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**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A16-1287**

State of Minnesota,
Respondent,

vs.

Dion Lavell Abrams,
Appellant.

**Filed August 14, 2017**
**Affirmed; motion granted**
**Toussaint, Judge***

Olmsted County District Court
File No. 55-CR-15-5365

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

Mark A. Ostrem, Olmsted County Attorney, James P. Spencer, Assistant County Attorney, Rochester, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Workman Jesness, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Jesson, Judge; and Toussaint, Judge.

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

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

**TOUSSAINT**, Judge

Appellant challenges his conviction of multiple counts of burglary, assault, and possession of a firearm by an ineligible person, arguing that (1) the evidence was insufficient to prove beyond a reasonable doubt that he aided and abetted the commission of a crime, (2) the evidence was insufficient to convict him of being a felon in possession of a firearm, (3) the district court erred in its instructions to the jury, and (4) the district court abused its discretion by imposing an upward departure. We grant the state's motion to strike appellant's supplemental briefing and affirm the conviction.[1]

## D E C I S I O N

### I.

On July 22, 2015, appellant Dion Lavell Abrams and his accomplices, V.K., A.W., and W.A., agreed to commit a robbery against A.J.W. and drove to the victim's house to carry out the crime. Appellant drove to A.J.W.'s house with V.K., who was armed with a gun. V.K. entered A.J.W.'s home with the gun and threatened A.J.W., his fiancé, and three children, and shot A.J.W. in the knee during an ensuing struggle. The state charged appellant with aiding and abetting first-degree aggravated robbery, aiding and abetting

[1] Appellant filed additional correspondence following completion of briefing, which the state moved to strike. "If pertinent and significant authorities come to a party's attention after the party's brief has been filed or after oral argument but before decision, a party may promptly file a letter with the clerk of the appellate courts setting forth the citations." Minn. R. Civ. App. P. 128.05. Because appellant did not have leave to file additional material and did not limit the filing to citations of supplemental legal authority, we grant the state's motion to strike.

first-degree assault with great bodily harm, aiding and abetting first-degree burglary of an occupied dwelling, ineligible person in possession of a firearm, and aiding and abetting second-degree assault. At trial, appellant stipulated to both the great bodily harm and substantial bodily harm elements of the first- and second-degree assault charges, and stipulated that he is ineligible to possess a firearm. The jury found appellant guilty of each of the five offenses.

Appellant argues the evidence presented at trial was insufficient to prove beyond a reasonable doubt that he intentionally aided and abetted the commission of a crime. Appellate courts' review of a sufficiency-of-the-evidence challenge is "limited to a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did." *State v. DeRosier*, 695 N.W.2d 97, 108 (Minn. 2005) (quotations omitted). When an element of the offense, such as intent, has been proved circumstantially, we apply a heightened standard of review. *State v. Al-Naseer*, 788 N.W.2d 469, 474 (Minn. 2010); *State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997) (recognizing that intent is generally proved by circumstantial evidence). We first identify the circumstances proved and defer to the jury's "acceptance of the proof of these circumstances," and then "examine independently the reasonableness of all inferences that might be drawn from the circumstances proved, including inferences consistent with a hypothesis other than guilt." *State v. Porte*, 832 N.W.2d 303, 310 (Minn. App. 2013) (quotations omitted). We defer to the jury's acceptance of the circumstances proved by the state and rejection of evidence

that conflicted with those circumstances. *State v. Silvernail*, 831 N.W.2d 594, 598-99 (Minn. 2013).

To convict appellant of intentionally aiding the commission of a crime, the state must prove that appellant "intentionally aid[ed], advise[d], hire[d], counsel[ed], or conspire[d] with or otherwise procure[d] the other to commit the crime." Minn. Stat. § 609.05, subd. 1 (2016). "Intentionally aids" means the defendant knew his accomplice was "going to commit a crime," and "intended his presence or actions to further the commission of that crime." *State v. McAllister*, 862 N.W.2d 49, 52 (Minn. 2015) (quotation omitted). Here, the circumstances proved are as follows: appellant and three accomplices agreed to commit a robbery; one of the men identified A.J.W. as a target; appellant and V.K. drove to A.J.W.'s house for the purpose of robbing him; and V.K. got out of appellant's car holding the firearm at his side and walked into A.J.W.'s house to commit a crime. With respect to the first step in the heightened-scrutiny analysis, the circumstances proved by the state demonstrate that appellant aided and abetted the commission of a crime.

The second step requires us to consider whether the circumstances proved are consistent with guilt and inconsistent with any reasonable hypothesis other than guilt. *Al-Naseer*, 788 N.W.2d at 473-74. At this step, we do not defer to the jury's "choice between reasonable inferences." *Id*. at 474 (quotations omitted). Appellant argues that he "merely drove . . . to the scene" and was "disinterest[ed]" in committing a crime. *See State v. Russell*, 503 N.W.2d 110, 114 (Minn. 1993) ("The state meets its burden . . . by showing some knowing role in the commission of the crime by a defendant who takes no steps to

thwart its completion." (quotations omitted)). The record does not support appellant's inference. Appellant actively participated in planning the robbery and drove V.K. to A.J.W.'s home to commit a robbery. The only reasonable inference, given the totality of the circumstances, is that appellant aided and abetted the commission of a crime. On the record before the district court, there is sufficient evidence to permit the jury to conclude beyond a reasonable doubt that appellant was guilty of intentionally aiding and abetting the commission of a crime.

**II.**

Appellant argues the evidence was insufficient to convict him of being a felon in possession of a firearm because, although the passenger in his vehicle was carrying a firearm, appellant did not have a "possessory interest" in it. Statutory interpretation is a question of law reviewed de novo. *State v. Leathers*, 799 N.W.2d 606, 608 (Minn. 2011).

"The objective of statutory interpretation is to ascertain and effectuate the . . . intent" of the legislature. *State v. Haywood*, 886 N.W.2d 485, 488 (Minn. 2016). "If the legislature's intent is clear from the statute's plain and unambiguous language, [we] interpret[] the statute according to its plain meaning" without engaging in construction. *Id.* The felon-in-possession statute provides that "[a]ny person who has been convicted of a crime of violence . . . and who ships, transports, possesses, or receives a firearm or ammunition, commits a felony." Minn. Stat. § 609.165, subd. 1b (2016). Neither section 609.165 nor section 609.02 (2016), the definitional section for chapter 609, defines the word "transport," so we analyze the statute "primarily on its plain language in an effort to discern and effectuate the legislature's intent." *State v. Shimota*, 875 N.W.2d 363, 366

(Minn. App. 2016), *review denied* (Minn. Apr. 27, 2016). Where a term is undefined in the statute, we can ascertain the meaning by looking at the dictionary definition. *Haywood*, 886 N.W.2d at 488. "Transport" is defined as "[t]o carry or convey (a thing) from one place to another." *Black's Law Dictionary* 1729 (10th ed. 2009).

Appellant argues that the term "transport" does not include objects that "happen to be carried by another person who is transported." We disagree. Appellant is equating the word "transport" with the word "carry." But these terms are readily distinguishable, as "'[c]arry' implies personal agency and some degree of possession, whereas 'transport' does not have such a limited connotation." *Muscarello v. United States*, 524 U.S. 125, 134, 118 S. Ct. 1911, 1917 (1998) ("'[T]ransport' is a broader category that includes 'carry' but also encompasses other activity."). We presume the legislature intends the entire statute to be effective, with no word or phrase rendered superfluous, void, or insignificant. Minn. Stat. § 645.17 (2016). If the legislature intended "transport" to be limited to situations in which an individual was personally carrying a gun and had a possessory interest over it, it would have been unnecessary to add the word "transport" to the statute. To interpret "transport" as analogous to "carry"—as appellant suggests—renders a portion of section 609.165, subdivision 1b, redundant and should be avoided. *See State v. Larivee*, 656 N.W.2d 226, 229 (Minn. 2003) ("A statute should be interpreted, whenever possible, to give effect to all of its provisions, and no word, phrase, or sentence should be deemed superfluous, void, or insignificant." (quotations omitted)). It is uncontested that appellant is ineligible to possess a firearm, and the evidence supports the jury's determination that appellant transported a firearm in his vehicle.

## III.

Appellant claims the jury instructions were erroneous. A district court is allowed "considerable latitude" in selecting language in the jury instructions and in "determining the propriety of a specific instruction." *Alholm v. Wilt*, 394 N.W.2d 488, 490 (Minn. 1986) (quotation omitted). "We review a district court's decision to give a requested jury instruction for an abuse of discretion," *State v. Koppi*, 798 N.W.2d 358, 361 (Minn. 2011), and we review the jury instructions as a whole to determine if they accurately state the law in a manner that is understandable to the jury, *State v. Kelley*, 855 N.W.2d 269, 274 (Minn. 2014).

The state charged appellant with aiding and abetting first- and second-degree assault. A person may be liable for the crimes of another "if the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime." Minn. Stat. § 609.05, subd. 1 (2016). Assault is defined as "(1) an act done with intent to cause fear in another of immediate bodily harm or death; or (2) the intentional infliction of or attempt to inflict bodily harm upon another." Minn. Stat. § 609.02, subd. 10 (2016). Prior to trial, appellant stipulated to the great bodily harm and substantial bodily harm elements of the assault charges. Before deliberations, the district court instructed the jury on the definitions of "great bodily harm" and "substantial bodily harm" and informed the jury that appellant stipulated to the harm elements.

Appellant argues the instructions were erroneous. Appellant did not raise this objection at trial and we review for plain error. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). Under the plain-error test, appellant must show an "(1) error, (2) that was

plain, and (3) that affected [appellant's] substantial rights." *State v. Milton*, 821 N.W.2d 789, 805 (Minn. 2012). If all three prongs are satisfied, we may decide whether to address the error to ensure "fairness and the integrity of the judicial proceedings." *Id*. (quotation omitted). If we determine that any one of the three prongs is not satisfied, we need not address the remaining elements. *Montanaro v. State*, 802 N.W.2d 726, 732 (Minn. 2011). "[A]n error affects a defendant's substantial rights if there is a reasonable likelihood that the error had a 'significant effect' on the verdict." *State v. Finch*, 865 N.W.2d 696, 703 (Minn. 2015). Appellant bears a "heavy burden" of proving prejudice. *State v. Wenthe*, 865 N.W.2d 293, 299 (Minn. 2015) (quotation omitted), *cert. denied*, 136 S. Ct. 595 (2015).

Appellant cannot satisfy this burden. The jury heard testimony from appellant's accomplices that appellant conspired with three other people to rob A.J.W. and drove V.K. to A.J.W.'s home to carry out the robbery. The jury found the testimony of these events credible, and we defer to the jury's credibility determinations. *See State v. Buckingham*, 772 N.W.2d 64, 71 (Minn. 2009) ("[D]etermining the credibility or reliability of a witness lies with the jury alone."). Given the strength of the state's evidence as a whole, we conclude that an error, if any, did not affect appellant's substantial rights. *See, e.g.*, *State v. Mosley*, 853 N.W.2d 789, 801 (Minn. 2014) (determining that no relief was warranted where defendant's substantial rights were not affected, even upon an assumption of plain error).

We further determine that the record does not support appellant's assertion that the district court committed a structural error requiring automatic reversal. *See State v. Moore*,

699 N.W.2d 733, 738 (Minn. 2005) (holding that reversal is required and harmless-error analysis is inapplicable when a jury instruction deprives a defendant of his right to have the jury determine that the state established every element of the charged offense). Viewing the instructions as a whole, we determine that the district court did not remove an element of the offense from the jury's consideration or direct a verdict on an element of the charged offense. In sum, we conclude that appellant failed to satisfy either the plain-error test or the structural-error test.

**IV.**

We last turn to appellant's argument that the district court abused its discretion by imposing an upward durational departure after finding aggravating factors. The district court is afforded "great discretion in the imposition of sentences," and we review a decision to depart from the sentencing guidelines for an abuse of discretion. *State v. Spain*, 590 N.W.2d 85, 88 (Minn. 1999). A district court abuses its discretion when its reasons for departure are improper or inadequate, *State v. Edwards*, 744 N.W.2d 596, 601 (Minn. 2009), or where the sentence "unfairly exaggerates the criminality of the defendant's conduct," *State v. McLaughlin*, 725 N.W.2d 703, 715 (Minn. 2007) (quotations omitted).

A sentence within the sentencing guidelines is presumed appropriate and the district court may depart from the guidelines "only when substantial and compelling circumstances are present." *Taylor v. State*, 670 N.W.2d 584, 587 (Minn. 2003). "Substantial and compelling circumstances are present when the defendant's conduct in the offense of conviction was significantly more or less serious than that typically involved in the commission of the crime in question." *State v. Abrahamson*, 758 N.W.2d 332, 337-38

(Minn. App. 2008) (quotation omitted), *review denied* (Minn. Mar. 31, 2009). Where the district court states its reasons for departure on the record, we "determine[] if the reasons justify the departure; if they do, the departure will be affirmed." *Id*. at 338.

The court determined that two aggravating factors supported an upward durational departure beyond a reasonable doubt: (1) the crime was committed in the presence of the victim's three children and (2) the crime was committed as part of a group of three or more, each of whom actively participated in the crime. The district court reasoned that appellant and his accomplices "knew children would be present and planned to hold them a[t] gunpoint to prevent them from alerting law enforcement and to make their father more cooperative with the robbery," that the children saw one of the accomplices "place a gun to their father's head," and that the crime traumatized the children, who are now in counseling. The reasons articulated by the district court do not appear "improper or inadequate," *Edwards*, 744 N.W.2d at 601, and sufficient evidence in the record supports these findings, *Taylor*, 670 N.W.2d at 588.

Appellant argues the departure is unjustified because it is disproportional to the sentences received by his accomplices. We are not persuaded. The district court acknowledged that appellant was "not the mastermind or the primary actor," but found that appellant was the "common link" among the three accomplices. Moreover, "[a] defendant is not entitled to a reduction in his sentence merely because a co-defendant or accomplice . . . received a lesser sentence." *State v. Starnes*, 396 N.W.2d 676, 681 (Minn. App. 1986). While a sentence may be modified "in the interests of fairness and uniformity," it is also true that "equality and fairness in sentencing involve more than comparing the sentence the

appealing defendant received with the sentence his accomplices received." *State v. Vazquez*, 330 N.W.2d 110, 112 (Minn. 1983). The district court did not abuse its discretion by imposing an upward durational departure.

**V.**

Appellant raises a number of pro se arguments, asserting that his conviction should be overturned because (1) the district court erroneously permitted the state to introduce evidence that appellant met V.K. in prison; (2) the district court erroneously admitted statements from his accomplices; (3) the district court considered whether to allow the state to impeach appellant with his prior convictions in the event he testified; (4) the jury instructions were erroneous; and (5) he was coerced into waiving his right to a hearing on the presence of aggravating factors. Because appellant fails to cite to relevant facts or legal authority supporting these arguments, we consider them forfeited. *See State v. Manley*, 664 N.W.2d 275, 286 (Minn. 2003) (deeming arguments forfeited on appeal that are unsupported by facts in the record and contain no citation to relevant legal authority).

**Affirmed; motion granted.**