This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).

STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1154

State of Minnesota,
Respondent,

vs.

Danielle Yvonne Coleman,
Appellant.

Filed July 20, 2020
Affirmed
Rodenberg, Judge

Hennepin County District Court
File No. 27-CR-18-24773

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

Michael O. Freeman, Hennepin County Attorney, Sarah J. Vokes, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Melissa Sheridan, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Rodenberg, Judge; and Frisch, Judge.

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

RODENBERG, Judge

In this direct appeal after she was convicted of theft, appellant Danielle Coleman argues that the circumstantial evidence of her mental state is insufficient to prove the

charged crime. Appellant alternatively argues that she is entitled to a new trial because the prosecutor's summation urging jurors to look to their own experiences in judging appellant's credibility constituted plain error. We affirm.

FACTS

In July 2018, X.V. worked as an agency operator for Avis in Rogers. Under Avis company policy, customers can rent a car for 30 days on a single rental contract, and can extend a shorter rental period three times, for up to a total of 30 days. If a customer wants to rent a car for longer than 30 days or extend a rental period more than three times, the customer is required to return the car to Avis and enter into a new contract.

On July 20, 2018, appellant rented a 2017 Toyota Corolla from the Avis agency in Rogers under a written rental agreement ending on July 23 at 1:00 p.m. Appellant and X.V. checked the vehicle for preexisting damages. Although there were some scratches on the back bumper and a dent on the right fender, neither of the driver's-side doors were damaged. Appellant left the agency with the car.

At appellant's request, X.V. extended appellant's rental contract from the original July 23 return date to July 27. Appellant did not return the car on July 27. Instead, she contacted the agency and again requested to extend the rental contract, this time to August 3. She then requested a third extension to August 17. When appellant requested a fourth extension, she was informed that Avis policies prohibited a fourth extension and that she was required to return the vehicle and open a new contract.

Appellant did not return the car on August 17. Instead, appellant informed X.V. by telephone that she would return the car on August 20. Avis generated a missing-vehicle

report. When appellant did not return the car on August 20, the Avis corporate security office became involved and called the phone number appellant provided when she rented the car. Appellant did not answer. The Avis corporate security office called appellant on August 24, 27, 28, and 30, but was unable to reach her. A certified demand letter was mailed to appellant, explaining that that the rental car must be returned immediately. That letter went unclaimed and was returned to Avis on September 12.

On September 5, D.H., a field agent for Asset Retrieval Investigations, was assigned by Avis to locate and retrieve the rental car from appellant. On September 6, D.H. texted appellant and told her to return the car immediately. According to D.H., appellant promptly returned a text message stating that she agreed to return the car. But she did not return the car.

On September 7, D.H. went to appellant's address and left a demand note on appellant's door. D.H. also texted appellant who again promised to return the car. The following day, D.H. visited two other addresses trying to retrieve the car, but was unable to locate it.

On September 11, D.H. texted appellant and some of her relatives, but appellant did not respond. D.H. again called and texted appellant the following day. Appellant informed D.H. that the car was at her house. But when D.H. went to appellant's residence, the car was not there. D.H. unsuccessfully tried calling appellant again on September 14, and was unable to find the car when he went to appellant's house on September 15.

On September 17, D.H. texted appellant and informed her that the car was now a month past due for return and that Avis may report it stolen. The next day, appellant called

D.H. and told him the car would be at her house. D.H. did not find the car at appellant's house. The Avis corporate security office sent an email to appellant to inform her that the car would be reported to police as stolen. The Avis agency in Rogers also called appellant, who stated that she had made arrangements with D.H. to retrieve the car the next day.

On September 19, the Avis agency in Rogers called appellant and informed her that the car would be reported stolen to police if she did not return the car by 6:00 p.m. that day. When appellant did not return the car by that time, the police were called and told of the facts.

On September 20, D.H. found the car at appellant's house with the keys in the ignition. The car had damage to the front and rear driver's-side doors.

Avis attempted to charge appellant's credit card $2,127.50 for the rental fees accrued between July 20 and September 20, 2018, in addition to a recovery investigation fee, but was paid only $1,748.97.

The state thereafter charged appellant with theft of rented property in violation of Minn. Stat. § 609.52, subd. 2(a)(9)(iii) (2016), based on the state's allegation that appellant rented a car but did not return it at the end of the rental agreement, with the intent to wrongfully deprive Avis of the car. Appellant pleaded not guilty and the case was tried to a jury.

At trial, appellant's trial strategy was that there had been a "miscommunication" concerning when the rental car was to be returned. The state, in rebuttal, argued that there was no miscommunication and argued:

> I think, during jury selection, every one of you raised your hand when we asked if you guys rented a car before. None of you raised your hand about—if you've been charged with a crime that involved a rental car. People said, like, minors or whatever; so I'm assuming none of you ever got in trouble for something like this. It's pretty clear to you, looking at a rental agreement, through your common sense and life experience, when that vehicle is due back—when it says it's due back, not 34 days later. Not, I'll turn it in tonight, but I never do; not, it's at my house, but it isn't.

The jury found appellant guilty of the charged theft of rented property. The district court stayed imposition of sentence and placed appellant on probation for three years.

This appeal followed.

D E C I S I O N

The evidence supports appellant's conviction.

Appellant was charged with theft of rented property in violation of Minn. Stat. § 609.52, subd. 2(a)(9)(iii). A person is guilty of theft of rented property if she: (1) leases or rents the property "under a written instrument"; (2) "does not return the property to the lessor at the end of the lease or rental term, plus agreed-upon extensions"; and (3) acts "with intent to wrongfully deprive the lessor of possession of the property." Minn. Stat. § 609.52, subd. 2(a)(9)(iii); *see also* 10 *Minnesota Practice*, CRIMJIG 16.15 (2017).

Appellant challenges the sufficiency of the evidence for her conviction of theft of rented personal property. She argues that the evidence of her intent is entirely circumstantial and is insufficient to eliminate rational inferences inconsistent with guilt. The state agrees that the evidence of appellant's intent is circumstantial, but contends that it is sufficient to support appellant's conviction.

When analyzing the sufficiency of circumstantial evidence, "we review the evidence to determine whether the facts in the record and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted." *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010) (quotation omitted). "A conviction supported by circumstantial evidence requires us to apply a two-step [analysis] . . . ." *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012). First, reviewing courts "identify the circumstances proved." *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). Second, courts "independently examine the reasonableness of all inferences that might be drawn, including inferences consistent with a hypothesis other than guilt." *Ortega*, 813 N.W.2d at 100 (quotation omitted). "Circumstantial evidence must form a complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt." *Al-Naseer*, 788 N.W.2d at 473 (quotation omitted).

In identifying the circumstances proved, appellate courts "defer 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 [s]tate." *Silvernail*, 831 N.W.2d at 598-99 (quotations omitted). Stated differently, "we construe conflicting evidence in the light most favorable to the verdict and assume the jury believed the [s]tate's witnesses and disbelieved the defense witnesses." *State v. Hawes*, 801 N.W.2d 659, 668 (Minn. 2011) (quotation omitted). Reviewing courts therefore "disregard testimony that is inconsistent with the verdict." *Id.* at 669.

Appellant's argument that she did not intend to "wrongfully deprive" Avis of the car proceeds on the theory that the circumstantial evidence does not eliminate the rational inference that appellant intended to repair the damage to the car's doors and that her retention of the car was related to her intention to fix the damage. But the trial record contains no evidence suggesting that appellant was retaining possession of the car in order to do repairs. Appellant did not testify at trial, and was certainly not obligated to do so. But the circumstantial-evidence review standard requires that we identify the circumstances proved at trial. *Silvernail*, 831 N.W.2d at 598. The record here includes nothing about any plans or efforts on appellant's part to repair the damage to the rented car. And appellant seems to confuse the intent to "wrongfully deprive" with the intent to "permanently deprive" Avis of the car. Careful attention to the elements of the charged offense is necessary to properly analyze the sufficiency of the circumstantial evidence.

A person is guilty of theft of rented property when that person "leases or rents personal property under a written instrument" and "does not return the property to the lessor *at the end of the lease or rental term*, plus agreed-upon extensions, with *intent to wrongfully deprive* the lessor of possession of the property." Minn. Stat. § 609.52, subd. 2(a)(9)(iii) (emphasis added). This particular provision of the theft statute does not require proof of intent to permanently deprive the owner of the rented property. The required intent under the statute is instead the intent to "*wrongfully* deprive the lessor of possession" after the end of the agreed-upon rental period. *Id.* (emphasis added). In other sections of the same statute, the legislature has prohibited acts done with the "intent to deprive the owner permanently of possession of the property." *See, e.g.*, Minn. Stat. § 609.52, subd. 2(a)(1)-

(2) (2016). It did not use that term in section 609.52, subd. 2(9)(iii). The use of "wrongfully" in section 609.52, subd. 2(9)(iii), clearly signifies the mental state that must be proved—the intent to "wrongfully" deprive the lessor of possession. Intent to "permanently" deprive the owner of the property need not be proved.

The term "wrongfully," or "wrongful," is often defined as something that is "[c]haracterized by unfairness or injustice," something that is "contrary to law," or something of which a person is "not entitled to the position occupied." *Black's Law Dictionary* 1932 (11th ed. 2019). In the context of rental of personal property, such as a vehicle, timely return of the leased property goes to the essence of the lessor's interest in the property. The lessor must have possession of the property to lease it to customers. As such, the statute recognizes that timely return of the leased property is the critical component. By her refusal to return the property here, appellant retained possession of the car beyond the date on which the lessor was entitled to have possession of the car returned to it.

With this understanding of what the statute prohibits, we turn to whether the evidence is sufficient to prove that appellant intended to wrongfully keep the rental car past the agreed-upon end date of the rental agreement with Avis. And we begin by identifying the circumstances proved at trial.

Here, the circumstances proved are that appellant rented a 2017 Toyota Corolla from Avis in Rogers on July 20, 2018. The rental agreement stated that the rental contract expired on July 23 at 1:00 p.m. Appellant extended her rental contract to July 27 and again to August 3. Appellant then extended her rental contract to August 17. When appellant

tried to extend her rental contract a fourth time, X.V. told appellant that, under company policy, appellant could only extend her rental contract three times, after which she would have to return the car, and could open a new contract to keep the car longer. Appellant did not return the car on August 17, and did not return it to Avis to open a new contract. When appellant did not return the car on August 20, the Avis corporate security office became involved and called the phone number appellant provided when she rented the car. Appellant did not answer. On August 23, a certified letter was mailed to appellant demanding the return of the car. The letter was unclaimed and returned to Avis. On August 24, 27, 28, and 30, calls to appellant went unanswered. On September 5, D.H. was assigned to locate and repossess the car, and appellant similarly dodged and resisted his attempts to recover possession of the car, repeatedly misleading him about where he could locate it. On September 17, 2018, D.H. informed appellant that if she did not return the car, Avis may report it stolen. The Avis agency in Rogers also called appellant, who stated that she had made arrangements with D.H. to retrieve the car the following day. Finally, on September 19, the Avis agency called appellant and informed her that, if the car was not returned by 6:00 p.m. that day, the car would be reported stolen to police. It was not returned, and a stolen-vehicle report was made. D.H. found the car in appellant's driveway on September 20—a month after appellant was contractually obligated to return it.

Having identified the facts consistent with guilt that were proved at trial, we next "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 proved are consistent with appellant's guilt and inconsistent with any other reasonable inference.

Appellant rented a car under a written contract that specified when the car was to be returned. Appellant knew when she was required to return the car, because she thrice extended the contract. She tried to extend it a fourth time. But Avis policies, disclosed to appellant in July when she rented the car, prohibited another extension without the car being returned and a new contract created. Appellant did not return the car. On numerous occasions, appellant falsely informed D.H. that he could retrieve the car from locations where the car was not to be found. Appellant knew that Avis wanted the car returned, but chose not to return it.

Appellant concedes that these circumstances are consistent with guilt, but contends that "they also did not exclude the reasonable possibility that [appellant] . . . did not have the specific intent required by the statute," and that it is rational to infer that appellant wanted to keep the car until she could fix the damage to it. But, as discussed above, the statute requires proof that appellant have intended to "wrongfully deprive" the lessor of possession of the car "at the end of the lease or rental term, plus agreed-upon extensions." Minn. Stat. § 609.52, subd. 2(a)(9)(iii). It cannot be rationally inferred on these facts that appellant did not intend to wrongfully deprive Avis of the car past the contractually agreed return date. Appellant knew very well—and was told repeatedly—that Avis wanted the rental car returned. She chose to wrongfully deprive Avis of the rental car after the expiration of the rental contract, plus any agreed-upon extensions.

The evidence of appellant's intent to *wrongfully* deprive Avis of the rental car beyond the end of the lease term is overwhelming and the circumstantial evidence admits of no rational conclusion other than that appellant committed the charged offense. The evidence is sufficient to support appellant's conviction.

Appellant is not entitled to relief for prosecutorial misconduct.

Appellant argues that the state "committed plain, prejudicial misconduct" during summation "by urging the jurors to look to their own experiences as proof that [appellant]'s defense was not credible." Appellant contends that the error affects her substantial rights and warrants the grant of a new trial.

"When reviewing claims of prosecutorial misconduct during closing argument, we consider the argument as a whole, rather than focusing on particular phrases or remarks that may be taken out of context or given undue prominence." *State v. Jones*, 753 N.W.2d 677, 691 (Minn. 2008) (quotations omitted). Because appellant did not object at trial, we review the alleged misconduct 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 "address the

error to ensure fairness and the integrity of the judicial proceedings." *State v. Dobbins*, 725 N.W.2d 492, 508 (Minn. 2006) (quotations omitted). "We will correct the error only if the fairness, integrity, or public reputation of the judicial proceeding is seriously affected." *Id.* (quotation omitted).

Here, appellant asserts that the state plainly erred when the prosecutor told the jury:

> I think, during jury selection, every one of you raised your hand when we asked if you guys rented a car before. None of you raised your hand about—if you've been charged with a crime that involved a rental car. People said, like, minors or whatever; so I'm assuming none of you ever got in trouble for something like this. It's pretty clear to you, looking at a rental agreement, through your common sense and life experience, when that vehicle is due back—when it says it's due back, not 34 days later. Not, I'll turn it in tonight, but I never do; not, it's at my house, but it isn't.

Appellant argues that the statement was improper because it "urged the jurors to put themselves in [appellant]'s shoes and ask themselves whether they would [return] a rental car when it was due." It is improper to request jurors to "look at their own experiences as proof that the defendant's defense is not credible." *State v. Williams*, 525 N.W.2d 538, 549 (Minn. 1994). However, the supreme court has also held that jurors "are free to (and undoubtedly do) bring their own experiences to bear in assessing the credibility of a defendant's claim." *Id.*

In context, we see no error in the state's comment to the jury. Although somewhat awkwardly worded, the statement amounted to an invitation to the jurors to apply their collective common sense to the facts of the case. *Cf.* 10 *Minnesota Practice*, CRIMJIG

3.03 (2017) (providing for a model jury instruction defining reasonable doubt as a doubt based on "reason and common sense").

Additionally, and even if the prosecutor's brief reference to the collective experiences of the jurors were considered to be error, that brief comment was not error that is plain. Appellant argues that the argument here resembles that held to be improper in *Williams*. In *Williams*, the supreme court concluded that the prosecutor, in a prosecution for possession of cocaine with intent to sell, could not "urge the jurors to put themselves in the defendant's shoes and ask themselves if they ever had traveled and opened their luggage to 'just magically find something in your bag that you hadn't put in there when you packed.'" 525 N.W.2d at 549. But the prosecutor here made no use of any disparaging characterization of the defense argument as was present in *Williams*. Instead, the prosecutor urged the jury to apply its collective common sense and life experiences to the evidence in the case. The statement was not so clearly obvious or wrong so as to constitute error that is plain.

Finally, the state has demonstrated that the prosecutor's isolated statement did not affect appellant's substantial rights in any event. The supreme court has held that prosecutorial misconduct does not affect a defendant's substantial rights when "there is no reasonable likelihood that the absence of the misconduct in question would have had a significant effect on the verdict of the jury." *Jones*, 753 N.W.2d at 686 (quotation omitted). Here, we see no possibility that this fleeting comment significantly impacted the jury's verdict. When viewed in the context of the prosecutor's entire summation, it was of little import. As detailed above, the evidence against appellant was extremely strong, and the

district court properly instructed the jury on the elements of the crime. We therefore conclude that the challenged statement did not affect appellant's substantial rights.

In sum, the circumstantial evidence is sufficient to eliminate any rational inference inconsistent with appellant's guilt, and appellant is not entitled to plain-error relief on appeal based on her claims of prosecutorial misconduct.

Affirmed.