

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0567**

State of Minnesota,
Respondent,

vs.

Samuel Morton Post III,
Appellant.

**Filed March 11, 2024
Affirmed
Wheelock, Judge**

Hubbard County District Court
File No. 29-CR-21-483

Keith Ellison, Attorney General, Jacob Campion, Assistant Attorney General, St. Paul, Minnesota; and

Jonathan Frieden, Hubbard County Attorney, Park Rapids, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rebecca Ireland, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Wheelock, Presiding Judge; Smith, Tracy M., Judge;
and Gaïtas, Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

In this appeal from a final judgment of conviction for perjury, appellant argues that there was insufficient evidence to prove that his false testimony at a

child-support-modification hearing was material. Because the evidence proves beyond a reasonable doubt that the false statements were material, we affirm.

FACTS

In September 2020, appellant Samuel Morton Post III moved for a modification of his child-support obligations, citing as the bases a substantial change in his gross income, a change in his receipt of public assistance, and a change in the residence of the children. With his motion, he filed an affidavit in support of motion to modify child support on a form produced by the Minnesota Judicial Branch. The form includes a section regarding the property the affiant owns, which lists a variety of property types and asks for their value. Post identified the value of two types of property he owns, but he did not write anything in the blank space next to “Checking/savings.”

At the November 18, 2020 hearing on the child-support-modification motion, the attorney for Hubbard County questioned Post about whether he had any money in his bank account:

COUNTY: [Y]ou had mentioned um, of not having any other income. Do you have any—do you have any bank accounts with any money in them?

POST: I provided, ah, as Exhibit—let’s see, I believe Exhibit 11 had my bank account information, sir.

COUNTY: Okay, um—

POST: And that was back when I was working. Since then, it has had the same, like what, \$42, or you know, something like that, dollars. But there’s nothing coming in or out.

....

COUNTY: And so, you’re saying you’ve got a total of about \$42 in the bank?

POST: Ah, maybe—maybe a hundred, I don't know, I've got something like that.

Post was under oath at the time he made this statement. At that same hearing, a Hubbard County Social Services employee with the child-support office testified that she had requested information from Post's bank, and the bank informed her that Post had two accounts containing money. Specifically, the county employee testified that, when Post filed the affidavit, he had a checking account with \$124.12 and a savings account with \$17,500. On the day of the hearing when the county attorney questioned him, Post had roughly \$13,000 in his savings account.

Based on his statements under oath about his account balances, respondent State of Minnesota subsequently charged Post with two counts of perjury. The first charge was based on Post's affidavit, and the other was based on his testimony during the child-support-modification hearing. The perjury case proceeded to a court trial at which the district court received testimony from the county attorney who had questioned Post at the child-support-modification hearing. When questioned by the prosecutor about the importance of the court in the family proceeding having accurate financial information relating to the parties, the county attorney answered:

Well with child support, both with the calculations and the collections, an accurate number in terms of what people not just have as income but what they have in assets, child support essentially works in a formulaic way, and assets determine in part what child support is ordered. It also in part determines whether or not a modification is appropriate depending on the assets someone has available. And finally in terms of

collections, what social services or child support can collect is based of course on what they're aware exists.

On cross-examination, the county attorney stated that it was not his belief “that the amount in a savings account could be used to calculate a current obligation.”

The district court then found Post guilty of one count of perjury relating to his testimony at the child-support-modification hearing and acquitted him on the count related to his affidavit. The district court convicted Post, stayed imposition of his sentence pending a five-year probation period, and imposed a \$300 fine.

Post appeals.

DECISION

Post challenges his conviction for perjury, arguing that the evidence was insufficient to prove that his false statements were “material.” This court uses the same standard for evaluating the sufficiency of the evidence in a bench trial as it does for the evidence in a jury trial. *State v. Burnett*, 867 N.W.2d 534, 537 (Minn. App. 2015), *rev. denied* (Minn. Oct. 20, 2015). We do so by viewing the evidence in the light most favorable to the conviction and determining whether the evidence is “sufficient to permit the [fact-finder] to reach the verdict which [it] did.” *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). In reviewing the sufficiency of evidence, we “carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the fact-finder to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted,” and we will not overturn the verdict “if the fact-finder, upon application of the presumption of innocence and the State’s burden of

proving an offense beyond a reasonable doubt, could reasonably have found the defendant guilty of the charged offense.” *Burnett*, 867 N.W.2d at 537-38 (quotation omitted); *accord State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010).

A person is guilty of perjury when they “make[] a false material statement not believing it to be true . . . in or for an action, hearing or proceeding of any kind in which the statement is required or authorized by law to be made under oath or affirmation.” Minn. Stat. § 609.48, subd. 1(1) (2020). Materiality is an element of the offense of perjury that must be proved to the jury beyond a reasonable doubt. *Burnett*, 867 N.W.2d at 536-37; *see also* Minn. Stat. § 609.48, subd. 1 (2020) (requiring that the perjurious statement be both false and material). A statement is “material” within the meaning of the statute if it “has a natural tendency to influence, or is capable of influencing, the decision of the decision-making body to which it is made.” *Burnett*, 867 N.W.2d at 537. It is not a defense to perjury that the declarant did not know the statement was material, that they believed the statement to be immaterial, that the statement “was not used,” or that it “did not affect the proceeding.” Minn. Stat. § 609.48, subd. 2(3), (4) (2020). Thus, the question here is whether Post’s false statements about his accounts were capable of influencing the magistrate’s decision on Post’s motion for child-support modification.

The evidence at trial established that Post had moved to modify his child-support obligation, that the magistrate’s focus at the hearing was determining how much support should be ordered, and that the magistrate admitted evidence relating to Post’s bank accounts—including the county attorney’s cross-examination of Post relating to the bank accounts and the county employee’s testimony detailing the amounts Post had in his

accounts. The evidence at trial also included the county attorney's testimony that "assets determine in part what child support is ordered." We thus conclude that the evidence was sufficient to prove beyond a reasonable doubt that Post's false testimony about his bank accounts was material because it was capable of influencing the magistrate's decision.

Affirmed.