

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1515**

State of Minnesota,
Respondent,

vs.

Quantelize Jerell Welch,
Appellant.

**Filed October 16, 2023
Affirmed in part, reversed in part, and remanded
Ross, Judge**

Hennepin County District Court
File No. 27-CR-21-13973

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

Mary F. Moriarty, Hennepin County Attorney, Adam Petras, Assistant County Attorney,
Minneapolis, Minnesota (for respondent)

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

Considered and decided by Ross, Presiding Judge; Worke, Judge; and Cleary,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

ROSS, Judge

Quantelize Welch killed a motorcyclist. He lined his SUV up behind the motorcyclist in an alley, accelerated into the motorcyclist, knocked him off the motorcycle, and then drove over the top of him before speeding away. After a bench trial, the district court found Welch guilty of second-degree intentional murder, second-degree felony murder, and criminal vehicular homicide. Welch appeals from the final judgment of conviction for second-degree intentional murder and from his sentence. He contends that the evidence is insufficient to establish that he specifically intended to kill the motorcyclist, that the prosecutor engaged in misconduct, and that including a \$50 felony fine as part of his sentence was unauthorized by law. Because sufficient evidence supports the murder conviction and because the prosecutor's misconduct did not affect Welch's substantial rights, we affirm the conviction. But because the fine was not authorized by law, we reverse and remand for the district court to amend Welch's sentence.

FACTS

Someone allegedly stole appellant Quantelize Welch's motorcycle in July 2021. Welch warned that whoever stole his motorcycle was "gonna get it."

The following afternoon, Caleb Hutchins was test-driving a motorcycle in an alley when Welch drove an SUV into the alley and approached Hutchins from behind. Welch lined his SUV up with Hutchins. He accelerated into Hutchins. The collision knocked Hutchins off the motorcycle and down to the ground. Welch then drove his SUV over Hutchins, and he dragged Hutchins under the SUV briefly before the SUV "spit out

[Hutchins] behind” it. Welch did not stop to render aid or call for help. Instead, he drove quickly down and out of the alley. The collision killed Hutchins. It broke ribs on all sides of his rib cage, causing a fatal, suffocating condition physicians call “flail chest.”

The state charged Welch with second-degree intentional murder, second-degree felony murder, and criminal vehicular homicide by causing the collision and leaving the scene. Welch waived his right to a jury trial, and the district court conducted a bench trial. Four eyewitnesses testified at trial providing details largely consistent with the facts summarized above. There were some variations. Two of the four eyewitnesses testified that they did not see the initial collision, three of the four testified that Welch sped off after the collision without stopping, and one of the four testified that the SUV struck Hutchins, slowed down to a stop, and then accelerated again to run over Hutchins before leaving the alley. The prosecutor elicited testimony from one of the witnesses indicating that the witness believed that the collision was intentional, but the district court sustained Welch’s objection that the testimony was inadmissible.

The parties submitted simultaneous written closing arguments. The state’s closing argument referred to the inadmissible testimony that Welch appeared to have intended the collision. It also argued, inaccurately, that the four witnesses testified “entirely consistent when they described the SUV hitting [Hutchins] and speeding heedlessly out of the alley, never stopping for a moment – if anything, picking up speed as he left.” The district court issued findings of fact and conclusions of law and found Welch guilty as charged. It implied that it would not consider the intent-based testimony referenced by the state. The district

court convicted Welch of second-degree intentional murder, sentenced him to 480 months' imprisonment, and ordered that Welch pay a \$50 felony fine. Welch appeals.

DECISION

Welch raises three arguments on appeal: that the state presented insufficient evidence of his intent to kill Hutchins, that the prosecutor engaged in prejudicial misconduct by misstating the facts and by referencing inadmissible evidence, and that the district court lacked the authority to order that he pay a \$50 felony fine. We address each argument.

I

Welch argues that the circumstantial evidence is insufficient to prove that he intended to kill Hutchins because it does not exclude the allegedly reasonable hypothesis that he intended only to harm him. The argument fails.

Welch contests the guilty verdict as to only one element. To convict Welch of second-degree intentional murder, the district court had to receive evidence that Welch caused Hutchins's death, that Welch did so "with intent to effect the death" of Hutchins, and that Welch did so without premeditation. *See* Minn. Stat. § 609.19, subd. 1(1) (2020). Intent is typically proved through circumstantial evidence. *See State v. Griese*, 565 N.W.2d 419, 425 (Minn. 1997). When reviewing convictions in which an element rests on circumstantial evidence, we follow a two-step approach, first identifying the circumstances proved, considering only those that are consistent with the verdict, and second determining whether those circumstances proved are "consistent with guilt and inconsistent with any rational hypothesis except that of guilt." *State v. Silvernail*, 831 N.W.2d 594, 598–99

(Minn. 2013) (quotation omitted). Based on the circumstances proved here, there is no rational hypothesis other than Welch's guilt.

The circumstances proved at trial regarding Welch's intentions are as follows. Welch believed that someone stole his motorcycle. Welch threatened that whoever stole his motorcycle was "gonna get it." The next day Welch encountered Hutchins in an alley test-driving a motorcycle. Welch positioned his SUV behind Hutchins. Welch accelerated the SUV directly toward Hutchins. Welch drove his SUV rapidly into Hutchins, knocking him off the motorcycle and onto the ground. Welch drove his SUV over the top of Hutchins. Welch did not stop to give aid to Hutchins. Welch did not call for emergency medical aid for Hutchins. Welch sped away.

The circumstances obviously support the finding that Welch specifically intended to kill Hutchins. And for our review, they leave no room for reasonably finding any lesser intention. The idea that the facts might support the finding that Welch intended only to injure Hutchins is meritless. Welch's proffered theory that he intended to hurt Hutchins implicitly accepts the fact that his act of driving his SUV, which the record tells us was a Ford Explorer, into and over Hutchins was intentional. The idea that Welch intended Hutchins to be merely injured, but not killed, under the crushing weight of a two-ton motor vehicle rolling over him is ludicrous.

Welch also argues that the district court's conclusions of law erroneously treated second-degree intentional murder as a general-intent crime rather than a specific-intent crime. We recognize that language in the district court's order is conflicting here. On the one hand, the district court correctly articulated the specific-intent requirement when it said

that “the State must prove beyond a reasonable doubt that [Welch] caused Hutchins’[s] death, and did so with the intent of killing him without premeditation.” And it correspondingly said that it was rejecting Welch’s argument that the state had not “proven that he acted with intent to kill Hutchins.” But on the other hand, the district court rendered its ultimate conclusion regarding the intent element by saying that the evidence supported “a finding beyond any reasonable doubt that Defendant’s *action* was intentional.” (Emphasis added.) Read in isolation only, one might say, as Welch contends, that this latter statement suggests that the district court was applying only a general-intent standard to a specific-intent crime.

Even if we were to disregard the district court’s correct statements of the intent element, we would not reverse here in this unusual circumstance. Welch framed his appeal as one challenging the sufficiency of the circumstantial evidence on the element of intent. This has led us to determine as a matter of law that the only reasonable conclusion available under the proved circumstances is that Welch specifically intended to kill Hutchins. Having so concluded, it would be futile to remand the case to the district court to re-evaluate the proved circumstances under the specific-intent standard to determine, as a fact-finder, whether Welch specifically intended to kill Hutchins. The ambiguity in the district court’s discussion of the legal standard therefore warrants no remand for new findings.

II

Welch argues that the prosecutor engaged in prejudicial misconduct by mischaracterizing the evidence and by referencing inadmissible evidence in its written closing argument. The state does not dispute this characterization of the prosecutor’s

conduct. The apparent concession on appeal is appropriate. A prosecutor engages in misconduct when she mischaracterizes the evidence, *see State v. Torres*, 632 N.W.2d 609, 618 (Minn. 2001), or improperly refers to inadmissible evidence, *Ture v. State*, 681 N.W.2d 9, 19 (Minn. 2004). The prosecutor did both here. The district court deemed the intent testimony inadmissible, and the prosecutor expressly relied on that testimony to argue for the element of specific intent to kill. And the prosecutor inaccurately characterized various witnesses' testimony as consistent on points that were actually inconsistent.

But the conceded point that the prosecutor engaged in misconduct does not end the inquiry. We will not reverse a conviction based on unobjected-to misconduct if the state establishes that the misconduct did not affect the defendant's substantial rights. *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). The key question in considering whether an error impacted an appellant's substantial rights is whether there is a reasonable likelihood that the misconduct impacted the verdict. *Id.* We are certain here that neither the prosecutor's references to the inadmissible evidence nor the mischaracterization of witness testimony impacted the verdict. Regarding the inadmissible intention testimony, the district court not only did not cite this testimony in its conclusions of law, it also reiterated its prohibition on witnesses testifying about Welch's intent, remarking that the witnesses had "no foundation to do so." And the characterization of the eyewitness testimony as "entirely consistent" is also harmless. It is true that the district court's findings appear to incorporate the prosecutor's mischaracterization. But the district court correctly referenced the witnesses who testified about the initial collision. We conclude that, although the prosecutor erred, the district court made factual findings consistent with the evidence

properly included in the record and that those findings support the guilty verdict. The errors did not impact Welch’s substantial rights.

III

We turn finally to Welch’s argument that the district court erred by imposing a felony fine after his second-degree intentional murder conviction despite the absence of a statutory basis to do so. We review the legality of a sentence *de novo*. *State v. DeRosier*, 719 N.W.2d 900, 903 (Minn. 2006). The legislature exclusively defines criminal acts and designates the punishment for them. *State v. Osterloh*, 275 N.W.2d 578, 580 (Minn. 1978). The legislature established that the punishment for second-degree murder is “imprisonment for not more than 40 years.” Minn. Stat. § 609.19, subd. 1 (2020). The legislature did not provide for a fine in second-degree murder cases. Because the statute does not authorize a fine, the district court lacked the authority to impose one. We therefore reverse only the fine component of Welch’s sentence and remand for the district court to correct the sentence by amendment.

The state theorizes that a fine is supported by Minnesota Statutes section 609.101, subdivision 4(1) (2020). That subdivision requires that, for all felony offenses not previously accounted for in prior subdivisions, the court must impose a fine of “not less than 30 percent of the maximum fine authorized by law.” Minn. Stat. § 609.101, subd. 4(1). The subdivision therefore applies only when a fine is authorized by law. And the legislature authorized no fine by law for second-degree murder.

Affirmed in part, reversed in part, and remanded.