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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1931**

State of Minnesota,
Respondent,

vs.

Deon Dell Griffin,
Appellant.

**Filed January 27, 2020
Affirmed
Smith, John, Judge***

Hennepin County District Court
File No. 27-CR-16-16831

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

Michael O. Freeman, Hennepin County Attorney, Kelly O'Neill Moller, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rachel Bond, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Smith, Tracy M., 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UNPUBLISHED OPINION

SMITH, JOHN, Judge

We affirm appellant's conviction of first-degree aggravated robbery because sufficient evidence supports his conviction and the district court's erroneous jury instructions, which were not objected to, did not affect appellant's substantial rights.

FACTS

A.W. drove appellant Deon Dell Griffin to a beach in Minneapolis. When A.W. was ready to leave, she refused to give appellant a ride. Appellant pulled her out of her car by her hair, punched her, and stomped on her. Appellant then got into A.W.'s car and drove away. Appellant fled law enforcement, crashed into two vehicles, and continued to flee on foot.

The state charged appellant with first-degree aggravated robbery, fleeing a police officer in a motor vehicle, third-degree assault, and driving while intoxicated (DWI). Appellant pleaded guilty to DWI and fleeing a police officer in a motor vehicle. The district court held a jury trial on the remaining charges of first-degree aggravated robbery and third-degree assault. A jury found appellant guilty on both counts, and the district court sentenced appellant to 108 months in prison on the first-degree aggravated-robbery conviction and 19 months in prison on the fleeing-a-police-officer conviction.

DECISION

I. The state presented sufficient evidence to convict appellant of first-degree aggravated robbery.

Appellant argues that the state failed to present sufficient evidence that “[he] assaulted A.W. for the specific purpose of overcoming her resistance to his taking or carrying away of her car.” He argues that the circumstances proved show that he assaulted A.W. because he was angry that she disrespected him. We are not persuaded.

To convict appellant of robbery, the state had to prove, beyond a reasonable doubt, that appellant took personal property from A.W. and used force against her “to overcome [her] resistance or powers of resistance to, or to compel acquiescence in, the taking or carrying away of the property.” Minn. Stat. § 609.24 (2014). Appellant is guilty of first-degree aggravated robbery if he, while committing a robbery, inflicted bodily harm upon A.W. Minn. Stat. § 609.245, subd. 1 (2014).

When reviewing a claim of insufficient evidence, we carefully review 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).

The parties dispute whether the circumstantial- or direct-evidence standard of review applies. Appellant argues that the circumstantial-evidence standard of review applies because robbery is a specific-intent crime. The state contends that robbery is a general-intent crime and that the direct-evidence standard of review applies. The supreme court held in *State v. Charlton* that “specific intent, or a purposeful or conscious desire to

bring about a criminal result, is an element of a robbery charge.” 338 N.W.2d 26, 30 (Minn. 1983).¹ Because appellant challenges intent, and intent is a product of the mind and is generally proved by circumstantial evidence, *State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997), we apply the circumstantial-evidence standard of review.

Under the circumstantial-evidence standard of review, we apply a two-step analysis. *State v. Harris*, 895 N.W.2d 592, 600 (Minn. 2017). First, we identify the circumstances proved “by resolving all questions of fact in favor of the jury’s verdict.” *Id.* Second, we independently consider the “reasonable inferences that can be drawn from the circumstances proved.” *Id.* at 601. The circumstances proved must, as a whole, “be consistent with a reasonable inference that the accused is guilty and inconsistent with any rational hypothesis except that of guilt.” *Id.* We assume the fact-finder “believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989).

The circumstances proved are as follows. A.W. drove herself, appellant, and two friends to a beach in Minneapolis. Appellant was attempting to dunk A.W. in the water, who was trying to avoid appellant. This made appellant angry, so he exited the water. While A.W. was still swimming, one of the friends asked A.W. if she was ready to leave because appellant was “ready to go.” After A.W. said no, appellant came back in the water

¹ The state argues that *Charlton* no longer applies based on *State v. Fleck*, 810 N.W.2d 303 (Minn. 2012). *Fleck* held that assault-fear is a specific-intent crime while assault-harm is a general-intent crime. *Id.* at 810 N.W.2d at 303. *Fleck* did not alter the supreme court’s conclusion in *Charlton* that robbery is a specific-intent crime.

and insisted that she get out of the water because he wanted to leave. A.W. told appellant that he could take a taxi if he wanted to leave but that he could not take her car.

When A.W. was ready to leave, she approached her car, where appellant was sitting in the driver's seat with the keys in the ignition. A.W. again told appellant that he could not drive her car, but appellant refused to get out of the driver's seat. At this point, A.W. got into the passenger's seat and attempted to remove the keys from the ignition. Appellant tried to fight A.W. for the keys and ripped the lanyard off the keys. After tussling over the keys, appellant put the keys back in the ignition and turned the car back on. A.W. stated that she would give him a ride, and appellant agreed to let her drive.

Appellant got out of the car and A.W. climbed over the center console to the driver's seat. Once appellant was outside of the car, A.W. tried to close the door, and with the door cracked partially open, she told him that she would not give him a ride.² Appellant pulled A.W. out of the car by her hair, causing her to fall to the ground. Appellant kicked A.W. in the torso, stomped on her head, and punched her repeatedly. When A.W. stood up,

² A.W. testified at trial that she did not remember telling the officer that when appellant got out of the car she told him she would not give him a ride. But the officer testified that A.W. made a statement to this effect. The state contends that this is not a circumstance proved because there was conflicting evidence and because it does not support the verdict. Appellant states that it is a circumstance proved. In identifying the circumstances proved, we resolve conflicting evidence in favor of the state and disregard evidence that is inconsistent with the jury's verdict. *State v. German*, 929 N.W.2d 466, 473 (Minn. App. 2019). When viewing this circumstance in the light most favorable to the verdict, it supports the verdict. It shows that appellant forcibly removed A.W. from her car after she told him she would not give him a ride because he wanted to take her car and leave. Therefore, it is a circumstance proved.

appellant jumped into her car and drove away. A.W. was transported to Hennepin County Medical Center to receive treatment for her injuries.

A police officer observed appellant driving the vehicle and attempted a traffic stop, but appellant fled. The officer continued to follow appellant until appellant crashed into two other vehicles, jumped out of the car, and took off running. Another officer eventually found appellant hiding in a bush.

Appellant contends that A.W.'s refusal to give him a ride made him angry and triggered the assault. He argues that he took her car as an afterthought to the assault to escape the scene. We view the circumstances proved as a whole. *State v. Silvernail*, 831 N.W.2d 594, 599 (Minn. 2013). The circumstances, viewed as a whole, show that appellant wanted to leave the beach but did not have permission to drive A.W.'s car. He fought with A.W. over her keys and finally agreed to let her drive after she said she would give him a ride. When A.W. informed him that she would not give him a ride, appellant pulled her out of the car and drove away. These circumstances do not support a reasonable inference that appellant took the vehicle as an afterthought. Appellant wanted to leave throughout the entire altercation. It was not until appellant was outside of the car and A.W. refused to give him a ride that he forcibly removed her from the car and drove away.

Moreover, appellant's theory that he assaulted A.W. because he was angry is not inconsistent with guilt. Appellant's anger and his intent to use force to overcome A.W.'s resistance to the taking of her car are not mutually exclusive. Appellant's theory of innocence is not reasonable.

II. The district court's jury instructions were not plain error.

Appellant argues that the district court's jury instructions were incomplete because they instructed the jury that it only needed to find that appellant used force against A.W. to overcome resistance. Appellant contends that this error significantly affected the verdict because his defense at trial hinged on this element.

A district court has "considerable latitude" in the selection of language for jury instructions. *State v. Gatson*, 801 N.W.2d 134, 147 (Minn. 2011) (quotation omitted). We review jury instructions for an abuse of discretion. *State v. Koppi*, 798 N.W.2d 358, 361 (Minn. 2011). We review jury instructions in their entirety to determine whether they fairly and adequately explain the law of the case. *State v. Flores*, 418 N.W.2d 150, 155 (Minn. 1988). An instruction is error if it materially misstates the law. *State v. Kuhnau*, 622 N.W.2d 552, 556 (Minn. 2001). Jury instructions must define the crime charged and explain the elements of the offense to the jury. *State v. Ihle*, 640 N.W.2d 910, 916 (Minn. 2002).

When a defendant did not object to the jury instructions at trial, this court has discretion to consider a claim of error on appeal if there was (1) an error, (2) that is plain, and (3) that affects substantial rights. *State v. Crowsbreast*, 629 N.W.2d 433, 437 (Minn. 2001). If all three prongs are met, we may reverse if necessary to ensure the fairness and integrity of the judicial proceedings. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998).

As stated above, appellant is guilty of robbery if he took personal property from another and used force against that person "to overcome the person's resistance or powers of resistance to, or to compel acquiescence in, the taking or carrying away of the property."

Minn. Stat. § 609.24. Appellant is guilty of first-degree aggravated robbery if he, while committing a robbery, inflicted bodily harm upon A.W. Minn. Stat. § 609.245, subd. 1. The district court read the following instructions to the jury:

The elements of aggravated robbery in the first degree are:

First, the defendant took [A.W.’s] car from the person of or in the presence of [A.W.].

Second, the defendant knew that he was not entitled to take the car.

Third, the defendant used force against [A.W.] to overcome resistance.

Fourth, the defendant inflicted bodily harm upon [A.W.].

Appellant argues that these instructions are erroneous because they did not require the jury to find that appellant used force to overcome resistance to “*the taking or carrying away of*” A.W.’s car.³

“An error is plain if it is clear or obvious.” *State v. Jackson*, 714 N.W.2d 681, 690 (Minn. 2006) (quotation omitted). A jury instruction that omits an element of the charged offense is plain error. *State v. Vance*, 734 N.W.2d 650, 658-59 (Minn. 2007), *overruled on other grounds by Fleck*, 810 N.W.2d at 311 (rejecting *Vance*’s discussion of specific- and general-intent crimes).

³ The state contends that the district court’s jury instructions did not omit an element of the crime because they are consistent with the jury instruction guides. See 10 *Minnesota Practice*, CRIMJIG 14.04 (2015). This argument lacks merit because when the plain language of the statute conflicts with the CRIMJIG, the district court is expected to depart from the CRIMJIG and instruct the jury on the elements of the crime. *State v. Gunderson*, 812 N.W.2d 156, 162 (Minn. App. 2012).

Here, the jury instructions did not inform the jury that it needed to find that appellant used force to overcome A.W.'s resistance or powers of resistance to, or to compel acquiescence in, *the taking or carrying away* of A.W.'s car. But we review the jury instructions in their entirety to determine whether they fairly and adequately explain the law of the case. *Flores*, 418 N.W.2d at 155. “[D]etailed definitions of the elements [of] the crime need not be given in the jury instructions if the instructions do not mislead the jury or allow it to speculate over the meaning of the elements.” *State v. Davis*, 864 N.W.2d 171, 177 (Minn. 2015) (quotation omitted). Here, the jury instructions explain that appellant was guilty of first-degree aggravated robbery if he took A.W.'s car knowing he was not entitled to the car, used force to overcome resistance, and inflicted bodily harm upon A.W. These elements together make it clear that appellant's use of force was to overcome A.W.'s resistance for the purpose of stealing her car, consistent with Minn. Stat. § 609.24. When viewed in their entirety, the jury instructions adequately explain the law of the case and do not mislead the jury. These instructions did not amount to plain error.

Affirmed.