*This opinion is nonprecedential except as provided by*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**
**A23-1098**

In the Matter of the Welfare of: M. D. T., Child.

**Filed July 1, 2024**
**Affirmed**
**Gaïtas, Judge**

Hennepin County District Court
File No. 27-JV-22-3232

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Considered and decided by Connolly, Presiding Judge; Gaïtas, Judge; and Larson, Judge.

**NONPRECEDENTIAL OPINION**

**GAÏTAS**, Judge

Appellant M.D.T. challenges his juvenile delinquency adjudication for the offense of aiding and abetting third-degree riot following a stipulated-facts and stipulated-evidence trial. He argues that the evidence was insufficient to prove his guilt beyond a reasonable doubt. Because we conclude that the evidence was sufficient to establish appellant's guilt, we affirm.

## FACTS

After a shooting at the Mall of America that resulted in the death of J.H. (the victim),[1] respondent State of Minnesota filed a petition alleging that appellant, a juvenile, had committed the offenses of aiding and abetting second-degree riot and aiding and abetting third-degree riot. The district court denied the state's motion to designate appellant as an extended jurisdiction juvenile.[2] Appellant then waived his right to a full court trial and agreed to proceed with a stipulated-facts and stipulated-evidence trial before the district court.[3] The parties submitted 34 fact stipulations and stipulated to 47 exhibits, which included surveillance video from the mall, video from body-worn police cameras, video from social media, and photographs. Our summary of the parties' stipulated facts and stipulated evidence is as follows.

On December 23, 2022, appellant and his group, D.D.-B., T.A.-W., L.L., and J.H., arrived at the mall in the early evening. The group arrived in one car and parked in the ramp near the Nordstrom department store. For approximately an hour and a half, the group walked around the mall together, visiting stores and dining areas.

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[1] Because a witness in the case also has the initials J.H., we use the term "the victim" to refer to the individual who was killed. Further references to J.H. are to the witness.

[2] "'Extended jurisdiction juvenile' is a child who has been given a stayed adult criminal sentence, a disposition under Minnesota Statutes, section 260B.198, and for whom jurisdiction of the juvenile court may continue until the child's twenty-first (21st) birthday." Minn. R. Juv. Delinq. P. 19.01, subd. 2(A); *see also* Minn. Stat. § 260B.130 (2022) (providing the process by which a defendant may be placed under extended juvenile jurisdiction).

[3] This type of proceeding is authorized by Minnesota Rule of Juvenile Delinquency Procedure 13.03, subdivision 3.

K.B.-B. and his mother arrived at the mall about an hour and a half after appellant and his group. Approximately 20 minutes after K.B.-B. arrived at the mall, appellant posted a video on social media showing his group and him following K.B.-B. and K.B.-B.'s mother around the second floor of the mall. In the video, appellant yells at K.B.-B. a few times, stating, "man, stop you clutching and shit while there's hella police in this bitch," "come here," and "all we want to do is talk with you." Another member of appellant's group yells, "[S]top walking away." Appellant's group continued following K.B.-B. until he left the mall with his mother.

After following K.B.-B. and K.B.-B.'s mother, appellant's group briefly split up. T.A.-W., L.L., and D.D.-B. returned to the parked car while appellant and J.H. remained inside the mall. During this time, appellant and J.H. were stopped by a Bloomington police officer who was investigating a report made by a mall patron about a person with a gun. According to the patron's report, a male was "walking with a lot of young people around him on the second level of the [mall]" and "a gun [was] protruding from [one of the male's] front waistband." The officer who stopped appellant and J.H. conducted a brief visual and pat search of the pair but did not find any weapons. Later, the patron who made the report identified K.B.-B. as the individual with a gun.

Meanwhile, K.B.-B.'s mother left the mall, and K.B.-B. met up with the victim and another person, N.A., in the parking ramp near Nordstrom. The trio walked into Nordstrom "through the Level 2 parking ramp" and made their way down the escalator to the first floor of the department store. Around the same time, T.A.-W. reconnected with appellant and J.H. in the first-floor men's shoe department of Nordstrom. Minutes later, appellant,

J.H., and T.A.-W. began following the victim, N.A., and K.B.-B as they walked toward the "up" escalator that would bring them back to the second floor. Appellant's group let N.A. and K.B.-B. pass to enter the escalator. But the group blocked the victim's path so he was unable to enter the escalator with the two other members of his group. The victim backed away from the escalator and appellant's group, but then J.H. chased the victim.

J.H. pursued the victim around the men's coat section and then physically attacked him. Other store patrons moved away from the physical altercation. At approximately 7:49 p.m., a Nordstrom employee called mall security and reported that kids were fighting in the store. During the call, the employee advised that shots had been fired. Within seconds of the first shot, surveillance video shows T.A.-W. holding a gun and running toward the victim. L.L. is visible in the video behind T.A.-W. As L.L. neared the victim, he took a shooter stance. By 7:49:36 p.m., the video shows J.H., T.A.-W., and L.L. running away from the victim, who was left lying on the floor. During this incident, the victim was shot in the back and back side at least eight times. He was declared dead at the scene.

While J.H. chased the victim, appellant remained near the escalator entrance. The surveillance video shows appellant looking back and forth between the escalator and the altercation. Before the first shot was fired, K.B.-B. walked down the "up" escalator. Appellant can be seen in the video gesturing at K.B.-B., seemingly pointing toward the second floor. K.B.-B. turned around and went back up the escalator. During the shooting, appellant stood about 80 to 90 feet away from the victim.

Immediately after the shooting, appellant and the four members of his group left the mall together. A video posted on social media approximately one hour later showed appellant and the four other group members together.

Police located a loaded .40 caliber pistol "approximately 40 feet away from where [the victim] died." The pistol belonged to the victim's mother. Subsequent DNA testing revealed that the pistol contained a mixture of DNA from the victim and J.H. The pistol had fired at least one expended bullet casing recovered from the scene. But investigators did not believe that any of the bullets recovered from the victim's body came from that pistol.[4]

Based on this evidence, the district court found appellant not guilty of aiding and abetting second-degree riot and guilty of aiding and abetting third-degree riot. The district court placed appellant on supervised probation.

This appeal follows.

## DECISION

Appellant argues that the evidence[5] was insufficient to support the district court's finding of guilt for the offense of third-degree riot. That offense occurs "[w]hen three or more persons assembled disturb the public peace by an intentional act or threat of unlawful force or violence to person or property." Minn. Stat. § 609.71, subd. 3 (2022). Here, the

[4] Police recovered a second gun on "the floor of the rear driver's-side passenger seat in the vehicle [the victim] drove to the [mall]." The DNA on that gun did not match any of the individuals involved in the incident.

[5] We refer to the stipulated facts and the stipulated evidence collectively as the evidence.

state alleged—and the district court found—that appellant aided and abetted a third-degree riot. "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." Minn. Stat. § 609.05, subd. 1 (2022). And a defendant "intentionally aids" an accomplice in the commission of a crime if the defendant knows an accomplice is going to commit a crime and intends the defendant's "presence or actions to further the commission of that crime." *State v. Segura*, 2 N.W.3d 142, 156 (Minn. 2024) (quotation omitted).

Appellant argues that the stipulated facts and evidence were insufficient to prove beyond a reasonable doubt that he "intentionally aided" J.H., T.A.-W., and L.L. in committing the offense of third-degree riot. He contends that the evidence does not support a finding that he knew members of his group would commit such an offense or that he intended his "presence or actions to further the commission of that crime." *See* Minn. Stat. § 609.71, subd. 3; *Segura*, 2 N.W.3d at 156.

In a criminal case, due process requires the state to present sufficient evidence to prove every element of the charged crime beyond a reasonable doubt. *State v. Culver*, 941 N.W.2d 134, 142 (Minn. 2020). "When evaluating the sufficiency of the evidence, appellate courts carefully examine 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. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016) (quotation omitted).

Evidence is viewed "in the light most favorable to the verdict, and it must be assumed that the fact-finder disbelieved any evidence that conflicted with the verdict." *Id.*

"The 'intentionally aids' element of accomplice liability is a state-of-mind requirement," *State v. Davenport*, 947 N.W.2d 251, 265 (Minn. 2020) (quotation omitted), that is rarely proven with direct evidence, *State v. McAllister*, 862 N.W.2d 49, 53 (Minn. 2015). This element can be inferred from circumstantial evidence, however, "including the defendant's presence at the scene of the crime, a close association with the principal before and after the crime, a lack of objection or surprise under the circumstances, and defendant's flight from the scene of the crime with the principal." *Segura*, 2 N.W.3d at 156 (quotation omitted). 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).

Evidence is circumstantial when it "requires an inferential step to prove a fact that is not required with direct evidence." *Id.* When reviewing the sufficiency of circumstantial evidence, appellate courts use a two-step process. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013) (stating that the level of scrutiny a reviewing court applies depends on whether the elements of an offense are supported by direct or circumstantial evidence). First, an appellate court identifies the circumstances proved. *Id.* "In identifying the circumstances proved, we 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." *Id.* at 598-99 (quotations omitted). Second, an appellate court "determine[s] whether the circumstances proved are consistent with guilt and inconsistent with any

rational hypothesis except that of guilt." *Id.* at 599. During this step, a reviewing court does not defer to the fact-finder's choice between reasonable inferences. *State v. Andersen*, 784 N.W.2d 320, 329-30 (Minn. 2010).

Appellant argues, and the state concedes, that the more stringent circumstantial evidence standard of review applies because the evidence of appellant's intent to aid others in the commission of third-degree riot was purely circumstantial. We agree. Applying that standard of review here, we first identify the circumstances proved. They are as follows.

Appellant, J.H., D.B.-B., T.A.-W., and L.L. arrived at the mall together. About an hour and a half after they arrived, appellant and his group began following K.B.-B. and his mother around the mall, yelling that they wanted to "talk" to him, that he should "come here," and that he should "stop walking away." K.B.-B. had a gun at the time he was being pursued by appellant's group. A pat search by a police officer revealed that appellant and J.H. were not carrying any weapons. After K.B.-B.'s mother left the mall, K.B.-B. returned to the mall with the victim and N.A. The victim, K.B.-B., and N.A. entered Nordstrom on the second floor and went down to the first floor where they encountered appellant, J.H., and T.A.-W. Appellant, J.H., and T.A.-W. followed the victim, K.B.-B., and N.A. as they walked toward the "up" escalator on Nordstrom's first floor. After letting K.B.-B., and N.A. get on the escalator, appellant and his group blocked the victim's path, preventing the victim from entering the escalator and separating him from his group. The victim backed away from the escalator, and J.H. chased after him. J.H. and the victim had a physical altercation. T.A.-W. ran toward the fight while holding a gun, and L.L. followed, taking a shooter stance near the victim. Appellant remained near the entrance to the escalator,

watching both the escalator and the fight. Before the first shot was fired, K.B.-B. walked down the "up" escalator toward appellant. Appellant gestured at K.B.-B., and K.B.-B. then turned around and returned to the second floor. A store employee called mall security to report "kids fighting." During the employee's call, there was a gunshot. Appellant's position near the escalator was 80 to 90 feet away from where the victim was shot. The victim was shot at least eight times in the back and back side, and ultimately died. Immediately after the shooting, appellant and the four members of his group left the mall together and remained together for at least another hour. A pistol registered to the victim's mother but containing the DNA of both J.H. and the victim, was recovered 40 feet from where the victim died. That pistol was not the weapon that killed the victim.

We conclude—and appellant acknowledges—that these circumstances support the reasonable inference that appellant's group "assembled [to] disturb the public peace by an intentional act or threat of unlawful force or violence to person" and that appellant both knew about and intended to support the commission of such a crime. *See* Minn. Stat. § 609.71, subd. 3. But appellant contends that these circumstances also support reasonable inferences that are inconsistent with guilt.

Appellant offers two alternative theories of innocence. First, he argues first that the circumstances proved support a reasonable hypothesis that the victim drew his gun first and that J.H. acted only in self-defense. According to appellant, if J.H. acted in self-defense, there was no "plan" in place and therefore there was nothing for him to "know." But this inference is not reasonable based on the evidence. Surveillance video shows J.H. confronting and pursuing the victim, not the other way around. Moreover, the victim was

shot in the back at least eight times by weapons that were not recovered. These facts do not reasonably support appellant's alternative theory that J.H. acted in self-defense.

As a second alternative theory, appellant contends that the evidence shows the group "had not planned to attack [the victim]." He argues that, because there was no such plan, he could not have known that "his cohorts would disturb the public peace in the way they did."

However, the circumstances proved do not reasonably support this second alternative theory, either. We initially note that the state was not required to prove that appellant knew the members of his group planned to physically attack the victim. Rather, the state could establish appellant's guilt of aiding and abetting third-degree riot by proving that he knew his accomplices intended to *threaten* the victim with unlawful force or violence. *See* Minn. Stat. § 609.71, subd. 3 (providing that a person is guilty of third-degree riot if the person, along with at least two other people, "disturb the public peace by an intentional act *or threat* of unlawful force or violence to person or property" (emphasis added)).

The circumstances proved strongly support the inference that, at minimum, appellant's accomplices intended to threaten the victim with force or violence. Those circumstances show a coordinated effort to target the victim and to isolate him from his friends immediately before the shooting. Appellant, J.H., and L.L. followed the victim through Nordstrom. Appellant blocked the victim from entering the escalator with his group. When K.B.-B. attempted to return to the first floor on the escalator moments before

the shooting, appellant gestured at K.B.-B., causing K.B.-B. to return upstairs. And when the victim attempted to run away, J.H. and L.L. chased him.

The circumstances proved also establish that appellant was with J.H., T.A.-W., and L.L. for almost two hours before the altercation and that he left the mall with this group after the shooting. An accomplice's intent to aid the principal's plan, including knowledge of the plan, can be inferred from "a close association with the principal[s] before and after the crime." *Segura*, 2 N.W.3d at 156.

Finally, we observe that the circumstances proved are inconsistent with appellant's second alternative theory. It is not reasonable to infer from the circumstances proved that appellant was unaware that his accomplices intended to threaten or harm the victim in disturbance of the public peace. The only reasonable inference from the evidence is that appellant intentionally aided his group in targeting the victim in a busy public place.

Even if appellant did not know in advance that his group planned to threaten or attack the victim, he undoubtedly gained that knowledge as the crime unfolded. To convict a defendant as an accomplice to an offense, the state is not required to prove that the defendant knew of the accomplice's "criminal intent before the crime commence[d.]" *State v. Smith*, 901 N.W.2d 657, 662 (Minn. App. 2017), *rev. denied* (Minn. Nov. 14, 2017). Rather, a defendant is liable for the actions of an accomplice when he learns of the accomplice's criminal intent while "the accomplice is in the process of committing the offense, and makes the choice to aid in its commission either through [his] presence or [his] actions." *Id.*; *see also McAllister*, 862 N.W.2d at 55 (discussing the knowledge requirement of accomplice liability and stating that, "even if [the defendant] did not know

that his [accomplices] were going to beat and rob [the victim] when the men entered the alley, we can infer that he acquired such knowledge as the altercation progressed").

The evidence established that appellant watched as J.H. chased the victim and as J.H., T.A.-W., and L.L. physically attacked the victim. During this time, appellant was 80 to 90 feet away from the altercation that was so disruptive that an employee called mall security. Given these circumstances, it is unreasonable to infer that appellant was unaware that the members of his group were threatening and assaulting the victim. And appellant's actions during the attack demonstrate appellant's decision to aid the members of his group in committing those offenses. *See Segura*, 2 N.W.3d at 156; *Smith*, 901 N.W.2d at 663.

Appellant asserts that, even if he knew his group was planning to threaten or attack the victim, the evidence does not support a reasonable inference that he intended his presence to further the attack. But appellant's actions during the incident belie this argument. As noted, the evidence shows that appellant isolated the victim, worked to separate the victim from his group, and then fled with the individuals who shot and killed the victim. The circumstances rule out any reasonable hypothesis that appellant did not intend his presence to further the crimes of his accomplices. *See McAllister*, 862 N.W.2d at 53 ("A [fact-finder] may infer the requisite state of mind for accomplice liability through circumstantial evidence, including 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.").

Finally, appellant offers an alternative interpretation of his gesture to the victim's associate K.B.-B., who momentarily attempted to walk down the "up" escalator.[6] But as an appellate court, we must consider the reasonable inferences from the circumstances viewed "as a whole." *Harris*, 895 N.W.2d at 598. Considering the circumstances proved in their entirety, the only reasonable inference is that appellant's gesture was an order to K.B.-B. to return upstairs. And that inference is only consistent with appellant's guilt.

The circumstances proved are only consistent with appellant's guilt of aiding and abetting third-degree riot and are inconsistent with any reasonable hypothesis other than guilt.[7] Thus, the evidence supports appellant's adjudication of aiding and abetting third-degree riot.

**Affirmed.**

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[6] In conjunction with the argument, appellant cites *State v. Witherspoon*, No. A12-1247, 2013 WL 3284272, at *1 (Minn. App. July 1, 2013). *Witherspoon* is a nonprecedential and therefore nonbinding case. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c). Moreover, we do not consider the case to be persuasive.

[7] The district court stated in its factual findings that appellant *knew* K.B.-B. had a gun. Based on our review of the record, this finding was clearly erroneous. *See State v. Lopez*, 988 N.W.2d 107, 116 (Minn. 2023) ("A factual finding is clearly erroneous when it lacks evidentiary support in the record."). But "[a] clearly erroneous finding . . . does not require a new trial when independent findings of fact, decisive of the case, are supported by the record." *Id.* And we conclude that even without a finding that appellant knew K.B.-B. had a gun, there was sufficient evidence presented to prove beyond a reasonable doubt that appellant intentionally aided members of his group.