STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0825

State of Minnesota,
Respondent,

vs.

Ricardo nmn Medina,
Appellant.

Filed April 27, 2020
Affirmed
Rodenberg, Judge

Morrison County District Court
File No. 49-CR-16-1517

Keith Ellison, Attorney General, Karen B. McGillic, Assistant Attorney General, St. Paul, Minnesota; and

Brian J. Middendorf, Morrison County Attorney, Little Falls, Minnesota (for respondent)

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

Considered and decided by Rodenberg, Presiding Judge; Smith, Tracy M., Judge; and Slieter, Judge.

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

RODENBERG, Judge

Appellant Ricardo Medina appeals from his conviction for aiding and abetting first-degree aggravated robbery. He argues that the state's circumstantial evidence is

insufficient to prove beyond a reasonable doubt that appellant had the requisite mental state to have aided and abetted an aggravated robbery. He also argues that the district court plainly erred when it instructed the jury on the knowledge element of first-degree aggravated robbery using the language provided in the model jury instructions. We affirm.

FACTS

On October 18, 2016, N.R., a confidential informant, was working with police with the purpose of completing a controlled buy of methamphetamine from S.L. An officer with the Central Minnesota Violent Offender Task Force met with N.R. before the planned controlled buy and searched N.R.'s person and vehicle. The officer thereafter supplied N.R. with $600 to purchase one-half of one ounce of methamphetamine and placed a small "listening device" in N.R.'s pocket so that police could hear and audio-record the transaction.

Officers set up surveillance around S.L.'s home and noticed a green motorcycle parked outside a detached garage on the property. When N.R. learned of the motorcycle, he became concerned that it belonged to appellant. Appellant was unhappy with N.R., who owed a substantial amount of money—as much as $7,500—to appellant and appellant's acquaintance, T.R., for prior drug transactions. As a result, officers considered moving the controlled buy to a different location, but N.R. ultimately decided to proceed with the original plan after noticing that the motorcycle was no longer in S.L.'s yard.

Around 6:00 p.m., N.R. drove to S.L.'s home and parked his car nearby while officers surveilled the house. N.R. walked toward the back of the property and followed

S.L. into the detached garage. After N.R. entered the garage, officers were unable to see what was happening but were able to listen to the meeting by way of the listening device hidden in N.R.'s pocket. Officers observed appellant and a man later identified as E.A. enter the garage shortly after N.R. entered it. Officers were able to hear an argument between N.R. and appellant, including a statement by N.R. that one of the people in the garage should take the money he had.

Approximately 20 minutes later, N.R. exited S.L.'s garage, got into his car, and contacted the officer with whom he had been working. N.R. informed the officer that, while N.R. was in the garage, appellant punched him in the face and E.A. pointed a gun at him "gangster style." N.R. also stated that the $600 was taken from him during the altercation in the garage. No methamphetamine was purchased. The officer met with N.R. and observed a cut below N.R.'s left eye that was not there before the controlled buy.

Based on the information provided by N.R., officers obtained a search warrant and entered S.L.'s home. While searching the home, officers discovered drugs and drug paraphernalia, but were unable to locate the gun allegedly used by E.A. during the altercation.

Police arrested appellant several days later. Appellant was charged with first-degree aggravated robbery, conspiring to commit first-degree aggravated robbery, aiding and abetting first-degree aggravated robbery, second-degree aggravated robbery, aiding and abetting second-degree aggravated robbery, simple robbery, and aiding and abetting simple robbery.

At trial, officers testified that, after E.A. and appellant entered the garage, they could hear "some sort of a scuffle or commotion" over the recording device. The officers testified that the name "Ricky" was spoken, and that Ricky "appeared to be the aggressor." After this initial commotion, officers testified that they believed "that there was a gun involved," that N.R. said something like "Here's the money. Take it," and that it "sounded like [the individuals in the garage] were in the process of taking the money from [N.R.]." Officers testified that the conversation in the garage concerned whether N.R. owed money to "the Medina organization" and how he was going to repay the organization.

In addition to the officers' testimony, the state played for the jury the audio recording that was obtained from the listening device in N.R.'s pocket. The transcript of that recording reads, in relevant part, as follows:

> MALE:[1] I don't have f---in ti[m]e for you.
> N.R.: I'll have cash for you tomorrow . . . .
> . . . .
> N.R.: . . . I don't think that you are a punker, you'd whoop my a-- in a second.
> N.R.: I don't want to fight you and I don't want trouble.
> APPELLANT: So, you think we are a joke huh?
> N.R.: I never said that, never once. Never once. Never once
> APPELLANT: Why wouldn't you f---in.
> N.R.: I am just trying to contact [T.R.] every day for the last four days.
> APPELLANT: Really?
>
> (Commotion going on)
>
> MALE: Oh Ricky . . . .

[1] The transcript identifies "A" as N.R., "Female" as S.L., "Male #1" as unknown, and "Male #2" as appellant. Male #1 is therefore presumably E.A.

N.R.: I could show you on my phone. Oh Ricky that is enough buddy, Ricky please Ricky, Ricky come on please bud. Please Rick. Rick I have been trying to contact him, Ricky come on man. No more.
APPELLANT: I told you. I told you.
N.R.: No more buddy please. I am going to try my hardest. Here I will give you the money I got. Here. Please can I just go, I will do my deposit I will do what I can I will give you a car title. I don't want to do this no more.
FEMALE: [E.A.]
APPELLANT: No more?
N.R.: Yeah please Rick.
APPELLANT: Huh ah you f---ed up right?
N.R.: Yeap [sic].
APPELLANT: What the f--k.
N.R.: I am not (inaudible) how f--k my face is f---ed up ahh f--k it hurts.
APPELLANT: Now, how much do you owe [T.R.]?
N.R.: Seven grand.
APPELLANT: Seven grand. Who does [T.R.] owe that money to?
N.R.: You.
APPELLANT: Me. Who do I owe it to?
N.R.: Your guy.
APPELLANT: That's right. And if I don't pay them, who do they come get?
N.R.: You.
APPELLANT: And I pay it. Okay?
N.R.: Okay.
APPELLANT: All right.
N.R.: All right . . . .
. . . .
N.R.: Ricky you are no joke, I know it dude. I want no more trouble just want to get you paid off on. I am going to go sell a car, I want to go.
APPELLANT: It's not that, brother, it's not that, it is the f---in sh-t that I have been hearing.
N.R.: What? What do [you hear], you will never hear another word about me or you again . . . .
. . . .
N.R.: . . . six hundred, she took it. I promise. I will have a little more money tomorrow. Like, $400.

> APPELLANT: You gonna take this serious?
> N.R.: I will take it serious.
> (Inaudible)
> APPELLANT: If anything happens to me, cause of you, there's my brother, my nephews . . . .
> . . . .
> APPELLANT: [phone ringing] . . . What's up, well I am here with him right now. All right. Listen Bro, Here's what I'm going to do now. I already f---ed him up. (Inaudible) What else do you want me to do . . . .
> . . . .
> APPELLANT: . . . On your eye, (inaudible) Okay. You gonna say that you got into a fight. Okay, with who and you are gonna say I don't know, some guy with, I don't give a f--k what you tell em, that is not here. You got that?
> N.R.: I will cover it . . . .
> . . . .
> MALE: $200 a week. It shows that you are dedicated to take care of this [debt].

N.R. testified at trial that he was in debt to appellant and T.R. in October 2016. N.R. further testified that, after he entered the garage, appellant and E.A. came through the door and that appellant "punched [N.R.] in the face and basically . . . told [N.R.] [he] need[ed] to pay up and behave." N.R. testified that E.A. pointed a handgun at his head, but that appellant later told E.A. to "put it away." N.R. testified about the $600:

> PROSECUTOR: And what happened to that six hundred?
> N.R.: [S.L] took it.
> PROSECUTOR: Did you have a choice about whether or not to give it to her?
> N.R.: No. At that point, I just wanted out of there so yeah.
> PROSECUTOR: Okay. Did you figure you didn't have a choice because you were scared?
> N.R.: Oh, definitely, at that point. I was scared sh--less.

S.L. also testified for the state as part of a plea agreement. S.L. testified that N.R. told her that he had "six big ones" and wanted to purchase methamphetamine. S.L. testified

that she then told appellant and E.A. that she planned to meet with N.R. on October 18. She acknowledged that N.R. was at her home that afternoon, and that appellant and E.A. were also there. She testified that, while the four individuals were in her detached garage, there was "a little bit of chaos." S.L. denied taking the $600, seeing anyone hit N.R., or seeing a gun. She said that, after the altercation, she and appellant left her residence on appellant's motorcycle. When S.L. and appellant returned to S.L.'s neighborhood, they saw that S.L.'s house was "lit up like the Fourth of July" with police. S.L. testified that she and appellant again fled on appellant's motorcycle, this time using "back roads" to drive to appellant's apartment.

At the close of the state's case, appellant moved for acquittal on all seven counts, arguing that there was insufficient evidence to show that the $600 had been forcefully taken from N.R. or that appellant had conspired with anyone or aided anyone in taking the money from N.R. The state then voluntarily dismissed the charge of conspiracy to commit first-degree aggravated robbery. The district court ruled that it would not submit the second-degree aggravated-robbery charge to the jury, but otherwise denied appellant's motion.

The jury found appellant not guilty of first-degree aggravated robbery and simple robbery, but found him guilty of aiding and abetting first-degree aggravated robbery and aiding and abetting simple robbery.

Before sentencing, appellant moved the district court to vacate the verdicts based on inconsistent jury verdicts. The district court denied the requested relief and sentenced

appellant to 108 months in prison on his aiding and abetting first-degree aggravated robbery conviction.

This appeal followed.

D E C I S I O N

Sufficient evidence supports the guilty verdict for aiding and abetting first-degree aggravated robbery.

Appellant argues that there is insufficient evidence to support the jury's verdict that he is guilty of aiding and abetting first-degree aggravated robbery. Appellant argues that the state's circumstantial evidence is insufficient to prove his knowing involvement in a robbery.

When evaluating a claim of insufficiency of the evidence, appellate courts "carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the factfinder to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted." *State v. Waiters*, 929 N.W.2d 895, 900 (Minn. 2019) (quotation omitted). Appellate courts review the evidence "in the light most favorable to the conviction . . . [and] assume the jury believed the State's witnesses and disbelieved any evidence to the contrary." *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (citations and quotation omitted). "[W]e will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense." *Id.* But if a conviction is based on circumstantial evidence, reviewing courts apply a higher level of scrutiny. *Id.*

Circumstantial evidence is "evidence from which the factfinder can infer whether the facts in dispute existed or did not exist." *State v. Harris*, 895 N.W.2d 592, 598 (Minn. 2017) (quotation omitted). "A conviction supported by circumstantial evidence requires us to apply a two-step [analysis] . . . ." *Ortega*, 813 N.W.2d at 100. First, we must "identify the circumstances proved, giving deference 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 State." *Id.* (quotation omitted). Second, we must "independently examine the reasonableness of all inferences that might be drawn from the circumstances proved, including inferences consistent with a hypothesis other than guilt." *Id.* (quotation omitted). "[A] conviction based on circumstantial evidence may stand only where the facts and circumstances disclosed by the circumstantial evidence form a complete chain which, in light of the evidence as a whole, leads so directly to the guilt of the accused as to exclude, beyond a reasonable doubt, any reasonable inference other than that of guilt." *State v. Jones*, 516 N.W.2d 545, 549 (Minn. 1994) (quotation omitted). We apply the circumstantial-evidence standard of review when the state presents solely circumstantial evidence on one or more elements of an offense. *State v. Porte*, 832 N.W.2d 303, 309 (Minn. App. 2013).

Appellant contends that the circumstantial evidence is insufficient to prove that he had the requisite mental state to have aided an aggravated robbery. He argues that there exists an alternative reasonable inference that appellant hit N.R. because N.R. spoke ill of appellant and not because appellant was intending to aid a robbery.

In order to convict appellant of aiding and abetting first-degree aggravated robbery, the state was required to prove beyond a reasonable doubt that appellant "played a knowing role in the commission of the crime." *Bernhardt v. State*, 684 N.W.2d 465, 477 (Minn. 2004) (quotation omitted). "Active participation in the actual commission of the offense is not required to constitute the aiding and abetting of that crime, and appellant's presence, companionship, and conduct before and after an offense is committed are relevant circumstances from which the jury may infer criminal intent." *Id.* (quotation omitted); *see also State v. Smith*, 901 N.W.2d 657, 663 (Minn. App. 2017) (an action contemporaneous with an ongoing crime can suffice as knowing involvement so long as the actor is aware of the ongoing crime and aids in its commission), *review denied* (Minn. Nov. 14, 2017).

The first step of the circumstantial-evidence test requires us to identify the circumstances proved, giving deference to the jury's determinations and disregarding evidence in the record that conflicts with the circumstances proved by the state. *Ortega*, 813 N.W.2d at 100. Deferring to the jury's guilty verdict, the circumstances proved are that, appellant, E.A., T.R., S.L, and N.R. had all been involved in methamphetamine transactions through the Medina organization. In October 2016, N.R. owed appellant's organization approximately $7,000 for methamphetamine previously purchased. On October 18, 2016, S.L. told appellant that N.R. was coming to her house with "six big ones" to buy methamphetamine. Before S.L.'s meeting with N.R., appellant parked his motorcycle outside S.L's home. N.L. was fearful of encountering appellant, but appellant's motorcycle was moved shortly before N.R. arrived and was no longer visible to N.R. when

N.R. arrived with the money. S.L. escorted N.R. into her garage, and appellant and E.A. followed. Appellant and E.A. then confronted N.R., who acknowledged his unpaid drug debt. Appellant punched N.R. in the face, while stating, "I told you. I told you." N.R., in response, stated "No more buddy please. I am going to try my hardest. Here I will give you the money I got. Here." N.R. then handed over the $600 to S.L. because he "was scared sh--less" and felt he had no other choice. N.R. parted with the $600 but received no methamphetamine in exchange. At some point, E.A. pointed a gun at N.R.'s head. After the physical altercation, appellant continued to threaten N.R. about N.R.'s debt to the Medina organization. Before N.R. left the garage, appellant told him to lie about how he sustained the cut under his eye, and E.A. told N.R. that he needed to make weekly payments until his debt was paid off. N.R. emerged from the garage with an injury to his face, but without either the $600 or any methamphetamine. Appellant and S.L. then fled and later did the same after seeing S.L.'s home surrounded by police.

The second step of the circumstantial-evidence test requires us to "independently examine the reasonableness of all inferences that might be drawn from the circumstances proved." *Ortega*, 813 N.W.2d at 100 (quotation omitted). The inferences to be drawn from the circumstances above are consistent with appellant's knowing participation in an aggravated robbery and are inconsistent with any other reasonable inference.

Concerning appellant's knowledge that his confederates were committing or were going to commit a robbery, it is reasonable to infer from the circumstances that appellant possessed the requisite state of mind based on his close association with E.A. and S.L.

before, during, and after N.R. was assaulted and the $600 was taken from him. From appellant's anger over N.R.'s failure to pay T.R. and appellant's decision to attack N.R. in S.L.'s garage at a time he knew N.R. would be arriving with money to buy more drugs, a reasonable inference may be drawn that N.R. was attacked so that appellant and his confederates could take the money that N.R. had with him. Appellant's flight is consistent with guilt.

It is also reasonable to infer that appellant intended his actions to further the commission of the robbery. During the robbery, appellant controlled the confrontation and punched N.R. in the face while E.A. held a gun to N.R.'s head. One of the group took the $600 from N.R. and threatened N.R. for not taking his debt seriously. In short, it appears that appellant knew that an aggravated robbery was being committed and that appellant intended his presence and actions to further the commission of the crime. The most-reasonable inference is that appellant was at least aware of—if not *directing*—the robbery.

Appellant contends that the circumstances proved are consistent with an alternative theory of innocence, to wit: that appellant punched N.R. not to assist in a robbery, but because N.R. "talk[ed] bad about" and disrespected appellant. But any "disrespect" was related to N.R.'s unpaid drug debt. And appellant's beating of N.R. coincided with N.R. giving up $600. Appellant argued to the jury throughout the trial that he was hitting N.R. for "disrespect" and not to rob him. The jury's verdict establishes that the jury rejected this theory, and we reject it as well because it is not reasonable in light of all the evidence produced at trial, most especially the evidence from the audio recording.

When viewed as a whole, the circumstances proved are consistent with guilt and inconsistent with any other rational inference. We are satisfied that the only reasonable inference that can be drawn from the evidence and circumstances proved is that appellant's assault on N.R. was a knowing part of a robbery.

Appellant also argues that the state was required to prove that appellant took N.R.'s money "knowing he [was] not entitled to the property." In support of this argument, appellant contends that, because N.R. owed him $7,000, he had a claim of right to the $600. Therefore, he argues, he cannot have been guilty of aiding a robbery.

It is axiomatic that fungible cash is not a chattel that can be recovered by force under a claim of right. *See* 67 Am. Jur. 2d *Robbery* § 23 (2019). And it is apparent to us that appellant did, in fact, know that he was not legally entitled to the $600, because the money taken from N.R. was, at best, money owed on an *illegal* drug debt. We reject the argument that extracting money owed on an illegal drug debt by way of a brutal assault is not a robbery.

The district court's jury instructions were not plainly erroneous.

Appellant argues that the district court plainly erred when it instructed the jury on the knowledge element of first-degree aggravated robbery using the language provided in the model jury instructions and not the governing statute. *See* 10 *Minnesota Practice*, CRIMJIG 14.04 (2018) (providing that "the defendant knew that (he) (she) was not entitled to take it.").

Appellant did not object to the jury instruction at trial, and we therefore review the instruction for plain error. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). Under the plain-error standard, a defendant must show "(1) error; (2) that is plain; and (3) the error must affect substantial rights." *Id.* "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." *State v. Webster*, 894 N.W.2d 782, 787 (Minn. 2017) (quotation omitted). To meet the substantial-rights requirement, an appellant bears the burden of showing "that there is a reasonable likelihood that the absence of the error would have had a significant effect on the jury's verdict." *State v. Horst*, 880 N.W.2d 24, 38 (Minn. 2016) (quotation omitted). If all three elements of the plain-error test are met, "we should address the error to ensure fairness and the integrity of the judicial proceedings" and "will correct the error only if the fairness, integrity, or public reputation of the judicial proceeding is seriously affected." *State v. Dobbins*, 725 N.W.2d 492, 508 (Minn. 2006) (quotations omitted).

We review jury instructions in their entirety when determining whether the instructions "fairly and adequately explain the law" of the case. *State v. Huber*, 877 N.W.2d 519, 522 (Minn. 2016). Moreover, "while it is well settled that jury instructions must define the crime charged and explain the elements of that crime to the jury, we nevertheless give district courts broad discretion and considerable latitude in choosing the language of jury instructions." *State v. Milton*, 821 N.W.2d 789, 805 (Minn. 2012) (quotation omitted). When deciding whether a jury instruction accurately states the law,

"we analyze the criminal statute and the case law under it." *State v. Taylor*, 869 N.W.2d 1, 15 (Minn. 2015).

Appellant's argument that the district court erred in its jury instructions proceeds from the premise, based in caselaw, that one of the elements of first-degree aggravated robbery is that the defendant took property from another "know[ing] [that] he is not entitled to the property he takes." *See State v. Charlton*, 338 N.W.2d 26, 29-30 (Minn. 1983); *State v. Sandve*, 156 N.W.2d 230, 232 (Minn. 1968); *State v. Bonga*, 153 N.W.2d 127, 130 (Minn. 1967). The pattern jury instruction suggests that the proper instruction on the knowledge element of the crime is that the actor took property from another and "knew that (he) (she) was not entitled to take it." CRIMJIG 14.04. Here, the district court instructed the jury that the state was required to prove that $600 was taken "from the person of" N.R. and that appellant "knew that he was not entitled to take it." This, appellant argues, was error, was plain, and affected appellant's substantial rights.

Without deciding whether the instruction was erroneous, appellant has failed to demonstrate on appeal either that any error was plain or that it affected appellant's substantial rights.

To the question of whether the claimed jury-instruction error was plain, appellant cites no Minnesota case holding that the instruction as given by the district court here was erroneous. Appellant argues that the instruction should properly have been worded more clearly to track the statutory language, but since the claimed error was not brought to the district court's attention at trial, any error must have been plain in order to warrant reversal.

And in the absence of caselaw showing the claimed error to have been "clear" or "obvious," there is no basis for a determination on appeal that the complained-of error was plain. *Webster*, 894 N.W.2d at 787 (quotation omitted). The claimed error here—even if it was error—is not clear or obvious. Any error was therefore not plain.

Appellant must also show that his substantial rights were affected in order to satisfy the plain-error test. "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." *State v. Kelley*, 855 N.W.2d 269, 283-84 (Minn. 2014). Here, there is substantial evidence establishing appellant's guilt, and there is no reason to think on this record that any error in jury instructions led to a guilty verdict that would not otherwise have been reached. For this reason as well, the district court's jury instructions were not plainly erroneous.

Affirmed.