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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0617**

State of Minnesota,
Respondent,

vs.

Prince Lashone Holt,
Appellant.

**Filed April 30, 2018
Affirmed
Ross, Judge**

Hennepin County District Court
File No. 27-CR-16-27297

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

Michael O. Freeman, Hennepin County Attorney, Brittany D. Lawonn, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Peterson, Judge; and Ross, Judge.

UNPUBLISHED OPINION

ROSS, Judge

A jury watched a video recording and heard police testimony describing the following events occurring on the sidewalk in downtown Minneapolis: Prince Holt talked

to a woman seconds before the woman purchased crack cocaine from a drug dealer; Holt nodded to several pedestrians at the crosswalk while he was standing next to the drug dealer; and Holt nodded toward, talked to, and handed a crack pipe and lighter to another crack buyer while Holt stood immediately beside the dealer. A jury found Holt guilty of third-degree aiding and advising in the sale of cocaine. Holt appeals his conviction, arguing that the evidence was insufficient to convict him, that prosecutorial misconduct made his trial unfair, and that his trial attorney improperly conceded guilt on an element of the crime. He adds other arguments in a supplemental brief. None of these arguments is convincing, and we affirm.

FACTS

Minneapolis Police Officer Mark Lanasa was watching part of downtown Minneapolis covertly by camera from the police department's surveillance room on an evening in October 2016. Officer Lanasa saw a woman approach a man later identified as Prince Holt near Hennepin Avenue and 8th Street. Police know the area as a place where cocaine dealers frequently operate in the evenings. The woman spoke to Holt. Holt looked at his phone. The woman then turned and walked to Andre Parker, who was standing nearby. Parker dropped a small white object on the sidewalk and the woman picked it up. The woman appeared to be holding folded cash. She walked past Holt and into a tobacco shop, out of view of the surveillance cameras.

Officer Lanasa, who has extensive experience observing and investigating drug deals, believed that the woman had purchased crack cocaine from Parker. Soon Holt and Parker stood together, talking. Holt nodded his head to pedestrians as they passed by. One

of them—a man—walked by, and Holt walked after him, talking to him. After a brief discussion between Holt and the man, Holt, Parker, and the man entered a recessed doorway. Parker reached to his mouth and showed a white substance to the man. Holt handed the man a pipe and seemed to load it with a white substance. The three then moved to a different recessed doorway. Holt handed the man a lighter and the man lit and smoked from the pipe. After several minutes, the man handed the pipe and the lighter back to Holt, who also smoked from it.

Officer Lanasa directed Officers San Roman and Joshua Henninger to arrest Parker and Holt. The officers found 19 bindles of crack cocaine on Parker and they found a glass pipe on Holt. The state charged Holt with third-degree aiding and advising in the sale of cocaine in violation of Minnesota Statutes section 152.023, subdivision 1(1) (2016). A jury found him guilty. This appeal follows.

D E C I S I O N

Holt makes three principal arguments. He argues that the evidence was insufficient to convict him, that the prosecutor committed misconduct by eliciting inadmissible character evidence, and that he received ineffective assistance of counsel because his attorney conceded guilt on an element of the charged offense. Holt offers additional arguments in his supplemental brief. None of his arguments leads us to reverse his conviction.

I

We are not persuaded by Holt’s argument that the evidence was not sufficient to convict him. When we address an insufficient-evidence argument, we review the record

for evidence that, viewed in a light favorable to the conviction, would allow the jury to find the defendant guilty. *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012). We assume that the jury believed the state’s witnesses and disbelieved any contrary evidence. *Id.* The evidence supporting the intent element here is circumstantial. We apply heightened scrutiny to convictions based on circumstantial evidence. *See State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). This includes any element that was proved by circumstantial evidence. *State v. Porte*, 832 N.W.2d 303, 309 (Minn. App. 2013) (citing *Al-Naseer*, 788 N.W.2d at 473–75).

The state charged Holt under a statute establishing that “[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 (2016). Proving that Holt intentionally aided Parker required the state to establish two elements: the first is that Holt knew that Parker was “going to commit a crime” (in this case selling cocaine) and the second is that he “intended his presence or actions to further the commission of that crime.” *See State v. Mahkuk*, 736 N.W.2d 675, 682 (Minn. 2007).

Reviewing whether the circumstantial evidence sufficiently proved that Holt knew that Parker was going to commit a crime involves two steps. We first identify the circumstances proved. *State v. Hanson*, 800 N.W.2d 618, 622 (Minn. 2011). We then independently examine the reasonableness of the inferences that can be made from these circumstances, including inferences consistent with innocence. *Id.* We maintain a guilty

verdict only if “there are no other reasonable, rational inferences that are inconsistent with guilt.” *Id.* (quotation omitted).

We identify the circumstances proved by deferring to the jury’s implied finding of these circumstances as well as to its rejection of any conflicting evidence. *Id.* The circumstances proved here are all those details and observations outlined above. Holt argues that one might reasonably infer that, instead of assisting Parker in *selling* the cocaine, he was actually trying to *purchase* cocaine. This may be a possible interpretation of the circumstances, but it is not a reasonable one. Holt’s nodding repeatedly to passersby, engaging with a woman who immediately received drugs from Parker in a surreptitious exchange, and his nodding toward and following the man and talking with him immediately before the man stopped to receive drugs from Parker, add to the other circumstances for a total picture depicting complicity in sale, not in purchase. The evidence supports the verdict.

II

We similarly are not persuaded by Holt’s claim of prosecutorial misconduct. Holt argues that the prosecutor committed misconduct by eliciting inadmissible character evidence from Officer Lanasa:

Prosecutor: Did you see anything else that drew your attention?

Officer Lanasa: I observed Mr. Holt.

Prosecutor: Are you familiar with Mr. Holt?

Officer Lanasa: I am.

Prosecutor: How is that?

Officer Lanasa: From prior incidents.

Holt did not object to this questioning at trial. We review unobjected-to prosecutorial misconduct under a modified plain-error test. *State v. Milton*, 821 N.W.2d 789, 802 (Minn. 2012). This places the burden on Holt to show that an error was made and that it was plain. *See id.* If Holt establishes these things, then the burden shifts to the state to prove that the error did not affect Holt’s substantial rights. *See id.*

The prosecutor engaged in misconduct. When a defendant’s identity is not at issue, a prosecutor may not draw a police officer to reveal that he knows the defendant from prior contacts. *State v. Valentine*, 787 N.W.2d 630, 641 (Minn. App. 2010) (citing *State v. Strommen*, 648 N.W.2d 681, 688 (Minn. 2002)). It is also improper for a prosecutor to elicit evidence of prior bad acts to taint the defendant’s character. *State v. Harris*, 521 N.W.2d 348, 354 (Minn. 1994); *see also* Minn. R. Evid. 404(b) (2017) (“Evidence of another crime, wrong, or act is not admissible to prove the character of a person in order to show action in conformity therewith.”). Holt’s attorney acknowledged in opening statements that Holt was one of the men depicted on the surveillance footage, and the state concedes that Holt’s identity was never disputed at trial. In fact, the state does not dispute that eliciting the testimony constituted an error. The prosecutor compounded the error by having the officer elaborate about his extensive felony-drug-arrest experience. In this context, the officer’s testimony that he knew Holt “[f]rom prior incidents” essentially informed the jury that Holt had multiple previous drug-enforcement encounters with police. The prosecutor engaged in misconduct by eliciting this evidence of Holt’s bad character, and it was error to allow the testimony.

We also conclude that the error was plain. Again, the state does not argue otherwise. An error is plain if it is clear or obvious, and “[u]sually this is shown if the error contravenes case law, a rule, or a standard of conduct.” *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). Given the clear principles from caselaw and the evidentiary rules, there could be no mistaking the prosecutor’s improper questioning for valid questioning. The error was plain.

But Holt’s substantial rights were not affected. Substantial rights are affected when there is “a reasonable likelihood that the error had a significant effect on the jury’s verdict.” *Milton*, 821 N.W.2d at 809 (quotation omitted). Because there was plain error, the burden is on the state to prove that this was not the case. *See id.* at 802. The state introduced considerable evidence against Holt, and the jury saw much of it unfiltered by means of the video recording. Because the jurors knew that Parker was selling drugs and because we have already established that no reasonable, innocent interpretation explains Holt’s involvement with Parker’s drug dealing, we conclude that there is no reasonable likelihood that Officer Lanasa’s improper reference to his prior involvement with Holt affected the verdict. Holt’s substantial rights were therefore not affected.

III

We turn to Holt’s ineffective-assistance-of-counsel claim. To receive a new trial for ineffective assistance, Holt must establish that his attorney performed beneath an objective standard of reasonableness and that it is reasonably probable that, but for the deficiency, the proceeding would have resulted differently. *Strickland v. Washington*, 466 U.S. 668, 687–88, 104 S. Ct. 2052, 2065 (1984); *Opsahl v. State*, 677 N.W.2d 414, 420–21 (Minn. 2004). Holt argues that his trial counsel was ineffective by conceding guilt on one of the

elements of the aiding-and-assisting drug sales charge—that the principal (Parker) was selling drugs—without Holt’s consent to the concession. The defendant, not his attorney, has the choice whether to concede guilt. *State v. Prtine*, 784 N.W.2d 303, 318 (Minn. 2010). So a defense attorney’s performance is deficient and prejudice is presumed if the attorney admits his client’s guilt unless the defendant consented to or acquiesced in the admission of guilt. *Id.* at 317–18.

It is clear that Holt’s attorney conceded guilt on an element of the offense. During opening statements, Holt’s attorney said the following:

But from the context, it seems likely that the man with the ponytail and the man in black, Mr. Parker, seem to exchange a small amount of cash for drugs.

At that point, Mr. Parker . . . leaves the scene, leaving Mr. Holt with his crack pipe and this buyer who just bought this small amount of crack together. And the man with the ponytail loads Mr. Holt’s crack pipe and then they walk together, and the man with the ponytail smokes the crack.

The concession continued during questioning. Cross-examining Officer Lanasa, Holt’s attorney replayed some of the surveillance video and, at one point, asked, “And then turning to when the individuals used the cocaine . . . [I]t appears that he started smoking at about 6:50:07; is that correct?” The concession culminated in the attorney’s closing argument, which included the plain statement, “There’s no real dispute that Mr. Parker was selling cocaine.”

It is also clear, however, that Holt acquiesced in the concession. A defendant acquiesces in his trial counsel’s concession “when trial counsel uses the same strategy from beginning to end of trial and the defendant does not object.” *Prtine*, 783 N.W.2d at 318

(citing *State v. Provost*, 490 N.W.2d 93, 97 (Minn. 1992)). The concession of Parker's drug dealing began in the opening statement and continued throughout the trial. Holt demonstrated his resolve to object to those things he found objectionable. For example, immediately before the trial began, Holt objected to having his attorney and informed the district court that he wanted a new one. Later he objected to part of Officer Lanasa's testimony on his own rather than through his attorney. Given Holt's proven ability and willingness to object to things he found objectionable, and given his failure to object throughout his attorney's multiple statements conceding that Parker was engaged in drug dealing, we must infer Holt's acquiescence to the concession. Holt's attorney therefore was not ineffective by conceding the element on Holt's behalf.

IV

We have carefully considered all of the supplemental arguments Holt has forwarded. Each argument plainly fails on various legal and factual grounds, and none warrants a detailed discussion.

Affirmed.