STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1730

State of Minnesota,
Respondent,

vs.

Chad Alan Norberg,
Appellant.

Filed August 14, 2017
Affirmed
Smith, Tracy M., Judge

Polk County District Court
File No. 60-CR-16-520

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

Greg Widseth, Polk County Attorney, Scott A. Buhler, Assistant County Attorney, Crookston, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Peterson, Judge; and Connolly, Judge.

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

SMITH, TRACY M., Judge

Appellant Chad Norberg broke into his girlfriend's home, threatening to kill whoever was in the house with her. Norberg challenges his conviction of first-degree

burglary, arguing that the evidence is insufficient to show that, when he entered the dwelling, he intended to commit a crime because any intent to kill was conditioned on another person being in the house. We affirm.

FACTS

Norberg and A.L. were in a romantic relationship and began living together in November 2015. In March 2016, Norberg and A.L. took a break from their relationship. During this break, Norberg stayed at a friend's house.

A.L. awoke on March 27 to the sound of Norberg banging on her window. Norberg said that he would kill whoever was in the house with A.L. A.L. was home alone. Norberg broke down the door and then searched A.L.'s house for another person. A.L. called 911 and reported, "My ex is over here[.] [H]e just broke into my door." She explained to the 911 dispatcher, "They're banging on my windows threatening to kill somebody who is in . . . if there was somebody else here. And my door was double locked and he somehow kicked it in." Several police officers responded to A.L.'s call. A.L. told one officer that she did not want Norberg in the house. The officers noticed that A.L.'s door was broken. Norberg was charged with first-degree burglary.[1]

A court trial took place. A.L. testified that had she stopped taking mental-health medications prior to the March 27 incident and was not thinking clearly at the time of the incident. She recanted part of her story, insisting that she had let Norberg into her home and that he had not broken the door. The district court did not find A.L.'s recantation

[1] Norberg was also charged with and convicted of third-degree test refusal. Norberg does not challenge his test-refusal conviction on appeal.

credible. The district court also rejected Norberg's argument that he entered A.L.'s house intending to find out whether another person was in the house with A.L. and that only if someone else was in the house would he have had intent to kill. The district court found Norberg guilty of first-degree burglary.

Norberg appeals.

D E C I S I O N

The same standard of review applies in sufficiency-of-the-evidence claims arising from court trials and jury trials. *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011). We review the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to support the conviction. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We generally will not consider matters not argued to or considered by the district court. *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996).

I. Sufficient evidence supports a finding that Norberg had intent to commit a crime.

The burglary statute provides that "[w]hoever enters a building without consent and with intent to commit a crime" commits first-degree burglary. Minn. Stat. § 609.582, subd. 1 (2014). Norberg argues that the evidence is insufficient to support a finding that he had intent to commit a crime because his intent was conditioned on someone being in the house with A.L. The state argues that the statutory definition of "intent" includes conditional intent and that Norberg's argument is one of factual impossibility.

Whether a defendant's conditional intent satisfies the intent element of burglary is a question of statutory interpretation. We review questions of statutory interpretation

arising out of sufficiency-of-the-evidence claims de novo. *State v. Vasko*, 889 N.W.2d 551, 556 (Minn. 2017). The goal of statutory interpretation is to ascertain and effectuate the intent of the legislature. *Marks v. Comm'r of Revenue*, 875 N.W.2d 321, 324 (Minn. 2016); *see also* Minn. Stat. § 645.16 (2016). We read and interpret the statute as a whole. *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). When the plain language of the statute is unambiguous, "the letter of the law shall not be disregarded under the pretext of pursuing the spirit." *State v. Peck*, 773 N.W.2d 768, 772 (Minn. 2009). If the statute is ambiguous, we apply "other canons of construction to discern the legislature's intent." *Brua v. Minn. Joint Underwriting Ass'n*, 778 N.W.2d 294, 300 (Minn. 2010).

Conditional intent is the principle that the defendant does not intend to commit an act unless a condition is satisfied. *See* 1 Wayne R. LaFave, *Substantive Criminal Law* § 5.2(d), at 350-51 (2d ed. 2003). In *Holloway v. United States*, the U.S. Supreme Court held that conditional intent satisfies the intent element of a statute that criminalizes carjacking with the intent to cause death or serious bodily harm. 526 U.S. 1, 3, 119 S. Ct. 966, 968 (1999). The defendant in *Holloway* stole several cars and threatened the drivers with a gun, demanding that they give the defendant their keys or he would shoot. *Id.* at 4, 119 S. Ct. at 968. The defendant argued that he did not act with the intent to cause death or serious bodily harm because he intended to steal the cars without harming the victims and would have shot only if the drivers fought back. *Id.* at 4-5, 119 S. Ct. at 968. The U.S. Supreme Court stated that the relevant moment for purposes of intent is "the precise moment [the defendant] demanded or took control over the car 'by force and violence or by intimidation.'" *Id.* at 8, 119 S. Ct. at 970 (quotation omitted). "If the defendant has the

proscribed state of mind at that moment, the statute's scienter element is satisfied." *Id.* Examining state court cases and the Model Penal Code, the Supreme Court decided that "a defendant may not negate a proscribed intent by requiring the victim to comply with a condition the defendant has no right to impose." *Id.* at 11, 119 S. Ct. at 971.

Our reading of Minnesota's burglary statute is consistent with the U.S. Supreme Court's decision in *Holloway*. The burglary statute provides that "[w]hoever enters a building without consent and with intent to commit a crime" commits first-degree burglary. Minn. Stat. § 609.582, subd. 1. Minnesota law defines "with intent to" to mean "that the actor either has a purpose to do the thing or cause the result specified or believes that the act, if successful, will cause that result." Minn. Stat. § 609.02, subd. 9(4) (2014). For purposes of burglary, the defendant must possess the requisite intent at the time of entry. *See State v. Davis*, 864 N.W.2d 171, 178 (Minn. 2015). A defendant who enters a building intending to commit a crime if a condition is met still enters a building with the purpose of committing a crime. *See* Minn. Stat. § 609.582, subd. 1. The plain language of the burglary statute compels the conclusion that the intent element is satisfied even when the defendant has only conditional intent to commit a crime.[2]

Moreover, we are persuaded that Norberg's conditional-intent argument is actually an argument that it was factually impossible for him to commit the intended crime because no one else was in the house with A.L. Factual impossibility does not negate criminal

[2] Norberg argues that the rule of lenity requires this court to construe the statute in his favor. The rule of lenity applies in cases of statutory ambiguity. *State v. Rick*, 835 N.W.2d 478, 485 (Minn. 2013). Because the plain language of the burglary statute is clear, we do not apply the rule of lenity here.

intent and thus is not a defense. *See State v. Bird*, 285 N.W.2d 481, 482 (Minn. 1979). In *State v. Golden*, the Minnesota Supreme Court held that the defendant had intent to commit larceny for purposes of burglary even if there were no goods to be stolen from the building. 86 Minn. 206, 209, 90 N.W. 398, 400 (1902). The court stated, "If the defendant supposed that there were goods in the warehouse, and broke and entered it with the intent to steal them, the fact that he was mistaken in his belief does not lessen the criminal intent with which he did the act." *Id.* Similarly, if Norberg believed that there was someone in the house with A.L., and broke into the house with intent to kill that other person, the fact that he was mistaken in his belief does not lessen his criminal intent.

Because Norberg had intent to kill or harm someone when he entered A.L.'s house, we conclude that sufficient evidence supports Norberg's conviction.

II. Norberg's pro se arguments are meritless.

Norberg raises several additional arguments in his pro se supplemental brief.

First, Norberg argues that the district court erred in summarily denying his petition for postconviction relief. There is no evidence that Norberg filed a postconviction petition, and therefore we cannot consider whether the district court erred in denying such a petition. *Roby*, 547 N.W.2d at 357.

Second, Norberg argues that there is insufficient evidence to support his conviction because A.L. recanted her statement and, therefore her original statements to the police were not credible.[3] The district court found that A.L.'s testimony recanting her story was

[3] The state interprets Norberg's argument as a request for a pretrial dismissal of the first-degree-burglary charge. If this is indeed Norberg's argument, we do not consider it

not credible because she told the 911 operator that her "ex" had broken down the door, she told the police that Norberg had broken down the door, and the police observed that the door was in fact broken. Moreover, A.L. testified that Norberg said he was going to kill whoever was in the house with A.L. We defer to the district court's credibility findings. *State v. Kramer*, 668 N.W.2d 32, 38 (Minn. App. 2003), *review denied* (Minn. Nov. 18, 2003).

Finally, Norberg argues that the prosecution failed to disclose A.L.'s criminal history and mental-health problems. "[T]he suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Brady v. Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194, 1196-97 (1963). A *Brady* violation requires the evidence to have been willfully or inadvertently suppressed by the state. *Pederson v. State*, 692 N.W.2d 452, 459 (Minn. 2005). The Minnesota Rules of Criminal Procedure require the prosecution to disclose the criminal convictions of witnesses who may be called at trial. Minn. R. Crim. P. 9.01, subd. 1(1)(a).

The state did not suppress either A.L.'s past convictions or her mental-health problems, and Norberg was aware of both at the time of trial. With respect to A.L.'s criminal record, the state disclosed her past convictions to Norberg pursuant to rule 9.01. A.L.'s criminal record was not suppressed by the state. *Pederson*, 692 N.W.2d at 459. With respect to A.L.'s mental-health problems, A.L. told the public defender at a pretrial

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because Norberg did not move to dismiss the first-degree-burglary charge. *Roby*, 547 N.W.2d at 357.

interview and testified at trial that she had been off her mental-health medications at the time of the incident. A.L.'s mental-health problems were not suppressed by the state. *Id.*

Because we conclude that sufficient evidence supported a finding that Norberg had intent to commit a crime when he entered A.L.'s house, and because Norberg's pro se arguments are meritless, we affirm.

Affirmed.