STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0928

State of Minnesota,
Respondent,

vs.

Jason Paul Hirman,
Appellant.

Filed May 8, 2017
Affirmed
Connolly, Judge

Dakota County District Court
File No. 19HA-CR-13-1031

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

James Backstrom, Dakota County Attorney, Torrie J. Schneider, Assistant County Attorney, Hastings, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rachel F. Bond, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Connolly, Judge; and Larkin, Judge.

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

CONNOLLY, Judge

On appeal from his conviction of receiving stolen property, appellant argues (1) his conviction must be reversed because the state failed to prove that he knew or had reason to know that the property was stolen; (2) the district court committed plain error affecting appellant's substantial rights by allowing the investigating officer to relate inadmissible hearsay during his testimony; and (3) the court committed reversible error by admitting evidence of a stolen camera, found in appellant's father's storage locker in July 2012, as intrinsic evidence. Because there is sufficient evidence for all the elements of the crime charged, the admission of the alleged hearsay testimony was not plain error, and because the district court did not abuse its discretion in admitting the camera found in appellant's father's storage locker as evidence under the intrinsic-evidence exception, we affirm appellant's conviction.

FACTS

In August 2011, a trailer containing a portable inspection system used to inspect and photograph sewers, storm drains, and similar remote locations was stolen. The inspection system was valued at more than $40,000. In August 2012, the inspection system was found inside a storage locker. The inspection system was intact and the serial numbers had not been removed. The renter of the storage locker, who purchased the locker at auction after the former renter failed to make payments, saw the unique equipment and contacted the manufacturing company. The manufacturing company identified the equipment, and the locker renter notified the original owner that the inspection system was in the locker. The

original owner of the inspection system contacted the police to report that the stolen system had been found.

The police investigators spoke with K.S., the former renter of the storage locker who failed to make her payments. K.S. testified further that she rented the locker in the spring of 2011 and that, in the late summer or early fall of 2011, her friend, appellant Jason Paul Hirman, asked if he could store something in her locker. K.S. testified that she met appellant, who was alone, at the locker and he removed the inspection system from his vehicle and placed it in her locker. Appellant never came looking for the inspection system again. K.S. also testified that, after the police talked to her regarding the stolen property, appellant tried to "*remind [her] that somebody else was with him*." (Emphasis added.)

The police found three latent fingerprints that could be examined. One print belonged to appellant. The police also discovered that appellant's father rented a storage locker near K.S.'s locker. In an interview, the storage-locker manager told police that (1) he is typically at the site on a daily basis; (2) appellant's father paid the rental fees for a locker, but only appellant was seen using the locker; and (3) appellant was there "on occasion." Based on this information, the police executed a search warrant at appellant's father's locker where they found a camera attachment belonging to the inspection system appellant stored in K.S.'s locker. The serial numbers on both the inspection equipment found in K.S.'s unit and the camera in appellant's father's unit matched the serial numbers from the equipment that was stolen.

At trial, the district court admitted evidence of the camera attachment found in appellant's father's storage locker as intrinsic evidence. The district court denied

appellant's motion for acquittal, concluding that there was sufficient evidence to conclude that appellant knew or should have known that the property was stolen. The district court found that "there is plenty of evidence that [the stolen property] is a highly specialized piece of equipment that's used for a very specific purpose and that it's a very expensive unit . . . . [B]ased upon that I believe there is evidence that it is a rather unique item." The jury found appellant guilty of receiving stolen property over $5,000, a felony, and appellant was sentenced to 48 months in prison.

D E C I S I O N

I. Was there sufficient evidence in the record to prove that appellant knew or had reason to know that the property found in K.S.'s storage locker was stolen?

Appellant argues that there is not sufficient evidence in the record to show that he knew or had reason to know that the equipment was stolen.[1] In considering a claim of insufficient evidence, this court's review is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the jurors to reach the verdict that they did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing court must assume "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). The reviewing court will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof

[1] The elements of the offense of receiving or concealing stolen property are: (1) the defendant received, possessed, transferred, bought or concealed the property; (2) the property had been stolen; and (3) the defendant knew or had reason to know the property had been stolen or obtained by robbery. Minn. Stat. § 609.53, subd. 1 (2016). On appeal, only the third element of the crime is challenged.

beyond a reasonable doubt, could reasonably conclude the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

Because the disputed issue is what appellant knew, we apply the circumstantial-evidence standard. *See State v. Al-Naseer*, 788 N.W.2d 469, 474 (Minn. 2010). "[A] conviction based entirely on circumstantial evidence merits stricter scrutiny than convictions based in part on direct evidence." *State v. Jones*, 516 N.W.2d 545, 549 (Minn. 1994). "While it warrants stricter scrutiny, circumstantial evidence is entitled to the same weight as direct evidence." *State v. Bauer*, 598 N.W.2d 352, 370 (Minn. 1999). In applying the circumstantial evidence standard, the reviewing court uses a two-step analysis. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). "The first step is to identify the circumstances proved. In identifying the circumstances proved, we defer to the jury's acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the [s]tate." *Id.* at 598-99 (citation and quotation omitted). "The second step is to determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt." *Id.* (quotation omitted).

In this case, the circumstances proved are that: (1) the equipment was stolen in early August and appellant placed it in K.S.'s storage locker in "late summer or early fall"; (2) the equipment was worth over $40,000; (3) the equipment was a portable inspection system used to inspect and photograph sewers, storm drains, and similar remote locations and was described by the man who found it as something that "stuck out to [him]" and that he did not have any idea of what it was; (4) the stolen property was "a very high tech piece

of equipment"; (5) after the investigation had commenced, appellant attempted to convince K.S. that there was another person with him when he dropped the equipment off; and (6) another piece of the stolen equipment was located in appellant's father's storage locker where appellant stored items.

"An individual's unexplained possession of stolen property within a reasonable time after a . . . theft will in and of itself be sufficient to sustain a conviction." *State v. Hager*, 727 N.W.2d 668, 678 (Minn. App. 2007) (quotation omitted). Appellant argues that, "[i]n every one of the cases applying that principle[,] . . . the defendant, when asked by police or in spontaneous statements, failed to adequately explain his possession of the property." While the record is devoid of any explanation as to how appellant came into possession of the property, the unique circumstances of this case convince us that appellant knew the equipment was stolen.

We rely heavily on appellant's attempt at convincing K.S. that there was someone else with him when he dropped the equipment off at the storage locker because, in our view, it displays a consciousness of guilt. Appellant was trying to create a false alibi, which supports the inference that appellant knew or had reason to know the item was stolen. Finally, the item was stolen in early August, and K.S. testified that appellant dropped the equipment off in "late summer or early fall." We conclude that early to mid-August fits the definition of "late summer or early fall" and indicates that appellant possessed the stolen property within a reasonable time after the theft.

Viewing the evidence in the light most favorable to the conviction, we conclude that the circumstances proved exclude any reasonable hypothesis other than guilt.

II. Was the alleged hearsay testimony from the investigating officer inadmissible under the plain-error standard of review?

Appellant next argues that there were two instances of inadmissible hearsay during the testimony of the investigating police officer. Neither instance was objected to at trial.

Where a defendant fails to object to the admission of evidence, our review is under the plain-error standard. *See* Minn. R. Crim. P. 31.02; *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). "The plain[-]error standard requires that the defendant show: (1) error; (2) that was plain; and (3) that affected substantial rights." *State v. Strommen*, 648 N.W.2d 681, 686 (Minn. 2002). The third prong is satisfied if there is a "reasonable likelihood that the error had a significant effect on the jury's verdict." *State v. Vance*, 734 N.W.2d 650, 660 n.8 (Minn. 2007), *overruled on other grounds by State v. Fleck*, 810 N.W.2d 303 (Minn. 2012). "If those three prongs are met, we may correct the error only if it seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Strommen*, 648 N.W.2d at 686 (quotation omitted).

Both statements under review occurred during the testimony of the investigating police officer. In the first statement, the investigating police officer testified that, in his out-of-court telephone conversation with K.S., she identified the equipment as belonging to the original owner's company. K.S. did not actually say that the piece of equipment belonged to the original owner's company.

In the second statement, the investigating officer testified that "[he] learned that there was a locker rented . . . by [appellant's] dad and that [appellant] was the one that was storing his . . . property in that locker and that [the storage-locker manager] had seen him

at the site numerous times in that locker." The storage-locker manager actually testified that he saw appellant "on occasion" and that he saw appellant at his father's locker. The storage-locker manager did not testify that appellant stored property in the unit. He did testify that appellant's father never came to the property except to make payments, that he was never seen actually at the unit, and that he was never seen "putting stuff in or taking stuff out."

Hearsay is defined in our rules of evidence as an out-of-court statement offered as evidence to prove the truth of the matter asserted. Minn. R. Evid. 801(c). "The rules bar the admission of hearsay unless it fits under one of a number of exceptions, which generally reflect the recognized reliability of statements made in certain situations." *State v. Manthey*, 711 N.W.2d 498, 504 (Minn. 2006).

> The number and variety of exceptions to the hearsay exclusion make objections to such testimony particularly important to the creation of a record of the trial court's decision-making process. . . . The complexity and subtlety of the operation of the hearsay rule and its exceptions make it particularly important that a full discussion of admissibility be conducted at trial.

Id. In *Manthey*, the Minnesota Supreme Court did not address the six statements at issue related to a witness's feelings regarding the appellant's illegal gambling; rather, it concluded that "[i]n the absence of an objection, the state was not given the opportunity to establish that some or all of the statements were admissible under one of the numerous exceptions to the hearsay rule." *Id.* *Manthey* is analogous: here the state was not given an opportunity to raise any of the numerous exceptions to the hearsay rule in response to an objection to the two statements because no objection was made.

In any event, appellant was not prejudiced by the admission of the statements, even if they should not have been admitted. Regarding the first statement, before the investigating officer testified, the equipment had been positively identified as the same equipment that was stolen, using the serial number on the equipment, by the person who purchased the storage locker contents after K.S. failed to make payments. K.S. confirmed that the metal box was the property appellant dropped off at her storage locker in 2011. Substantial evidence existed in the record that the equipment was the same equipment that was stolen even without the investigating officer's statement. We conclude the first contested statement did not affect the outcome of the case and appellant was not prejudiced.

Regarding the second statement, the storage manager testified that, (1) as property manager, he is typically at the site on a daily basis; (2) appellant's father paid for the storage locker; (3) appellant's father was never seen actually at the storage locker; and (4) appellant was seen at the storage locker on occasion. These facts, in addition to the fact that the equipment in K.S.'s locker matched the camera found in appellant's father's locker, is sufficient evidence that appellant knew or had reason to know the property was stolen. Therefore, sufficient evidence exists that appellant stored the stolen items in his father's storage locker. As a result, the comment by the investigating officer that the storage manager told him that appellant stored property in his father's locker was not prejudicial.

Because respondent did not have an opportunity at the district court to raise any of the numerous exceptions to the hearsay rule and because appellant was not prejudiced by the statements made by the investigating officer, we conclude that the admission of the investigating officer's statements was not plain error.

III. Did the district court err in admitting bad-act evidence under the "intrinsic-evidence" exception?

Appellant argues that the district court abused its discretion in allowing the state to present evidence, under the intrinsic-evidence exception, that the camera attachment was found in appellant's father's storage locker. This court reviews the district court's evidentiary ruling for an abuse of discretion. *State v. Ness*, 707 N.W.2d 676, 685 (Minn. 2006).

In January 2015, the state noticed its intent to offer evidence of the discovery of stolen equipment in appellant's father's storage locker and appellant objected. The state argued that the court should admit the camera found in appellant's father's storage locker because it was inexorably intertwined with the evidence of the charged offense. *See State v. Hollins*, 765 N.W.2d 125, 132 (Minn. App. 2009) (stating that evidence of the criminal activity is intrinsic to the charged offense and admissible if it is inextricably intertwined with evidence of the charged offense). The district court concluded, under *Hollins* and the Rules of Criminal Procedure, that

> when there is evidence that's intrinsically tied to the allegations in a complaint, [a] 404(b) analysis is not necessary or appropriate in that it is intrinsically related to the charged crime if the crime arose out of the same transaction or series of transactions as the charged crime and either the other crime is relevant to an element of the charged crime or excluding the evidence of the other crime would present an incoherent or incomplete story of the charged crime.
> . . . .
> The court finds that this is intrinsically related evidence. . . . It would be an important part of the State's case in attempting to establish intent and knowledge of possession of the allegedly stolen equipment.

"Evidence of another crime, wrong or act is not admissible to prove the character of a person in order to show action in conformity therewith." Minn. R. Evid. 404(b). However, evidence of other crimes or acts may be admitted to demonstrate "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." *Id.* "In a criminal prosecution, a rule 404(b) analysis is unnecessary if the evidence of another crime is intrinsic to the crime charged." *Hollins*, 765 N.W.2d at 131. Evidence of another crime is intrinsic to the charged crime and therefore admissible without regard to Minn. R. Evid. 404 if: "(1) the other crime arose out of the same transaction or series of transactions as the charged crime, and (2) either (a) the other crime is relevant to an element of the charged crime, or (b) excluding evidence of the other crime would present an incoherent or incomplete story of the charged crime." *Id.* at 132.

Appellant argues that *Hollins* has been called into question by *State v. Riddley*, 776 N.W.2d 419, 425 n.3 (Minn. 2009) (requiring a close causal and temporal connection between the prior bad act and the charged crime), and that no such connection has been proved in appellant's case. However, *Riddley* involved the application of the immediate-episode exception to 404(b) evidence and not the intrinsic-evidence exception. *Riddley*, 776 N.W.2d at 425. Unlike the immediate-episode exception, the intrinsic-evidence exception as set forth in *Hollins* does not require a close causal and temporal connection between the prior bad act and the charged crime. *Id.*; *Hollins*, 765 N.W.2d at 132.[2]

[2] But see *Diriye v. State*, A15-0869, 2016 WL 208414, at *5 (Minn. App. Jan. 19, 2016) ("*Hollins* is the only [published] Minnesota case to create an intrinsic-evidence exception, under which other-bad-acts evidence is admissible without a rule 404(b) analysis."). "*Hollins* appears to simply reiterate and refine the immediate-episode exception, which is

Additionally, *Riddley* concluded that, absent a temporal and casual connection, immediate-episode evidence is not admissible merely to complete the story of the crime. *Riddley*, 776 N.W.2d at 425 n.3. In this case, the district court concluded that the evidence was admissible both because the evidence of the crime is relevant to an element of the charged crime, that appellant knew or had reason to know the equipment was stolen, and because excluding evidence of the other crime would present an incoherent or incomplete story of the charged crime. Therefore, we conclude that the prohibition on allowing 404(b) evidence merely to complete the story of the crime is not dispositive here.

Because *Hollins* created a new exception to 404(b), relying on federal caselaw interpreting the Federal Rules of Evidence, we also consider whether the evidence was admissible under the immediate-episode exception and Minnesota caselaw. We conclude

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well established in Minnesota evidentiary jurisprudence" and "[the two exceptions serve] nearly identical purposes." *Id.* We disagree. *Hollins* specifically stated, "No prior Minnesota case has articulated the [intrinsic-evidence] framework adopted here." *Hollins*, 765 N.W.2d at 133. Thus, in *Hollins*, this court did not intend to "reiterate and refine the immediate-episode exception, which is well established in Minnesota evidentiary jurisprudence," but rather articulated a framework for an independent exception to the 404(b) prohibition against evidence of other crimes or bad acts. *See Diriye*, 2016 WL 208414, at *5. *Hollins* has not been specifically overruled, and, because it discusses an intrinsic-evidence exception and not an immediate-episode exception, we treat the two separate exceptions to 404(b) as distinct. Moreover, *Diriye* is distinguishable from *Hollins* and from this case because, unlike those cases, *Diriye* did not concern uncharged conduct. Here, it is undisputed that the evidence of the camera in appellant's father's storage locker is not the basis for any charged crime. The camera and the equipment stored in K.S.'s unit were both stolen from the same trailer unit on August 2, 2011 and were both possessed by appellant. The two acts arose out of the same transaction or series of transactions as the charged crime of possession of stolen goods. The evidence is also relevant to show that appellant knew or should have known the property was stolen because it is unlikely that he obtained the goods on separate occasions from separate vendors.

that the evidence found in appellant's father's locker is res gestae[3] and is admissible under the immediate-episode exception. "[T]he rule excluding evidence of the commission of other offenses does not necessarily deprive the state of the right to make out its whole case against the accused on any evidence which is otherwise relevant upon the issue of the defendant's guilt of the crime with which he was charged." *State v. Wofford*, 262 Minn. 112, 118, 114 N.W.2d 267, 271 (1962). The state can prove all the relevant facts and circumstances that establish the elements of the offense, even if it may prove or tend to prove the defendant committed other crimes. *Id.* Immediate-episode evidence is admissible "where two or more offenses are linked together in point of time or circumstances so that one cannot be fully shown without proving the other, or where evidence of other crimes constitutes part of the res gestae, it is admissible." *Id.* The supreme court in *Riddley* did not abandon *Wofford* but rather clarified that, in its prior cases, it "repeatedly affirmed the admission of immediate-episode evidence when there is a close causal and temporal connection between the prior bad act and the charged crime." *Riddley*, 776 N.W.2d at 425.

In this case, there is a close causal and temporal connection between the theft of the equipment and the camera. The equipment and the camera were stolen at the same time, in the same place, and from the same victim. We conclude that this is sufficient to satisfy the immediate-episode exception. *See State v. Darveaux*, 318 N.W.2d 44, 48 (Minn. 1982)

[3] Res gestae means the events at issue or other events contemporaneous with them. *Riddley*, 776 N.W.2d at 425 n.2.

(admitting drugs found in the defendant's purse after a drug store robbery because the drugs were the same type as those stolen from the drug store).

The district court did not abuse its discretion in admitting evidence of the camera found in appellant's father's locker.

Affirmed.