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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1109**

State of Minnesota,
Respondent,

vs.

Jacob Jordan Johnson,
Appellant.

**Filed August 16, 2021
Affirmed
Worke, Judge**

St. Louis County District Court
File No. 69DU-CR-19-248

Keith Ellison, Attorney General, Peter Magnuson, Assistant Attorney General, St. Paul, Minnesota; and

Mark S. Rubin, St. Louis County Attorney, Duluth, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Benjamin J. Butler, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Gaïtas, Presiding Judge; Worke, Judge; and Johnson, Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant challenges his conviction of aiding-and-abetting third-degree murder for the drug overdose death of a friend, arguing that the evidence failed to show that he aided

and abetted the murder. He also argues that the district court erred by declining to give the jury a joint-acquisition instruction. We affirm.

FACTS

On December 14, 2018, J.B. contacted appellant Jacob Jordan Johnson and asked for \$20 worth of a controlled substance. Johnson told J.B. where he was, and J.B. stated that he would be right over. J.B. left his apartment, telling his son that he was going to the store.

J.B. picked Johnson up. Using J.B.'s cellphone, Johnson called "Memphis." J.B. and Johnson met Memphis at a gas station, and Memphis got into J.B.'s vehicle. J.B. handed Memphis \$20, and Memphis gave J.B. a tinfoil package. Memphis exited J.B.'s vehicle, and J.B. dropped Johnson off.

J.B. returned to his apartment about an hour later, but he did not have any purchases with him. Shortly after he returned, J.B. went to take a shower. While J.B. was in the bathroom, his son noticed that Johnson was contacting J.B.'s cellphone. Johnson was contacting J.B. because Memphis had locked himself out of his vehicle and lost his key. J.B.'s son did not respond to Johnson's attempts to contact J.B. J.B.'s phone also received a text message from J.B.'s girlfriend. J.B.'s son responded to that message. He told J.B.'s girlfriend that J.B. had been in the bathroom for a long time and asked her to come over.

J.B.'s girlfriend arrived at the apartment and pounded on the locked bathroom door. When J.B. did not respond, she kicked the door down and found J.B. on the floor unresponsive. J.B.'s girlfriend called 911 and performed CPR. Acts to save J.B.'s life, including the administration of Narcan, were unsuccessful.

Police officers interviewed Johnson on December 17, 2018, after they heard that Johnson was going “around [telling] some people that [he] had sold [J.B.] the [drugs] that he may have overdosed on.” Johnson stated that he met J.B. the year prior through a mutual friend, and they hung out together in the “drug scene.” Johnson admitted that J.B. had contacted him on December 14, and that he and J.B. met Memphis for the drug sale.

Johnson also stated that J.B. did not know Memphis and would not have known how to contact him. Johnson admitted that J.B. “needed [him] to get to” Memphis and J.B. did not have other connections “other than people that he had met at [Johnson’s] house.” Johnson stated that J.B. would “hit [him] up every couple days,” and he would take J.B. to someone like Memphis to buy drugs. Johnson was charged with aiding-and-abetting third-degree murder for serving as a middleman and facilitating the drug sale between Memphis and J.B.

At Johnson’s jury trial, J.B.’s son and girlfriend testified about what they witnessed on December 14. Police officers testified about their investigation and interview with Johnson. Johnson’s recorded interview was played for the jury.

A forensic pathologist testified that J.B. died of the toxic effects of heroin and fentanyl; the two drugs “enhance each other’s effects,” so together they “markedly” increased his risk of overdose. A forensic toxicologist testified that the level of fentanyl in J.B.’s system was “consistent with someone succumbing to the effects of using this drug rather quickly . . . [his] body did not have enough time to metabolize that fentanyl all into nonfentanyl, . . . [which is] consistent with an acute or immediate overdose.” Johnson did not testify.

Johnson requested a joint-acquisition jury instruction based on *State v. Carithers*, 490 N.W.2d 620 (Minn. 1992), claiming that during his interview with police officers he indicated that he also used the drugs that J.B. purchased from Memphis. The district court declined to give the jury instruction. The jury found Johnson guilty of aiding-and-abetting third-degree murder in violation of Minn. Stat. §§ 609.195(b), .05, subd. 1 (2018). The district court sentenced Johnson to 74 months in prison. This appeal followed.

DECISION

Sufficiency of the evidence

Johnson first challenges the sufficiency of the evidence supporting his conviction. In his principal brief, he argues that the state's evidence satisfied neither subdivision 1 nor subdivision 2 of the accomplice-liability statute, which provide alternative means by which the state may prove that a defendant aided and abetted a crime. *See* Minn. Stat. § 609.05, subds. 1, 2. His written argument focused on subdivision 2 by arguing that the state's evidence did not establish that the murder was committed in furtherance of the drug sale and was not reasonably foreseeable. His oral argument focused on subdivision 1 by arguing that the state failed to prove that he "intentionally aided" third-degree controlled-substance-sale murder on the ground that a person cannot intentionally aid another in committing an unintentional offense. Specifically, Johnson asserts that he could not have intentionally aided Memphis in committing a murder that Memphis himself did not intend to commit; indeed, he claims that there are essentially no circumstances under which a person could be an accomplice to third-degree controlled-substance-sale murder due to the

conflict in intent requirements between the accomplice-liability statute and the third-degree-murder statute. We are not persuaded.

Subdivision 1 of the accomplice-liability statute requires the state to prove that the defendant intentionally aided and abetted another in committing the crime. *Id.*, subd. 1 (“A person is criminally liable for a crime committed by another if the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime.”). “Intentionally aiding” is an element of accomplice liability that the state must prove beyond a reasonable doubt, in addition to the elements of the substantive offense. *State v. Huber*, 877 N.W.2d 519, 523-24 (Minn. 2016). To establish that the defendant “intentionally aided” in the commission of a crime, “the [s]tate must prove that the defendant knew his alleged accomplice was going to commit a crime and the defendant intended his presence or actions to further the commission of that crime.” *Id.* at 524 (quotation omitted).

The third-degree-murder statute requires the state to prove that a person, without intent to cause death, intentionally sold a controlled substance that proximately caused the death of another. Minn. Stat. § 609.195(b). Examining the elements of the accomplice-liability statute and the third-degree-murder controlled-substance-sale statute together, we discern no conflict between the mens rea elements.

To prove that a defendant aided and abetted third-degree controlled-substance-sale murder, the state must show that (1) the defendant intentionally aided the principal in supplying a controlled substance to an individual—that is, knew that the principal was going to sell a controlled substance and intended to act in furtherance of the sale, and (2) the

controlled substance was the proximate cause of the individual's unintentional death. Thus, the only intent and conduct required is the intentional aiding of the drug sale.

Having concluded that a defendant intentionally aids in third-degree controlled-substance-sale murder by aiding/abetting the sale of a controlled substance that proximately causes death, we now turn to the evidence presented at trial to determine whether it was sufficient to sustain Johnson's conviction. Johnson asserts that the evidence supporting his conviction is all circumstantial, but there is direct evidence, in the form of his statement to police offices, showing his facilitation of the drug sale.

When evaluating the sufficiency of the evidence, this court carefully examines 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 he was convicted." *State v. Waiters*, 929 N.W.2d 895, 900 (Minn. 2019) (quotation omitted). We view the evidence "in the light most favorable to the verdict" and assume that the jury "disbelieved any evidence that conflicted with the verdict." *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016). The verdict will not be overturned if the jury, after applying the presumption of innocence and the state's requirement of proving the offense beyond a reasonable doubt, could reasonably have found the defendant guilty of the charged offense. *Id.*

In reaching its verdict, the jury had to find that the evidence proved that Johnson, "without intent to cause death," "intentionally aid[ed], advise[d], hire[d], counsel[ed], or conspire[d] with or otherwise procure[d]" Memphis in "proximately caus[ing] the death of [J.B.] by, directly or indirectly, unlawfully selling, giving away, bartering, delivering,

exchanging, distributing, or administering a controlled substance classified in Schedule I or II.” *See* Minn. Stat. §§ 609.195(b), .05, subd. 1.

Johnson claims that the evidence showed that he intended to aid Memphis in the sale but fell short in proving that he intended to aid in the murder. But as the state asserts, and as we just concluded, the evidence need not establish that Johnson intended to aid in causing the death itself. Under the statute, the murder does not require intent; all that is required is that Johnson intentionally aided in the sale of the controlled substance that unintentionally caused J.B.’s death.

Johnson admits that he aided Memphis in the sale, and the evidence corroborates this admission. J.B. asked Johnson to arrange for him to buy \$20 worth of a controlled substance. Johnson called Memphis to meet him and J.B. Johnson stated that J.B. could not have contacted Memphis without him, and he admitted that he arranged drug sales for J.B. on multiple occasions. Without Johnson, the transaction between J.B. and Memphis would not have happened. Thus, the evidence supports the jury’s verdict.

Johnson also argues that he cannot be liable because he believed that Memphis sold heroin to J.B. and not a mixture of heroin and fentanyl. But even if Johnson believed that J.B. purchased only heroin, he would still be liable as a proximate cause of J.B.’s death. For purposes of Minn. Stat. § 609.195(b), we interpreted “proximate cause” to mean “something that had a substantial part in bringing about the individual’s death either directly and immediately or through happenings that follow one after another.” *State v. Schnagl*, 907 N.W.2d 188, 196 (Minn. App. 2017) (quotation omitted), *review denied* (Minn. Feb. 28, 2018). A forensic pathologist testified that J.B. died of the toxic effects of

heroin and fentanyl. Thus, the heroin contributed to J.B.’s death and played a substantial part in bringing about his death.

Even if there was no direct evidence, as Johnson claims, that he facilitated the transaction—so eliminating Johnson’s admission—the circumstantial evidence also supports the verdict.

When circumstantial evidence supports the verdict, this court applies a heightened standard of review. *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). This heightened standard of review involves two steps, the first being identification of the circumstances proved. *Id.* In identifying the circumstances proved, this court defers to the jury’s acceptance of the circumstances proved by the state and rejects conflicting evidence. *State v. Barshaw*, 879 N.W.2d 356, 363 (Minn. 2016). The second step involves an independent examination of reasonable “inferences that might be drawn from the circumstances proved [to determine] whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *Id.* (quotation omitted). “Circumstantial evidence must form a complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt.” *State v. Taylor*, 650 N.W.2d 190, 206 (Minn. 2002). Because this second step requires an independent examination, we do not give deference to the jury at this stage. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017).

The circumstances proved show that J.B. sent Johnson a message asking to purchase \$20 worth of a controlled substance. Johnson then sent a message to J.B. telling him where

to pick Johnson up. J.B. left his apartment. The men contacted Memphis. Memphis was in J.B.'s vehicle because the key that Memphis lost was found in J.B.'s vehicle. J.B. returned home and went into the bathroom. Johnson attempted to contact J.B. J.B. was found in the bathroom unresponsive. A syringe was found in the bathroom. A pathologist concluded that J.B. died of a heroin/fentanyl overdose. Police officers heard that Johnson told people that he "sold [J.B.] the [drugs] that he may have overdosed on."

The reasonable inferences that might be drawn from these circumstances are consistent with Johnson's guilt and inconsistent with any other rational hypothesis. This evidence forms a "complete chain" showing that Johnson played a substantial role in bringing about J.B.'s death, because it shows that Johnson was the connection between J.B. and Memphis. *See Taylor*, 650 N.W.2d at 206.

Jury instruction

Johnson also argues that the district court abused its discretion by denying his requested joint-acquisition jury instruction under *Carithers*. *See* 490 N.W.2d at 620. The refusal to give a requested jury instruction lies within the discretion of the district court and will not be reversed absent an abuse of discretion. *State v. Cole*, 542 N.W.2d 43, 50 (Minn. 1996). The focus of our analysis is whether the refusal resulted in error. *State v. Kuhnau*, 622 N.W.2d 552, 555 (Minn. 2001). "No error results from a refusal to instruct whe[n] the evidence does not support the proposed instruction and no abuse of discretion is shown." *State v. Daniels*, 361 N.W.2d 819, 831 (Minn. 1985).

Johnson argues that the district court should have instructed the jury that if he received drugs from Memphis and used them with J.B., he could not be Memphis's

accomplice. But the district court correctly declined to give the instruction because the evidence did not support the proposed jury instruction.

Johnson's statement to police shows that he did not jointly acquire drugs with J.B. to use together. He stated that J.B. gave Memphis \$20, and Memphis gave J.B. drugs. An officer asked Johnson: "Do you get any of that?" Johnson replied: "No, I didn't." The officer testified that Johnson never mentioned sharing drugs with J.B. on December 14.

Further, testimony from the forensic toxicologist shows that J.B. did not share the drugs with Johnson. The toxicologist testified that the level of fentanyl in J.B.'s system was "consistent with an acute or immediate overdose." An immediate overdose would have occurred immediately after J.B. injected the drugs, which shows that he injected it in his bathroom and not while he was in his vehicle with Johnson. Additionally, Johnson did not state that he suffered from any severe effects that he could have suffered if he had injected the same mixture that killed J.B.

Lastly, Johnson relies on a statement that he made to police officers, which he claims indicates that he used the drugs with J.B. During the interview, the officer asked how the controlled substance from Memphis was packaged, and Johnson stated that he believed it was in tinfoil. The officer asked Johnson: "Do you get any of that?" Johnson replied: "No, I didn't." The officer asked if J.B. "shoots it," to which Johnson agreed. The officer then asked: "Do you?" And Johnson replied: "Yeah." But the officer testified that this question referred to general use and was not specific about the night of December 14.

Johnson never stated that he used drugs with J.B. that night; he stated that after the transaction between J.B. and Memphis, J.B. drove him back to where he was staying.

Additionally, as Johnson stated during his interview, he regularly arranged for J.B. to purchase drugs from whomever Johnson contacted for him, which indicates that Johnson was serving as a middleman and not as a joint user with J.B. Therefore, there was no evidence supporting the requested jury instruction, and the district court correctly declined to give it to the jury.

Affirmed.