STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0400

State of Minnesota,
Respondent,

vs.

Robert Wilford Fields, III,
Appellant.

Filed March 4, 2024
Affirmed in part, reversed in part, and remanded
Wheelock, Judge

Hennepin County District Court
File No. 27-CR-21-20086

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

Mary F. Moriarty, Hennepin County Attorney, Nicole Cornale, 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 Wheelock, Presiding Judge; Smith, Tracy M., Judge; and Gaïtas, Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

In this direct appeal from his convictions for first-degree aggravated robbery and theft, appellant argues that (1) there was insufficient evidence that he used force or threatened the imminent use of force to support his conviction for aggravated robbery,

(2) the prosecutor engaged in misconduct by misstating the law and misleading the jury during closing arguments, and (3) his theft conviction should be vacated because theft is a lesser included offense of first-degree aggravated robbery. Because the state presented sufficient evidence to support the jury's guilty verdict on the first-degree aggravated-robbery charge and the prosecutor did not engage in misconduct, we affirm the first-degree aggravated-robbery conviction. But because theft is a lesser included offense of first-degree aggravated robbery, we reverse the theft conviction and remand to the district court to amend the warrant of commitment.

FACTS

Respondent State of Minnesota charged appellant Robert Wilford Fields III with first-degree aggravated robbery in violation of Minn. Stat. § 609.245, subd. 1 (2020), and misdemeanor theft in violation of Minn. Stat. § 609.52, subd. 2(a)(1) (2020), based on an incident that occurred in October 2021. The state presented the following evidence at trial.

On October 27, 2021, B.W. was working at a Home Depot in St. Louis Park as an asset-protection specialist whose job was to catch or deter shoplifting. A man later identified as Fields entered the store and walked directly toward a holiday-gift display. A short time after entering the store, Fields placed a set of Husky tool bags, two DeWalt power tools, paint markers, and a pen light in his cart.

Because Fields had selected what B.W. described as "high-theft items" so quickly, B.W. watched Fields and took a photo of him with the items in his cart. Fields proceeded to a self-checkout register. B.W. watched Fields from the vestibule between the first and second sets of doors to the store that exit to the parking lot. At the register, Fields scanned

the items, placed them in bags, and pushed buttons on the pin pad. B.W. observed that Fields did not swipe or scan a card to pay for the items before proceeding to the exit and that no receipt printed from the self-checkout station.

When Fields walked through the first set of exit doors into the vestibule with the cart, B.W. approached him, showed Fields his badge, and identified himself as "Home Depot Asset Protection." He asked Fields to leave the shopping cart and reenter the store to talk in the office. B.W. and Fields were standing close together, with Fields standing behind the cart and B.W. standing in front of it. No one else was in the vestibule. Fields shoved the cart toward B.W., and B.W. stopped the cart by bracing it with his hand and asked Fields to release the cart. While B.W. was still holding on to the cart, Fields pushed it toward B.W. again.

Fields then reached toward his right front pants pocket, retrieved a four-inch pocketknife, and began to unfold it. As soon as B.W. saw the pocketknife, he exited the store to the parking lot and went around the corner to stay clear of Fields's path to the exit. As he stood outside, B.W. called 911 within seconds and told the dispatcher that he was reporting a robbery. B.W. stated three times that Fields had "pulled a knife" on him. During this time, B.W. watched Fields push the cart into the parking lot and get into the passenger seat of a black Jeep Cherokee, which immediately took a U-turn from its parking spot, hit a curb, and sped off. When B.W. returned to the self-checkout station Fields had used, he printed a "suspended transaction receipt" showing that Fields had scanned merchandise but had not paid for it. Officers responded to B.W.'s 911 call and

apprehended Fields after the driver crashed the vehicle and Fields fled on foot. The arresting officer found a four-inch pocketknife clipped to Fields's front pants pocket.

At trial, B.W. testified that he let Fields go because it was Home Depot's policy and because, he said, it was "common sense, you know, it's definitely a situation where I felt like I should back off, disengage and let him pass me." When asked if he was fearful that something would happen if he did not let Fields go, B.W. testified, "I definitely felt like had I not disengaged there was a potential he could have used that weapon on me." B.W. did not make another attempt to stop Fields after Fields unfolded the knife in front of him, explaining that he would not do so "at that point just for my own safety and also for the, you know, policy of my job." He explained that, according to Home Depot's policy, "[i]f we ever feel that there's anything unsafe about the situation we're to immediately disengage."

In his testimony, Fields admitted to shoplifting and possessing the pocketknife, but denied showing B.W. his pocketknife or threatening B.W. According to Fields, B.W. stopped him in the vestibule and grabbed his cart. Fields tried to get B.W. to let go of the cart, and when B.W. did not let go, Fields decided to wipe his fingerprints off the cart with his bandana so he could leave the cart in the store without leaving evidence that he had attempted to shoplift. The bandana was tied to his right beltloop next to his pocketknife, which was clipped to his right front pants pocket. As soon as Fields reached for the bandana, B.W. jumped to the side with his hands up. Fields then exited the store with the cart, loaded the items into the Jeep, and left. Fields testified that he intended only to shoplift and did not "pull a knife" on B.W. or threaten B.W. with a knife.

The jury found Fields guilty of first-degree aggravated robbery and theft. The district court entered judgments of conviction on both counts, sentenced Fields to 60 months' imprisonment for the first-degree aggravated-robbery conviction, and did not impose a sentence for the theft conviction.

Fields appeals.

DECISION

Fields argues that (1) his first-degree aggravated-robbery conviction must be reversed because the evidence was insufficient to prove that he used or threatened the imminent use of force; (2) alternatively, he is entitled to a new trial because the prosecutor engaged in misconduct by misstating the law and misleading the jury during closing arguments; and (3) his misdemeanor theft conviction must be reversed because theft is a lesser included offense of first-degree aggravated robbery. We address each argument in turn.

I. The evidence was sufficient to support Fields's first-degree aggravated-robbery conviction.

Fields argues that the state failed to prove beyond a reasonable doubt that he threatened the use of imminent force because it did not present evidence showing anything more than his possession of the pocketknife. He argues that caselaw requires the state to prove that he "brandished" or "waved" the weapon and that his conduct in taking the pocketknife out of his pocket and beginning to unfold it does not constitute brandishing or waving. Whether a defendant's conduct is prohibited by a statute is an issue of statutory

interpretation that we review de novo. *State v. Smith*, 825 N.W.2d 131, 136 (Minn. App. 2012), *rev. denied* (Minn. Mar. 19, 2013).

Minnesota law defines simple robbery as follows:

> Whoever, having knowledge of not being entitled thereto, takes personal property from the person or in the presence of another and *uses or threatens the imminent use of force* against any person to overcome the person's resistance or powers of resistance to, or to compel acquiescence in, the taking or carrying away of the property is guilty of [simple] robbery . . . .

Minn. Stat. § 609.24 (2020) (emphasis added). Simple robbery becomes first-degree aggravated robbery when, "while committing a robbery, [the person] is armed with a dangerous weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a dangerous weapon, or inflicts bodily harm upon another." Minn. Stat. § 609.245, subd. 1. The district court instructed the jury that "[t]hreat of imminent force" means "the intentional creation in the alleged victim's mind of an understanding that if he resisted or refused to cooperate, force would immediately be used against him."[1]

In support of his argument, Fields cites cases in which, he asserts, Minnesota appellate courts have held that brandishing or waving a knife was sufficient to prove a threat of imminent force. *State v. Slaughter*, 691 N.W.2d 70, 76 (Minn. 2005); *Smith*,

[1] This instruction mirrors the model jury instruction. *See* 10 *Minnesota Practice*, CRIMJIG 14.03 (Supp. 2022). We note that while the jury-instruction guides are not binding law, *Rowe v. Munye*, 702 N.W.2d 729, 734 n.1 (Minn. 2005), this instruction is consistent with the statute and "does not contravene existing case law," *State v. Webster*, 894 N.W.2d 782, 787 (Minn. 2017).

825 N.W.2d at 136; *State v. Bryan*, No. A12-2039, 2013 WL 6389581, at *2 (Minn. App. Dec. 9, 2013), *rev. denied* (Minn. Feb. 18, 2014). Fields then cites a dictionary definition of "brandish" and argues that his conduct in taking the pocketknife out of his pocket and beginning to unfold it does not meet that definition and that, therefore, the state failed to prove the threat-of-imminent-force element.

But the statute imposes no such requirement. The relevant question under the statute is whether Fields used or threatened the imminent use of force against B.W. to overcome B.W.'s resistance to Fields taking the merchandise from Home Depot. If the legislature sought to impose a waved-or-brandished requirement to prove the threat element, it would have done so. *Compare* Minn. Stat. § 609.66, subd. 1d(b) (2022) (criminalizing the "use[]" or "brandish[ing]" of a replica firearm on school property), *with* Minn. Stat. § 609.24 (criminalizing the use or threat of imminent use of force against another person to accomplish the offense of robbery). And "it is impermissible to add words or phrases to an unambiguous statute." *State v. Hensel*, 901 N.W.2d 166, 178 (Minn. 2017) (quotation omitted). We are therefore not persuaded by Fields's argument that his conduct could not, as a matter of law, fall within the ambit of the first-degree aggravated-robbery statute.

Moreover, Fields's reliance on the cases he cites is misplaced. None of the cases Fields cites addresses whether something less than "brandishing" or "waving" a knife is sufficient to prove a threat of imminent force; rather, in each cited case, the defendant *did* brandish or wave a knife. *See Slaughter*, 691 N.W.2d at 76 (determining that the defendant's conduct of brandishing a knife-like object was sufficient to support his first-degree aggravated-robbery conviction); *Smith*, 825 N.W.2d at 136 (rejecting a

challenge to a terroristic-threats conviction in which the defendant argued that "his conduct of waving a knife at [the victim] conveyed a threat of immediate violence" rather than a threat of future violence); *Bryan*, 2013 WL 6389581, at *2 (rejecting the argument that the defendant's conduct in brandishing a knife after, rather than before or simultaneous to, the taking was insufficient to prove first-degree aggravated robbery).[2]

Having addressed Fields's statutory-interpretation argument about whether the robbery statute prohibits his conduct, we review whether the evidence was sufficient on the threat-of-imminent-force element. Fields argues that he did not intend to communicate a threat of imminent force. Because intent is a state of mind, evidence of intent is typically circumstantial. *State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997). Therefore, we analyze Fields's sufficiency claim using the circumstantial-evidence test. *See State v. Lampkin*, 994 N.W.2d 280, 291 (Minn. 2023).

When reviewing a sufficiency-of-the-evidence claim, we "carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt." *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016) (quotation omitted). To evaluate the sufficiency of circumstantial evidence, we apply a two-step standard of review. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). First, we identify the circumstances proved at trial. *Id.* In doing so, we view conflicting evidence in the light most favorable to the verdict. *State v. Andersen*, 784 N.W.2d 320, 330 (Minn. 2010).

[2] Fields concedes that *Bryan* is nonprecedential. Nonprecedential cases are not binding on this court. Minn. R. Civ. App. P. 136.01, subd. 1(c).

Second, we "determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt." *Silvernail*, 831 N.W.2d at 599 (quotations omitted). At this step of the analysis, we consider the circumstantial evidence "as a whole," giving "no deference to the fact finder's choice between reasonable inferences." *Id.* (quotation omitted). "[W]e do not review each circumstance proved in isolation." *Andersen*, 784 N.W.2d at 332 (quotation omitted).

We first determine what circumstances were proved. Viewing the conflicting evidence in the light most favorable to the conviction, we determine that the state proved the following circumstances:

- Fields was walking out of Home Depot with a cart containing merchandise for which he had not paid.
- B.W. stopped Fields in the vestibule before Fields reached the exterior doors to the parking lot, identified himself as "Home Depot Asset Protection," and told Fields to leave the shopping cart and reenter the store.
- Fields and B.W. were standing a few feet apart, facing each other across a shopping cart in a confined area with no other witnesses.
- Fields understood that B.W. was trying to prevent him from shoplifting.
- Fields pushed the cart into B.W. twice: first when B.W. asked him to go back into the store and again when B.W. asked him to release the cart.
- Fields removed a four-inch folding pocketknife from his pocket and began to unfold it.
- B.W. saw Fields begin to unfold the pocketknife and immediately disengaged by exiting the vestibule into the parking lot and moving away from Fields.

- B.W. was fearful that Fields would use the pocketknife on him.
- It is Home Depot's policy for employees to disengage when a situation is unsafe.
- Fields exited the store with the merchandise.
- B.W. called 911 as soon as he stepped around the corner of the exterior doors away from Fields and told the dispatcher three times that Fields had "pulled a knife" on him.
- Fields fled the scene in a vehicle.
- When officers arrested Fields, he had a pocketknife clipped to his pants pocket.

Next, we examine whether the reasonable inferences drawn from the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis other than guilt. *See Silvernail*, 831 N.W.2d at 599. Regarding the threat of imminent force, it is reasonable to infer from these circumstances that Fields intended to communicate to B.W. that Fields would immediately use force against B.W. with the pocketknife if B.W. continued to resist him. Fields argues that the only evidence the state introduced to prove the threat-of-imminent-force element was that he took the pocketknife out of his pocket and began to unfold it. But Fields's argument ignores that he pushed the cart toward B.W. twice and refused to comply with B.W.'s requests, that a pocketknife is capable of inflicting bodily harm, and that B.W. disengaged because he felt unsafe and immediately called 911 to report that Fields had "pulled a knife" on him. These circumstances, viewed as a whole, support a reasonable inference that Fields intended to communicate a threat. Fields does not present a hypothesis other than guilt, and we do not discern one.

We thus conclude that the state presented sufficient evidence to support Fields's first-degree aggravated-robbery conviction.

II. The prosecutor did not engage in misconduct during closing arguments.

Fields argues that he is entitled to a new trial because the prosecutor engaged in misconduct during closing arguments by misstating the law and misleading the jury about the inferences it could draw from the evidence. Fields concedes that, because he did not object to the challenged statements at trial, his argument is subject to plain-error review.

In cases of unobjected-to prosecutorial misconduct, we apply a modified plain-error test. *State v. Epps*, 964 N.W.2d 419, 423 (Minn. 2021). Under the modified plain-error test, the appellant bears the burden to show both that the prosecutor committed error and that the error is plain. *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). If the appellant makes such a showing, the burden shifts to the state to demonstrate that the error did not prejudice the appellant's substantial rights. *Id.* And if the state fails to meet that burden, we determine whether reversal is required to uphold the fairness and integrity of the judicial proceedings. *Id.* Because we conclude that Fields has not met his burden to show plain error, we do not address the other requirements. *See State v. Lilienthal*, 889 N.W.2d 780, 785 (Minn. 2017).

A prosecutor's error is plain if it is "clear or obvious." *State v. Strommen*, 648 N.W.2d 681, 688 (Minn. 2002) (quotation omitted). Plain error can be shown in a prosecutor's action or statement that clearly "contravenes case law, a rule, or a standard of conduct." *State v. Wren*, 738 N.W.2d 378, 393 (Minn. 2007) (quotation omitted). A prosecutor "may present all legitimate arguments on the evidence and all proper inferences

that can be drawn from that evidence in its closing argument," *State v. Munt*, 831 N.W.2d 569, 587 (Minn. 2013) (quotation omitted), but engages in misconduct by misstating the law, misstating the facts, or misleading the jury about the inferences it may draw from the facts, *State v. Peltier*, 874 N.W.2d 792, 805 (Minn. 2016).

Fields asserts that the prosecutor engaged in misconduct by making the following statements during closing argument:

- "Mr. Fields testified and admitted to every element of the offense except the one where he pulls the knife out. So this case is now very simple, did he pull the knife out?"

- "It's the aggravated robbery when you pull a knife out, right, and that's the part where he doesn't admit to."

- "What I think is most important for you is that this case is now extremely simple[;] it's did this knife get pulled."

- "Yeah, Mr. Fields did admit to shoplifting. Shoplifting isn't aggravated robbery, one involves a weapon, one involves threats, the other is just shoplifting; right? So he admits to everything but the knife. Awfully convenient."

- "I still have to prove to you beyond a reasonable doubt all of the elements of the offense. I'm not saying I don't. I'm not saying, hey, it just comes down to did he have a knife or didn't he, because I still have to prove every element, I've still got to prove it happened in Hennepin County, that Mr. Fields did it, that a knife is a dangerous weapon. So I still have to prove all of those things to you beyond a reasonable doubt."

Fields argues that the prosecutor misstated the law by merging two separate elements of first-degree aggravated robbery—possession of a dangerous weapon and the threat of force—and that the prosecutor misled the jury by implying that if the jury found that Fields took the pocketknife out of his pocket and opened it, then the jury was required

to infer that he threatened the use of imminent force with it.[3] The state argues that the prosecutor's statements did not misstate the law or mislead the jury because the prosecutor did not state that possession of a knife necessarily proved a threat of imminent force, reminded the jury that the state was required to prove each element of the offense, emphasized B.W.'s statements that Fields "pulled a knife on him," and merely distinguished Fields's version of events from B.W.'s. We agree with the state.

The prosecutor did not misstate the law. The prosecutor reminded the jury of the difference between first-degree aggravated robbery and theft, stating that first-degree aggravated robbery involves a weapon *and* threats. *See* Minn. Stat. §§ 609.245, subd. 1, .24. And "pulling the knife" was relevant to both of those elements because, in the context of this case, it demonstrates that Fields possessed the knife and that he threatened B.W. by "pulling" it.

In addition, "the State may, in closing argument, argue that a witness was or was not credible." *State v. Jackson*, 773 N.W.2d 111, 123 (Minn. 2009). And comments that address a central issue in a case are permissible when the comment "merely summariz[es] the key issue that would impact the jury's determination of guilt." *State v. McDaniel*, 777 N.W.2d 739, 751 (Minn. 2010). Whether Fields pulled the pocketknife was the only disputed fact that went to the only disputed element of the offense of first-degree

[3] Fields's second argument relies on the same premise as his sufficiency argument—that the state did not introduce evidence of a threat beyond his unfolding the pocketknife and that the single act of unfolding the pocketknife is insufficient to prove a threat. We reject this argument because, as we have already concluded, the state proved other circumstances that support the reasonable inference that Fields intended to communicate a threat.

aggravated robbery—whether Fields threatened the imminent use of force against B.W. And the fact-finder's determination of that fact came down to witness credibility because Fields's and B.W.'s testimonies, as well as B.W.'s prior consistent statements to the 911 dispatcher, were the only evidence relevant to this point and their versions of events directly conflicted.

We thus conclude that Fields has not established that the prosecutor plainly erred in the state's closing argument and that Fields is not entitled to a new trial on the basis of prosecutorial misconduct.

III. Fields's theft conviction must be vacated as a lesser included offense of aggravated robbery.

The parties agree that Fields's conviction for theft under Minn. Stat. § 609.52, subd. 2(a)(1), should be vacated because theft is a lesser included offense of aggravated robbery under Minn. Stat. § 609.245, subd. 1. A person "may be convicted of either the crime charged or an included offense, but not both." Minn. Stat. § 609.04, subd. 1 (2020). "[T]heft is a lesser included offense of aggravated robbery." *State v. McClenton*, 781 N.W.2d 181, 187 (Minn. App. 2010) (quoting *State v. Nunn*, 351 N.W.2d 16, 19 (Minn. App. 1984), *rev. denied* (Minn. Mar. 13, 1987)), *rev. denied* (Minn. June 29, 2010).

When the district court's order includes convictions for an offense and a lesser included offense, we reverse and remand with instructions to vacate the erroneous conviction and retain the guilty verdict on that offense. *State v. Crockson*, 854 N.W.2d 244, 248 (Minn. App. 2014), *rev. denied* (Minn. Dec. 16, 2014); *see State v. Pflepsen*, 590 N.W.2d 759, 767 (Minn. 1999). Because the warrant of commitment includes

convictions for both first-degree aggravated robbery and the lesser included offense of misdemeanor theft, we reverse and remand with instructions to vacate the theft conviction while preserving the guilty verdict on that offense.

Affirmed in part, reversed in part, and remanded.