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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0961**

State of Minnesota,
Respondent,

vs.

Lamar Terrelle Warren,
Appellant.

**Filed April 2, 2018
Affirmed
Reilly, Judge**

Polk County District Court
File No. 60-CR-17-349

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

Greg Widseth, Polk County Attorney, Scott A. Buhler, Brent R. Carlsen, Assistant County Attorneys, Crookston, Minnesota (for respondent)

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

Considered and decided by Connolly, Presiding Judge; Reilly, Judge; and Reyes, Judge.

UNPUBLISHED OPINION

REILLY, Judge

Appellant challenges his conviction of gross-misdemeanor escape from custody for failing to return to custody after a temporary furlough expired, in violation of Minn. Stat.

§ 609.485, subd. 2(1) (2016). He asserts that the district court committed reversible error by denying his motion for a judgment of acquittal. We affirm.

D E C I S I O N

I. Standard of Review

Appellant argues that the district court erred in denying his motion for a judgment of acquittal after the close of the state’s case-in-chief. “At the close of evidence for either party, the defendant may move for . . . a judgment of acquittal on one or more of the charges if the evidence is insufficient to sustain a conviction.” Minn. R. Crim. P. 26.03, subd. 18(1)(a). We review the district court’s decision on a motion for a judgment of acquittal de novo, as a question of law. *State v. McCormick*, 835 N.W.2d 498, 506 (Minn. App. 2013), *review denied* (Minn. Oct. 15, 2013). “[T]he test to be applied is whether, after viewing the evidence and all resulting inferences in the light most favorable to the state, the evidence is sufficient to present a fact question for the jury.” *Id.* (quotation omitted).

II. We review all the evidence presented at trial.

Appellant asks us to limit our review to the evidence presented during the state’s case-in-chief. We decline to do so. “[W]here a defendant chooses to introduce evidence after his motion for judgment of acquittal has been denied, we consider the whole record and not just the evidence produced by the State.” *State v. Tschau*, 758 N.W.2d 849, 857 n.7 (Minn. 2008) (citations and quotations omitted). Thus, when examining whether the evidence was sufficient to support the conviction, we are not limited solely to the evidence introduced by the State, and may instead review the record as a whole. *Id.*; *see also State v. Golden*, 216 Minn. 97, 102, 12 N.W.2d 617, 619 (1943) (noting that reviewing court

considers “all the evidence presented in the case”); *State v. Traver*, 198 Minn. 237, 238, 269 N.W. 393, 393-94 (1936) (“[T]he question of the sufficiency of the evidence to sustain the verdict or decision is . . . to be determined on appeal by a consideration of all the evidence presented in the case.”); *State v. Baker*, 161 Minn. 1, 2, 200 N.W. 815, 815 (1924) (stating that the relevant inquiry is whether there is a “case for the [fact-finder] when all the evidence was in”). Given the weight of authority, it is appropriate for this court to consider the entirety of the trial record in reviewing the district court’s decision.

III. Sufficient evidence supports the conviction.

Appellant challenges the sufficiency of the evidence underlying his conviction. Our review of the sufficiency of the evidence 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) (quotations omitted). We “presume that the jury believed the State’s witnesses and disbelieved any contrary evidence.” *State v. Buckingham*, 772 N.W.2d 64, 71 (Minn. 2009). The verdict will not be disturbed “if the [fact-finder], acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense.” *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012).

Appellant argues that the district court erred by denying his acquittal motion because the state failed to produce sufficient evidence of his intent to escape from custody. A person is guilty of escape from custody if he “escapes while held . . . in lawful custody on a charge or conviction of a crime. . . .” Minn. Stat. § 609.485, subd. 2(1). “‘Escape’

includes departure without lawful authority and failure to return to custody following temporary leave granted for a specific purpose or limited period.” *Id.* § 609.485, subd. 1 (2016). Failure to return from a furlough constitutes an escape. *See Headbird v. State*, 375 N.W.2d 90, 92 (Minn. App. 1985), *review denied* (Minn. Dec. 13, 1985). This offense is not a specific-intent crime, as “the only intent required to constitute the crime of escape is the intent to do the act which results in the departure from custody.” *State v. Kjeldahl*, 278 N.W.2d 58, 61 (Minn. 1979); *see also State v. Knox*, 311 Minn. 314, 322, 250 N.W.2d 147, 154 (1976) (stating that acts constituting escape-from-custody offense “must be intentional and voluntary”).

Appellant stipulated that he was in lawful custody at a corrections center in connection with an impaired-driving offense. Appellant received a temporary furlough for a four-hour period. Appellant failed to return to custody by the expiration of the temporary furlough, and the state charged him with escaping from custody. The jury found appellant guilty of the charge. The question presented on appeal is whether the state satisfied its burden of establishing that appellant’s failure to return to custody after his temporary furlough expired was intentional and voluntary, as required by *Knox* and *Kjeldahl*.

Appellant argues that his conviction rests on circumstantial evidence, warranting stricter scrutiny on appeal. While we determine that direct evidence supports the verdict, appellant’s challenge also fails under a heightened-review standard.

First, direct evidence supports the intent element. The district court granted appellant a four-hour furlough to retrieve his belongings from a hotel in Grand Forks, where he had been living. After collecting his belongings from the hotel, appellant also

attempted to collect his car, which was in someone else's possession. Appellant knew that he was late returning to custody and stated, "I can accept bein[g] in . . . trouble as long as I got my belongings back," revealing that appellant's failure to return at the end of his furlough was intentional and voluntary. At trial, appellant reiterated that he knew he was "late getting back" from leave, and understood that he was out of custody beyond the expiration of his temporary furlough. "Confessions are held to be direct, rather than circumstantial, evidence of guilt." *State v. McClain*, 208 Minn. 91, 95-96, 292 N.W. 753, 755 (1940). Here, appellant's admissions that he made a conscious choice to delay returning to custody in order to collect his belongings satisfies the definition of escape under *Knox* and *Kjeldahl* and constitutes direct evidence of guilt. Direct evidence, in the form of appellant's admission, supports a determination that he escaped from custody by failing to return at the end of his temporary furlough, and, in turn, supports the conviction.

Second, when an element of the offense, such as one's state of mind, has been proved circumstantially, we apply a heightened standard of review. See *State v. Al-Naseer*, 788 N.W.2d 469, 474 (Minn. 2010) (recognizing that a conviction based on circumstantial evidence requires heightened scrutiny). 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). 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).

Viewed in the light most favorable to the verdict, the state proved the following circumstances: (1) appellant knew his temporary furlough expired; (2) he knew he was late

returning to custody at the end of his furlough; and (3) he did not return to custody until after the furlough expired. The fact-finder could reasonably have inferred that appellant's escape from custody was intentional and voluntary based upon the circumstances proved. With regard to the second *Al-Naseer* factor, the circumstances proved are inconsistent with any rational hypothesis except that of guilt. To successfully challenge a conviction based upon circumstantial evidence, appellant bears the burden of "point[ing] to evidence in the record that is consistent with a rational theory other than guilt." *State v. Taylor*, 650 N.W.2d 190, 206 (Minn. 2002). The possibility of a defendant's innocence does not require reversal if "the evidence taken as a whole makes such theories seem unreasonable." *Id.* Here, appellant has not identified evidence in the record consistent with a rational theory other than guilt, and we determine that the evidence is sufficient to permit the fact-finder to conclude beyond a reasonable doubt that appellant was guilty of escaping from custody, even under a heightened standard of review. Thus, the district court did not err by denying appellant's acquittal motion.

Affirmed.