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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0259**

State of Minnesota,
Respondent,

vs.

Robert Curtis Dawson, Jr.,
Appellant.

**Filed January 7, 2019
Affirmed
Schellhas, Judge**

Ramsey County District Court
File No. 62-CR-17-3984

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

John C. Choi, Ramsey County Attorney, Adam E. Petras, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Halbrooks, Judge; and Schellhas, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges his conviction of aiding and abetting drive-by shooting, arguing that the district court committed reversible error in its jury instruction regarding the state's burden of proof. We affirm.

FACTS

Respondent State of Minnesota charged appellant Robert Dawson, Jr., with aiding and abetting drive-by shooting. At trial, the state presented evidence that, while stopped at a traffic light, D.E. observed a white sedan pass her in the right lane and “an African American male leaning out of the car window on the passenger side shooting.” According to D.E., the “passenger was in the front seat leaning far enough out of the window, so . . . [his] upper torso was completely out because he was able to shoot over the top of the car into the lane in which I was in.” One of the bullets pierced the back of a vehicle in front of D.E. and became “lodged in the [gear] shifter.” Police also recovered two spent casings from the lane in which the white sedan had been traveling.

After the passenger in the white sedan fired three shots, the white sedan turned right and drove past an undercover police officer “at about 50 miles an hour.” Police soon located the white sedan in a nearby parking lot. The sedan was empty of passengers, but a black handgun was lying on the front-passenger floorboard. A couple blocks away, officers found three individuals, including Dawson, walking across a bridge, and a fourth individual walking in the opposite direction. In the grass a few feet from the three individuals, police discovered a set of car keys that operated the white sedan.

Dawson admitted to police that he was seated in the front passenger seat of the white sedan that was involved in the drive-by shooting but claimed that he “was asleep and awoke to a pop.” Ballistics linked the black handgun recovered from the front-passenger floorboard of the white sedan to the shooting, and DNA taken from the handgun matched Dawson. A jury found Dawson guilty of the charged offense, and the district court sentenced Dawson to 48 months in prison.

This appeal follows.

D E C I S I O N

Dawson argues that the district court failed to properly instruct the jury that the state had to prove beyond a reasonable doubt that he intentionally aided or assisted another in committing a drive-by shooting. Because Dawson failed to object to the jury instructions at trial, this court has discretion to consider his claim of error on appeal only if the district court plainly erred. *See State v. Peltier*, 874 N.W.2d 792, 797 (Minn. 2016) (analyzing unobjected-to jury instructions for plain error). The plain-error test allows us to consider a forfeited error under Minn. R. Crim. P. 31.02 when the defendant establishes (1) an error, (2) that is plain, and (3) that affected the defendant’s substantial rights. *State v. Webster*, 894 N.W.2d 782, 786 (Minn. 2017). If we conclude that any requirement of the plain-error analysis is not satisfied, we need not consider the others. *Id.* If the defendant establishes all three requirements, we “may correct the error only if it seriously affects the fairness, integrity, or public reputation of judicial proceedings.” *Id.*

The district court has broad discretion to choose the language for jury instructions. *State v. Huber*, 877 N.W.2d 519, 522 (Minn. 2016). We review jury instructions as a whole

to determine whether they accurately state the law in a manner that the jury could understand. *State v. Kelley*, 855 N.W.2d 269, 274 (Minn. 2014). The jury instructions must describe the crime charged and explain the elements of the crime. *State v. Milton*, 821 N.W.2d 789, 805 (Minn. 2012). “To determine if a jury instruction correctly states the law, [an appellate court] analyze[s] the criminal statute and the case law under it.” *State v. Taylor*, 869 N.W.2d 1, 15 (Minn. 2015).

“An individual 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.’” *State v. Washington-Davis*, 881 N.W.2d 531, 541 (Minn. 2016) (quoting Minn. Stat. § 609.05, subd. 1 (2014)).¹ The Minnesota Supreme Court has said:

Accomplice-liability instructions must explain to the jury that in order to find a defendant guilty as an accomplice, the jury must find beyond a reasonable doubt that the defendant knew his alleged accomplice was going to commit a crime and the defendant intended his presence or actions to further the commission of that crime.

Id. (quotation omitted).

Here, the district court instructed the jury as follows:

The defendant is guilty of a crime committed by another person when the defendant has played an intentional role in aiding the commission of the crime and made no reasonable effort to prevent the crime before it was committed.

Intentional role includes, *intentionally aiding*, advising, hiring, counseling, conspiring with or procuring another to commit the crime.

¹ The statute has not been amended since 2014.

The defendant's presence or actions constitute aiding if, first, the defendant knew others were going to or were committing a crime. And second, the defendant intended that his presence or actions aided the commission of the crime.

If the defendant intentionally aided another person in committing a crime or intentionally advised, hired, counseled, conspired with or otherwise procured the other person to commit it, the defendant is also guilty of any other crime the other person commits while trying to commit the intended crime, if the other crime was reasonably foreseeable to the defendant as a probable consequence of trying to commit the intended crime.

The defendant is guilty of a crime, however, only if the other person commits a crime. The defendant is not criminally liable for aiding, advising, hiring, counseling, conspiring, or otherwise procuring the commission of a crime unless some crime including an attempt is actually committed.

You shall apply this instruction to determine whether the defendant aided others in committing the offense of Drive-By Shooting.²

(Emphasis and footnote added.)

Minnesota Statutes section 609.05, subdivision 1, does not define “intentionally aids.”

But, in *Milton*, the supreme court noted that “the element of ‘intentionally aiding’ includes two important and necessary principles: (1) that the defendant ‘knew that his alleged accomplices were going to commit a crime,’ and (2) that the defendant ‘intended his

² The district court's jury instruction is taken almost verbatim from the CRIMJIG with the exception of one deviation; in the first line of the third paragraph, the district court's jury instruction omits the word “intentionally” between the words “constitute” and “aiding.” See 10 *Minnesota Practice*, CRIMJIG 4.01 (Supp. 2018).

presence or actions to further the commission of that crime.” 821 N.W.2d at 805 (quoting *State v. Mahkuk*, 736 N.W.2d 675, 682 (Minn. 2007)). A district court’s failure to “explain that the intentionally aiding element requires that the jury find beyond a reasonable doubt that the defendant knew his alleged accomplice was going to commit a crime and the defendant intended his presence or actions to further the commission of that crime” constitutes plain error. *Kelley*, 855 N.W.2d at 275.

Relying on *Huber*, Dawson argues that this omission “constituted plain error because, taken as a whole, [the jury instructions] failed to properly inform the jury that the state had to prove beyond a reasonable doubt that Dawson intentionally aided or assisted another in committing drive-by shooting.” In *Huber*, the state charged the defendant with intentionally aiding another in the commission of second-degree intentional murder. 877 N.W.2d at 521. The instructions that the district court gave the jury “contained 13 references” to the murderer being “‘aided and abetted’” by the defendant, but omitted the word “‘intentionally’” every time they referred to the defendant aiding and abetting the murderer. *Id.* at 523. The supreme court noted that the jury instructions “not only failed to explain the meaning of intentionally aiding another in the commission of a crime, but they also failed to require that the aiding and abetting be intentional when stating the elements of the offense.” *Id.* at 525. The supreme court therefore concluded that the jury instructions constituted plain error because they erroneously allowed the jury to convict the defendant “for his mere presence near the commission of the crime or because his actions assisted [the murderer] in committing a crime, regardless of [the defendant’s] mens rea.” *Id.*

This case is distinguishable from *Huber*. In *Huber*, the district court used a “hybrid” instruction that “included the theory of accomplice liability with the elements for each substantive offense,” which conflicted with the supreme court’s prior encouragement that district courts “separately instruct the jury on accomplice liability and the underlying substantive offense, as opposed to incorporating the theory of accomplice liability into the instructions on the elements of the substantive offenses for which the defendant was charged.” *Id.* at 524 n.3 (quotation omitted). In contrast here, not only were the instructions in this case taken almost verbatim from the CRIMJIG, but the district court separately instructed the jury on accomplice liability and drive-by shooting. And the court instructed the jury that the state had to prove beyond a reasonable doubt that Dawson knew others were going to commit a crime and intended his actions or presence to further the commission of that offense. Moreover, unlike the instructions in *Huber*, which omitted the word “intentionally” all 13 times they referred to the defendant aiding and abetting the murderer, in this case, the court instructed the jury several times that the act of aiding and abetting had to be an intentional act.

Dawson also contends that the jury instructions were plainly erroneous because after instructing the jury that “[y]ou shall apply this instruction to determine whether the defendant aided others in committing the offense of Drive-By-Shooting,” the district court instructed the jury as follows:

If the defendant advised, aided, hired, counseled, or conspired with another or otherwise procured the commission of a crime by another person and the crime was committed, the defendant is guilty of a crime.

You are not to consider – concern yourselves rather,
with what action, if any, was taken against the other person.

Dawson claims that by including this language rather than following the direction of CRIMJIG 4.01 and then instructing on the elements of the offense of drive-by shooting, the district court provided jury instructions that were confusing and materially misstated the law. We disagree.

The above quoted language is taken verbatim from CRIMJIG 4.03, and both parties specifically agreed to its inclusion in the jury instructions. Dawson now argues that the instruction materially misstates the law because it does not include the two required components from *Milton*, but those components are included in CRIMJIG 4.01, which the court provided to the jury. Dawson presents no legal authority to support a conclusion that the instruction materially misstates the law. We conclude that when read as a whole, the jury instructions accurately stated the law. The jury instructions therefore were not plainly erroneous.

Affirmed.