STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0669

State of Minnesota,
Respondent,

vs.

James Allen Buck,
Appellant.

Filed March 30, 2020
Affirmed
Reyes, Judge

Kandiyohi County District Court
File No. 34-CR-18-423

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Shane D. Baker, Kandiyohi County Attorney, Aaron P. Welch, Assistant County Attorney, Willmar, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Chang Y. Lau, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Bratvold, Judge; and Bryan, Judge.

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

REYES, Judge

On appeal from his jury conviction of misdemeanor theft, appellant argues that respondent State of Minnesota presented insufficient evidence to satisfy the intent element

of the crime and that the district court committed plain error that affected his substantial rights by failing to respond adequately to the jury's question. We affirm.

FACTS

This dispute involves three neighbors in the community of Sunburg. Two neighbors, the Bloedels and Mr. Caskey, cut down three trees near their shared property line. Appellant James Allen Buck lives within walking distance of Caskey and the Bloedels. On May 10, 2018, the state charged appellant with misdemeanor theft under Minn. Stat. § 609.52, subd. 2(a)(1) (2016), for taking a large trailer's worth of wood from Caskey's property. The district court held a jury trial on February 19, 2019.

While deliberating, the jury submitted a written request to the district court about the intent element of the offense.[1] The question stated, "If a person doesn't 'know' he has no right to take wood at the time he is taking it but finds out later he has no right, does that mean he meets the element -- this element?" The district court responded by saying:

> Ladies and gentlemen of the jury, I can't answer that question for you. So I've brought you up here to tell you that I can't. I can tell you further that that perhaps is the heart of the question of what you are going to have to answer for us in your job as juror and your sole job as a factfinder.
>
> I will just reiterate the third element which says, "to know requires only that the actor believes that a specified fact exists." So, within that definition, you will have to make the determination as to what knowledge the defendant had at the time.

[1] Whether appellant "knew" is taken from the jury instruction explaining the intent element of the crime. We refer to this as the intent element because section 609.52, subd. 2(a)(1), uses the word "intent."

> So, with that, with all the curious looks on your faces, I am going to send you back to the jury room and deliberate further.

Appellant did not object to the district court's response at trial.

The jury found appellant guilty of misdemeanor theft. This appeal follows.

D E C I S I O N

I. The state presented sufficient evidence to prove that appellant intentionally took his neighbor's firewood.

Appellant argues that the state presented insufficient evidence to prove the intent element of the crime of theft. We disagree.

A person commits theft if he "intentionally and without claim of right takes, uses, transfers, conceals or retains possession of movable property of another without the other's consent and with intent to deprive the owner permanently of possession of the property." Minn. Stat. § 609.52, subd. 2(a)(1).

Parties generally show intent through circumstantial evidence. *State v. Essex*, 838 N.W.2d 805, 809 (Minn. App. 2013), *review denied* (Minn. Jan. 21, 2014). Appellate courts apply a heightened standard of review when a party intends to prove a disputed element of an offense in part with circumstantial evidence. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017). To apply the circumstantial-evidence standard, an appellate court follows a two-step analysis. *State v. Moore*, 846 N.W.2d 83, 88 (Minn. 2014). We first identify the circumstances proved, and "construe conflicting evidence in the light most favorable to the verdict and assume that the jury believed the [s]tate's witnesses and disbelieved the defense witnesses." *Id.* (quotation omitted). Second, we independently

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

Here, the circumstances proved are the following. Appellant asked Mrs. Bloedel about the trees cut down on her property. Mrs. Bloedel told appellant that he could not take her wood, but that she did not know about Caskey's wood. Appellant never spoke to Caskey about his wood or asked for his permission to take it. Caskey did not give anyone permission to take any wood from his property. Midday at a later date, appellant and his son loaded most of the wood from Caskey's property into a trailer. Tread marks in the snow showed that appellant drove directly back to his house. There, most of the wood remained in the trailer in appellant's yard. When approached by law enforcement, appellant first "kind of denied having anything to do with the wood," but he eventually admitted that the wood came from Caskey or the Bloedels. Caskey offered to consider the matter settled if appellant returned to him the wood in the trailer and gave him $100 to account for the wood missing from the trailer. Appellant refused to pay $100 and later burned the wood himself. We conclude that these circumstances proved are consistent with appellant's guilt.

Appellant argues for additional circumstances proved. He argues that his uncontradicted testimony shows that his conversation with Mr. Bloedel gave him the impression that Mr. Bloedel was giving the wood away. But we "assume that the jury believed the [s]tate's witnesses and *disbelieved the defense witnesses*." *Id.* (emphasis added). Moreover, appellant also testified that he first talked to Mr. Bloedel about the wood and then he talked to Mrs. Bloedel. And appellant admitted to taking Caskey's wood,

even though no evidence established that he had permission to do so. Even if we were to consider this testimony, Mrs. Bloedel later told appellant that he could not have their wood. So the circumstances proved, even considering appellant's uncontested reference to his conversation with Mr. Bloedel, do not support a rational inference inconsistent with guilt.

Next, appellant argues that his belief that he had a claim to the wood is apparent because he did not hide his actions. He took the wood in broad daylight, tracks in the snow led directly to his house, and the deputy saw the trailer of wood in appellant's yard from the road. But appellant took the wood midday on a work day for the neighbors and had unloaded some of the wood by wheelbarrow by the time Caskey and the deputies arrived. We conclude that this evidence, when viewed with the other circumstances proved, does not lend itself to a rational inference inconsistent with guilt.

II. The district court did not commit plain error by rereading the jury instructions in response to the jury's question about the intent element of theft.

Appellant next argues that the district court plainly erred because it should have answered the jury's question by instructing them that the state needed to prove appellant "knew he did not have a claim of right to Caskey's wood at the time he took it." We are not persuaded.

Appellant did not object to the district court's answer at trial. An appellant generally forfeits any relief by not objecting at trial. *State v. Webster*, 894 N.W.2d 782, 786 (Minn. 2017). However, we may review unobjected-to claims under the plain-error test. *Id.* Appellant must establish "(1) an error, (2) that was plain, and (3) that affected [appellant's] substantial rights." *Id.* If the appellant establishes all three elements, "we may correct the

error only if it seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Id.*

"An error is plain if it is clear or obvious; usually this means an error that violates or contradicts case law, a rule, or an applicable standard of conduct." *State v. Vang*, 847 N.W.2d 248, 261 (Minn. 2014). When the jury asks a question about the law, the district court may "give additional instructions" or "reread portions of the original instructions." Minn. R. Crim. P. 26.03, subd. 20(3)(a)-(b).

Here, the district court answered the jury's question by rereading the intent element of the offense in the jury instruction, consistent with rule 26.03. Moreover, the district court told the jury, "So, within that definition, you will have to make the determination as to what knowledge the defendant had *at the time*." (emphasis added.) "At the time" is the exact language appellant argues for on appeal.

Finally, appellant relies on *State v. Shannon*, 514 N.W.2d 790, 791 (Minn. 1994), to support his argument. But *Shannon* did not address the rule 26.03 issue of how the district court should answer a jury's question. We discern no error by the district court.

Because appellant has not shown how the district court plainly erred in its response to the jury's question, we need not analyze the other plain-error elements. *See State v. Mouelle*, 922 N.W.2d 706, 718 (Minn. 2019).

Affirmed.