This opinion is nonprecedential except as provided by Minn.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
A22-0453

State of Minnesota,
Respondent

vs.

Corey Duane Warner,
Appellant

Filed January 17, 2023
Affirmed
Kirk, Judge*

Lyon County District Court
File No. 42-CR-20-876

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

Richard R. Maes, Lyon County Attorney, Carlotta Navarrette, Assistant County Attorney, Marshall, Minnesota (for respondent)

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

Considered and decided by Frisch, Presiding Judge; Reyes, Judge; and Kirk, Judge.

NONPRECEDENTIAL OPINION

KIRK, Judge

In this direct appeal of the judgment of conviction for fifth-degree drug possession and unlawful transportation of a firearm, appellant argues (1) he is entitled to a new trial

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

because the jury was not asked to find facts necessary to enhance the severity of the drug-possession offense to a felony, and (2) the evidence was insufficient to prove beyond a reasonable doubt that he knew he was transporting a firearm. We affirm.

FACTS

In October 2020, a Lyon County deputy sheriff stopped appellant Corey Duane Warner for speeding. After approaching the vehicle, the deputy could smell "the fresh odor of marijuana" coming from inside Warner's vehicle. The deputy asked Warner how much marijuana he had, and Warner said he had "a little bit" inside a grinder. The deputy searched the vehicle and found two THC vape cartridges, an uncased and unloaded 12-gauge shotgun in the backseat area, cash, and a small amount of marijuana inside the grinder. The deputy arrested Warner.

Respondent State of Minnesota charged Warner with felony fifth-degree possession of a controlled substance, illegal transportation of a firearm, and possession of drug paraphernalia.

The deputy and a forensic scientist for the Minnesota Bureau of Criminal Apprehension testified at the jury trial, and the jury found Warner guilty of all three charges.

At sentencing, the district court stayed adjudication on the felony fifth-degree possession-of-a-controlled-substance offense, entered convictions on the other two offenses, ordered 45 days of jail time, and placed Warner on probation. One month later, the state filed a probation violation report alleging that Warner "[f]ail[ed] to report to jail"

at the date and time required as part of his sentence. The district court found that Warner violated his probation.

The district court revoked the stay of adjudication on the felony fifth-degree possession-of-a-controlled-substance offense, entered a conviction, stayed imposition of a felony sentence, and reinstated probation. Warner appeals.

DECISION

I. The district court's plain error did not affect Warner's substantial rights.

Warner argues that he is entitled to a new trial because the district court did not instruct the jury to make a finding as to the amount of controlled substance that he possessed, which is required to prove felony fifth-degree possession. The state concedes that the "jury instruction did not include an instruction regarding the weight of the mixture" but argues that it "proved beyond a reasonable doubt that the weight of the oil contained in only one of the cartridges was felony level."

"We review unobjected-to jury instructions for plain error." *State v. Reek*, 942 N.W.2d 148, 158 (Minn. 2020). Warner's counsel specifically stated, "I have no objections" to the jury instruction at issue. "Under the plain-error doctrine, an appellant must show that there was (1) an error; (2) that is plain; and (3) that the error affected his substantial rights." *Id.* at 158-59. "An error is plain if it is clear or obvious, which is typically established if the error contravenes case law, a rule, or a standard of conduct." *State v. Webster*, 894 N.W.2d 782, 787 (Minn. 2017) (quotation omitted).

Under Minnesota law, fifth-degree possession becomes a felony if the state proves that the amount of the controlled substance possessed was 0.25 grams or more. Minn. Stat.

§ 152.025, subd. 4(a) (2020). Here, the district court did not instruct the jury on this element of the felony-level offense, and the state does not contend that it did. Questions of fact "must be submitted to the jury." *See State v. Jacobson*, 697 N.W.2d 610, 616 (Minn. 2005); *see also State v. Watkins*, 840 N.W.2d 21, 30 (Minn. 2013). Therefore, it was plain error for the district court not to do so. *See Webster*, 894 N.W.2d at 787. However, the state argues that this error does not require reversal because it "proved beyond a reasonable doubt that the weight of the oil contained in only one of the cartridges was felony level."

"A plain error affects the substantial rights of the defendant when there is a reasonable likelihood that the error substantially affected the verdict." *State v. Matthews*, 800 N.W.2d 629, 634 (Minn. 2011) (quotation omitted). "The defendant bears the burden of persuasion on this third prong. We consider this to be a heavy burden." *State v. Griller*, 583 N.W.2d 736, 741 (Minn. 1998). We "may consider, among other factors, whether: (1) the defendant contested the omitted element and submitted evidence to support a contrary finding, (2) the [s]tate submitted overwhelming evidence to prove that element, and (3) the jury's verdict nonetheless encompassed a finding on that element." *Watkins*, 840 N.W.2d at 29. "The court's analysis under the third prong of the plain error test is the equivalent of a harmless error analysis." *Matthews*, 800 N.W.2d at 634.

Warner argues that "[t]he state's evidence wasn't exactly overwhelming" because the forensic scientist "simply weighed the liquid in one of the cartridges" and "[t]he jury's verdict did not encompass a finding regarding weight." We are not persuaded.

Here, the jury found credible the evidence regarding the testing and composition of THC liquid mixture when it found Warner guilty. The forensic scientist testified, and the

state provided her report indicating the same, that the weight of THC liquid mixture in just one of the vape cartridges was 0.545 grams +/- 0.10 grams, which is well over the 0.25 grams needed to prove a felony-level offense. Minn. Stat. § 152.025, subd. 4(a). Moreover, this did not include the weight of the liquid in the second cartridge. Therefore, the plain error did not affect Warner's substantial rights because there is no reasonable likelihood that the error substantially affected the verdict. *Matthews*, 800 N.W.2d at 634.

II. The state presented sufficient evidence to prove beyond a reasonable doubt that Warner knew he was transporting a firearm.

Warner argues his conviction must be reversed because the statute under which he was convicted does not have a mens rea requirement, our court must read a knowledge requirement into the statute, and the evidence was insufficient to prove that he knew he was transporting a firearm.

"Because the meaning of a criminal statute is intertwined with the issue of whether the [s]tate proved beyond a reasonable doubt that the defendant violated the statute, it is often necessary to interpret a criminal statute when evaluating an insufficiency-of-the-evidence claim." *State v. Vasko*, 889 N.W.2d 551, 556 (Minn. 2017). "We review issues of statutory interpretation de novo." *Id.* Whether a defendant's conduct meets the definition of a particular offense presents a question of statutory interpretation that is also reviewed de novo. *State v. Hayes*, 826 N.W.2d 799, 803 (Minn. 2013).

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 [s]tate'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 fact[-]finder 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 [s]tate." *Silvernail*, 831 N.W.2d at 598-

99 (quotation omitted). First, "we construe conflicting evidence in the light most favorable to the verdict and assume that the jury believed the [s]tate'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). Second, 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). "We 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).

Minnesota law provides that a firearm may not be transported "in a motor vehicle unless the firearm is . . . unloaded and in a gun case expressly made to contain a firearm, and the case fully encloses the firearm by being zipped, snapped, buckled, tied, or otherwise fastened, and without any portion of the firearm exposed." Minn. Stat. § 97B.045, subd. 1(1) (2020). Though the statute provides several exceptions to that general prohibition, *see id.*, subds. 2, 3(a) (2020), the law is silent as to any mens rea requirement, such as whether the defendant knew he was transporting the firearm. *See id.*, subd. 1.

"In general, criminal offenses require both a volitional act and criminal intent, referred to as mens rea." *State v. Schwartz*, 957 N.W.2d 414, 419 (Minn. 2021) (citing Wayne R. LaFave, *Criminal Law*, § 5.1, at 253 (5th ed. 2010)). "Mens rea is the element of a crime that requires the defendant know the facts that make his conduct illegal." *State v. Ndikum*, 815 N.W.2d 816, 818 (Minn. 2012) (quotation omitted). "If a criminal statute does not require the defendant to know the facts that make the conduct illegal, the crime is considered to be a strict liability offense." *Schwartz*, 957 N.W.2d at 419 (citing *Ndikum*, 815 N.W.2d at 818).

Warner does not argue that Minn. Stat. § 97B.045, subd. 1(1), contains an explicit mens rea element. Instead, he argues that we must read a mens rea element into the statute. Warner relies on several cases for his argument, including *Schwartz*. But *Schwartz* is inapposite.

In *Schwartz*, the supreme court explained that there is a "long established principle of American criminal jurisprudence that in common law crimes and in felony level offenses mens rea is required." *Id.* It further explained that, particularly for "gross misdemeanor and felony liability," our courts are "guided by the public policy that if criminal liability . . . is to be imposed for conduct unaccompanied by fault, the legislative intent to do so should be clear." *Id.* (quotation omitted). But Warner's case is distinguished because it involves a misdemeanor, not a felony or gross misdemeanor. And the cases that Warner cites all involve felonies or gross misdemeanors. *See id.* at 417 (gross misdemeanor); *In re Welfare of C.R.M.*, 611 N.W.2d 802, 803 (Minn. 2000) (felony); *Ndikum*, 815 N.W.2d

at 818 (gross misdemeanor to potential felony); *Staples v. United States*, 511 U.S. 600, 618 (1994) (felony).[1]

Warner's case is like *State v. Loge*, 608 N.W.2d 152 (Minn. 2000). *Loge* involved a "question of whether knowledge is an element of the crime under the open bottle law when the driver is the sole occupant of a motor vehicle." 608 N.W.2d at 153. Loge maintained that he did not know there was an open bottle with alcohol in the vehicle he borrowed from his father, and raised the same argument presented here. *Id.* at 153-54.

The supreme court analyzed the statute as a whole to determine whether the legislature intended to impose strict liability. *Id.* at 156 (citing Minn. Stat. § 645.17(2)).[2] Ultimately, the supreme court held that it was "clear from reading the statute as a whole that the legislature intended to categorically prohibit open bottles of alcohol in a motor vehicle on a public road except under the limited circumstances that the legislature expressly addressed and carved out." *Id.* We reach a similar conclusion.

The statute at issue, Minn. Stat. § 97B.045, subd. 1, first provides that "[a] person may not transport a firearm in a motor vehicle unless" one of three enumerated conditions

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[1] Citing *C.R.M.*, 611 N.W.2d at 805, and *Ndikum*, 815 N.W.2d at 818, Warner argues that we may turn to "the legislative history" in this analysis. This misstates what the supreme court did in those cases. In *C.R.M.*, the supreme court turned to the legislative history of the statute only after it determined that the statute's terms at issue were not defined in the statute and dictionary definitions provided "little guidance." 611 N.W.2d at 805. In *Ndikum*, the supreme court did not review the statute's legislative history to ascertain the legislature's intent, it merely reviewed the statute's policy statement and the statute as a whole. 815 N.W.2d at 819-22. Here, there is no question as to the language of the statute.

[2] "In ascertaining the intention of the legislature, the courts may be guided by the following presumptions," specifically, "the legislature intends the entire statute to be effective and certain." Minn. Stat. § 645.17(2) (2022).

exist, which do not exist here. The statute then provides two broad exceptions, which do not apply here, for persons with disabilities and for hunting and shooting ranges. Minn. Stat. § 97B.045, subds. 2, 3. Similar to *Loge*, from reading the statute as a whole, it is clear that the legislature intended to categorically prohibit the transport of firearms "except under the limited circumstances that the legislature expressly addressed and carved out." 608 N.W.2d at 156. The legislature provided three enumerated conditions by which a person may transport a firearm, and then carved out two exceptions to the statute's applicability. Minn. Stat. § 97B.045. Therefore, we conclude that the legislature understood that the statute imposed a strict prohibition, it understood how to carve out exceptions to that prohibition, and it chose to draft the statute as a strict-liability offense.

But even assuming arguendo that Minn. Stat. § 97B.045 has a mens rea element, there was sufficient circumstantial evidence to show that Warner knew he was transporting a firearm in his vehicle, particularly when we view the evidence in the light most favorable to the verdict. *Silvernail*, 831 N.W.2d at 599.

The state proved the following circumstance via the deputy's testimony. During the stop, Warner stated that he thought the manner in which he was transporting the shotgun "was legal" because "it was unloaded in the backseat." Viewing the evidence in the light most favorable to the jury's guilty verdict, the legitimate inference drawn from this circumstance proved is that Warner *knew* he was transporting an uncased shotgun in the backseat area of his vehicle, but he incorrectly believed that he was doing so in a lawful manner.

The circumstances proved are also consistent with guilt and inconsistent with any rational hypothesis except that of guilt. *Id*. Warner argues that, because the only evidence presented was the deputy's testimony, "[t]he circumstances proved are also consistent with the rational hypothesis that Warner did not know he was transporting the shotgun." But this would require the jury to believe that Warner attempted to justify possessing a gun which he did not previously know was in his vehicle rather than deny that it was his or that he knew it was there. This is not a reasonable inference. The only reasonable inference from Warner's explanation is that he *knew* he was transporting an uncased shotgun in the backseat area of his vehicle, but he incorrectly understood the law. Ignorance or mistake of law is generally not a defense unless knowledge of the law is an element of the offense, such as when the offense requires that the offender knowingly violate the law. *State v. Watkins*, 840 N.W.2d 21, 30 (Minn. 2013); *see also State v. Mikulak*, 903 N.W.2d 600, 603 (Minn. 2017). After examining the record, the circumstances proved form a complete chain that, in view of the evidence as a whole, leads so directly to the Warner's guilt "as to exclude beyond a reasonable doubt any reasonable inference other than guilt." *Al-Naseer*, 788 N.W.2d at 473 (quotation omitted).

Affirmed.