

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0006**

Rachael Michelle Parker, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed May 21, 2018
Affirmed
Bjorkman, Judge**

St. Louis County District Court
File No. 69DU-CR-15-1590

Cathryn Middlebrook, Chief Appellate Public Defender, Steven P. Russett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Mark S. Rubin, St. Louis County Attorney, Christopher J. Pinkert, Assistant County Attorney, Duluth, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Bjorkman, Judge; and Randall,
Judge.*

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

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges the denial of her postconviction petition, arguing that her conviction for aiding an offender must be reversed because the state did not prove that she intended to aid her daughter in avoiding arrest and prosecution. She also asserts that the prosecutor committed misconduct by eliciting testimony that she was “a known meth user,” and that the district court erred by concluding her petition was untimely. We affirm.

FACTS

On March 18, 2015, L.W. saw a picture of appellant Rachael Parker at her aunt’s residence, where L.W.’s children live. L.W. did not want Parker around her children, so she sent a Facebook message telling Parker to stay away. The message initiated hostile communications between the two, which lasted for 15-20 minutes. After the Facebook exchange ended, L.W. went to her friend J.D.’s house.

Several minutes after arriving at the house, L.W. noticed that a cab driven by Parker had stopped out front. Thea Pelfrey, Parker’s daughter, was in the front passenger seat. As L.W. and J.D. approached the cab, Pelfrey pulled out a BB gun—that appeared to be a real handgun—and began shooting at them. One of the pellets hit J.D. as she and L.W. retreated into the house. After several shots were fired, L.W. heard the cab’s tires squeal, and she saw the cab disappear around a nearby corner. L.W. contacted the police and gave a statement to the responding officer.

An investigator followed up with L.W. about a week later. The investigator also interviewed Parker at that time. Parker acknowledged that she and L.W. argued on social

media, but she denied intentionally pursuing L.W. Parker explained that she was on her way to pick up a customer when an unknown person jumped in front of the cab. Parker specifically denied L.W.'s report, stating there was no BB gun and no shooting. When the investigator informed Parker that BBs were collected from the scene, Parker again stated that no BB gun was present during the incident.

The state charged Parker with three counts of aiding her daughter in making terroristic threats. Pelfrey pleaded guilty to one count of terroristic threats. The state subsequently dismissed the terroristic-threats-related charges against Parker, instead charging her with one count of aiding an offender in avoiding arrest or prosecution.

At trial, Parker testified that she was at home when she received a Facebook message from L.W. Parker did not initially recognize L.W., so she asked who she was, and then blocked her communications after exchanging several messages. Parker then left to visit a friend who lived in J.D.'s neighborhood. When Parker reached her friend's home, J.D. appeared in front of the cab, kicking its bumper while L.W. came running toward the vehicle. As Parker maneuvered the cab to leave, Pelfrey pulled out a BB gun and began shooting at L.W. and J.D.

Parker drove away amidst the chaos, stopping on a dirt road about a block away from the scene. She told Pelfrey to get out because she was not sure what would happen and figured some type of legal action was likely. She denied lying to the investigator, explaining that he did not ask many questions, and that she responded by telling him to speak with Pelfrey.

The jury found Parker guilty. The district court stayed imposition of a sentence and placed Parker on probation for three years. Almost a year later, Parker filed her postconviction petition. The district court determined the request for a new trial was untimely, but denied the postconviction petition on the merits after concluding the evidence supports Parker's conviction and the prosecutor did not commit prejudicial misconduct. Parker appeals.

D E C I S I O N

I. Sufficient evidence supports Parker's conviction.

Parker contends that the evidence was insufficient to establish that she acted with the intent to aid her daughter in avoiding arrest or punishment. We will not disturb the jurors' verdict if they, "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." *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004) (quotation omitted). And we review the evidence in the light most favorable to the verdict, assuming that the jury disbelieved evidence conflicting with the verdict. *State v. Gatson*, 801 N.W.2d 134, 143 (Minn. 2011).

Parker was convicted of aiding an offender under Minnesota's aiding-an-offender statute. See Minn. Stat. § 609.495, subd. 1(a) (2014) (stating a person who "aids, or assists by word or acts another whom the actor knows or has reason to know has committed a crime . . . with intent that such offender shall avoid or escape from arrest, trial, conviction, or punishment" may be subject to a felony sentence if the conduct occurred during a committed or attempted felony). The phrase "with intent that" requires proof of specific

intent, which means “the [person aiding the offender] either has a purpose to do the thing or cause the result specified or believes that the act, if successful, will cause that result.” Minn. Stat. § 609.02, subd. 9(4) (2014).

A defendant’s intent is generally established through circumstantial evidence. *See State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997) (noting that because intent is a state of mind, it is generally proved circumstantially via inferences drawn from the actor’s words and actions in the context of the entire occurrence). Heightened scrutiny is required for convictions that are based on circumstantial evidence. *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). In such cases, we first identify the circumstances proved “by resolving all questions of fact in favor of the jury’s verdict.” *State v. Harris*, 895 N.W.2d 592, 600 (Minn. 2017). We next determine whether “the reasonable inferences that can be drawn from the circumstances proved” are “consistent with the hypothesis that the accused is guilty and inconsistent with any other rational hypothesis except that of guilt.” *Id.* at 598 (quotation omitted). The appellant must produce more than mere conjecture to overturn a conviction based on circumstantial evidence. *State v. Lahue*, 585 N.W.2d 785, 789 (Minn. 1998).

Viewing the state’s evidence in the light most favorable to the verdict, the following circumstances were proved: (1) Parker exchanged unfriendly Facebook messages with L.W.; (2) Parker and Pelfrey then drove to L.W.’s location; (3) Pelfrey shot at L.W. and J.D. with a BB gun from Parker’s vehicle; (4) a pellet struck J.D.; (5) Parker immediately sped away from the scene with her tires squealing; (6) Parker did not report the incident to

police; and (7) Parker lied to the investigator one week later by denying that a shooting took place or that her daughter had a BB gun that day.

Parker concedes that these circumstances support a reasonable hypothesis that she left the crime scene and lied to the investigator to help her daughter avoid arrest and prosecution. Indeed, the jury's verdict is consistent with caselaw noting that transporting a shooter away from a crime scene may constitute aiding an offender. *See Holt v. State*, 772 N.W.2d 470, 483 (Minn. 2009) (stating individuals may be charged "with aiding an offender after the fact for [their] role in driving a getaway car"). But Parker argues that the circumstances proved also support the reasonable inference that she fled the scene to prevent her daughter from causing more harm and to avoid retaliation from J.D. and L.W. Parker also asserts that her failure to report the incident and her subsequent lies to the investigator reflect her desire to shield herself and the cab company from criminal or civil liability. We are not persuaded.

While Parker may have articulated several reasons to flee from the crime scene and later lie to police, we must assume from the verdict that the jury found she concealed her involvement to protect Pelfrey from the consequences of her crime. Parker's contention that she sped away from the scene to prevent Pelfrey from harming L.W. is inconsistent with the proven circumstances that Parker showed up at L.W.'s location immediately after their hostile Facebook exchange with Parker's BB gun-armed daughter in tow. Moreover, Parker's claimed interest in avoiding retaliation is belied by her shifting accounts of the incident, which she offered both before and during the trial. In short, the circumstances proved, when considered in their totality, are "consistent with the hypothesis that [Parker]

is guilty” and inconsistent with any other theory. *State v. Bias*, 419 N.W.2d 480, 484 (Minn. 1988).

II. The prosecutor did not commit misconduct when he elicited unobjected-to testimony from L.W.

Unobjected-to claims of prosecutorial misconduct are reviewed under a modified plain-error test. *State v. Wren*, 738 N.W.2d 378, 389 (Minn. 2007). Under this test, the appellant must show both that the prosecutor erred and that the error was plain. *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). Plain error is usually demonstrated by showing that “the error contravenes case law, a rule, or a standard of conduct.” *Id.* After the appellant meets her burden, the state must show that the appellant was not prejudiced by the unobjected-to error. *Id.* To establish lack of prejudice, the state must show that there is not a “reasonable likelihood that the absence of the misconduct in question would have had a significant effect on the verdict of the jury.” *State v. MacLennan*, 702 N.W.2d 219, 236 (Minn. 2005) (quotation omitted).

The following exchange occurred as the prosecutor examined L.W.:

Q: It sounds like to me that you have known [Parker] for quite some time.

A: Yes.

Q: Would you describe her as a friend of yours or just somebody that you know?

A: Just somebody that I know. When we first moved here she used to live across the street from us.

Q: Do you get along with [Parker]?

A: I mean, up until last year. I mean, I can’t say that I didn’t get along with her.

Q: The question that is coming into my mind is why were you telling [Parker] to stay away from your kids?

A: Because she is a *known meth user* around Duluth.

Q: Now, in these Facebook messages, you weren't at your house when the Exclusive Taxi pulled up; correct?

(Emphasis added.)

Parker argues that the way the questioning unfolded, coupled with the prosecutor's apparent lack of surprise and lack of follow-up, indicate that the testimony was planned. We disagree. This line of question was designed to provide context for the relationship between Parker and L.W. Nothing in the record suggests that the prosecutor knew or should have known that L.W. would comment on Parker's alleged drug use. And the fact the prosecutor did not express surprise or ask a relevant follow-up question most likely reflects an effort to turn the jury's attention away from L.W.'s response. We note the prosecutor's follow-up question had been answered by L.W. a few minutes earlier. In short, it appears that the prosecutor did not anticipate L.W.'s answer—and acted in a way to mitigate any prejudice to Parker.

Because we are convinced that the prosecutor did not intentionally elicit improper testimony, we discern no prosecutorial misconduct. Accordingly, we need not consider the prejudice prong of the modified plain-error test. *See State v. Brown*, 815 N.W.2d 609, 620 (Minn. 2012) (“If we conclude that any prong of the plain error analysis is not satisfied, we need not consider the other prongs.”).

Finally, Parker contends that the district court erred by concluding that her petition for postconviction relief was barred because it was an untimely request for a new trial under Minn. R. Crim. P. 26.04, subd. 1(1). We agree. *See* Minn. Stat. § 590.01, subd. 1 (2016) (permitting offender to request a new trial through a postconviction petition when a direct

appeal is not available). But because the district court nonetheless addressed the merits of Parker's substantive claims, Parker is not entitled to relief on this basis.

Affirmed.