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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A21-1272**

State of Minnesota,  
Respondent,

vs.

Jeremy Jantile Burton,  
Appellant.

**Filed October 10, 2022  
Reversed  
Slieter, Judge**

Mille Lacs County District Court  
File No. 48-CR-20-1130

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

Joe Walsh, Mille Lacs County Attorney, Milaca, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Suzanne M. Senecal-Hill, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Bryan, Judge; and Klaphake, Judge.\*

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

## NONPRECEDENTIAL OPINION

**SLIETER, Judge**

In this direct appeal, appellant contends that the state's circumstantial evidence is insufficient to support his convictions of criminal sexual conduct and kidnapping. Because the circumstances proved do not exclude all rational hypotheses other than guilt, we reverse his convictions.

### FACTS

Respondent State of Minnesota charged appellant Jeremy Jantile Burton, as amended during trial, with third-degree criminal sexual conduct (both principal and accomplice liability), first-degree criminal sexual conduct, and kidnapping (both principal and accomplice liability).

The following facts derive from the jury trial and were provided primarily by the victim's testimony. The relevant events occurred over a period of approximately 24 hours near three locations in Mille Lacs County: P.B.'s house, L.P.'s apartment, and W.N.'s house.

#### ***P.B.'s House – First Visit***

In May 2020, the victim's boyfriend drove her from Brainerd to the home of P.B., near Onamia, for her to acquire heroin because she was "coming down off of heroin," which made her "dope sick." Once they arrived at P.B.'s house, the victim went in and encountered three men – Burton, T.W., and E.S. – and two women – D.K. and H.B. She was "shocked to see" D.K. and H.B. because "things were tense between" D.K. and the victim's boyfriend. P.B., with whom she communicated regarding acquiring heroin, was

not present. The victim went to a bedroom to inject heroin with E.S. while T.W. and D.K. went outside to see who was in the vehicle.

While in the bedroom, the victim heard a gunshot from outside, after which D.K. and H.B. “came flying in and tried to jump [her].” Burton and E.S. held D.K. and H.B. back so they could not physically assault the victim. D.K. and H.B. told the victim that she “wasn’t allowed to go anywhere” and, when everyone at the house decided to leave because of the gunshot, D.K. told the victim that she had to go with them. Before they left the house, Burton told the victim “something about” her boyfriend being dead, which she did not believe because his “truck was gone and he was gone too.” The victim rode with D.K. in the back seat of T.W.’s vehicle to “where Mr. Burton was staying,” which was an apartment occupied by L.P., the victim’s cousin. Burton rode in the front passenger seat.

### ***L.P.’s Apartment***

At L.P.’s apartment, the victim sat on the couch between Burton and T.W., which she felt was “probably a good thing” because she was fearful of D.K., who had attempted to attack her at P.B.’s apartment. T.W. gave the victim approximately one-half gram of heroin because she was “a little shaken up” and he “told [her] to shoot it all up.” This was twice as much heroin as the victim usually injects, but she injected all of it. After doing so, the victim went to an empty bedroom, and T.W. followed her. The victim did not “remember too much after that” because she was starting to feel the effects of the heroin.

The victim next remembered regaining consciousness with her pants around her ankles and T.W. on top of her sexually penetrating her. She felt him ejaculate, then he

stood up and left the room. The victim “g[o]t up and tr[ied] to clean [her]self off and g[o]t dressed.”

### ***W.N.’s House – First Visit***

Later the same day, the victim, Burton, and T.W. left L.P.’s apartment and T.W. drove them to W.N.’s house. There, they switched vehicles and W.N. drove to various locations with Burton, T.W., and the victim. While riding in the car, the victim passed in and out of consciousness due to the heroin. The victim then rode back to P.B.’s house with T.W. and Burton.

### ***P.B.’s House – Second Visit***

While he drove back to P.B.’s house, T.W. told the victim, who was seated next to him, “[h]ow [she] got to help him make money . . . and do what [she] got to do to help us.” The victim recounted in her testimony that T.W. “[p]retty much coached [her] into sleeping with somebody else for money.”

No one was at P.B.’s house when they arrived. Upon entering, the victim lay down on a couch and, when asked, told T.W. that she was not feeling well. He offered her another one-half gram of heroin, which she accepted. While she was preparing the heroin to inject, T.W. told the victim that Burton wanted her to perform oral sex on him. The victim refused.

As the heroin began to take effect, the victim heard someone leave the house and she “lifted [her] head up” and realized “it was just [her] and Mr. Burton there.” The victim saw Burton standing outside of what she identified as “his room,” drinking liquor with his back to the victim. Shortly thereafter, the victim lost consciousness.

The next thing the victim remembered was waking up “on the bed with [her] clothes off” in the bedroom Burton typically used when staying at P.B.’s house. She recalled that she “couldn’t sit up because everything hurt”—specifically, her “vaginal area and [her] stomach.” Burton was in the room fully dressed and “looking for, like, a sweater or something.” Burton left the room and T.W. immediately came in to help the victim dress. As T.W. helped her dress, the victim “asked him why [she] was sore and why [her] clothes were off, and he told [her] not to worry about it.” He also “said that [she] had did good.”

After helping dress the victim, T.W. “kind of dragg[ed]” her by the hand out of the house to his vehicle, where Burton was waiting in the back seat. The victim sat in the front seat next to T.W., who drove back to W.N.’s house.

#### ***W.N.’s House – Second Visit***

At W.N.’s house, T.W. told the victim to “get out” of his vehicle, which she and Burton did. T.W. then left. Burton sat in the front passenger seat of W.N.’s car, which was parked in the garage, and the victim sat next to W.N. in the back seat. W.N. carried the victim from the car into his bedroom and began “trying to kiss [her] and take [her] clothes off.” She told him no, to which he responded, “Oh, come on. You did it with my homies. Why not me?” W.N. “ended up getting frustrated and laying down on his bed, getting mad and yelling at [her].”

The victim ran out of the house and down the road toward a friend’s house but, before she made it there, she saw W.N. driving after her in his car, with Burton still in the passenger seat. W.N. asked her, “Why are you making me chase after you?” and told her to “[g]et in the car before you start anybody more trouble.” The victim had reached her

friend's house by this point but complied with W.N.'s demand because she "saw kids in the yard, so [she] didn't want to cause anybody trouble." W.N. drove back to his house, then a woman drove W.N.'s car, with the victim still in the back seat and Burton in the front seat, to pick up someone else and returned to W.N.'s house. T.W. returned to W.N.'s house at the same time they did and helped the victim back into his vehicle. Burton also switched vehicles and rode back to P.B.'s house with T.W.

### ***P.B.'s House – Third Visit***

Burton and the victim went into the house, though T.W. did not. Inside, two women were using heroin, and, when they finished, they began to clean the house. The two women accused the victim of trying to steal their heroin and attempted to "jump" her, but Burton, who had been in a different part of the house, stopped them. The women tried to make the victim leave, but Burton said, "No. She's with [T.W.]. She can't leave." The victim then sat on the couch in the living room, Burton and one of the women went to a separate room, and the other woman went into the bathroom. When T.W. returned, the women came "shouting out saying that [the victim] stole their dope and that [she] had to leave." They dragged the victim out of the house by her hair, and, when they let go, the victim ran across the intersection to her "auntie's" house. From there, she contacted and was reunited with her boyfriend, and they made their way to his grandmother's house. Law enforcement interviewed her the next day and assisted her in completing a sexual-assault examination.

The jury found Burton guilty of all charges. The district court denied Burton's motion for a judgment of acquittal or new trial, entered judgments of conviction, and sentenced Burton to 360 months' imprisonment. Burton appeals.

## DECISION

When reviewing a sufficiency-of-the-evidence claim, “[t]he verdict will not be overturned if the fact-finder, upon application of the presumption of innocence and the State’s burden of proving an offense beyond a reasonable doubt, could reasonably have found the defendant guilty of the charged offense.” *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016). As a reviewing court, we undertake “a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient.” *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (quotation omitted). When a jury is the fact-finder, we assume that “the jury believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Caldwell*, 803 N.W.2d 373, 384 (Minn. 2011) (quotation omitted). We apply this traditional standard of review “whenever the direct evidence establishing a particular element of a crime is alone sufficient to support the jury verdict.” *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017). “When the direct evidence of guilt on a particular element is not alone sufficient to sustain the verdict,” we apply the heightened two-step circumstantial-evidence standard of review. *Id.*

Circumstantial evidence is “evidence from which the factfinder can infer whether the facts in dispute existed or did not exist.” *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). “[C]ircumstantial evidence always requires an inferential step to prove a fact that is not required with direct evidence.” *Id.* When reviewing challenges to the sufficiency of circumstantial evidence, appellate courts apply a two-step analysis in which they “identify the circumstances proved and independently consider the reasonable

inferences that can be drawn from those circumstances, when viewed as a whole.” *Id.* at 598; *see also State v. Silvernail*, 831 N.W.2d 594, 598-99 (Minn. 2013).

When identifying the circumstances proved, appellate courts “defer to the jury’s acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the State.” *Silvernail*, 831 N.W.2d at 598-99 (quotation omitted). “[W]e construe conflicting evidence in the light most favorable to the verdict and assume that the jury believed the State’s witnesses and disbelieved the defense witnesses.” *Id.* at 599 (quotation omitted). When considering “whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt,” we view the circumstances proved “not as isolated facts, but as a whole.” *Id.* (quotation omitted). And we independently “determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt, not simply whether the inferences that point to guilt are reasonable.” *Id.* (quotation omitted). “[Appellate courts] give no deference to the fact finder’s choice between reasonable inferences.” *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. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010) (quotation omitted).

Burton argues that all of his convictions must be overturned because they are not supported by sufficient circumstantial evidence.

## ***I. Aiding and Abetting Third-Degree Criminal Sexual Conduct<sup>1</sup>***

“A defendant is guilty of aiding and abetting if the defendant ‘intentionally aids, advises, hires, counsels, or conspires with or otherwise procures another to commit’ a crime.” *State v. Milton*, 821 N.W.2d 789, 805 (Minn. 2012) (quoting Minn. Stat. § 609.05, subd. 1). To establish that a defendant intentionally aided in the commission of a crime, the state must prove beyond a reasonable doubt “(1) that the defendant knew that his alleged accomplices were going to commit a crime, and (2) that the defendant intended his presence or actions to further the commission of that crime.” *Id.* (quotation omitted). Whether a defendant intentionally aided the commission of a crime requires proving a state of mind, which is typically accomplished through circumstantial evidence. *State v. McAllister*, 862 N.W.2d 49, 53 (Minn. 2015). Such circumstantial evidence may include “the defendant’s presence at the scene of the crime, a close association with the principal offender before and after the crime, a lack of objection or surprise under the circumstances, and flight from the scene of the crime with the principal offender.” *Id.* However, a reviewing court must “distinguish between playing a knowing role in the crime and mere presence at the scene, inaction, knowledge and passive acquiescence.” *State v. Scruggs*, 822 N.W.2d 631, 640 (Minn. 2012) (quotation omitted). “Inaction, knowledge, or passive

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<sup>1</sup> The jury found Burton guilty of both principal and accomplice liability for third-degree criminal sexual conduct. However, the district court convicted Burton solely as an accomplice and the state does not argue that Burton is directly liable for third-degree criminal sexual conduct, and the record demonstrates that the state’s theory during trial was that Burton was guilty only as an accomplice for third-degree criminal sexual conduct.

acquiescence . . . do not rise to the level of conduct encompassed by Minn. Stat. § 609.05, subd. 1.” *State v. Russell*, 503 N.W.2d 110, 114 (Minn. 1993).

The circumstances the state proved regarding aiding and abetting third-degree criminal sexual conduct are as follows:

- Burton went with T.W. and the victim to L.P.’s apartment;
- Burton was present when T.W. offered the victim twice as much heroin as she usually injected;
- Burton was in the apartment living room when T.W. followed the victim to a bedroom and closed the door;
- Burton was in the apartment when T.W. sexually assaulted the victim in the bedroom behind the closed door; and
- Burton travelled to several other locations with T.W. and the victim.

Although these circumstances proved are consistent with the rational hypothesis that Burton aided and abetted T.W.’s sexual assault, that does not end our analysis. We must also determine whether the circumstantial evidence, viewed as a whole, is consistent with any rational hypothesis other than guilt. *Silvernail*, 831 N.W.2d at 599. On this second step, we “give no deference to the fact finder’s choice between reasonable inferences.” *Id.* (quotation omitted).

The circumstances proved show no communication between Burton and T.W., or evidence suggesting that Burton knew T.W. intended to sexually assault the victim or in some way furthered the commission of the sexual assault. The circumstances show only that Burton was present in the apartment during the sexual assault. Thus, the circumstances proved do not exclude the rational hypothesis that Burton was “mere[ly] presen[t] at the

scene” and did not know that T.W. intended to sexually assault the victim or intend his presence to aid the assault. *Scruggs*, 822 N.W.2d at 640. Therefore, “giving due regard to the presumption of innocence and to the state’s burden of proof beyond a reasonable doubt,” *Al-Naseer*, 788 N.W.2d at 473 (quotation omitted), the state did not present sufficient evidence to prove the first element—that Burton knew T.W. was going to commit a crime. *Milton*, 821 N.W.2d at 473. For that reason, the circumstances proved do not “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.” *Id.*

## ***II. First-Degree Criminal Sexual Conduct***

For the jury to find Burton guilty of first-degree criminal sexual conduct, the state needed to prove that Burton: (1) intentionally sexually penetrated the victim, (2) without her consent, (3) causing her personal injury, and (4) knew or had reason to know she was mentally impaired, mentally incapacitated, or physically helpless. Minn. Stat. §§ 609.342, subd. 1(e)(ii), .341, subd. 12 (Supp. 2019).

The state proved the following circumstances related to the first-degree criminal-sexual-conduct offense:

- On the drive to P.B.’s house, before Burton allegedly sexually assaulted the victim, T.W. told the victim “[h]ow [she] got to help him make money, and this and that, and do what [she] got to do to help us”;
- T.W. gave the victim one-half gram of heroin and told her to “shoot it all up.” While the victim was preparing the heroin, T.W. told her that Burton wanted her to perform oral sex on him and, when she refused, he pressured her to “do anything that would help us”;

- The last thing the victim remembered, before losing consciousness from the heroin on the couch, was hearing someone leave the house and seeing only Burton remain;
- When the victim regained consciousness, she was naked, under the covers on a bed in the room Burton typically used when staying at P.B.'s house. Burton was also in the room, "fully dressed . . . looking for, like, a sweater or something";
- The victim felt severe pain in her stomach and vagina, which she had not felt after T.W. sexually assaulted her less than 18 hours earlier;
- Immediately after Burton left the room, T.W. came in, helped the victim dress, and told the victim that she "did good";
- When W.N. attempted to have sex with the victim and she refused, he said "you did it with my homies. Why not me?"; and
- Results from a sexual-assault examination showed DNA from T.W. and at least one other male.

Although these circumstances proved are consistent with the rational hypothesis that Burton committed first-degree criminal sexual conduct, that does not end our analysis. We must also determine whether the circumstantial evidence, viewed as a whole, supports any rational hypothesis other than guilt. *Silvernail*, 831 N.W.2d at 599. On this second step, we "give no deference to the fact finder's choice between reasonable inferences." *Id.* (quotation omitted).

The only time the victim observed Burton in the room with her, he was fully clothed and "looking for . . . a sweater or something" in his own bedroom right before he left the house. T.W., who had recently sexually assaulted the victim, was also in the house, and entered the room as Burton was leaving it. According to T.W.'s statement to the victim, Burton expressed an interest in oral sex, said nothing about vaginal sex, and the victim "figured" that T.W.'s statement that she "did good" meant "Burton had gotten what he

wanted . . . [b]ut a little bit more than what he asked for.” There exists no evidence of whom W.N. meant when he referred to his “homies” or that Burton paid T.W. (or anyone), which would have been consistent with the state’s theory of payment for sex. And the DNA evidence indicates only that *some* other man likely had sexual contact with the victim, not that it was Burton.

Based upon our independent review, the circumstances proved do not exclude the rational hypothesis that *Burton* did not sexually penetrate the victim. Therefore, “giving due regard to the presumption of innocence and to the state’s burden of proof beyond a reasonable doubt,” *Al-Naseer*, 788 N.W.2d at 473 (quotation omitted), the state did not present sufficient evidence to prove the first element—that *Burton* sexually penetrated the victim. Minn. Stat. §§ 609.342, subd. 1(e)(ii), .341, subd. 12. Thus, the circumstances proved do not “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.” *Id.* (quotation omitted).

### ***III. Aiding and Abetting Kidnapping<sup>2</sup>***

To establish that a defendant intentionally aided in the commission of a crime, the state must prove beyond a reasonable doubt “(1) that the defendant knew that his alleged accomplices were going to commit a crime, and (2) that the defendant intended his presence or actions to further the commission of that crime.” *Milton*, 821 N.W.2d at 805

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<sup>2</sup> Like the aiding and abetting third-degree criminal-sexual-conduct charge, the jury found Burton guilty as a principal and an accomplice. The state’s theory at trial was that Burton was an accomplice, the district court convicted him as an accomplice, and the state argues on appeal that Burton is liable as an accomplice.

(quotation omitted). When determining whether a defendant aided and abetted a crime, a reviewing court must “distinguish between playing a knowing role in the crime and mere presence at the scene, inaction, knowledge and passive acquiescence.” *Scruggs*, 822 N.W.2d at 640 (quotation omitted); *see also Russell*, 503 N.W.2d at 114.

The kidnapping statute requires the state to prove that the defendant, “for any of the following purposes, confines or removes from one place to another, any person without the person’s consent . . . (2) to facilitate commission of any felony or flight thereafter; or (3) to commit great bodily harm or to terrorize the victim or another.” Minn. Stat. § 609.25, subd. 1(2)-(3) (2018). The word “purpose” indicates a specific intent crime, which means the defendant must intend or desire the specific result. *See State v. Wilson*, 830 N.W.2d 849, 853 (Minn. 2013). Because intent is a state of mind, it must generally be proved through circumstantial evidence. *State v. Davis*, 656 N.W.2d 900, 905 (Minn. App. 2003), *rev. denied* (Minn. May 20, 2003).

The state proved the following circumstances regarding aiding and abetting kidnapping:

- T.W. and Burton each carried a holstered pistol;
- At P.B.’s house the first time, D.K. and H.B. physically assaulted the victim and told her she could not leave, and Burton told her “something about” her boyfriend being dead, which she did not believe;
- When everyone left P.B.’s house following the gunshot, D.K. told the victim that she “had to go with them”;
- When they left P.B.’s house after Burton allegedly sexually assaulted the victim, T.W. was “kind of dragging [the victim] by [her] hand”;

- W.N. carried the victim from his vehicle to his bedroom where he tried to kiss the victim and take her clothes off;
- After the victim ran from W.N.'s house, W.N. pursued her in a vehicle and told her, "Get in the car before you start anybody more trouble";
- In the final stop at P.B.'s house, two women "tried to jump" the victim and "sa[id] that [she] had to leave," but Burton stopped them and said that the victim "can't leave"; and
- Burton was with the victim for the entire relevant time period.

These circumstances proved are consistent with the rational hypothesis that Burton aided and abetted the kidnapping of the victim. But when we consider the circumstances proved as a whole, "giv[ing] no deference to the fact finder's choice between reasonable inferences," *Silvernail*, 831 N.W.2d at 599 (quotation omitted), they do not exclude the rational hypothesis that Burton was merely present and passively acquiesced to the kidnapping without knowing others intended to kidnap the victim or intending his actions to aid a kidnapping. *Scruggs*, 822 N.W.2d at 640.

Most critically, there is no evidence that Burton knew of a plan, by someone, to kidnap the victim and, even if he did, that he took any action to further it.<sup>3</sup> He was in various vehicles and residences with the victim, but he never drove and there is no indication he had any input as to when they left a particular location, who drove, or the next destination. He never removed his gun from its holster or made any reference to it. He did not provide the victim with heroin or encourage her to inject it. The only time he

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<sup>3</sup> In its closing argument, the state did not identify a specific person as the kidnapper and argued that the kidnapping "could have happened at any point in this period of time," but started, at the latest, when the victim tried to leave W.N.'s house.

spoke to the victim, he told her “something about” her boyfriend being dead, which she did not believe because his “truck was gone and he was gone too.” The one time he said that the victim “can’t leave” was in response to two women attacking her and trying to force her to leave, apparently against her will.

The circumstantial evidence viewed as a whole does not exclude the rational hypothesis that Burton was “mere[ly] presen[t] at the scene” and “passive[ly] acquiesce[d]” to the commission of the alleged kidnapping. *Scruggs*, 822 N.W.2d at 640 (quotation omitted). Therefore, “giving due regard to the presumption of innocence and to the state’s burden of proof beyond a reasonable doubt,” *Al-Naseer*, 788 N.W.2d at 473 (quotation omitted), the state did not present sufficient evidence to prove that Burton “intended his presence or actions to further the commission of” the alleged kidnapping. *Milton*, 821 N.W.2d at 805. Thus, the circumstances do not “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.” *Al-Naseer*, 788 N.W.2d at 473 (quotation omitted).

**Reversed.**