STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1897

State of Minnesota,
Respondent,

vs.

George Anthony Woods,
Appellant.

Filed November 19, 2018
Affirmed in part, reversed in part, and remanded
Schellhas, Judge

Hennepin County District Court
File No. 27-CR-17-12700

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

Michael O. Freeman, Hennepin County Attorney, Jonathan P. Schmidt, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Larkin, Presiding Judge; Schellhas, Judge; and Kalitowski, 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

SCHELLHAS, Judge

Appellant challenges his conviction of attempted first-degree criminal sexual conduct, arguing that (1) the district court plainly erred in its jury instructions on the elements of the offense; (2) the evidence was insufficient to prove beyond a reasonable doubt that he specifically intended to cause the victim's injuries; and (3) the imposition of a ten-year conditional-release period for attempted first-degree criminal sexual conduct is unauthorized by law. We affirm in part, reverse in part, and remand to the district court.

FACTS

Based on trial testimony, I.G. lived in an apartment in Minneapolis, and K.H. and his girlfriend, L.M., lived down the hall. I.G. was friendly with K.H. and L.M., and the neighbors would occasionally borrow food and cigarettes from each other. In mid-May 2017, appellant George Woods and his girlfriend temporarily moved in with K.H., Woods's uncle. I.G. saw Woods "[m]aybe three times" after he moved in with K.H.

About three days after Woods moved in with K.H., Woods and K.H. knocked on I.G.'s apartment door and asked for some milk. I.G. told them that they could check the milk but she thought it was "expired." K.H. left when he discovered the milk "was no good" but Woods remained, pushed the apartment door shut, started "slapping" I.G., and told her that she "would give him some ass." I.G. told Woods: "You don't want to do this. . . . I got a heart condition. I'm a grandmother. I'm a parent," but Woods "just respond[ed] with a slap." I.G. then went into her bedroom "to think what to do," and Woods followed her, slapped her again, unzipped his pants, took out his penis, and told her that she "was

going to suck his d-ck." I.G. told Woods to "go and wash himself" and she would then do it. When Woods went into the bathroom, I.G. ran out of her apartment. Once in the apartment-building hallway, I.G. knocked on doors and screamed until the neighbors came out. Woods followed her into the hallway and "tried to drag" her back into her apartment. I.G. kicked and yelled, "somebody [is] trying to rape me," until Woods gave up and went to his uncle's apartment.

I.G. called the police and Minneapolis Police Officer Felix Alvarado arrived at the scene. Officer Alvarado testified that I.G. was "hysterical" and claimed that Woods had attempted to sexually assault her. The district court admitted several photographs, depicting bruises and a cut that I.G. sustained during the alleged attempted sexual assault, and video surveillance from the hallway, depicting Woods and I.G. in the hallway.

Woods testified in his defense and claimed that when he first met I.G., she would "make . . . little comments" like, "oh, you cute." He also claimed that on the evening in question, after he and his uncle went out for "a couple of beers," they stopped by I.G.'s apartment to get milk. According to Woods, his uncle then left with some milk while he stayed with I.G. to share a cigarette. Woods claimed that I.G. grabbed his penis and asked him for sex, and that he told her no and "hit her . . . to get her off" him.

Respondent State of Minnesota charged appellant George Woods with one count of attempted first-degree criminal sexual conduct and one count of attempted third-degree criminal sexual conduct. The jury found Woods guilty of the charged offenses. The district court then sentenced Woods to 100 months in prison and imposed a ten-year conditional-release term.

This appeal follows.

D E C I S I O N

Jury instructions

Woods argues that the district court erred in instructing the jury "for the offense of attempt" by failing "to require the jurors to find [that Woods] intended to commit each element of the offense." Woods did not object to the jury instructions at trial; in fact, his trial counsel crafted the instructions with the prosecutor, and they jointly submitted the instructions to the court. Under the invited-error doctrine, appellate courts "do not typically review errors that were invited by the defendant or that the defendant could have prevented in the district court." *State v. Myhre*, 875 N.W.2d 799, 804 (Minn. 2016). But the invited-error doctrine does not apply if an error meets the plain-error test. *Id.* The plain-error test allows us to consider a forfeited error under Minn. R. Crim. P. 31.02 when the defendant establishes (1) an error, (2) that is plain, and (3) that affected the defendant's substantial rights. *State v. Webster*, 894 N.W.2d 782, 786 (Minn. 2017). If we conclude that "any of the requirements of the plain-error analysis are not satisfied, we need not consider the others." *Id.* If the defendant establishes all three requirements, we "may correct the error only if it seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Id.*

A district court has broad discretion to choose the language for jury instructions. *State v. Milton*, 821 N.W.2d 789, 805 (Minn. 2012). We review jury instructions as a whole to determine whether they accurately state the law in a manner that the jury could understand. *State v. Kelley*, 855 N.W.2d 269, 274 (Minn. 2014). The jury instructions must

describe the crime charged and explain the elements of the crime. *Milton*, 821 N.W.2d at 805. "To determine if a jury instruction correctly states the law, [appellate courts] analyze the criminal statute and the case law under it." *State v. Taylor*, 869 N.W.2d 1, 15 (Minn. 2015).

Woods was convicted of attempted first-degree criminal sexual conduct under Minn. Stat. § 609.342, subd. 1(e)(i) (2016), and Minn. Stat. § 609.17 (2016). A person is guilty of first-degree criminal sexual conduct when he "engages in sexual penetration with another person," "the actor causes personal injury to the complainant," and "uses force or coercion to accomplish sexual penetration." Minn. Stat. § 609.342, subd. 1(e)(i). A person is guilty of attempted first-degree criminal sexual conduct when he, "with intent to commit [the] crime, does an act which is a substantial step toward, and more than preparation for, the commission of the crime." Minn. Stat. § 609.17, subd. 1.

Woods argues that the jury instructions were plainly erroneous because (1) "[i]nstead of following the pattern [jury] instruction," the district court's instructions "wrongly treated attempt as a sentence modifier, not as a discrete offense"; and (2) "the court's instruction only applied the intent requirement to the first element—sexual penetration—instead of each element."

Attempt as a sentence modifier

In *State v. Noggle*, the supreme court determined that the "attempt statute and our case law treat an attempt as a crime rather than solely as a procedural sentence modifier." 881 N.W.2d 545, 549 (Minn. 2016). The supreme court therefore held that this court erred by concluding that "attempt" is a sentence modifier. *Id*. Citing *Noggle*, Woods argues that

the district court's jury instruction "d[id] not accurately state the law because it instructed the jury to consider attempt not as its own separate offense but merely as a modifier of the completed act of first-degree criminal sexual conduct." Jury instructions must "fairly and adequately explain the law of the case" by "defin[ing] the crime charged and explain[ing] the elements." *Milton*, 821 N.W.2d at 805 (quotation omitted). "Although courts may favor the use of CRIMJIGs, their use is not mandatory." *State v. Smith*, 674 N.W.2d 398, 401 (Minn. 2004); *see State v. Flores*, 418 N.W.2d 150, 156 (Minn. 1988) (stating that although district court may preferably use CRIMJIG, jury instruction fairly and adequately explained law and was not error).

Here, the jury instructions accurately recited the law by defining attempt as "an intent to commit the crime and a substantial step toward the commission of the crime," which is more than "mere preparation" for the commission of the crime. *See* Minn. Stat. § 609.17, subd. 1 (defining "attempt"). And after instructing the jury regarding attempt, the district court instructed the jury on the elements of first-degree criminal sexual conduct. Although the instructions repeated "attempt" and "substantial step" within the criminal-sexual-conduct instruction, they treated attempt as a separate crime, not as a sentence modifier. In light of the considerable latitude afforded district courts in choosing the language for jury instructions, we conclude that the instructions with respect to the crime of attempt were not erroneous.

Moreover, even if the instructions were erroneous, the error was not plain. "An error is plain if it is 'clear' or 'obvious,' which is typically established 'if the error contravenes case law, a rule, or a standard of conduct.'" *Webster*, 894 N.W.2d at 786 (citation omitted).

Woods points to no case holding that jury instructions were erroneous because they treated attempt as a sentence modifier. Woods relies upon *Noggle* to support his claim that the jury instructions treated attempt as a sentence modifier. But *Noggle* is not a jury-instructions case. In *Noggle*, the supreme court held that because attempt is a separate crime and not a sentence modifier, the statute that made a ten-year conditional release mandatory for designated sex offenses did not apply to the crime of attempt to commit an enumerated sex offense. 881 N.W.2d at 449–51. We therefore conclude that Woods has not met his burden to demonstrate that the district court's jury instructions regarding attempt were plainly erroneous.

Element of intent

Woods also contends that the jury instructions were erroneous because the instructions only applied the element of intent to the element of sexual penetration. But again, Woods is unable to demonstrate that any error was plain. The jury instructions were largely consistent with the CRIMJIGs, and the standard CRIMJIG states that the "elements of attempt to commit [first-degree criminal sexual conduct] are: First the defendant *intended* to commit the crime of [first-degree criminal sexual conduct]." 10 *Minnesota Practice*, CRIMJIG 5.02 (2015) (emphasis added). The CRIMJIG then states that "[t]he statutes of Minnesota define that crime as follows: [listing the elements of first-degree criminal sexual conduct]." *Id*. And the standard CRIMJIG for first-degree criminal sexual conduct does not include the word "intend" in each element of the offense. *See* 10 *Minnesota Practice*, CRIMJIG 12.02 (2015) (defining criminal sexual conduct in the first degree—fear of great bodily harm, force, etc.); *see also* 10 *Minnesota Practice*, CRIMJIG

12.03 (2015) (listing the elements of criminal sexual conduct in the first degree—fear of great bodily harm, force, etc.). The instructions for "attempt" inform the jury that the defendant must have intended to commit the crime charged, and Woods points to no rule or caselaw supporting the proposition that the jury instructions must include an intent definition for each element of first-degree criminal sexual conduct. Although the better practice might be to include an intent instruction with each element of the underlying offense, we cannot conclude that the omission of such an instruction was plain error.

Substantial rights

Finally, Woods cannot establish that any error affected his substantial rights. An error affects an appellant's substantial rights "if the error was prejudicial and affected the outcome of the case." *State v. Griller*, 583 N.W.2d 736, 741 (Minn. 1998) (footnote omitted). An appellant claiming that an erroneous instruction affected substantial rights bears a "heavy burden of proving that there is a reasonable likelihood that giving the instruction in question had a significant effect on the jury verdict." *Kelley*, 855 N.W.2d at 283 (quotation omitted). "An erroneous jury instruction will not ordinarily have a significant effect on the jury's verdict if there is considerable evidence of the defendant's guilt." *Id.* at 283–84.

Here, the evidence against Woods was very strong. I.G. consistently claimed that Woods and his uncle stopped by for milk, and that after Woods's uncle left, Woods started slapping her, and told her that she "would give him some ass." I.G. consistently claimed that Woods slapped her again in her bedroom, unzipped his pants, took out his penis, and told her that she "was going to suck his d-ck." And I.G. consistently claimed that after she

told Woods to "go and wash himself" and that she would do it, she fled the apartment where a scuffle ensued with Woods trying "to drag" her back into her apartment.

I.G.'s testimony was corroborated by surveillance video that showed Woods and his uncle stopping by I.G.'s apartment, Woods's uncle's departure shortly thereafter, and I.G.'s exit from the apartment a few minutes later with Woods following her. The video also shows I.G. and Woods involved in a brief scuffle in front of I.G.'s apartment, before Woods finally walks away as people start to open their apartment doors in response to the commotion. Although Woods claimed that I.G. propositioned him by "grabb[ing] his stuff," and later grabbed his leg in the hallway, the surveillance video contradicts Woods's testimony. The video depicts I.G. exiting her apartment followed closely by Woods, who appears to be attempting to pull or drag I.G. back into the apartment. Not only does the video lack footage of I.G. "grabbing [Woods's] leg," but it appears to show Woods briefly place I.G. in a headlock. Furthermore, photographs depicting bruises and a cut on I.G.'s body were admitted into evidence, which also support I.G.'s version of the events. Accordingly, in light of the considerable evidence supporting Woods's guilt, no reasonable likelihood exists that the alleged erroneous jury instruction significantly affected the jury verdict.

Sufficiency of evidence

This court's review of a sufficiency-of-the-evidence challenge is limited to "a painstaking review of the record to determine whether the evidence and reasonable inferences drawn therefrom, viewed in a light most favorable to the verdict, were sufficient to allow the jury to reach its verdict." *Lapenotiere v. State*, 916 N.W.2d 351, 360–61 (Minn.

2018) (quotation omitted). We assume that "the jury believed the state's witnesses and disbelieved any contradictory evidence." *Webster*, 894 N.W.2d at 785 (quotation omitted). "This is especially true where resolution of the case depends on conflicting testimony, because weighing the credibility of witnesses is the exclusive function of the jury." *State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980).

As addressed above, to obtain a conviction of attempted first-degree criminal sexual conduct, the state had the burden of proving beyond a reasonable doubt that Woods took a substantial step toward (1) using force or coercion to accomplish sexual penetration with I.G.; and (2) causing personal injury to I.G. *See State v. Dale*, 535 N.W.2d 619, 623 (Minn. 1995) (reviewing elements of attempted first-degree criminal sexual conduct). Woods concedes that the evidence is sufficient to establish that he "intended to sexually penetrate I.G." But Woods argues that the evidence is insufficient to prove that he "specifically intended to inflict personal injury to I.G."

Because intent involves a state of mind, it is generally established circumstantially. *State v. Davis*, 656 N.W.2d 900, 905 (Minn. App. 2003), *review denied* (Minn. May 20, 2003). When reviewing a conviction based on circumstantial evidence, this court uses a two-step analysis. *State v. Galvan*, 912 N.W.2d 663, 668 (Minn. 2018). We first identify "the circumstances proved, giving deference to the jury's acceptance of the proof of these circumstances and rejection of conflicting evidence." *Id.* (quotation omitted). We then independently "examine the reasonableness of all inferences to be drawn from [those] circumstances." *Id*. at 669. We will "not overturn convictions based on circumstantial evidence on conjecture alone, and our review consists of determining whether the

circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt." *Id*. (quotation omitted).

Here, the circumstances proved are: (1) Woods and his uncle went to I.G.'s apartment to request milk; (2) Woods's uncle left before Woods, and after he left, Woods closed the apartment door; (3) Woods slapped I.G. several times and told her she was going to have sex with him; (4) Woods followed I.G. to her bedroom where he slapped her again; (5) Woods exposed his penis and told I.G. that she was going to give him oral sex; (6) I.G. fled the apartment yelling that someone was trying to rape her; (7) Woods followed I.G. from the apartment and a scuffle ensued in the hallway; and (8) I.G. suffered bruises on her face, elbow, foot, and thigh.

Woods argues that the "circumstances do not show that [he] specifically intended to inflict personal injury to I.G." because the "circumstances show that the injuries occurred inadvertently as part of the struggle." We disagree. That a "'jury may infer that a person intends the natural and probable consequences of his actions"' is well settled. *State v. Harlin*, 771 N.W.2d 46, 52 (Minn. App. 2009) (quoting *State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997)), *review denied* (Minn. Nov. 17, 2009). In this case, the jury could have easily inferred that Woods intended to injure I.G. when he slapped her multiple times and struggled with her in the hallway because the natural and probable consequences of these actions is injury, and these circumstances proved were consistent with guilt and inconsistent with any rational hypothesis except that of guilt. We conclude that the evidence is sufficient to sustain Woods's conviction of attempted first-degree criminal sexual conduct.

Imposition of ten-year conditional-release term

Woods argues that the district court erred by imposing ten years of conditional release for an attempted criminal-sexual-conduct offense. We agree, and the state concedes the issue. Minnesota law provides that persons convicted of certain enumerated offenses shall be placed on conditional release for ten years. Minn. Stat. § 609.3455, subd. 6 (2016). But the statute defining "attempt," Minn. Stat. § 609.17, subd. 1, is not one of these enumerated offenses. In *Noggle*, the supreme court held that section 609.3455, subdivision 6, does not authorize the imposition of a ten-year conditional-release term for an attempted criminal-sexual-conduct offense. 881 N.W.2d at 550. We therefore reverse Woods's ten-year conditional-release term and remand for correction of his sentence.

Affirmed in part, reversed in part, and remanded.