STATE OF MINNESOTA
IN COURT OF APPEALS
A10-123

State of Minnesota,
Respondent,

vs.

Tyre Dante Williams,
Appellant.

Filed February 1, 2011
Affirmed
Kalitowski, Judge

Dakota County District Court
File No. 19HA-CR-09-1356

Lori Swanson, Attorney General, St. Paul, Minnesota; and

James C. Backstrom, Dakota County Attorney, Kevin J. Golden, Assistant County Attorney, Hastings, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Bradford S. Delapena, Special Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Lansing, Judge; and Huspeni, Judge.*

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

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

KALITOWSKI, Judge

Appellant Tyre Dante Williams challenges his convictions of two counts of aiding and abetting first-degree aggravated robbery, arguing that the district court (1) abused its discretion by declining to instruct the jury with the "mere presence" instruction on accomplice liability used in federal courts; and (2) plainly erred by not instructing the jury that appellant could not be convicted unless he played a "knowing role" in the offenses. We affirm.

D E C I S I O N

I.

Appellant argues that the district court abused its discretion by declining to instruct the jury with the federal "mere presence" instruction on accomplice liability. We review a district court's refusal to give a requested instruction for an abuse of discretion. *State v. Daniels*, 361 N.W.2d 819, 831 (Minn. 1985).

At trial, appellant requested that the district court instruct the jury that a defendant's "mere presence" is not sufficient to establish liability for the crimes of another. The district court declined to give the requested instruction and instead instructed the jury consistent with the state model instruction on accomplice liability. *See* 10 *Minnesota Practice*, CRIMJIG 4.01 (2006).

A district court has "considerable latitude in selecting the language for jury instructions." *State v. Auchampach*, 540 N.W.2d 808, 816 (Minn. 1995) (quotation omitted). Although a party is entitled to a particular jury instruction if evidence exists at

trial to support the instruction, a district court is not required to give a requested instruction if its substance is already contained in the jury instructions. *Id.*

At trial, appellant testified that the man who committed the robberies approached appellant in his apartment building shortly before the crimes took place. The robber pressured appellant to participate. Appellant claimed he refused, attempted to dissuade the robber from his plans, and eventually told the robber to leave the building. Through his living-room window, appellant later observed some of the robber's interactions with the victims. Still later, appellant stated that he found the driver's license of one of the victims outside the apartment building and, assuming that it belonged to a neighbor, put it in his pocket without looking at it. Because appellant's version of events supports a "mere presence" instruction, it would not have been an abuse of discretion for the district court to give the requested instruction.

But appellant contends that the district court abused its discretion by declining to give the requested instruction because evidence exists to support his theory of the case—that is, that he was merely present at the scene of the crime. We disagree. The district court instructed the jury consistent with CRIMJIG 4.01, which includes the substance of the requested "mere presence" instruction. *See State v. Boyd*, 410 N.W.2d 445, 447 (Minn. App. 1987) (holding that CRIMJIG 4.01 "was sufficient to exclude mere presence or passive approval"). We therefore conclude that the district court did not abuse its discretion by declining to give the "mere presence" instruction. *See id.* (concluding that district court did not abuse its discretion by giving CRIMJG 4.01 instead of requested instruction on "mere presence"); *see also State v. Volk*, 421 N.W.2d 360, 365 (Minn.

App. 1988) (rejecting argument that "mere presence" language of federal jury instructions must be included in Minnesota jury instructions), *review denied* (Minn. May 18, 1988).

II.

Appellant argues that the district court committed plain error by failing to instruct the jury that he could not be convicted unless he played a "knowing role" in the offenses. Appellant did not request such an instruction at trial. A defendant who does not object to jury instructions at trial generally forfeits any right to challenge those instructions on appeal. *State v. Yang*, 774 N.W.2d 539, 557 (Minn. 2009). But an appellate court may review an unobjected-to instruction if the defendant shows (1) error, (2) that is plain, and (3) affects substantial rights. *Id.* "If the three prongs are met, we then consider whether to address the error to ensure fairness and the integrity of the judicial proceedings." *Id.* (quotation omitted).

The first step in the plain-error analysis is to determine whether the given jury instruction misstated the law. *State v. Hollins*, 765 N.W.2d 125, 129 (Minn. App. 2009). The Minnesota Supreme Court has held that CRIMJIG 4.01 does not erroneously state the law of accomplice liability. *E.g.*, *State v. White*, 684 N.W.2d 500, 509 (Minn. 2004).

Appellant relies on *State v. Mahkuk*, 736 N.W.2d 675 (Minn. 2007), and *State v. Williams*, 759 N.W.2d 438 (Minn. App. 2009), to support his argument that an instruction on the element of "knowledge" is required in addition to an instruction on the element of intent. But the district court in *Mahkuk* deviated from CRIMJIG 4.01. 736 N.W.2d at 681-83. And the district court in *Williams* failed to provide any instruction on

accomplice liability. 759 N.W.2d at 444. These cases are therefore distinguishable from a case where, as here, the district court instructed the jury consistent with CRIMJIG 4.01.

Moreover, the district court here did not erroneously omit the element of "knowledge" from the jury instructions. The district court instructed the jury that appellant "is guilty of a crime committed by another person when [appellant] has *intentionally* aided the other person in committing it or has *intentionally* advised, hired, counseled, or conspired with or otherwise procured the other person to commit it." (Emphases added.) Knowledge is required for intent; the jury could not have concluded that appellant intentionally aided the robber in committing the charged offenses without also concluding that appellant played a "knowing role" in the crimes. We therefore conclude that the district court did not commit plain error by not giving the jury a separate instruction on the element of "knowledge."

Affirmed.