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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1416**

State of Minnesota,
Respondent,

vs.

Jessica Elaine Quirt,
Appellant.

**Filed June 19, 2017
Affirmed
Klaphake, Judge***

Hennepin County District Court
File No. 27-CR-14-6682

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

Michael O. Freeman, Hennepin County Attorney, Elizabeth R. Johnston, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rachel F. Bond, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Larkin, Judge; and Klaphake, Judge.

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

UNPUBLISHED OPINION

KLAPHAKE, Judge

Appellant Jessica Elaine Quirt challenges her conviction of aiding and abetting second-degree sale of a controlled substance on the ground that the state failed to prove beyond a reasonable doubt that she intentionally aided the commission of a crime. Because sufficient evidence supports appellant's conviction and her pro se arguments lack merit, we affirm.

DECISION

Sufficiency of the Evidence

Appellant argues that the evidence presented at trial was insufficient to prove beyond a reasonable doubt that she intentionally aided the commission of a crime. Our review of a sufficiency-of-the-evidence challenge is "limited to a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did." *State v. DeRosier*, 695 N.W.2d 97, 108 (Minn. 2005) (quotation omitted). When an element of the offense, such as intent, has been proven by circumstantial evidence, we apply a heightened standard of review. *See State v. Al-Naseer*, 788 N.W.2d 469, 474 (Minn. 2010) (clarifying that heightened scrutiny applies both to cases in which all of the evidence is circumstantial and to cases in which only one element of the offense is proved by circumstantial evidence); *see also State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997) (recognizing that because intent is a state of mind, it is generally proved by circumstantial evidence). We first identify the circumstances proved and defer to the jury's "acceptance

of the proof of these circumstances.” *State v. Porte*, 832 N.W.2d 303, 310 (Minn. App. 2013) (quotations omitted). We then “examine independently the reasonableness of all inferences that might be drawn from the circumstances proved, including inferences consistent with a hypothesis other than guilt.” *Id.* (quotations omitted). Because “we have recognized that the jury is in the best position to evaluate the evidence,” we defer to the jury’s acceptance of the circumstances proved by the state and rejection of evidence that conflicted with those circumstances. *Id.* (quotations omitted); *see also State v. Silvernail*, 831 N.W.2d 594, 599 (Minn. 2013) (“[We] construe conflicting evidence in the light most favorable to the verdict and assume that the jury believed the state’s witnesses and disbelieved the defense witnesses.” (quotation omitted)).

A person who “on one or more occasions within a 90-day period . . . unlawfully sells one or more mixtures of a total weight of three grams or more containing . . . heroin” is guilty of a second-degree controlled substance crime. Minn. Stat. § 152.022, subd. 1(1) (2012). To convict appellant of intentionally aiding the commission of a controlled substance crime, the state had to prove that appellant “intentionally aide[d], advise[d], hire[d], counsel[d], or conspire[d] with or otherwise procure[d] the other to commit the crime.” Minn. Stat. § 609.05, subd. 1 (2012). “Intentionally aids” means that the defendant knew her alleged accomplice was “going to commit a crime,” and intended her “presence or actions to further the commission of that crime.” *State v. McAllister*, 862 N.W.2d 49, 52 (Minn. 2015) (quotation omitted).

Minneapolis police officers conducted an undercover investigation into heroin dealing in the community. On five separate occasions in March and April 2012,

undercover officers purchased heroin from appellant's boyfriend through controlled drug buys. Officers obtained a phone number for a "mobile heroin dealer" and later identified it as appellant's phone number. Officers testified that appellant accompanied her boyfriend during these drug buys and, on at least three occasions, drove a car registered to her father to the meeting spots. On one occasion, an undercover officer spoke directly to appellant on the phone and indicated that she wanted to purchase drugs. According to the officer's testimony, appellant answered in the "affirmative" and indicated that it "would be a possibility and okay for the day," and instructed the officer where to go for the exchange. During the final drug buy, appellant pulled her car up alongside the undercover officer's car and passed the officer a cigarette pack containing four bindles of a substance that field-tested positive for 3.1 grams of heroin. With respect to the first step in the heightened-scrutiny analysis, the circumstances proved by the state demonstrate that appellant aided and abetted the commission of a controlled substance crime.

We next consider whether the circumstances proved are consistent with guilt and inconsistent with any reasonable hypothesis other than guilt. *Al-Naseer*, 788 N.W.2d at 473-74. At this step, we do not defer to the jury's "choice between reasonable inferences." *Id.* at 474 (quotations omitted). Appellant denies assisting her boyfriend in selling drugs and argues that she was "merely present" during the drug buys. We recognize that "[i]naction, knowledge, or passive acquiesce . . . do not rise to the level of conduct" prohibited by law and that the state bears the burden of showing "some knowing role in the commission of the crime by a defendant who takes no steps to thwart its completion." *State v. Russell*, 503 N.W.2d 110, 114 (Minn. 1993) (quotation omitted). The record, however,

does not support appellant's inference. Police officers arranged five drug buys by calling appellant's cell phone number. She drove to the location of the drug buys and, in one instance, spoke to the officer on the phone and directed the officer to a specific location to pick up the drugs. During the fifth and final drug buy, appellant personally handed the officer a pack containing 3.1 grams of heroin. The only reasonable inference, given the totality of the circumstances, is that appellant was aiding and abetting the sale of controlled substances.

In sum, on the record before us, there is sufficient evidence to permit the jury to conclude beyond a reasonable doubt that appellant was guilty of intentionally aiding the commission of a controlled substance crime.

Pro Se Arguments

Appellant raises several additional arguments in her pro se brief. Appellant argues that the state misrepresented certain facts to the jury and urges this court to reconsider the evidence and the witness testimony in light of these alleged errors. Because it is not a reviewing court's role on appeal to reweigh the evidence or assess witness credibility, we decline to do so. *See State v. Franks*, 765 N.W.2d 68, 73 (Minn. 2009) ("Our precedent does not permit us to re-weigh the evidence."). Appellant also claims that she was denied effective assistance of counsel. Appellant did not raise this issue below and the record is inadequately developed to allow meaningful review on appeal. *See Voorhees v. State*, 627 N.W.2d 642, 649 (Minn. 2001) (noting that while an ineffective-assistance-of-counsel claim must generally be raised in a postconviction petition, we may consider such claims for the first time on appeal if the record is adequately developed). We have carefully

reviewed the substance of appellant's pro se claims and the case law relevant to those claims, and determine that they are without merit. *See Ture v. State*, 681 N.W.2d 9, 20 (Minn. 2004) (rejecting pro se claims without articulating reasoning for each argument).

Affirmed.