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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1152**

State of Minnesota,
Respondent,

vs.

DeAndray Artez Easley,
Appellant.

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

Ramsey County District Court
File No. 62-CR-17-4175

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

John J. Choi, Ramsey County Attorney, Alexandra Meyer, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

Melissa Sheridan, Eagan, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Slieter, Judge; and Smith,
John, Judge.*

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

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant challenges his convictions for aiding and abetting first-degree criminal sexual conduct, arguing that the state failed to present sufficient evidence that he intentionally aided his codefendants in committing the offenses. Because the evidence is sufficient to prove that appellant did intentionally aid his codefendants, we affirm.

FACTS

In June 2017, respondent the State of Minnesota (the state) charged appellant DeAndray Artez Easley with two counts of first-degree aiding and abetting criminal sexual conduct—penetration with fear of great bodily harm; two counts of aiding aggravated first-degree robbery; and two counts of kidnapping. Two further counts of kidnapping were added in October 2017. The state alleged that appellant, along with three codefendants, robbed and kidnapped four victims and that appellant aided the codefendants in sexually assaulting the two female victims.

Appellant was tried before a jury and found guilty on all counts. He challenges his aiding and abetting criminal-sexual-conduct convictions, arguing that the state failed to present sufficient evidence to support those charges because the evidence did not support the jury's determination that he intentionally aided the codefendants.

DECISION

In reviewing the sufficiency of evidence, an appellate court is limited to ascertaining whether a jury could reasonably conclude that the defendant was guilty of the offense charged, given the facts in the record and the legitimate inferences that can be drawn from

those facts. *Bernhardt v. State*, 684 N.W.2d 465, 476 (Minn. 2004). This court considers the evidence in the light most favorable to the verdict when it reviews a claim for insufficient evidence. *Id.* at 477.

To convict appellant of aiding and abetting first-degree criminal sexual conduct, the state had to prove beyond a reasonable doubt that appellant intentionally aided the codefendants when they committed the sexual assaults and made no reasonable effort to prevent the crimes before they were committed. Minn. Stat. § 609.05, subds. 1, 3 (2016); 10 *Minnesota Practice*, CRIMJIG 4.01, .02 (2016). A defendant's presence will constitute aiding if he: (1) knew that his alleged accomplices were going to or were committing a crime, and (2) intended that his presence or actions aid the commission of the crime. *State v. Milton*, 821 N.W.2d 789, 806 (Minn. 2012). Because the "intentionally aids" element of accomplice liability is a state-of-mind requirement, it is generally proved through circumstantial evidence. *State v. McAllister*, 862 N.W.2d 49, 53 (Minn. 2015).

This court applies a two-step analysis when it reviews a conviction based on circumstantial evidence. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). First, we identify the circumstances proved. *Id.* When we identify the circumstances proved, this court defers "to the jury's acceptance of the proof of these circumstances and rejection of evidence in the record that conflict with the circumstances proved by the State." *Id.* at 598-99 (quotation omitted). Conflicting evidence is construed in the light most favorable to the verdict, and we assume that the jury believed the state's witnesses and disbelieved the defense witnesses. *Id.* at 599. Under the second step, "we determine whether the circumstances proved are consistent with guilt and inconsistent with any rational

hypothesis except that of guilt . . . [and] review the circumstantial evidence not as isolated facts, but as a whole. *Id.* (quotation and citation omitted).

The state proved the following circumstances at trial: (1) appellant and his group participated in the robbery of two boys and two girls; (2) one of the female victims testified that appellant was the “leader” of the group; (3) appellant instructed the victims to deactivate any tracking software on their phones and to hand them over; (4) the two female victims were taken to a vehicle and forced to perform sexual acts on the codefendants and one of the victims told appellant that she was not consenting to what was going on; (5) appellant walked away and did not stop his codefendants from carrying out the sexual assaults; (6) appellant held the two male victims at gun point outside the vehicle as the sexual assaults were carried out; (7) appellant cleaned areas of the vehicle’s interior with a blanket or a shirt when the codefendants were finished sexually assaulting the female victims; (8) appellant threw the car keys and threatened the victims that they would be shot if they left too soon; and (9) appellant was seen with the codefendants at a convenience store after the robbery and sexual assaults.

Appellant concedes that there is rational hypotheses consistent with guilt, but he argues that there is also a rational hypothesis that his actions were not done to intentionally aid his codefendants because evidence showed he disapproved of and attempted to distance himself from the sexual activity. Appellant’s argument is flawed. First, we cannot consider the testimony and evidence that may have shown that appellant disapproved of and attempted to distance himself from the activity because they are inconsistent with the guilty verdict and are not circumstances proved. *See State v. Hawes*, 801 N.W.2d 659, 669 (Minn.

2011) (when determining the circumstance proved, “we disregard testimony that is inconsistent with the verdict.”); *Silvernail*, 831 N.W.2d 599 (we assume the jury disbelieved the defense witnesses).

Second, contrary to appellant’s argument, the state did not have to prove that appellant committed an overt act or encouraged the other defendants to commit the sexual assaults. *See* Minn. Stat. § 609.05, subds. 1, 3 (2016); *Milton*, 821 N.W.2d at 806. Thus, appellant’s proposed alternative hypothesis, that the evidence showed appellant “tried to distance himself from the sexual activity when he discovered it was occurring” and there was “no evidence that [appellant] did anything to encourage the others” does not affect whether he could be found guilty of intentionally aiding and abetting first-degree sexual assault.

Moreover, intent to aid can be inferred “from a variety of facts, including presence at the scene of the crime, a close association with the principal offender before and after the crime, a lack of objection or surprise under the circumstances, and flight from the scene of the crime with the principal offender.” *State v. Bahtuoh*, 840 N.W.2d 804, 810 (Minn. 2013). Considering these factors, the circumstances proved show that appellant was at the scene of the sexual assault, was described as the “leader” of the group, did not object to his codefendants carrying out the offenses, and left and remained with the principal offenders. *See State v. Lahue*, 585 N.W.2d 785, 789 (Minn. 1998) (An appellate court “will not overturn a conviction based on circumstantial evidence on the basis of mere conjecture.”).

Consequently, considering the evidence as a whole, there is no rational hypothesis inconsistent with guilt.

Affirmed.