Anderson in 2008 testified that when asked, she denied the 1991 incident and told him F.S. rescinded this claim in a deposition. F.S. disputed this assertion and testified that when confronted about the unauthorized purchase, Anderson cried and apologized. F.S. warned Anderson she would be fired if it happened again and put a letter of documentation in her employee file.[4] F.S. testified that he looked for the file in 2008 after the fraudulent checks came to light and discovered her file had somehow disappeared.

¶7 The jury was instructed that in order to find Anderson guilty, the State had to prove beyond a reasonable doubt that: (1) Anderson knowingly or intentionally received property; (2) the property was stolen property; and (3) when the property was received, Anderson knew it was stolen property. WIS JI—

[4] The evidence of Anderson's unauthorized purchase was offered on the issue of knowledge. The jury was instructed that if it determined the prior incident occurred, it could consider the incident only in deciding whether Anderson knew the checks were stolen, "giving it the weight you determine it deserves." The court specifically instructed the jury it could not permissibly consider the 1991 incident as character or propensity evidence.

CRIMINAL 1481. Anderson does not dispute the first two elements, but argues that the trial evidence was insufficient to prove beyond a reasonable doubt that Anderson knew the checks were stolen.

¶8 We review the sufficiency of the evidence de novo, but in the light most favorable to sustaining the conviction. ***State v. Hanson***, 2012 WI 4, ¶15, 338 Wis. 2d 243, 808 N.W.2d 390. The standard of review is the same whether the conviction relies upon direct or circumstantial evidence. ***State v. Poellinger***, 153 Wis. 2d 493, 503, 451 N.W.2d 752 (1990). We will sustain a conviction unless the evidence is so insufficient "that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." ***Id.*** at 501. "If any possibility exists that the trier of fact could have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt, an appellate court may not overturn a verdict even if it believes that the trier of fact should not have found guilt based on the evidence before it." ***Id***. at 507.

¶9 We conclude that a reasonable juror could have found beyond a reasonable doubt that at the time Anderson received the checks she knew they were stolen. The only person with whom Anderson ever discussed Home Design's sponsorship was her friend, Clark-Branton. Anderson, who had some basic knowledge of Home Design's business practices, did not provide any documentation, receipts, or acknowledgment of the company's sponsorship. The Club participated in small events and Anderson was unable to name any other monetary sponsors. She testified she did not keep track of the over $400,000 received from Home Design, and never reported the money to an accountant or tax preparer. Anderson received and cashed checks from Home Design well after 2006, the year she stated would have been the last Home Design sponsored event. In 2007, the Club received $69,014.66. In the month of January 2008 alone,

Anderson received three consecutively numbered checks all dated the same day totaling over $10,000. These unorthodox practices, along with the commonsense notion that undocumented sponsorship monies for small events would not reasonably total over $400,000, support the jury's finding that Anderson knew at the time of receipt the checks were stolen.

¶10 Additionally, a jury could reasonably construe Anderson's actions after the crime came to light as evidence of guilty knowledge. Rather than immediately contacting F.S. with an explanation or offer of assistance, Anderson did not return his calls, disconnected her phone, closed her Club account, discussed the matter and remained in contact with Clark-Branton, provided a stilted letter after learning that F.S. was pressuring Clark-Branton for an explanation, and denied her 1991 misuse of company funds to law enforcement.[5]

¶11 Anderson argues that because there was no direct evidence Clark-Branton told Anderson the checks were unauthorized, the jury could not permissibly infer she actually knew the money was stolen. Pointing to select trial testimony, Anderson maintains that at most, the evidence supports an inference

[5] Our decision does not address all of the evidence adduced at trial supporting the jury's guilty verdict. For example, Anderson's equivocal deposition testimony concerning the nature of her "partnership" with Clark-Branton constitutes further circumstantial evidence of her guilty knowledge.

that she should have known the checks were stolen and fails to satisfy the element of actual knowledge.[6]

¶12 We disagree. In reviewing the sufficiency of the evidence, we do not examine evidentiary "bits" in isolation, but look to the totality of the evidence. *See* ***State v. Smith***, 2012 WI 91, ¶¶34-36, 342 Wis. 2d 710, 817 N.W.2d 410. Anderson highlights only a small portion of the circumstantial evidence from which the jury could infer actual knowledge. As we previously explained, there was ample evidence supporting the jury's verdict. Moreover, the probative value of the highlighted evidence was challenged by trial counsel on cross-examination and in closing argument. It is the jury's function to determine the credibility of the witnesses, reconcile inconsistent testimony, and to weigh the evidence. ***Poellinger***, 153 Wis. 2d at 504, 506. If more than one inference can be drawn from the evidence, this court will follow the inference that supports the jury's finding "unless the evidence on which that inference is based is incredible as a matter of law." ***Id.*** at 506-07. The jury was not required to believe Anderson's testimony that she did not know the checks were stolen. Despite any direct evidence that Clark-Branton told Anderson the checks were not authorized, the totality of the trial evidence sufficiently supports an inference that at the time she

[6] Anderson highlights the State's arguments that: (1) based on her prior employment with Home Design, Anderson knew F.S.'s advertising practices and policies and that he sponsored only local events, in small monetary amounts; (2) it would not make good business sense for F.S. to sponsor events outside his company's usual territory to the tune of $400,000; and (3) in light of her 1991 $15.00 misuse of the company's account, Anderson knew F.S. would not sponsor her Club in such a large amount. Asserting that Home Design's business substantially increased and changed since she left the company and that her misuse of funds occurred years ago and did not cause her to be fired, Anderson argues this evidence fails to adequately support an inference that she knew the checks were stolen.

received the checks, Anderson knew they were stolen. A reasonable juror could have found beyond a reasonable doubt that Anderson was guilty.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.