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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-2043**

State of Minnesota,
Respondent,

vs.

Micah Lee Ward,
Appellant.

**Filed December 3, 2018
Affirmed
Schellhas, Judge**

Lyon County District Court
File No. 42-CR-16-1147

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

Rick Maes, Lyon County Attorney, Abby Wikelius, Assistant County Attorney, Marshall,
Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota; and

Mark D. Nyvold, Special Assistant Public Defender, Fridley, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Schellhas, Judge; and
Randall, Judge.*

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

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges his convictions of domestic assault and fifth-degree controlled-substance sale, arguing that the district court plainly erred in its jury instructions and that his conviction of fifth-degree controlled-substance sale is not supported by sufficient evidence. We affirm.

FACTS

In November 2016, while appellant Micah Ward was involved in a romantic relationship with A.H. and at her home, he hit her with a closed fist, bruising her left arm and back, and hit her with a fan that he had broken, injuring her face near her left eye. Ward told A.H. that if the police came, he would kill her. When A.H. tried to leave her home, Ward prevented her departure by blocking the door and then pulling out a gun. Eventually, A.H. called 911, and Ward ran from A.H.'s apartment and she saw him get into a taxi.

Police arrived quickly, and A.H. directed them to a taxi, where Ward was sitting in the front passenger seat. A police officer stopped the taxi and noticed that Ward was “making movements like he was moving his hands toward the back seat of the [taxi] and after he got out [the officer] observed he didn’t have anything in his hands.” The officer searched the taxi and found a “package of green leafy substance” behind the front passenger’s seat. Based on his experience and training, the officer identified the substance as marijuana. The substance in the package consisted of 15 individually wrapped baggies that were identical in size and were later determined to weigh one gram, including the

weight of the baggie. The officer arrested Ward and transported him to a law-enforcement center for questioning.

Before questioning Ward, the police officer patted him down and found additional small baggies and one larger bag of marijuana on his person. Ward admitted that the marijuana belonged to him. Respondent State of Minnesota charged Ward with various offenses, and the following offenses were tried to a jury: threats of violence in violation of Minn. Stat. § 609.713, subd. 1 (2016); domestic assault-fear in violation of Minn. Stat. § 609.2242, subd. 4 (2016); domestic assault-bodily harm in violation of Minn. Stat. § 609.2242, subd. 4; two counts of domestic assault-prior convictions in violation of Minn. Stat. § 609.224, subd. 4(b) (2016); fifth-degree controlled-substance sale in violation of Minn. Stat. § 152.025, subd. 1(1) (2016); and second-degree assault with a dangerous weapon in violation of Minn. Stat. § 609.222, subd. 1 (2016).

Multiple officers testified at trial about the packaging and presentation of the marijuana. One officer stated that “when people carry baggies like that where they’re all individually packaged, identical in size, identical in shape and weight, that to [him] is indicative . . . that they have them for sale, not for personal use.” An officer also testified that the larger bag of marijuana was ground up, indicating that it was for Ward’s personal use, while the smaller bags contained buds, indicating they were intended for sale.

At the close of the trial, the district court instructed the jury about each charge, but the court misstated the jury instruction for domestic assault-bodily harm. Before the jury began deliberating, the court acknowledged the mistake and again instructed the jury on

domestic assault-bodily harm. The jury found Ward guilty of felony domestic assault-bodily harm and fifth-degree sale of marijuana.

This appeal follows.

DECISION

Jury Instructions

Appellate courts review a district court's jury instructions for an abuse of discretion. *State v. Peltier*, 874 N.W.2d 792, 797 (Minn. 2016). Jury instructions must "fairly and adequately explain the law of the case and not materially misstate the law." *Id.* Ward did not object to the jury instructions at trial. When a defendant fails to object at trial, the forfeiture doctrine generally precludes appellate relief. *State v. Beaulieu*, 859 N.W.2d 275, 278–79 (Minn. 2015). But under Minn. R. Crim. P. 31.02, an appellate court may consider a forfeited error when an appellant shows "(1) error; (2) that was plain; and (3) that affected substantial rights." *State v. Lillenthal*, 889 N.W.2d 780, 785 (Minn. 2017). If an appellate court concludes that any of the requirements of the plain-error doctrine is not satisfied, it need not consider the others. *State v. Webster*, 894 N.W.2d 782, 786 (Minn. 2017). If an appellant establishes all three requirements, an appellate court "may correct the error only if it seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Id.*

"An error is plain if it is clear or obvious, which is typically established if the error contravenes case law, a rule, or a standard of conduct." *Id.* at 787 (quotations omitted). A district court "abuses its discretion . . . when its jury instructions materially misstates the law when read as a whole." *State v. Schoenrock*, 899 N.W.2d 462, 466 (Minn. 2017).

Here, the district court instructed the jury on felony domestic assault in violation of Minn. Stat. § 609.2242, subd. 4, in relevant part, as follows:

Under Minnesota law, whoever intentionally inflicts or attempts to inflict bodily harm upon another is guilty of a crime if the personal assaulted is a fa – is a member of the defendant’s family or household.

Domestic Assault Intent to Inflict Bodily Harm Elements. The elements of domestic assault are, first the defendant assaulted [A.H.]. The term assault as used in this charge is the intentional infliction of bodily harm upon another. Bodily harm means physical pain or injury, illness, or any impairment of a person’s physical condition. *It is not necessary for the State to prove that the defendant intended to inflict bodily harm or death but only that the defendant acted with intent that [A.H.] would -- it is not necessary for the State to prove that the defendant intended to inflict bodily harm or death.* Intentionally means that the actor either has a purpose to do the thing or cause the result specified or believes that the act performed by the actor, if successful, will cause the result. In addition the actor must have knowledge of those facts that are necessary to make the actor’s conduct criminal and that are set forth after the word intentionally. To have knowledge requires only that the actor believes that the specified fact exists. Second, [A.H.] was a member of the defendant’s family

(Emphasis added.)

Ward argues that the italicized language above constituted “instructional error” and

means the jury, to convict, did not have to find that [Ward] had even committed the physical act necessary to inflict bodily harm. This is because a reasonable lay jury could not reasonably have understood the instruction “it is not necessary for the State to prove that the defendant intended to inflict bodily harm or death” to mean the State had no burden to prove that Ward specifically intended the bodily harm he allegedly caused.

We disagree. “[T]he mens rea element of assault-harm, ‘intentional,’ requires only the general intent to do the act that results in bodily harm.” *State v. Dorn*, 887 N.W.2d 826, 831 (Minn. 2016) (citing *State v. Fleck*, 810 N.W.2d 303, 309 (Minn. 2012) (holding that assault-harm is general-intent crime)). “[I]n proving the mens rea element of general-intent crimes, the State need not show that the defendant meant to or knew that she would violate the law or cause a particular result.” *Id.* (quotation omitted).

Moreover, here, before the jury began deliberating, the district court stated, “I want to correct any possible error and that is the instruction on Domestic Assault Intent to – to inflict bodily harm elements.” The court then provided full, correct, and agreed-upon instructions to the jury. Additionally, the court provided written instructions to the jury. *See State v. Swain*, 269 N.W.2d 707, 715 (Minn. 1978) (“[W]ritten instructions are to be encouraged as an aid to juries unversed in the law and that fairness may be better insured by giving written instructions.”). We conclude that the district court did not commit plain error in its instructions to the jury on assault-harm.

Sufficiency of the Evidence

Ward argues that the evidence was insufficient to convict him of fifth-degree controlled-substance sale because the circumstances proved create a reasonable inference that is inconsistent with guilt and instead show possession for personal use. In assessing the sufficiency of evidence, an appellate court views “the evidence in a light most favorable to the verdict to determine whether the facts in the record and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted.” *State v.*

Hanson, 800 N.W.2d 618, 621 (Minn. 2011) (quotations omitted). “We will not disturb the jury’s verdict if the jury, acting with due regard for the presumption of innocence and for the necessity of overcoming it by proof beyond a reasonable doubt, could reasonably conclude that a defendant was proven guilty of the offense charged.” *Id.* (quotation omitted).

Here, the state relied on circumstantial evidence to prove that Ward intended to sell the marijuana that he possessed. “Intent to sell or distribute is usually proved circumstantially.” *State v. White*, 332 N.W.2d 910, 912 (Minn. 1983).

When assessing the sufficiency of circumstantial evidence, our review warrants closer scrutiny. When reviewing the sufficiency of circumstantial evidence, we first identify the circumstances proved. Consistent with our standard of review, we defer to the jury’s acceptance of the proof of these circumstances as well as to the jury’s rejection of evidence in the record that conflicted with the circumstances proved by the State. We recognize that juries are generally in the best position to weigh the credibility of the evidence and thus determine which witnesses to believe and how much weight to give their testimony.

Our second step is to examine independently the reasonableness of all inferences that might be drawn from the circumstances proved, including inferences consistent with a hypothesis other than guilt. In contrast to the deference given when identifying the circumstances proved, we give no deference to the fact finder’s choice between reasonable inferences. Circumstantial evidence must form a complete chain that, as a whole, leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt. Therefore, in assessing the inferences drawn from the circumstances proved, the inquiry is not simply whether the inferences leading to guilt are reasonable. Although that must be true in order to convict, it must also be true that there are no other reasonable, rational inferences that are inconsistent with guilt. This is because if

any one or more circumstances found proved are inconsistent with guilt, or consistent with innocence, then a reasonable doubt as to guilt arises. But we will not overturn a conviction based on circumstantial evidence on the basis of mere conjecture. The State does not have the burden of removing all doubt, but it must remove all reasonable doubt.

Hanson, 800 N.W.2d at 622 (quotations and citations omitted).

To prove Ward guilty of fifth-degree controlled-substance sale, the state had to prove beyond a reasonable doubt that Ward possessed marijuana with the intent to sell. *See* Minn. Stat. § 152.025, subd. 1(1) (listing elements of offense); Minn. Stat. § 152.01, subd. 15a(3) (2016) (including intent to sell within definition of sell). “Evidence tending to show such intent includes evidence as to the large quantity of drugs possessed, evidence as to the manner of packaging, and other evidence.” *White*, 332 N.W.2d at 912.

Here, the circumstances proved are that: (1) after Ward was apprehended by police when he left the scene where the assaults occurred, police searched the taxi in which he was riding and found 15 small bags of marijuana; (2) the small bags of marijuana were identical in shape and weight; (3) after Ward’s arrest, police searched him and found ten additional small bags and one larger bag of marijuana; and (4) the large bag of marijuana contained ground marijuana while the small bags contained buds. Experienced officers testified that the identical shape and weight of the small bags indicated that the bags were intended for sale, not for personal use. The officers also testified that the fact that the small bags contained unground marijuana, unlike the large bag, showed that the small bags were intended for sale and the large bag was intended for personal use.

The next step is to evaluate “independently the reasonableness of all inferences that might be drawn from the circumstances proved.” *Hanson*, 800 N.W.2d at 622 (quotation omitted). Ward argues that the circumstances proved are consistent with other hypotheses besides guilt because unlike other intent-to-sell cases, police did not find Ward with significant amounts of cash, log lists, scales, or weapons. But although “the circumstances proved include circumstances from which, when viewed in isolation,” one might infer that Ward possessed the marijuana for personal use, “there are also circumstances proved from which the only reasonable inference to be drawn is that the [marijuana] was possessed for purposes of sale.” *Id.* at 623. The packaging and preparation of the marijuana found in Ward’s possession are overarching circumstances that proved that the only reasonable inference was that he possessed the marijuana with the intent to sell it. The jury was in the best position to evaluate the circumstantial evidence, and its verdict is entitled to due deference. *See State v. Fairbanks*, 842 N.W.2d 297, 307 (Minn. 2014) (“A jury is in the best position to evaluate circumstantial evidence, and its verdict is entitled to due deference.”)

Affirmed.