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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1380**

State of Minnesota,
Respondent,

vs.

Doroteo Leyva Ramirez,
Appellant.

**Filed October 7, 2008
Affirmed
Kalitowski, Judge**

Hennepin County District Court
File No. 06064400

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

Michael O. Freeman, Hennepin County Attorney, Jean Burdorf, Assistant County Attorney, C-2000 Government Center, Minneapolis, MN 55487 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Sharon E. Jacks, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Hudson, Judge; and Harten, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

KALITOWSKI, Judge

On appeal from his conviction of aiding and abetting aggravated robbery, appellant Doroteo Leyva Ramirez argues that (1) the district court committed plain error when instructing the jury on the mental state required for accomplice liability and (2) his conviction should be reversed and a new trial ordered because the prosecutor was not authorized to practice law during appellant's trial. We affirm.

DECISION

I.

Appellant argues that the district court committed reversible error by failing to instruct the jury on the meaning of “intentionally” and by adding the word “knowingly” to the definition of accomplice liability. We disagree.

Appellant did not object to the accomplice-liability jury instruction at trial. Therefore, we consider only whether the instruction amounted to plain error affecting appellant's substantial rights. *See State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998) (holding where a party fails to object to a jury instruction at trial, the reviewing court will consider only whether the instruction was plain error affecting substantial rights). An error affects an individual's substantial rights if it is prejudicial; in other words, “if there is a ‘reasonable likelihood that the giving of the instruction in question would have had a significant effect on the verdict of the jury.’” *Id.* at 741 (quoting *State v. Glidden*, 455 N.W.2d 744, 747 (Minn. 1990)). Even when the plain error standard is met, a reviewing court may “correct the error only if it seriously affects the fairness, integrity or public

reputation of judicial proceedings.” *State v. Washington*, 693 N.W.2d 195, 204 (Minn. 2005) (quotation omitted).

We will not reverse a district court’s decision regarding jury instructions unless the district court abused its discretion. *State v. Persitz*, 518 N.W.2d 843, 848 (Minn. 1994). A district court is given “considerable latitude” when drafting jury instructions. *State v. Ihle*, 640 N.W.2d 910, 916 (Minn. 2002). We review jury instructions in their entirety to determine whether they fairly and adequately explain the law. *Id.* “Erroneous jury instructions merit a new trial ‘if it cannot be said beyond a reasonable doubt that the error had no significant impact on the verdict.’” *State v. Valtierra*, 718 N.W.2d 425, 433 (Minn. 2006) (quoting *State v. Olson*, 482 N.W.2d 212, 216 (Minn. 1992)).

Minn. Stat. § 609.05, subd. 1 (2006), provides that “[a] person is criminally liable for a crime committed by another if the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime.” And liability for aiding and abetting extends to “other crime[s] committed in pursuance of the intended crime if reasonably foreseeable by the person as a probable consequence of committing or attempting to commit the crime intended.” Minn. Stat. § 609.05, subd. 2 (2006). Thus, the state was required “to prove, beyond a reasonable doubt, that [the defendant] knew that his alleged accomplices were going to commit a crime and that [the defendant] intended his presence or actions to further the commission of that crime. *State v. Mahkuk*, 736 N.W.2d 675, 682 (Minn. 2007).

The district court instructed the jury as follows:

The Defendant is guilty of a crime committed by another person when the Defendant has intentionally aided the other person in committing it, or has intentionally advised, hired, counseled, conspired with, or otherwise procured the other person to commit it. If the Defendant intentionally, knowingly, or purposefully aided another person in committing a crime, or intentionally advised, hired, counseled, conspired with, or otherwise procured the other person to commit it, the Defendant is also guilty of any other crime the other person commits while trying to commit the intended crime, if that other crime was reasonably foreseeable to the Defendant as a probable consequence of trying to commit the intended crime.

Appellant objects to the district court's addition of the phrase, "knowingly or purposefully" to the standard jury instruction set forth in CRIMJIG 4.01. 10 *Minnesota Practice*, CRIMJIG 4.01 (2006). But appellate courts have held that liability for aiding and abetting hinges on whether the defendant played a knowing role in the commission of the crime. *See, e.g., State v. Jackson*, 746 N.W.2d 894, 898 (Minn. 2008); *State v. Crow*, 730 N.W.2d 272, 280 (Minn. 2007); *State v. Matelski*, 622 N.W.2d 826, 832 (Minn. App. 2001); *State v. Gates*, 615 N.W.2d 331, 337 (Minn. 2000). Therefore, the jury instruction was not improper.

And the district court did not abuse its discretion by refusing appellant's request to provide the jury with the definition of "intentionally" set forth in CRIMJIG 7.10. 10 *Minnesota Practice*, CRIMJIG 7.10 (2006). That provision states that "'intentionally' means that the actor either has a purpose to do the thing or cause the result specified, or believes that the act performed by the actor, if successful, will cause the result." CRIMJIG 7.10. This definition does not apply in the accomplice-liability context because an accomplice need not intend that his act will cause the result. *See Minn. Stat.*

§ 609.05, subd. 1 (“A person liable under [§ 609.05, subd. 1] is also liable for any other crime committed in pursuance of the intended crime if reasonably foreseeable . . .”). Because giving the requested definition would have misled the jury regarding the state’s burden of proof for aiding and abetting, we conclude that the district court properly refused to give the instruction.

II.

Appellant argues that he is entitled to a new trial because the prosecutor in his trial, Gemma Graham, was unauthorized to practice law as a result of her failure to receive continuing legal education over the past 20 years. Appellant’s argument is foreclosed by this court’s decision in *State v. Ali*, 752 N.W.2d 98 (Minn. App. 2008).

In *Ali*, we held that another defendant prosecuted by Ms. Graham was not entitled to a new trial. *Id.* at 106. We rejected the defendant’s invitation to adopt a per se rule. *Id.* at 106-08. Instead we held that a defendant prosecuted by an attorney whose license to practice was on restricted status must show that he was prejudiced in order to receive a reversal and a new trial. *Id.* at 108. Here, appellant does not claim to have been prejudiced by Ms. Graham’s conduct as the prosecutor. Accordingly, we conclude that appellant is not entitled to a new trial.

Affirmed.