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**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0070**

State of Minnesota,
Respondent,

vs.

Liban Khalif Abdirahman,
Appellant.

**Filed December 21, 2020
Affirmed
Frisch, Judge**

Hennepin County District Court
File No. 27-CR-18-7084

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, Rochelle R. Winn, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Hooten, Judge; and
Frisch, Judge.

UNPUBLISHED OPINION

FRISCH, Judge

Appellant challenges the sufficiency of the evidence underlying his convictions for identity theft involving more than three victims and for possession of a credit card reencoding device. We affirm.

FACTS

From August 14, 2017, to September 18, 2017, appellant Liban Khalif Abdirahman entered into multiple fraudulent transactions involving different victims. Abdirahman does not dispute that he engaged in fraudulent transactions involving three of the victims. Some of these undisputed transactions involved vehicle rentals at the Minneapolis-St. Paul International Airport or purchases near the airport. Police officers commenced an investigation and obtained video footage of Abdirahman engaging in the relevant transactions. All three victims reported unauthorized charges even though they still possessed the relevant credit cards, which demonstrates that their personal information had been stolen and used to manufacture duplicate credit cards.

A fourth victim then reported unauthorized charges at two retail stores inside the airport, both occurring on October 7, 2017. Some of the unauthorized transactions were captured on video surveillance at an airport iStore. The video depicts a female using a credit card to purchase a laptop and Abdirahman taking the laptop and receipt. Other airport surveillance footage shows Abdirahman entering the airport and boarding an airplane with the same female who used the credit card, along with another individual who was present during the transaction.

On March 20, 2018, officers identified Abdirahman on a live surveillance camera and tracked him to an airport gate, where he boarded an airplane. Officers arrested Abdirahman on the airplane, and his belongings were removed from the flight. Another officer waited at the airplane entrance, where an airline employee handed the officer a credit card reencoder as Abdirahman was removed from the aircraft.

The state charged Abdirahman with identity theft involving more than three but not more than seven victims, in violation of Minn. Stat. §§ 609.05, subds. 1, 2, .527, subds. 2, 3(4), .821, subds. 2(2) (2016); and possessing a scanning device or reencoder with intent to commit, aid, or abet unlawful activity, in violation of Minn. Stat. § 609.527, subd. 5b(b) (2016). The matter proceeded to trial, where a jury found Abdirahman guilty as charged. This appeal follows.

D E C I S I O N

Abdirahman challenges the sufficiency of the evidence underlying his convictions. When evaluating the sufficiency of the evidence, we carefully examine the record to determine whether the facts and the legitimate inferences drawn from them permit a reasonable conclusion that the defendant was guilty. *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016). “The evidence must be viewed in the light most favorable to the verdict, and it must be assumed that the fact-finder disbelieved any evidence that conflicted with the verdict.” *Id.*

The parties agree that the verdicts were based on circumstantial evidence. When reviewing a conviction based on circumstantial evidence, we employ a two-step analysis. We first identify the circumstances proved. *State v. Silvernail*, 831 N.W.2d 594, 598-99

(Minn. 2013). In doing so, we “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.” *Id.* at 598-99 (quotations omitted). We “consider only those circumstances that are consistent with the verdict.” *Id.* at 599. Second, we determine “whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *Id.* In making this determination, we independently examine the reasonableness of all inferences that might be drawn from the circumstances proved, including inferences consistent with a hypothesis other than guilt, and give “no deference to the fact finder’s choice between reasonable inferences.” *Id.* The circumstances proved 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.” *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). Even so, we will not “break the evidence into discrete pieces in an effort to establish that, when viewed in isolation, these evidentiary fragments support a reasonable hypothesis other than guilt.” *State v. Andersen*, 784 N.W.2d 320, 332 (Minn. 2010). And “we will not overturn a conviction based on circumstantial evidence on the basis of mere conjecture.” *State v. Anderson*, 789 N.W.2d 227, 242 (Minn. 2010).

I. The state presented sufficient evidence to support Abdirahman’s conviction for aiding and abetting identity theft involving more than three victims.

Abdirahman challenges his conviction for aiding and abetting identity theft involving three or more victims, arguing that the evidence is insufficient to prove that he committed identity theft against one of the four victims. Abdirahman specifically argues

that the evidence related to the purchase at the airport iStore was insufficient to prove that he (1) knew his alleged accomplice was going to commit identity theft by using a fraudulent credit card and (2) intended his presence or actions to further the commission of the crime.

“A person who transfers, possesses, or uses an identity that is not the person’s own, with the intent to commit, aid, or abet any unlawful activity is guilty of identity theft” Minn. Stat. § 609.527, subd. 2. The “unlawful activity” underlying Abdirahman’s charge is the “use[] or attempt[] to use a card knowing it to be forged, false, [or] fictitious.” Minn. Stat. § 609.821, subd. 2(2). The offense is punishable by up to ten years of imprisonment and/or a \$20,000 fine “if the offense involves more than three but not more than seven direct victims.” Minn. Stat. § 609.527, subd. 3(4); *see also* Minn. Stat. § 609.52, subd. 3(2) (2016).

The aiding and abetting statute provides, “A person is criminally liable for a crime committed by another if the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime.” Minn. Stat. § 609.05, subd. 1. This requires proof that a defendant had “some knowing role in the commission of the crime” and took “no steps to thwart its completion,” even though the defendant may not have actively participated in the overt act of the primary offense. *State v. Merrill*, 428 N.W.2d 361, 367 (Minn. 1988). “It is well-settled in this state that presence, companionship, and conduct before and after the offense are circumstances from which a person’s participation in the criminal intent may be inferred.” *State v. Ulvinen*, 313 N.W.2d 425, 427 (Minn. 1981). The evidence must allow a reasonable inference that the

defendant's presence "is intended to and does aid the primary actors." *State v. Ostrem*, 535 N.W.2d 916, 924-25 (Minn. 1995) (quotations omitted).

Step One: The Circumstances Proved

Abdirahman argues that the state failed to present evidence that he knew the principal was using a fraudulent credit card at the airport iStore. Reviewing the record in the light most favorable to the verdict, the relevant circumstances proved include the following.

Abdirahman made fraudulent purchases using the credit card information of at least three different victims in the weeks preceding the iStore purchase. All three victims retained physical possession of their credit cards at the time of the fraudulent purchases and did not know how an unauthorized user would have obtained their personal information. Many of the fraudulent transactions took place near the airport, and other individuals appeared to be involved in at least some of the incidents. The first incident occurred on the morning of August 14, 2017, when Abdirahman used a fraudulent credit card to purchase fuel for two vehicles at a gas station near the airport. That afternoon, he used the same credit card to purchase items at the same gas station. The following day, Abdirahman was seen at the airport with a rental car accompanied by other individuals. The rental car was later identified as one of the vehicles for which Abdirahman purchased fuel the day before and was rented using a false name. Then, on September 1, 2017, Abdirahman used a second fraudulent credit card and a false name to rent another vehicle

at the airport. On September 18, 2017, Abdirahman used a third fraudulent credit card to make purchases in Forest Lake and Fridley.

The transactions involving the fourth victim took place on October 7, 2017. On that date, a male and female entered the airport at the ticketing level, with Abdirahman close behind. After the three of them passed through security, video surveillance captured them together at the iStore. Abdirahman was initially wandering around the store, while the female stood at the checkout counter with the other male beside her. Abdirahman approached the checkout counter and discussed with the female and male whether to use cash or a credit card to pay for items that were placed on the checkout counter. The female told Abdirahman she would use a credit card. The male told the cashier to ring up a laptop for Abdirahman before ringing up the other items. Abdirahman and the male stopped and watched as the female used a credit card to purchase the laptop. While the transaction was pending, they all paused and waited for the transaction to become final. After the transaction became final, the female signed a receipt, and Abdirahman immediately took possession of the laptop. The clerk then handed the receipt to Abdirahman. Abdirahman asked the clerk for a bag, took the bag with the laptop, and continued wandering around the store as the female made additional purchases using the same credit card. The other male took these additional items and thanked the female. They left the store together. Abdirahman then accompanied the two other individuals to the airport Sunglass Hut, where

\$634.39 was charged to the same credit card. Shortly thereafter, they all boarded the same flight.

The next day, a fourth victim was notified of charges at the airport iStore and Sunglass Hut and immediately knew the charges were fraudulent. Like the other victims, the fourth victim still had possession of his credit card at the time of the purchases, did not know Abdirahman, and had never authorized Abdirahman to use the credit card.

Collectively, the evidence shows that Abdirahman engaged in multiple fraudulent transactions at or near the airport in the weeks preceding the disputed transaction, that Abdirahman had a prior association with the principal who used the fourth victim's credit card, that Abdirahman traveled with the principal and another associate on that same date, that the principal used a fraudulent credit card to purchase a laptop for Abdirahman as well as other items for their male associate, and that Abdirahman and his associates agreed to a payment arrangement for the iStore purchases. The evidence further shows that all four victims had their credit card information stolen and used in a similar fraudulent manner and that many of the fraudulent transactions occurred at or near the airport within a span of two months. At minimum, the evidence is sufficient to support jury findings that Abdirahman had "some knowing role in the commission of the crime" and took "no steps to thwart its completion." *Merrill*, 428 N.W.2d at 367.

Step Two: Whether Circumstances Are Consistent with Guilt and Inconsistent With Any Other Rational Hypothesis

The circumstances proved are consistent with the rational hypothesis that Abdirahman knew the iStore transaction was fraudulent and that he played a knowing role

in the fraudulent transaction. Abdirahman argues that his presence at the iStore was also consistent with another rational hypothesis: that he did not know the principal was using a fraudulent credit card and did not intend his presence to further the commission of that crime. But the evidence shows that the three associates discussed the method of payment, and Abdirahman remained at the register while the principal used the credit card and until the transaction became final. He then took the laptop and receipt into his possession. Abdirahman engaged in multiple, similar fraudulent transactions in the preceding weeks. The only rational hypothesis to draw from these proved circumstances is that Abdirahman played a knowing and supportive role in the iStore fraudulent transaction.

II. The state presented sufficient evidence to support Abdirahman’s conviction for possession of a scanning device or reencoder with intent to commit or aid unlawful activity.

Abdirahman also challenges his conviction for possession of a credit card reencoder, arguing that the evidence was insufficient to prove that he possessed the device. “A person who possesses, with the intent to commit, aid, or abet any unlawful activity, any device, apparatus, equipment, software, material, good, property, or supply that is designed or adapted for use as a scanning device or a reencoder is guilty of a crime.” Minn. Stat. § 609.527, subd. 5b(b). When the state cannot prove actual possession of an illicit item, the constructive-possession doctrine permits a conviction if “the inference is strong that the defendant physically possessed the item at one time and did not abandon his possessory

interest in it.” *State v. Smith*, 619 N.W.2d 766, 770 (Minn. App. 2000), *review denied* (Minn. Jan. 16, 2001).

Step One: The Circumstances Proved

The state proved the following circumstances. Abdirahman used, or aided and abetted in the use of, fraudulent credit cards using the identities of multiple victims on different occasions, including vehicle rentals at the airport and purchases inside or near the airport. On each occasion, the victim retained physical possession of the relevant credit card, demonstrating the unauthorized procurement of their personal information through the use of a scanning device and subsequent reencoding of that personal information onto a fraudulent credit card.

Airport police officers arrested Abdirahman while he was onboard an airplane. His boarding pass displayed a false name. All of Abdirahman’s belongings were “taken off the flight with him,” and as Abdirahman was taken into custody, an airline employee handed one of the officers a credit card reencoder.

Step Two: Whether Circumstances Are Consistent with Guilt and Inconsistent With Any Other Rational Hypothesis.

Abdirahman does not offer any rational hypothesis inconsistent with his guilt, and none of the circumstances proved suggest an alternative rational hypothesis. Although Abdirahman alleges that the state failed to prove that he ever possessed the credit card reencoder, the circumstances proved are consistent with only one rational hypothesis: the reencoder was part of the possessions Abdirahman brought onto the airplane and then, upon his arrest, removed from the airplane along with all of his other possessions. We can

discern no other reason why an airline employee would hand the reencoder to an officer at that time, and based on the existing record any such reason would be pure conjecture. *See Anderson*, 789 N.W.2d at 242. The strength of this evidence is sufficient to uphold the jury's finding that Abdirahman constructively possessed the reencoder.

Affirmed.