STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0839

State of Minnesota,
Respondent,

vs.

Ling Zhou,
Appellant.

Filed April 27, 2020
Affirmed
Jesson, Judge

Ramsey County District Court
File No. 62-CR-17-8856

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

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Paul D. Baertschi, Minneapolis, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Rodenberg, Judge; and Smith, Tracy M., Judge.

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

JESSON, Judge

After receiving and transferring almost $300,000, appellant Ling Zhou was convicted of receiving stolen property and aiding and abetting theft by swindle. Zhou, who lived in California, received this money from two men in Minnesota through a financial scheme. On appeal, she challenges the jurisdiction of the state of Minnesota and the Ramsey County Attorney's Office. She also raised concerns about the jury instructions and the sufficiency of the evidence. Because jurisdiction was proper, the jury instructions were not plainly erroneous, and the evidence is sufficient, we affirm.

FACTS

This case involves a complex financial swindle. According to trial testimony, appellant Ling Zhou's participation in this swindle began more than a year before the victims in this case, S.T. and R.B., were scammed. In April 2015, Zhou met "Gerald Moretti Roberto Rossi" on a dating website, and they began communicating frequently by email and text message.[1] Their relationship grew serious quickly, and they declared their love for each other early on. Soon, the couple planned for Moretti to visit Zhou in California.

About two weeks after they began their online relationship, Moretti told Zhou that he was having trouble transferring funds from some personal business in Dubai to his account in the United States. He asked Zhou to help him by sending money so that the funds would be released. Skeptical that she might be cheated, Zhou contacted a banker and was advised not to send the money because the situation was "strange" and that it was likely a "scam." She confronted Moretti with this information, but he convinced her that the transaction was legitimate. She began sending him money, in an apparent hope that he

[1] It appears that Moretti may not be an actual person or the actual name of the person with whom Zhou was communicating. The photos Moretti sent to Zhou of himself were taken from a celebrity's Instagram account, and the passport scan Moretti sent also appeared to be fake. The authorities had not located Moretti at the time of the trial.

would return to the United States and they could be together. Zhou used some of her own money, loans from family members, and "hard money lenders" during the myriad of transactions she facilitated on Moretti's behalf.

Eventually, Moretti told Zhou that he found a way to make money while he was in Dubai through a "referral business." At Moretti's instruction, Zhou set up an account in her name with zoominfo.com and gave him her login information.[2] Shortly after, Moretti told Zhou he was receiving referral fees through the account and asked her to establish bank accounts so that he could monitor the deposits. Zhou did so. She ended up opening more than a dozen different bank accounts at different financial institutions at Moretti's direction. Zhou then provided him the details of these new accounts in her name and her existing Happy Oceans bank account, which she used for her real estate business. Once he had her account information, Moretti would inform Zhou when "referrals" would be deposited into her accounts. And he would ask her to move certain funds from specific accounts to other accounts or send certain funds to other individuals, including by wire transfer and cash withdrawal and deposit. Zhou did as Moretti directed. For these wire transfers, Zhou often had to list a "purpose" on the bank's form. Moretti suggested she put down "family support" and she did, despite not knowing the recipients of the money. She even joked about this, calling them her "international criminal families."

Several times, Zhou expressed suspicion about Moretti and his requests of her. She wrote him, "I feel you are not honest to me" and questioned how he spent the tens of

[2] This service provides contact information for potential customers or clients.

thousands of dollars she sent him so quickly. And she told Moretti, "I have to went to [two banks] in order [to not] look like a criminal." She asked him several times if he was laundering money. Expressing fear that she was jeopardizing her residency in the United States, she said, "I did help you sen[d] the referral money which is stolen from another innocent people's money, I looked like a criminal." But despite all of these fears, she continued to help Moretti.

Victim S.T.

In September 2016, S.T. was preparing to close on a new house in Eden Prairie. During this process, he worked with Edgewater Title Group, a company based in Minnesota. With the closing date approaching, S.T. emailed his contact at the title company for the final payment details. Later that same morning, he received emails providing the date, time, and address for the closing, as well as final payment wiring instructions. The instructions provided account and routing numbers for an account identified as "Happy Oceans INC 10633 165th St W Lakeville, MN 55044," allegedly located at a Bank of America in Minneapolis.[3] S.T. even received follow-up emails to confirm he had wired the final payment as instructed, which he had.

On the day of the closing, S.T. learned that these emails were not from the title company and that it had never received his final payment of $205,704.11. S.T. and the title company representative compared communications and realized that S.T. received

[3] This address in Lakeville was Edgewater Title Group's actual address. But the actual Happy Oceans account was registered at a California address, consistent with Zhou's real estate business.

fraudulent emails and had never received the email with the proper wiring instructions. After realizing this, they contacted police.

Victim R.B.

In 2016, R.B.—a St. Paul resident—met "Teresa Hill" on a dating website. The two communicated through email and text, and even had more than ten phone conversations, but never met in person.

After a few weeks, Hill told R.B. that she was traveling to Dubai for her work as a "gems dealer." While in Dubai, Hill told R.B. that she ran out of money and needed $14,000 for "shipping, taxes, [and] whatever else Dubai was throwing on her." Hill promised to pay R.B. back once she got back to the United States, so R.B. sent her the money. Hill directed R.B. to send the money to her "broker," and provided the details for the Happy Oceans account.[4] After he wired $14,000 to the Happy Oceans account, there were more obstacles Hill allegedly had to overcome to come back to the United States. At Hill's request, R.B. sent three more payments ($7,000, $20,000, and $49,000) to the Happy Oceans account, in the form of personal checks. Eventually, the police informed R.B. that he was being scammed.

Police Investigation

Lakeville police first investigated S.T.'s wire transfer into Zhou's account. In October 2016, the bank closed Zhou's Happy Oceans account after S.T. reported the fraud.

[4] Again, this was Zhou's business account. R.B. testified that Hill mentioned Gerald Moretti's name to him as "another contact that could be used to send transfers to."

Zhou immediately texted Moretti to let him know, telling him that the bank believed the account was being used for money laundering.

Around this time, Lakeville police contacted a detective in Santa Clara, California, asking him to speak to Zhou because she lived in his jurisdiction. In December 2016, the detective visited Zhou and asked her about S.T.'s transfer. Zhou told police that she did not know about the specific deposit but that she would ask her cousin with whom she did business and let them know.

This was a lie. After the police left, Zhou texted Moretti telling him that law enforcement was investigating stolen money deposited into her Happy Oceans account. Moretti and Zhou discussed what she should tell police. Zhou later emailed the police with alleged proof that the deposit in her account was legitimate: a series of undated emails between Moretti and a third party about work Moretti did for him, for which he sent $205,704 to the Happy Oceans account. The detective believed this series of emails to be "a scam" and "fraudulent."

An agent with the Minnesota Commerce Fraud Bureau began assisting the Lakeville Police Department in investigating this case. The police discovered that the funds from both S.T. and R.B. initially went into the Happy Oceans accounts owned by Zhou. The agent first tracked the deposits and subsequent transfers out of the accounts. And the agent connected the various communications in the case with the bank records to map the movement of the money that Zhou initiated at the direction of Moretti.

The agent interviewed Zhou again about the case. And she finally told him the truth: that she was in love with Moretti and that she trusted him and was trying to help him.

And through Zhou's communications with Moretti, police discovered that Zhou realized that the money in her accounts was stolen, and that she felt bad for the people who lost their money. The state charged Zhou with two crimes: (1) felony aiding and abetting theft by swindle, for the S.T. transaction and the R.B. transactions, and (2) felony receiving stolen property, for the final R.B. transaction of $49,000.

Zhou was tried by a jury over four days. At trial, the state presented testimony from S.T., R.B., an employee from the title company, police, and the agent. The agent provided detailed testimony, with help from several exhibits, about his meticulous tracking of the financial transactions and his review of Zhou and Moretti's conversations. After the state rested, the defense moved for a judgment of acquittal based on insufficient evidence, lack of jurisdiction, and improper venue. The district court denied the request and the defense presented two character witnesses on behalf of Zhou before it rested.

After closing arguments, the district court read the jury the pattern jury instructions, including those for liability for the crimes of another and theft by swindle. And the jury found Zhou guilty of both counts. The district court sentenced her to a stay of imposition, five years of probation, and community service. And the court ordered her to pay full restitution to S.T. and R.B. Zhou appeals.

D E C I S I O N

On appeal, Zhou raises four issues. First, she argues that the state lacked jurisdiction to prosecute her for these crimes. Second, according to Zhou, the Ramsey County Attorney's Office lacked authority to prosecute her. Third, she contends that there were errors in the jury instructions. Finally, she asserts that there was insufficient evidence to support her convictions. We review each argument in turn.

I. The State of Minnesota had jurisdiction to prosecute Zhou.

Zhou argues that Minnesota lacked authority to prosecute this case. We review questions of subject-matter jurisdiction de novo. *State v. Vang*, 847 N.W.2d 248, 257-58 (Minn. 2014). Subject-matter jurisdiction is "the court's power to hear and decide the dispute." *State v. Eibensteiner*, 690 N.W.2d 140, 149 (Minn. App. 2004), *review denied* (Minn. Mar. 15, 2005). Under Minnesota law:

> A person may be convicted and sentenced under the law of this state if the person:
>
> (1) commits an offense in whole or in part within this state; or
>
> (2) being without the state, causes, aids or abets another to commit a crime within the state; or
>
> (3) being without the state, intentionally causes a result within the state prohibited by the criminal laws of this state.

Minn. Stat. § 609.025 (2016).

Minnesota courts also rely on the operative-event test in determining whether crimes occurred in Minnesota for the purposes of subject-matter jurisdiction. *State v. Simion*, 745 N.W.2d 830, 838-39 (Minn. 2008). Courts consider "whether some operative event, a triggering event, for the crime occurred in Minnesota. . . . [S]ome part of the crime charged must be committed within the jurisdiction." *Id.* (quotations and citation omitted). And when an act is committed outside of Minnesota and causes a crime to result in Minnesota, it could satisfy this test "if the result is part of the crime or related to an element of the crime." *Id.* at 839.

We turn first to Zhou's theft-by-swindle conviction as an accomplice. Under that charge, jurisdiction in Minnesota is authorized under section 609.025(2). Zhou was outside the state of Minnesota when she lived and acted in California. And she aided or abetted Moretti's swindle in Minnesota: S.T. and R.B. were both Minnesota residents when they lost their money. The operative-event test is satisfied here. The critical events for this crime were the transfers from S.T. and R.B. to accounts owned by Zhou. Both men were in Minnesota when they were swindled and sent their money from Minnesota. And the result of these transfers was that S.T. and R.B. gave up possession of their money to Zhou's account, which is relevant to the elements of the crimes. *See* Minn. Stat. § 609.52, subd. 2(a)(4) (2016). Therefore, Zhou's crimes satisfy the statutory requirements for Minnesota to have jurisdiction with regard to this crime.

Next, we turn to Zhou's receiving-stolen-property conviction. Jurisdiction over this crime in Minnesota is authorized under section 609.025(3). While outside of Minnesota, Zhou intentionally received and transferred stolen property. And the result—R.B. losing his money—occurred in Minnesota. Under the operative-event test, the key event for this crime was the final transfer from R.B. to Zhou's account. This transfer was sent from Minnesota. Thus, because a transfer of money occurred within the State of Minnesota, the state has subject-matter jurisdiction to prosecute Zhou for these crimes.

Still, Zhou advances two arguments regarding why Minnesota lacks jurisdiction. First, she asserts that because she has never been to Minnesota and never acted within the state, it lacks jurisdiction. But, by using phrases like "being without the state" and "aids or abets another to commit a crime within the state," the statute contemplates (and provides jurisdiction for) situations in which a criminal actor participates in a crime in Minnesota even if the actor is not physically here. *See* Minn. Stat. § 609.025.

Second, Zhou argues that the state failed to elicit testimony that, when they were swindled, S.T. and R.B. lived within the jurisdiction of the Minnesota court. But S.T. testified that at the time of trial he lived in Eden Prairie and that he moved "here" from Wisconsin about three years earlier. And later, he testified that he sold his home in Madison to "move to Minneapolis" and that, at the time of the transfer, he "was in south Minneapolis." Three years before the trial, in January 2019, would be January 2016. His transfer occurred in September 2016, so S.T. lived "here" in Minnesota at the time of his wire transfer. From this testimony, the jury could reasonably infer that "here" related to Minnesota.

And R.B. testified that he lives on the east side of St. Paul, Minnesota and is a resident of Ramsey County. The checks he wrote to Happy Oceans in 2016 have his address listed as in St. Paul. He further testified that he "just went to the bank and had them do a transfer." This suggests that his transfers were done at a bank in Minnesota.

In sum, the record contains evidence that both victims lived in Minnesota and transferred their money to Zhou from Minnesota. This sufficiently confers jurisdiction. As a result, the district court did not err by denying Zhou's motion for acquittal.

II. The Ramsey County Attorney's Office had authority to prosecute Zhou.

Next, Zhou argues that the Ramsey County Attorney lacked authority to prosecute these crimes, which we construe as an argument about venue. Challenges to venue raise questions of law that we review do novo. *State v. Pierce*, 792 N.W.2d 83, 86 (Minn. App. 2010).

Because we have determined that jurisdiction over these crimes exists in Minnesota, a determination of the precise county for trial, or the venue, is "less significant." *Eibensteiner*, 690 N.W.2d at 150 (quotation omitted). Venue is a matter of convenience. *Id.* at 149. Minnesota law provides the Ramsey County Attorney authority to prosecute felony violations of state law that occur in Ramsey County. *See* Minn. Stat. §§ 388.051, subd. 1(3), 484.87, subd 2 (2016); *see also State v. Ali*, 752 N.W.2d 98, 107 (Minn. App. 2008) (noting that the Hennepin County Attorney's Office was the appropriate prosecuting authority when the offense occurred in Hennepin County), *review denied* (Minn. May 27, 2009). And "every criminal cause shall be tried in the county where the offense was committed," meaning "where any element of the offense was committed or any county where the property involved in an offense is or has been located." Minn. Stat. § 627.01, subds. 1-2 (2016). Zhou's crimes were violations of state law that occurred in Minnesota, as described above, and her crime relating to R.B. occurred in Ramsey County.

Because the state aggregated the offenses relating to R.B. and S.T., the Ramsey County Attorney's Office had appropriate authority to try these crimes in Ramsey County. Under rule 24.01 of the Minnesota Rules of Criminal Procedure, a "case must be tried in the county where the offense was committed unless these rules direct otherwise." And "when two or more offenses are committed by the same person in two or more counties, the accused may be prosecuted in any county in which one of the offenses was committed for all of the offenses aggregated under this paragraph." Minn. Stat. § 609.52, subd. 3(5) (2016). While S.T. was not in Ramsey County, this aggregation permits the Ramsey County Attorney's Office to charge Zhou's crimes as to both victims. And because Zhou's crimes were felony violations of state law that occurred, at least in part, within Ramsey County, it is within the Ramsey County Attorney's Office's authority to prosecute Zhou. Venue in Ramsey County was proper.[5]

III. The district court did not provide erroneous jury instructions.

According to Zhou, the district court misled the jury on the burden of proof as to aiding and abetting theft in the jury instructions. Zhou further explains that the error occurred when the court failed to include the accomplice-liability instruction within the elements for theft by swindle. Because trial courts enjoy broad discretion over jury instructions, unless they have abused that discretion, we will not reverse. *State v. Milton*, 821 N.W.2d 789, 805 (Minn. 2012). But if a jury instruction materially misstates the law, it is erroneous. *State v. Kuhnau*, 622 N.W.2d 552, 556 (Minn. 2001).

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[5] We also note that Zhou summarily argued for the first time that venue in Ramsey County was improper in a verbal motion for acquittal following the state's case-in-chief. But "objections to improper venue are deemed waived where a defendant does not object to the venue before trial." *State v. Blooflat*, 524 N.W.2d 482, 484 (Minn. App. 1994). Thus, Zhou waived any challenge when she failed to object to venue before trial.

Because Zhou did not object to the instructions at trial, we consider whether the instructions amounted to plain error that affected her substantial rights. *State v. Crowsbreast*, 629 N.W.2d 433, 437 (Minn. 2001). According to Zhou, the instructions failed to require the jury to find that she knowingly and intentionally aided in the theft by swindle. Here, the state had to prove that Zhou knew Moretti was committing a crime and that she intended her actions to aid in the commission of the crime. *See, e.g.*, *State v. Mahkuk*, 736 N.W.2d 675, 682 (Minn. 2007). A jury instruction for accomplice liability must explain the "intentionally aiding" element. *State v. Kelley*, 855 N.W.2d 269, 275 (Minn. 2014) (citing *Milton*, 821 N.W.2d at 808).

Here, the district court read to the jury the pattern jury instructions for liability for the crimes of another. Those instructions defined "intentionally aiding" as requiring two elements: "first, the defendant knew another person was going to commit or was committing a crime. Second, the defendant intended that her actions aided the commission of the crimes." Then, the court stated, "[y]ou shall apply this instruction to determine whether the defendant aided another person in committing the offense of theft-swindle." Next, the court read the instructions for theft by swindle.

These instructions meet the requirements set forth in our caselaw. And providing the instructions in this way, rather than "incorporating" them as Zhou suggests, has been encouraged by the Minnesota Supreme Court. *See State v. Huber*, 877 N.W.2d 519, 524-25 n.3 (Minn. 2016).

Zhou provides no legal authority to demonstrate that the provided jury instructions were erroneous because they failed to weave together the elements of aiding and abetting with the elements for theft by swindle. And she gives no example of what would have been an appropriate instruction. Accordingly, we discern no error, let alone error that is plain, in the district court's use of the pattern instructions here.

IV. There is sufficient evidence to support Zhou's convictions.

Finally, according to Zhou, the evidence was insufficient to support her convictions. When reviewing claims about sufficiency of the evidence, this court "carefully examine[s] the record to determine whether the facts and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which [she] was convicted." *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016) (quotation omitted). The evidence is viewed in the light most favorable to the verdict, and we assume that the jury "disbelieved any evidence that conflicted with the verdict." *Id.*

Here, Zhou challenges the sufficiency of the evidence related to her intent and knowledge for both crimes. Because intent and knowledge are generally proved by circumstantial evidence, the circumstantial-evidence standard of review is appropriate. *See State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997). Under this standard, this court applies a two-step analysis. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). First, this court identifies the circumstances proved, considering only those consistent with the verdict. *Id.* at 598-99. Second, this court determines "whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt," examining independently the reasonableness of the inferences. *Id.* (quotations omitted). With this standard in mind, we review the evidence supporting each of Zhou's convictions.

Theft by Swindle

Zhou argues that, because she did not know about the communications with S.T. and R.B. that led to them sending money, she could not have *knowingly* aided Moretti in committing the theft by swindle.

To convict Zhou for aiding and abetting, the state had to prove that she intentionally aided, advised, or conspired with another to commit theft by swindle. *See* Minn. Stat. § 609.05, subd. 1 (2016). And theft by swindle requires the state to prove that through a swindle—"artifice, trick, device, or any other means"—Zhou obtained property from another person. Minn. Stat. § 609.52, subd. 2(a)(4).

Relevant to these elements, the state proved the following circumstances. Zhou wanted to help Moretti leave Dubai and transfer his money. Zhou created an online account in her name for Moretti to search for business contacts and gave him access to it. He then engaged in some "referral" business that resulted in several deposits into Zhou's accounts. This money was, in part, from S.T. and R.B. At Moretti's direction, Zhou transferred money in and out of these accounts and wired money to several individuals she did not know. And Zhou opened additional bank accounts with many financial institutions at Moretti's direction, and she provided him the information so that her new accounts could receive more deposits. Zhou also lied to the banks at Moretti's direction, saying that the wire transfers were for "family support" to people who were not her family and for "services" to people who did not provide her with any services. One of Zhou's accounts was closed because of the fraudulent S.T. transaction, and the bank and police told her that the money was stolen. And she lied to police about the origin of S.T.'s money in her account. At times, Zhou asked Moretti if he was laundering money or committing a crime.

Considering the circumstances proved, the second step of the analysis is to determine whether these circumstances are consistent with guilt and inconsistent with any rational hypothesis other than guilt. *Silvernail*, 831 N.W.2d at 599. Here, the circumstances reveal Zhou's guilt. They show that someone caused money to appear in Zhou's accounts and that she transferred the money out. She did these transfers at Moretti's direction, in an attempt to benefit him or help with his "business." The bank closed her account because of fraud, and the police told her that some deposited funds were stolen money, but *she continued to participate*. Further, Zhou's lying about the origins of the money to the police and the purpose for the transfers to the banks reveals she felt she had to hide the truth about her conduct.

Zhou does not offer what her rational alternative hypothesis is, but it appears to be that she did not communicate with S.T. and R.B. personally or cause them to send their money to her accounts. But this specific communication is unnecessary to be guilty of aiding and abetting this crime. Thus, the circumstances proven are consistent solely with guilt and inconsistent with any rational alternative hypothesis. Sufficient evidence supports Zhou's conviction for aiding and abetting theft by swindle.

Receiving Stolen Property

Zhou also contends that she did not know the money she received was stolen. This charge relates only to R.B.'s final $49,000 check to Zhou's Happy Oceans account, sent in November 2016. To convict her for receiving stolen property, the state had to prove that she received, possessed, transferred, or concealed any stolen property, with knowledge or with reason to know that the property was stolen. Minn. Stat. § 609.53, subd. 1 (2016).

The circumstances proved as described above are also relevant here. Particularly, that the bank closed her account in mid-October because of suspected fraud, and she received R.B.'s $49,000 on November 30. Shortly after that, the police came to her door and asked her about the S.T. transaction from late September. She then lied to them about the money that had been deposited by S.T. and worked with Moretti on a cover story. These circumstances are consistent with guilt and demonstrate her knowledge that the money that was being deposited in her account was stolen.

Moving on to the second step, Zhou's alternative rational hypothesis appears to be that she thought she was being paid back with the $49,000, meaning that she was entitled to the money. But within a week after R.B.'s money was deposited, Zhou had transferred it between her accounts and then wired it to people in South Africa, stating that it was for "family support." And in her communications with Moretti at this time, which appear to be about this transaction, she did not assert that the funds coming in were hers when he told her to transfer them. We are satisfied that there is sufficient evidence to convict Zhou of receiving stolen property on this record.

In sum, the State of Minnesota and the Ramsey County Attorney's Office had sufficient authority to prosecute Zhou for these crimes. And the district court did not provide erroneous jury instructions. Finally, there is sufficient evidence to sustain Zhou's convictions. While Zhou appears to have been a pawn in this financial scheme, personally losing a significant amount of money, that does not change the fact that she also aided Moretti in the swindle and received stolen property. For these reasons, we affirm.

Affirmed.