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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1094**

State of Minnesota,
Respondent,

vs.

Murtada Ahmed Abdelrahim,
Appellant.

**Filed May 20, 2019
Affirmed
Schellhas, Judge**

Olmsted County District Court
File No. 55-CR-16-5719

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Mark A. Ostrem, Olmsted County Attorney, Jennifer D. Plante, Senior Assistant County
Attorney, Rochester, Minnesota (for respondent)

David L. Liebow, Godwin Dold, Rochester, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Worke, Judge; and Schellhas,
Judge.

U N P U B L I S H E D O P I N I O N

SCHELLHAS, Judge

Appellant challenges his conviction of patronage of a prostitute in a public place,
arguing that (1) the evidence does not support the jury's finding of guilt; and (2) the district
court prejudicially erred by admitting *Spreigl* evidence. We affirm.

FACTS

On June 20, 2016, while L.P. was walking along Broadway near Soldiers Field Park in Rochester, she approached a white car on the side of the road and asked the occupant if he needed to call a tow truck. According to L.P., the occupant asked her if she “was free” and then “gestured for [her] to get in” the car. L.P. “told him off” and then called the police.

L.P. met Officer Brandon MacLeod at a nearby gas station, described the car, provided the license-plate number, and described the occupant. The car was registered to appellant Murtada Abdelrahim, and Abdelrahim’s driver’s license photograph matched L.P.’s description of the occupant in the car.

A “short time later,” another person contacted the dispatch center to report that someone had approached her and asked her to have sex with him. Officer MacLeod attempted to contact the complainant, who was later identified as A.F., but was unable to “immediately” speak with her. The next day, Officer MacLeod spoke with Abdelrahim by telephone, and he denied being in the area of Soldiers Field Park on the afternoon of June 20.

After speaking with Abdelrahim, Officer MacLeod contacted A.F., who reported that while she was walking her dog in Soldiers Field Park on June 20, 2016, a man approached her and asked, “how much.” A.F. replied, “For what,” to which the man stated, “For sex.” According to A.F., she told the man, “No, that’s illegal,” and walked away. Officer MacLeod then showed A.F. a photograph of Abdelrahim. A.F. stated that she was “99 percent sure” that Abdelrahim was the man she spoke with in Soldiers Field Park.

Officer MacLeod went to Abdelrahim's residence where he observed a white sedan parked outside with a license-plate number that matched the one provided by L.P. According to Officer MacLeod, he then spoke with Abdelrahim, who acknowledged that the white sedan belonged to him but again denied being near Soldiers Field Park on the afternoon of June 20, 2016.

Respondent State of Minnesota charged Abdelrahim with gross misdemeanor patronage of prostitution in a public place under Minn. Stat. § 609.324, subd. 2(2) (2014). Abdelrahim moved to prohibit the state from admitting L.P.'s testimony at trial, arguing that her testimony was inadmissible *Spreigl* evidence. The district court denied the motion, concluding that the evidence was admissible as immediate-episode evidence. A jury found Abdelrahim guilty of the charged offense. The court imposed a stay of imposition and placed Abdelrahim on probation for a period of two years.

This appeal follows.

D E C I S I O N

I. Sufficiency of the evidence

When reviewing the sufficiency of the evidence, this court ordinarily conducts “a painstaking review of the record to determine whether the evidence and reasonable inferences drawn therefrom, viewed in a light most favorable to the verdict, were sufficient to allow the jury to reach its verdict.” *Lapenotiere v. State*, 916 N.W.2d 351, 360–61 (Minn. 2018) (quotation omitted). We assume that the jury “believed the state’s witnesses and disbelieved any contradictory evidence.” *State v. Webster*, 894 N.W.2d 782, 785 (Minn. 2017) (quotation omitted). This court will “not disturb the verdict if the jury, 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).

Abdelrahim was convicted of patronage of prostitution in a public place. Under Minn. Stat. § 609.324, subd. 2(2), a person who “hires, offers to hire, or agrees to hire an individual 18 years of age or older to engage in sexual penetration or sexual contact” in a public place is guilty of a gross misdemeanor.

Abdelrahim focuses on whether he made an “offer” and argues that the definition requires a willingness to enter into a bargain. He argues that “there is no direct evidence here of [his] intent to offer to hire someone to engage in sex.” Intent is a state of mind that “is generally proved by inferences drawn from a person’s words or actions in light of all the surrounding circumstances.” *State v. Thompson*, 544 N.W.2d 8, 11 (Minn. 1996); see also *State v. Johnson*, 616 N.W.2d 720, 726 (Minn. 2000) (noting that intent is “proved circumstantially, by inference from words and acts of the actor both before and after the incident”). A jury or fact-finder is permitted to infer that “a person intends the natural and probable consequences” of his or her actions. *Id.*

When reviewing a conviction based on circumstantial evidence, we apply a two-step analysis. *State v. Harris*, 895 N.W.2d 592, 598–601 (Minn. 2017). The first step is to identify the circumstances proved “by resolving all questions of fact in favor of the [fact-finder]’s verdict,” and in deference to the fact-finder’s credibility determinations. *Id.* at 600. Second, we independently consider the reasonable inferences that can be drawn from the circumstances proved. *Id.* at 600–01. “To sustain the conviction, the circumstances

proved, when viewed as a whole, must be consistent with a reasonable inference that the accused is guilty and inconsistent with any rational hypothesis except that of guilt.” *Id.* at 601.

Here, the following circumstances were proved at trial: (1) on June 20, 2016, L.P. observed a white sedan parked alongside the road near Soldiers Field Park; (2) when L.P. approached the vehicle, Abdelrahim asked L.P. if she was “free” and gestured for her to get into his car; (3) L.P. contacted and provided police with the license-plate number of the white sedan, which was registered to Abdelrahim; (4) shortly after speaking with L.P., Abdelrahim approached A.F. on foot in Soldiers Field Park and asked her “how much”; (5) when A.F. asked, “For what,” Abdelrahim replied, “For sex”; (6) A.F. asked for clarification of Abdelrahim’s statement by asking, “What,” to which Abdelrahim answered, “To pay you for sex”; (7) Abdelrahim then attempted to “convince” A.F. by saying “something like” ““Oh, you know, it’s okay,’ or ‘No one would know’”; and (8) A.F. contacted police and informed them of the incident.

Abdelrahim claims that two reasonable inferences drawn from these circumstances are that (1) he “was seeking to learn if [A.F.] would sell sex for money”; and (2) he “was inviting [A.F.] to make [him] an offer rather than [Abdelrahim] making one himself.” But we “will not overturn a conviction based on circumstantial evidence on the basis of mere conjecture.” *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010) (quotation omitted). “[A] defendant is not relying on conjecture or speculation when the defendant . . . points to evidence in the record that is consistent with a rational theory other than guilt.” *Id.* at 480 (quotation omitted). “[P]ossibilities of innocence do not require reversal of a jury

verdict so long as the evidence taken as a whole makes such theories seem unreasonable.” *State v. Stein*, 776 N.W.2d 709, 719 (Minn. 2010) (quotation omitted).

Abdelrahim points to no evidence that he was inviting A.F. to make him an offer for sex, or that he was seeking to learn if A.F. would sell sex for money. Rather, the only reasonable inference to be drawn from the circumstances proved is that Abdelrahim offered to hire A.F. for sex. Abdelrahim’s hypothesis is therefore based on mere conjecture and is unreasonable.

Abdelrahim also contends that the evidence was insufficient to sustain his conviction because, under “principles of contract law,” his “preliminary inquiry” did “not constitute an ‘offer.’” We disagree. The supreme court declined to interpret an earlier prostitution statute under basic contract-law principles, instead holding that an offer to engage in sexual conduct with an adult for hire is inchoate activity “requir[ing] neither completed sexual conduct nor a substantial act in furtherance of the endeavor.”¹ *State v. Bennett*, 258 N.W.2d 895, 897 (Minn. 1977) (footnotes omitted). The supreme court further clarified that “because it proscrib[e]d inchoate activity, the statute is likely to be applied to conduct which is in some degree ambiguous.” *Id.*; see also *State v. Oanes*, 543 N.W.2d 658, 662 (Minn. App. 1996) (holding that an “offer need not be explicit, but may be implied by the defendant’s words and actions”).

The record here reflects that Abdelrahim asked A.F. how much to pay her for sex. Under *Bennett*, Abdelrahim’s conduct is sufficient to constitute an offer to hire A.F. for

¹ The statute at issue in *Bennett* defined prostitution in part as “engaging or offering or agreeing to engage for hire in sexual intercourse.” Minn. Stat. § 609.32, subd. 1(1) (1976).

sex under Minn. Stat. § 609.324, subd. 2(2). Therefore, the evidence is sufficient to sustain the jury's guilty verdict.

II. Immediate-episode evidence

Abdelrahim also challenges the admission of L.P.'s testimony at trial. We review the admission of this testimony for an abuse of discretion. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). To obtain relief, Abdelrahim must show that the district court abused its discretion and that he was prejudiced as a result. *See id.* (“On appeal, the appellant has the burden of establishing that the [district] court abused its discretion and that appellant was thereby prejudiced.”). A district court abuses its discretion “when its decision is based on an erroneous view of the law or is against logic and facts in the record.” *State v. Guzman*, 892 N.W.2d 801, 810 (Minn. 2017).

“Minnesota has long adhered to the common-law rule excluding evidence of prior bad acts except where the evidence fits within a specific exception.” *State v. Riddley*, 776 N.W.2d 419, 424 (Minn. 2009); *see also* Minn. R. Evid. 404(b) (prohibiting bad-acts character evidence). One exception to this general rule is “immediate-episode evidence.” *State v. Washington–Davis*, 867 N.W.2d 222, 239 (Minn. App. 2015), *aff’d*, 881 N.W.2d 531 (Minn. 2016). This exception permits the state to “prove all relevant facts and circumstances which tend to establish any of the elements of the offense with which the accused is charged, even though such facts and circumstances may prove or tend to prove that the defendant committed other crimes.” *Riddley*, 776 N.W.2d at 425 (quotation omitted).

To be admissible as immediate-episode evidence, the other crime need not prove an element of the charged offense but must be linked to the charged offense in time and circumstances, “so that one cannot be fully shown without proving the other,” or where evidence of the other crime constitutes part of the events at issue. *Id.* (quotation omitted). This exception has permitted evidence of drug possession in a prosecution for a drug-store robbery and of a kidnapping that motivated a charged murder. *Id.* at 426 (collecting cases). And this court recently affirmed the admission of immediate-episode evidence that a defendant charged with sex trafficking and promoting prostitution used violence and threats of violence to “coerce their continued participation in the prostitution scheme.” *Washington–Davis*, 867 N.W.2d at 240.

Here, the district court found that the “circumstances before the Court are similar because [Abdelrahim] was on the same course of conduct in his approach to [L.P.] as [A.F.] and the conduct is not only a part of a single course of conduct, but shows general intent as required within Minn. Stat. § 609.324, subd. 2(2).” The court therefore concluded that “because the interaction between [Abdelrahim] and [L.P.] was part of the immediate episode for which [Abdelrahim] is being tried, the testimony will be allowed.”

Abdelrahim argues that the district court abused its discretion in admitting L.P.’s testimony as immediate-episode evidence because the “two incidents were not causally connected.” We disagree. The incident involving L.P. is linked to the charged offense in both time and circumstances. The record indicates that Abdelrahim’s interactions with A.F. and L.P. both occurred within an hour or two on June 20, 2016. Moreover, the record reflects that L.P.’s interaction with Abdelrahim occurred near Soldiers Field Park, which

was the location where the alleged offense occurred. And Abdelrahim's interaction with L.P. consisted of statements that could be construed as a solicitation for sex. The court therefore did not abuse its discretion in admitting L.P.'s testimony as immediate-episode evidence.

Moreover, even if the district court abused its discretion by admitting L.P.'s testimony, Abdelrahim cannot establish prejudice. *See State v. Fardan*, 773 N.W.2d 303, 320 (Minn. 2009) (stating that an erroneous admission is prejudicial when there is a "reasonable possibility that the wrongfully admitted evidence significantly affected the verdict" (quotation omitted)). A.F. testified that Abdelrahim approached her in Soldiers Field Park and asked her "how much." A.F. also testified that when she responded, "For what," Abdelrahim said, "For sex." A.F. further testified that when she responded by saying, "What," Abdelrahim stated, "To pay you for sex." And according to A.F., Abdelrahim then tried to "convince" her by saying "something like" "'Oh, you know, it's okay,' or 'No one would know.'" The only reasonable interpretation of A.F.'s testimony is that Abdelrahim offered to hire A.F. for sex. Because there is no reasonable possibility that the admission of L.P.'s testimony significantly affected the jury's verdict, Abdelrahim is not entitled to a new trial.

Affirmed.