

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0985**

State of Minnesota,
Respondent,

vs.

Michael John McClatchey,
Appellant.

**Filed August 15, 2022
Affirmed
Smith, John, Judge ***

Steele County District Court
File No. 74-CR-20-742

Keith Ellison, Attorney General, Lisa Lodin Peralta, Assistant Attorney General, St. Paul, Minnesota; and

Daniel McIntosh, Steele County Attorney, Owatonna, Minnesota (for respondent)

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

Considered and decided by Smith, Tracy M., Presiding Judge; Segal, Chief Judge;
and Smith, John, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

SMITH, JOHN, Judge

We affirm appellant's convictions of aiding and abetting first-degree controlled-substance possession and conspiracy to import a first-degree amount of a controlled substance because the circumstantial evidence supports the jury's verdicts on those charges.

FACTS

Respondent State of Minnesota charged appellant Michael John McClatchey by amended complaint with three counts: (1) conspiracy to commit a first-degree controlled-substance crime (possession of methamphetamine), (2) aiding and abetting a first-degree controlled-substance crime (possession of methamphetamine), and (3) conspiracy to import a first-degree amount of a controlled substance. The matter proceeded to a jury trial.

A drug investigation agent testified that, in January 2020, he received information from an informant that D.W., who lived with McClatchey, planned to travel to Colorado to obtain a pound of methamphetamine. The agent observed D.W.'s truck leave around 8:00 a.m. on January 10, which was consistent with the informant's tip. The agent learned that D.W. was traveling with J.M. The agent obtained a search warrant to track D.W.'s phone and saw that he arrived in Denver around 10:45 p.m. and left around 4:00 a.m.

The agent coordinated with law enforcement to stop D.W.'s truck in Minnesota upon D.W.'s return from Colorado. After searching the truck, officers found a little over a pound of methamphetamine and several pounds of marijuana. During the search, J.M.

and D.W.'s phones "never stopped ringing" with calls from McClatchey and another man, B.H.

The agent obtained a search warrant for the phones but was unable to search D.W.'s phone because it was broken. J.M.'s phone showed communications with McClatchey around the time of the trip. For example, at 9:38 a.m., on January 10, McClatchey sent J.M. the following text:¹

So what's the hold up on the number he either comes clean with the truth and [c]alls me. Or I pull the plug and he turns around and gives [B.H.] back all his money. I'm d[o]ne being f-ckin lied to and f-cked around. He thinks the pennies in sh-t he's given me is something compared to the food shelter and this trip which is obviously bigger th[a]n he comprehends then he must think . . . I'm a f-cking idiot. But I've been doing this a long long time. Sorry to put you in the middle but he's f-cked up from the time he got the money to smoke up my ass but this be a check and why he was still hanging around and now surprise surprise not really no f***** check once again so you needed the f***** tell me what the f*** is going on or this is all going to end and right now he can turn the f*** around.

The agent conducted a recorded interview with McClatchey during which McClatchey admitted that he put D.W., "in touch with money," meaning he put him in touch with B.H. The following exchange occurred:

Agent: Conspiracy to traffic dope from Colorado to here is a problem for you.

McClatchey: That's f-ckin' their thing. He brought it up.

Agent: But I mean, you don't even want to be honest with me about it, they are.

McClatchey: He brought it up. I put him in touch with money. That's what I did.

¹ We have redacted the profanity by substituting a hyphen for certain letters, however, the asterisks appear in the original.

....

Agent: You don't get—you don't get anything for puttin' somebody in contact with a hook.

McClatchey: Maybe some of that bud that they were bringing.

Agent: Yeah.

McClatchey: But I—the other sh-t I don't—I didn't want that—nothin' like that.

McClatchey also admitted during the interview that he told J.M. to go with D.W. to keep D.W. “from being an idiot.”

J.M. testified that the purpose of the trip was to “go and pick up some meth,” he went at the direction of McClatchey and D.W., and he went in order to protect the money and make sure that everything “went smooth.” When asked if he knew how much methamphetamine was being sought, J.M. responded, “Yes.” When asked who organized the trip to Colorado, J.M. indicated that the trip was a “collaboration” between McClatchey, D.W., and B.H. J.M. later indicated that McClatchey, D.W., and B.H. “entered into this agreement.” The court instructed the jury that J.M. was an accomplice and his testimony needed to be corroborated.

The jury found McClatchey guilty of aiding and abetting first-degree controlled-substance possession and conspiracy to import a first-degree amount of a controlled substance, but not guilty of conspiracy to commit first-degree controlled-substance possession.

DECISION

I.

McClatchey argues that the evidence was insufficient to prove that he aided and abetted first-degree controlled-substance possession. He does not dispute that D.W. and

J.M. traveled from Colorado to Minnesota with over 50 grams of methamphetamine. Rather, he argues that the evidence fails to show that he intentionally aided in the possession of that amount of methamphetamine.

Under Minn. Stat. § 152.021, subd. 2(a)(1) (2018), a person is guilty of a first-degree controlled-substance crime if the person “unlawfully possesses one or more mixtures of a total weight of 50 grams or more containing . . . methamphetamine.” Under Minn. Stat. § 609.05, subd. 1 (2018), “[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.” Under the aiding-and-abetting statute, “liability attaches when one plays some knowing role in the commission of the crime and takes no steps to thwart its completion.” *State v. Swanson*, 707 N.W.2d 645, 658-59 (Minn. 2006) (quotation omitted).

Traditionally, when considering a challenge to the sufficiency of the evidence, we carefully analyze the record to determine whether the evidence, viewed in the light most favorable to the conviction, was sufficient to permit the jury to reach its verdict. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We assume the jury believed the state’s witnesses and disbelieved any contrary evidence. *State v. Brocks*, 587 N.W.2d 37, 42 (Minn. 1998). We defer to the jury’s credibility determinations and will not reweigh the evidence on appeal. *State v. Franks*, 765 N.W.2d 68, 73 (Minn. 2009); *State v. Watkins*, 650 N.W.2d 738, 741 (Minn. App. 2002). We will not disturb a guilty verdict if the jury, acting with due regard for the presumption of innocence and requirement of proof beyond

a reasonable doubt, could reasonably have concluded that the state proved the defendant's guilt. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

However, if the state relied on circumstantial evidence to prove an element of an offense, we apply a heightened standard of review. *See State v. Harris*, 895 N.W.2d 592, 601-03 (Minn. 2017) (discussing circumstantial-evidence standard); *State v. Al-Naseer*, 788 N.W.2d 469, 471 (Minn. 2010) (stating that “the heightened scrutiny applies to any disputed element of the conviction that is based on circumstantial evidence”). Circumstantial evidence is “evidence from which the [jury] can infer whether the facts in dispute existed or did not exist.” *Harris*, 895 N.W.2d at 599 (quotation omitted). “In contrast, direct evidence is evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.” *Id.* (quotations omitted).

Here, McClatchey seeks review under the circumstantial-evidence standard, and the state concedes that the circumstantial-evidence standard is applicable. We agree. The aiding-and-abetting statute requires that a person act intentionally. Minn. Stat. § 609.05, subd. 1. That is, the defendant must know that his alleged accomplices were going to commit a crime, and the defendant must intend “his presence or actions to further the commission of that crime.” *State v. Davenport*, 947 N.W.2d 251, 265 (Minn. 2020) (quotation omitted). Intent involves a defendant's state of mind and is usually established through circumstantial evidence by drawing inferences from the defendant's words and actions. *State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997).

Under the circumstantial-evidence standard, we first determine the circumstances proved, disregarding evidence that is inconsistent with the jury's verdict. *Harris*, 895

N.W.2d at 601. Next, we “determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis other than guilt.” *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017) (quotation omitted). We do not defer to the jury’s choice between reasonable inferences. *State v. Silvernail*, 831 N.W.2d 594, 599 (Minn. 2013). But we will reverse a conviction based on circumstantial evidence only if there is a reasonable inference other than guilt. *Loving*, 891 N.W.2d at 643.

Here, the circumstances are as follows. D.W., who lived with McClatchey, planned to go to Colorado to obtain a pound of methamphetamine. McClatchey helped plan the trip. The purpose of the trip was to obtain methamphetamine. McClatchey put D.W. in touch with B.H., who provided money for the deal, and told J.M. to accompany D.W. to protect the money and ensure that the deal went smoothly. J.M. was aware of how much methamphetamine was being sought. McClatchey communicated with J.M. during the trip and at one point threatened to pull the plug on the deal and make D.W. return B.H.’s money. During his recorded interview, McClatchey said that he may have received marijuana for his efforts in setting up the money. These circumstances are consistent with guilt because they indicate that McClatchey intentionally aided D.W. in possessing a first-degree amount of methamphetamine.

We next consider whether the circumstances are inconsistent with any rational hypothesis other than guilt. “To successfully challenge a conviction based upon circumstantial evidence, a defendant must point to evidence in the record that is consistent with a rational theory other than guilt.” *State v. Taylor*, 650 N.W.2d 190, 206 (Minn. 2002). A defendant may not rely on mere conjecture or speculation but must instead point

to specific evidence in the record that is consistent with innocence. *Al-Naseer*, 788 N.W.2d at 480; *State v. Tscheu*, 758 N.W.2d 849, 858 (Minn. 2008). Possibilities of innocence do not require reversal “so long as the evidence taken as a whole makes such theories seem unreasonable.” *Taylor*, 650 N.W.2d at 206 (quotation omitted).

McClatchey argues that the circumstances allow for the rational hypothesis that he did not know D.W. planned to acquire a first-degree amount of methamphetamine or believed only marijuana would be acquired. We disagree. The evidence showed that D.W. planned to obtain a pound of methamphetamine and was ultimately stopped with that amount. McClatchey helped plan the trip, helped set up the money, told J.M. to accompany D.W., and communicated with J.M. during the trip. J.M. was aware of the amount of methamphetamine being sought. During his recorded interview, McClatchey effectively admitted that he knew D.W. was going to obtain drugs besides marijuana. The evidence of the planned trip to obtain a pound of methamphetamine and McClatchey’s extensive involvement and admissions render McClatchey’s theory of a rational basis other than guilt unreasonable. *See id.*

II.

McClatchey next argues that the evidence was insufficient to prove that he conspired to import a first-degree amount of methamphetamine into Minnesota.²

² The district court entered convictions on both guilty verdicts. McClatchey does not challenge the appropriateness of multiple convictions in this instance, so we address his sufficiency challenge on both counts.

Under Minn. Stat. § 152.0261, subd. 1 (2018), it is a felony for a person to cross into Minnesota while in possession of a first-degree amount of a controlled substance, and under Minn. Stat. § 152.096, subd. 1 (2018), it is a crime for a person to conspire “to commit any act” prohibited under Minnesota’s controlled-substance laws, chapter 152.

A conspiracy exists when two or more people agree to commit a crime, and in furtherance of the conspiracy, “one or more of the parties does some overt act in furtherance of such conspiracy.” Minn. Stat. § 609.175 (2018); *State v. Hatfield*, 639 N.W.2d 372, 376 (Minn. 2002); *State v. Kuhnau*, 622 N.W.2d 552, 556 (Minn. 2001). Proof of a formal agreement to commit a crime is not required, but there must be evidence that objectively indicates an agreement between the parties to commit a crime. *Hatfield*, 639 N.W.2d at 376.

Therefore, to prove the crime at issue, there must be sufficient evidence that objectively indicates an agreement between McClatchey and another to cross into Minnesota while in possession of a first-degree amount of a controlled substance, and sufficient evidence of an overt act in furtherance of that crime. *See State v. Tracy*, 667 N.W.2d 141, 145-46 (Minn. App. 2003) (involving challenge to the sufficiency of the evidence supporting a conviction for conspiracy to import a controlled substance). McClatchey does not dispute that D.W. engaged in overt acts in furtherance of the crime at issue, and therefore the sole issue is whether there was sufficient evidence of a qualifying agreement.

The state concedes that a circumstantial-evidence standard applies, and we agree. Again, the circumstances are that D.W. lived with McClatchey and planned to go to

Colorado to obtain a pound of methamphetamine. McClatchey and B.H. collaborated with D.W. in planning the trip. McClatchey put D.W. in touch with B.H., who provided money for the deal, and told J.M. to accompany D.W. to protect the money and ensure that the deal went smoothly. J.M. was aware of how much methamphetamine was being sought. McClatchey communicated with J.M. during the trip and at one point threatened to pull the plug on the deal and make D.W. return B.H.'s money. During his recorded interview, McClatchey said that he may have received marijuana for his efforts in setting up the money. These circumstances are consistent with McClatchey objectively agreeing with D.W. and B.H. to bring a first-degree amount of methamphetamine into Minnesota. Indeed, J.M. indicated during his testimony that McClatchey, D.W., and B.H. "entered into this agreement."

We next consider whether the circumstances proved are inconsistent with any rational hypothesis other than guilt. McClatchey argues that the circumstances allow for the rational hypothesis that he did not agree to import a first-degree amount of methamphetamine or only agreed to import marijuana. Again, the evidence of the planned trip to obtain a pound of methamphetamine and McClatchey's extensive involvement and admissions render McClatchey's theory of a rational basis other than guilt unreasonable. *See Taylor*, 650 N.W.2d at 206.

Affirmed.