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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0546**

State of Minnesota,
Respondent,

vs.

Jason Cory Walker,
Appellant.

**Filed March 9, 2020
Affirmed in part, reversed in part, and remanded
Worke, Judge**

Stearns County District Court
File No. 73-CR-18-2032

Keith Ellison, Attorney General, Michael Everson, Assistant Attorney General, St. Paul, Minnesota; and

Janelle P. Kendall, Stearns County Attorney, St. Cloud, Minnesota (for respondent)

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

Considered and decided by Worke, Presiding Judge; Larkin, Judge; and Florey, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant challenges his controlled-substance-crime conviction, arguing that the evidence is insufficient to prove that he aided and abetted in the offense. Appellant further

argues that the district court erred in denying his request for a sentencing departure and that the warrant of commitment erroneously indicates convictions on two counts for which the district court did not pronounce adjudications. We affirm appellant's conviction and sentence, but reverse and remand for correction of the warrant of commitment.

FACTS

On February 12, 2018, a confidential informant, T.V., drove to a prearranged meeting place to purchase methamphetamine from Josi Adelman. Adelman arrived in a vehicle driven by her boyfriend, appellant Jason Cory Walker. Walker "circl[ed] the parking lot multiple times" before parking in the space behind T.V. Adelman exited the vehicle and entered T.V.'s vehicle. T.V. gave Adelman money and she gave him baggies of methamphetamine. Adelman exited T.V.'s vehicle and returned to her vehicle.

On February 15, 2018, T.V. met Adelman again to purchase methamphetamine. An officer followed the vehicle, driven by Walker, from a hotel to a gas station. The exchange, and Adelman's activity, occurred as it had on February 12. An officer followed the vehicle back to the hotel. A few minutes later, Walker and Adelman returned to the gas station; Adelman entered the gas station while Walker fueled the vehicle.

On March 8, 2018, an investigator interviewed Walker. Walker admitted that he and Adelman were "pushing" "a couple a bowls" a week, and that he sold methamphetamine the night before the interview. He stated that Adelman's cousin, T.V., is "messed up with this, too."

Walker was charged with two counts of aiding and abetting first-degree sale of methamphetamine, and one count of aiding and abetting second-degree sale of

methamphetamine. A jury found him guilty as charged. Walker moved for a downward durational departure, arguing that he was a “bit player at best” because he only drove Adelman to the sales. The district court denied the request and sentenced Walker to 110 months in prison on count one—aiding and abetting first-degree sale of methamphetamine. This appeal followed.

DECISION

Sufficiency of the evidence

Walker first argues that the state failed to prove that he knowingly and intentionally aided Adelman in the sales. Because Walker’s conviction is supported by circumstantial evidence, this court must closely scrutinize that evidence in a two-step process. *State v. Hanson*, 800 N.W.2d 618, 622 (Minn. 2011). First, we identify the circumstances proved. *See State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). In doing so, this court defers to the jury’s acceptance of the proof of the circumstances and rejection of evidence that conflicts with the circumstances proved by the state. *Id.* Next, this court “examine[s] independently the reasonableness of all inferences that might be drawn from the circumstances proved,” including those consistent with a hypothesis other than guilt. *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010) (quotation omitted). The circumstantial evidence must form a complete chain that leads directly to the defendant’s guilt, such that “there are no other reasonable, rational inferences that are inconsistent with guilt.” *Id.* at 330. But a conviction based on circumstantial evidence will not be overturned based merely on conjecture. *Id.*

A person is guilty of aiding and abetting an offense if he “intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime.” Minn. Stat. § 609.05, subd. 1 (2016). The state must prove that the defendant “had knowledge of the crime and intended his presence or actions to further the commission of that crime.” *State v. Hawes*, 801 N.W.2d 659, 668 (Minn. 2011) (quotation omitted). The jury may infer the necessary intent from the circumstances of the crime, including the “defendant’s presence at the scene of the crime, [his] close association with the principal before and after the crime, [his] lack of objection or surprise under the circumstances, and [his] flight from the scene of the crime with the principal.” *State v. Swanson*, 707 N.W.2d 645, 659 (Minn. 2006) (quotation omitted). While more is required of the defendant than inaction or “passive approval,” *Hawes*, 801 N.W.2d at 673, “active participation in the overt act which constitutes the substantive offense is not required.” *State v. Ostrem*, 535 N.W.2d 916, 924 (Minn. 1995). Thus, the defendant need not have actually participated in the crime to impose aiding-and-abetting liability; rather, it is enough if he had knowledge of it and intended his actions or presence to further the crime. *Hawes*, 801 N.W.2d at 668.

Here, the circumstances proved include: (1) Adelman agreed to sell methamphetamine to her cousin, T.V., on February 12, 2018; (2) T.V. and Adelman agreed on a meeting place; (3) Walker drove Adelman to the meeting place; (4) Walker conducted counter-surveillance, “circling the parking lot multiple times,” before parking behind T.V.’s vehicle; (5) Adelman exited the vehicle, entered T.V.’s vehicle, exchanged two baggies of methamphetamine for \$800, exited T.V.’s vehicle, and returned to her vehicle; (6) Walker drove Adelman out of the parking lot; (7) on February 15, 2018, T.V. arranged

to purchase one-half ounce of methamphetamine from Adelman for \$425; (8) T.V. and Adelman agreed to meet at a gas station; (9) Walker drove Adelman from the hotel where they were staying to the gas station; (10) Adelman exited the vehicle, entered T.V.'s vehicle, exchanged methamphetamine for money, exited T.V.'s vehicle, and reentered her vehicle; (11) Walker drove back to the hotel, and shortly thereafter, returned to the gas station with Adelman; (12) Walker admitted that he and Adelman were "pushing" "a couple a bowls" a week; (13) Walker admitted that he sold methamphetamine on March 7, 2018; and (14) Walker stated that he knew that T.V. was Adelman's cousin, and that T.V. is "messed up with this, too."

The circumstances proved, and the reasonableness of the inferences that could be drawn from the circumstances proved, lead directly to the hypothesis that Walker aided and abetted the sales. The reasonable hypothesis is that Walker had knowledge of the crime and intended his actions to further in the commission of the crime. Walker and Adelman sold drugs weekly. Walker knew that T.V. was involved in drug sales. Walker drove Adelman to two separate drug sales with T.V. Walker conducted counter-surveillance; an officer experienced in controlled buys testified that while most people pull into a parking lot, find a spot, and park, someone trying to identify law enforcement in the area prior to a controlled-substance transaction will "circl[e] the parking lot multiple times." Walker then drove Adelman away after each drug sale.

The jury could have inferred Walker's knowledge and intent to further the commission of the crime based on his presence at the scene, his close association with Adelman before and after the crime, and his flight from the scene of the crime with

Adelman. *See Swanson*, 707 N.W.2d at 659. The state was not required to prove that Walker participated in the actual sales. *See Hawes*, 801 N.W.2d at 668. Based on this record, the evidence is sufficient to support Walker’s conviction.

Sentence

Walker also argues that the district court abused its discretion by denying his request for a durational departure. A district court has great discretion in its sentencing decision, and this court will reverse that decision only when there is an abuse of that discretion. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014).

A district court must impose a presumptive sentence unless “identifiable, substantial, and compelling circumstances” justify a departure. Minn. Sent. Guidelines 2.D.1 (2016). This court will not ordinarily interfere with the imposition of a sentence within the presumptive range, even if there are grounds that would justify a departure. *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006). “[A]s long as the record shows the [district] court carefully evaluated all the testimony and information presented before making a determination,” we will not interfere with the district court’s decision to impose a presumptive sentence. *State v. Pegel*, 795 N.W.2d 251, 255 (Minn. App. 2011) (quotation omitted). Only in a rare case will we reverse the imposition of a presumptive sentence. *Id.* at 253.

Walker sought a downward durational departure, arguing that he was a “bit player at best.” “Substantial and compelling circumstances are those demonstrating that the defendant’s conduct in the offense of conviction was *significantly* more or less serious than that typically involved in the commission of the crime in question.” *State v. Jones*, 745

N.W.2d 845, 848 (Minn. 2008) (quotation omitted). A departure may be justified by a single mitigating factor, which could be an offender’s minor role in the crime. *State v. Stempfley*, 900 N.W.2d 412, 418 (Minn. 2017); *State v. Solberg*, 882 N.W.2d 618, 627 (Minn. 2016).

Walker argues that the district court failed to consider his request, because it “indicate[d] that it believed the jury verdict finding [him] guilty as an aider and abettor precluded a departure on this ground.” But Walker mischaracterizes the district court’s contemplation of his request. The district court stated:

[T]he problem with a departure is for me to actually give you a departure, I would have to essentially disregard what the jury implicitly – if not explicitly – found. Which is you knew what was happening.

The legal instruction is such that if you generally didn’t know what [Adelman] was doing and you just drove her and you had no idea about the drug sales, you’re not guilty. Right. But the jury found otherwise. . . . So I can’t in my good conscience disregard what their verdict is and say that it is less serious because you’re charged with aiding and abetting. And if the jury says . . . that the [s]tate proved you knew what she was doing, the fact that you drove her, . . . even [if] the conduct itself might be minimal[,] . . . I don’t think that necessarily is [a] substantial and compelling reason to believe that it’s less serious than your typical offense.

Thus, the district court considered that Walker’s role in the offense was driving Adelman to the controlled buys, but concluded that it was not a substantial and compelling circumstance to justify a departure because it is a fact that satisfied the elements of the offense. Further, although playing a minor role in a crime may be a mitigating factor, the district court is not required to depart simply because that factor may exist. *State v. Abrahamson*, 758 N.W.2d 332, 337 (Minn. App. 2008), *review denied* (Minn. Mar. 31,

2009). Finally, Walker's presumptive sentence was 128 months in prison, with a range between 110 and 153 months. The district court imposed a 110-month sentence. While the district court did not find that Walker's role in the offense was a substantial and compelling circumstance to justify a departure, it did consider his role by imposing the bottom-of-the-box sentence. Therefore, the district court did not abuse its discretion by denying Walker's request for a downward departure.

Warrant of commitment

At sentencing, the district court stated that it was permitted to impose a sentence only on count one because count one "covers the two sales referencing [c]ounts 2 and 3." The district court then announced: "Counts 2 and 3 will be unadjudicated, but their verdicts will remain consistent with the trial findings." The warrant of commitment, however, reflects a disposition of "conviction" for counts two and three. Walker argues that the warrant of commitment needs to be corrected to reflect that counts two and three are unadjudicated. While the state agrees that we should remand with instructions to correct the error, it is our responsibility to decide cases in accordance with the law. *See State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990).

That being said, the parties are correct because a defendant may be convicted of a charged offense or a lesser-included offense, but not both. Minn. Stat. § 609.04, subd. 1 (2016). Here, count one—first-degree controlled-substance sale—included the February 12 and 15 sales, and the total weight of 44.7 grams containing methamphetamine. Count two represented the sale of 29.4 grams containing methamphetamine on February 12, and count three represented the sale of 15.3 grams containing

methamphetamine on February 15. The district court appropriately recognized when it pronounced Walker's sentence that Walker could not be convicted of counts two and three because count one included both sales. *See State v. Pflepsen*, 590 N.W.2d 759, 766 (Minn. 1999) (stating that when a jury finds a defendant guilty of more than one offense based on a single course of conduct, the district court should "adjudicate formally and impose sentence on one count only"). But the warrant of commitment incorrectly reflects convictions for counts two and three. Therefore, we reverse and remand to the district court with instructions to vacate Walker's convictions of counts two and three so as to reflect a disposition that counts two and three are unadjudicated.

Affirmed in part, reversed in part, and remanded.