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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0764**

State of Minnesota,
Respondent,

vs.

Richard Theodore Knoll,
Appellant.

**Filed March 9, 2020
Affirmed
Segal, Judge**

Isanti County District Court
File No. 30-CR-17-154

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

Jeffrey Edblad, Isanti County Attorney, Joel B. Whitlock, Assistant County Attorney,
Cambridge, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Ross, Judge; and Segal,
Judge.

UNPUBLISHED OPINION

SEGAL, Judge

Appellant challenges his conviction of third-degree burglary, arguing that the district court committed plain error by allowing the prosecutor to introduce evidence of his accomplice's guilty plea to the same burglary. We affirm.

FACTS

In the early morning hours of March 3, 2017, T.E. called 911 because he saw a vehicle park in the driveway of his neighbor's property in Isanti County. The property consists of five acres and contains a home, several outbuildings including a large pole barn, and a number of cars that the property owner collects. The property owner lives in Minneapolis and asked T.E. to keep an eye on the property when he was away. A deputy with the Isanti County Sheriff's Office responded to the 911 call. He found appellant Richard Theodore Knoll and Jeffrey Sura inside the pole barn on the property and observed that Knoll was wearing a head lamp. They claimed that they were looking for a car part. They did not know the property owner and did not have permission to be on the property. The deputy later discovered methamphetamine inside their vehicle.

Respondent State of Minnesota charged Knoll with third-degree burglary, fifth-degree controlled-substance crime, and misdemeanor theft. The case against Knoll was tried to a jury. The state called Sura as a witness. Sura testified that he pleaded guilty to burglary for his role in the incident. Specifically, he testified that he entered an *Alford* plea and explained he did not admit guilt, but pleaded guilty because he believed the evidence

against him was substantial.¹ Sura testified that it was his idea to go to the property and look for a fuel pump for Knoll's vehicle. Sura stated that he intended to see if someone was at the house and inquire about purchasing a fuel pump, but that no one answered the door at the house when he and Knoll knocked. After no one answered the door, he and Knoll proceeded to look for a fuel pump in the pole barn. Sura testified that if they had found a fuel pump they intended on returning to the property later to purchase the part. The property owner testified that the doors to the pole barn were all normally locked and that he later discovered a door had been "jimmied open" and the "lock had been pried off."

The jury found Knoll guilty of third-degree burglary but not guilty of fifth-degree controlled-substance crime or misdemeanor theft. The district court sentenced Knoll to 15 months in prison, stayed execution of the sentence for five years, and placed him on probation. This appeal follows.

DECISION

Knoll argues that the district court plainly erred by allowing the prosecutor to elicit testimony about Sura's guilty plea to burglary. Because Knoll did not object to the admission of the statement at trial, we review for plain error. *State v. Strommen*, 648 N.W.2d 681, 686 (Minn. 2002); see Minn. R. Crim. P. 31.02 (providing that plain error affecting a substantial right can be considered on appeal). Under the plain-error standard, the appellant must show: "(1) error; (2) that was plain; and (3) that affected [his] substantial

¹ See *State v. Goulette*, 258 N.W.2d 758, 761 (Minn. 1977) (stating that in an *Alford* plea, a defendant, while maintaining his innocence, pleads guilty because he believes that the state has sufficient evidence to obtain a conviction at trial).

rights.” *Strommen*, 648 N.W.2d at 686. If the three elements of the plain-error standard are met, an appellate court “may correct the error only if it seriously affect[s] the fairness, integrity, or public reputation of judicial proceedings.” *Id.* (alteration in original) (quotation omitted). An error is plain when it is clear, obvious, or contravenes caselaw, a rule or a standard of conduct. *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006).

Generally, evidence of an accomplice’s guilty plea is not admissible to prove the guilt of the accused. *State v. Cermak*, 365 N.W.2d 243, 247 (Minn. 1985). “Such evidence is not probative of the accused’s guilt and may give rise to the prejudicial inference that, because the accomplice is guilty, so is the accused.” *State v. Dillon*, 529 N.W.2d 387, 391 (Minn. App. 1995), *remanded on other grounds*, 532 N.W.2d 558 (Minn. 1995). However, the Minnesota Supreme Court has recognized limited exceptions to this general rule. Evidence of an accomplice’s guilty plea may be admitted to provide a first-hand narrative of the events leading up to and after the crime where the accomplice does not testify. *State v. Caine*, 746 N.W.2d 339, 351 (Minn. 2008). Evidence of an accomplice’s guilty plea may also be admitted where it is introduced in anticipation of a defense theory. *See Cermak*, 365 N.W.2d at 247 (stating “the evidence was clearly introduced in anticipation of defendant’s argument that the charges against her were questionable because they were not filed for over 1 year after the arrest of . . . the first of the defendants”).

Knoll argues that the district court plainly erred by allowing the prosecutor to elicit testimony about Sura’s guilty plea. But we need not decide whether this constitutes error that is plain because Knoll has failed to establish the third prong of the test, that the asserted error affected his substantial rights. Under the plain-error standard, Knoll bears the “heavy

burden” to show that any error affected substantial rights. *State v. Griller*, 583 N.W.2d 736, 741 (Minn. 1998). “An error affects substantial rights if the error is prejudicial—that is, if there is a reasonable likelihood that the error substantially affected the verdict.” *Strommen*, 648 N.W.2d at 688.

The state argues there is no reasonable likelihood that the evidence of Sura’s plea affected the jury’s verdict because the evidence of Knoll’s guilt was strong. *See State v. Cao*, 788 N.W.2d 710, 717 (Minn. 2010) (stating when determining whether an error affected a defendant’s substantial rights the court may consider the strength of the evidence). We agree. To establish that Knoll committed third-degree burglary, the state had to show that Knoll entered a building “without consent and with intent to steal or commit any felony or gross misdemeanor while in the building.” Minn. Stat. § 609.582, subd. 3 (2016). Knoll was discovered by the deputy inside of the pole barn, and the property owner testified that neither Knoll nor Sura had permission to be there. Indeed, neither of them had ever met or spoken to the property owner. Thus, the record contains clear evidence that Knoll entered a building without consent. The only remaining element is whether he intended to steal or commit a felony or gross misdemeanor while in the building.

The evidence of intent to commit a crime is equally strong. Knoll and Sura did not know the property owner. They arrived at this five-acre property in the early morning hours when it was still mostly dark outside, and Knoll was equipped with a headlamp. They entered the pole barn, which, according to the property owner, was locked. The

property owner also testified that one of the doors to the pole barn had been “jimmied open” and the “lock had been pried off.” This evidence supports the jury’s verdict.

Knoll, however, argues that the admission of evidence of Sura’s guilty plea substantially affected the jury’s verdict because it “allowed the jury to disregard the other problems with the State’s evidence,” primarily the “innocent explanations for being at the property.” At trial, Knoll’s theory of defense was that it was Sura’s idea to go to the property to look for the car part and that he was merely “along for the ride.” Sura’s testimony at trial supported this defense—Sura testified that he drove and it was his idea to go to the property to look for the car part. Sura also testified they did not intend to steal any parts and would have left and returned later to purchase the part from the owner if they found the part Sura was seeking. Thus, the jury heard the “innocent explanation” for Knoll being at the property and rejected it.

On this record, we conclude there is no reasonable likelihood that the admission of evidence of Sura’s *Alford* plea substantially impacted the jury’s verdict. Knoll has therefore failed to establish the admission of the evidence affected his substantial rights and he is not entitled to relief.

Affirmed.