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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A10-1948**

State of Minnesota,  
Respondent,

vs.

Ahmed Osman Farah,  
Appellant.

**Filed October 11, 2011  
Affirmed  
Stoneburner, Judge**

Hennepin County District Court  
File No. 27CR0955613

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Lee W. Barry, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Suzanne Senecal-Hill, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Klaphake, Presiding Judge; Stoneburner, Judge; and Schellhas, Judge.

**UNPUBLISHED OPINION**

**STONEBURNER**, Judge

Appellant challenges his convictions of kidnapping and second-degree aggravated robbery, arguing that the district court erred in instructing the jury on the kidnapping

charge and that the evidence was insufficient to support his convictions. Because the district court properly instructed the jury and the evidence is sufficient to support the convictions, we affirm.

## **FACTS**

In September 2009, Matthias Pieringer, a Carlson School of Management foreign-exchange student from Austria, reported to police that two men had offered to give him a ride home, but then drove him around in a car, robbed him, and forced him to withdraw money from an ATM at a bank. The men spoke to each other in a language that Pieringer did not understand. The passenger indicated to Pieringer that he had a gun and threatened to kill him numerous times, but Pieringer never saw a gun. As they left the bank, Pieringer saw some boys across the street. He shouted that he had been robbed and ran toward the boys. One of the boys recalled seeing a red Cadillac CTS drive away. He called 911.

Minneapolis police officer Conor McDonough responded to the call. Pieringer was scared and upset. He recounted what had happened. He described the driver as dark-complexioned with braided hair down to his neck, wearing a white jersey with a double digit on it in baby-blue lettering. Pieringer described the passenger as a black man wearing a green hat and a green shirt.

The surveillance video from the bank showed all three men coming into the ATM vestibule. Several Minneapolis police officers looked at still photographs captured from the video. Each identified appellant Ahmed Osman Farah, known to them from their contact with him while patrolling the neighborhood. Farah's face was not pictured, but

identification was made because of his features and the Dallas Cowboys Terrell Owens jersey depicted in the photographs, which was the same jersey the officers had seen Farah wearing so often that some of the officers had nicknamed him “T.O.”

Four days after the incident, Officer Maia Gardner, of the Roseville Police Department, stopped a maroon Cadillac CTS as it pulled into a parking space at a Motel 6. Four people got out of the car, and the front-seat passenger ran toward the motel. Officer Gardner chased him, and he finally stopped. Gardner identified him as Farah. The keys to the Cadillac, a rental car, were in Farah’s pocket. A blue and white Dallas Cowboys Terrell Owens jersey with the number 81 on it was in the trunk of the Cadillac.

Abdihamid Hassan was one of the other people in the Cadillac. Gardner learned that Farah and Hassan matched the descriptions of the men who robbed Pieringer. She notified Sergeant Ron Christianson, the lead investigator for that case. Gardner also looked at one of the still photographs from the bank’s surveillance video and identified Farah as one of the men in the photograph because of his features and distinct hair. Pieringer was unable to identify either of his robbers from photographs that Christianson showed him.

Christianson interviewed Farah in November 2009 and thought that the tennis shoes worn by Farah looked like the tennis shoes worn by the man identified as Farah from the bank’s surveillance video. Farah initially denied any involvement and denied owning or wearing a Terrell Owens football jersey. Later, he admitted that he was in the bank and that the jersey from the trunk of the Cadillac was his. He never admitted kidnapping or robbing Pieringer.

Farah was charged with aiding and abetting kidnapping and second-degree aggravated robbery. A jury found him guilty of both charges, and he was sentenced. In this appeal, Farah challenges the jury instructions regarding kidnapping and the sufficiency of the evidence to support the convictions.

## **D E C I S I O N**

### **I. The district court did not err in instructing the jury.**

Farah did not object to the district court's proposed jury instructions on kidnapping or offer an alternative instruction. "Failure to object to jury instructions before they are given generally constitutes a forfeiture of the right to an appeal based on those instructions." *State v. Vance*, 734 N.W.2d 650, 654 (Minn. 2007). But appellate review is not precluded by failure to object "if the instructions constitute plain error affecting substantial rights or an error of fundamental law." *Id.* at 655.

The district court instructed the jury using the pattern jury instruction for kidnapping found at 10 *Minnesota Practice*, CRIMJIG 15.02 (2006). On appeal, Farah challenges the portion of the pattern instruction on the element of whether the victim was released in a safe place. The instruction provides, "A victim of kidnapping is released only if released with the consent of the kidnapper. A victim who escapes is not released." 10 *Minnesota Practice*, CRIMJIG 15.02. Farah argues that the instruction essentially and erroneously directed the jury's verdict on whether Pierienger was released in a safe place. *See State v. Perkins*, 353 N.W.2d 557, 561 (Minn. 1984) (stating that recognition of the jury's power of lenity "underlies the rule that the trial court may not direct a verdict for the state in a criminal case and may not instruct the jury that any of the elements of the

offense have been proven beyond a reasonable doubt, absent a judicial admission by the defendant of any of the elements”).

In *State v. Ferguson*, 561 N.W.2d 901, 902 (Minn. 1997), the supreme court approved this specific language, stating that “[t]he trial court should have instructed the jury on kidnapping according to CRIMJIG 15.02, including the statement that ‘A victim of kidnapping is released only if released with the consent of the kidnapper. A victim who escapes is not released.’” Farah notes that, in *Ferguson*, the district court had omitted the element of release in a safe place from the instructions, and the defendant challenged the instruction as violating his right to go to the jury on every element. He argues that *Ferguson* is distinguishable from the instant case because the claim that the language directed the verdict was not raised in *Ferguson* as it is here. Farah also argues that *Ferguson* does not address the supreme court’s caution, in *State v. Gassler*, 505 N.W.2d 62, 68 (Minn. 1993), against giving sufficiency tests. And Farah asserts that *Ferguson* does not address the supreme court’s disapproval of giving jury instructions that remove factual questions from the jury’s consideration, citing *State v. Moore*, 699 N.W.2d 733, 736–37 (Minn. 2005) (holding that an instruction that “[t]he loss of a tooth is a permanent loss of the function of a bodily member” was effectively a directed verdict and violated the requirement that convictions must rest on a jury’s determination of guilt on every element of the crime charged). But even if we agreed that Farah’s distinctions have any merit, his arguments do not show that the district court committed plain error by giving a pattern jury instruction that accurately states the law and has been specifically

sanctioned by the supreme court. We therefore conclude that Farah has waived appeal of this issue by failing to object at trial.

## **II. The evidence is sufficient to support Farah’s convictions.**

When considering a claim of insufficient evidence, our review is “limited to a painstaking analysis of the record to determine whether the evidence, when viewed in [the] light most favorable to the conviction, [is] sufficient” to sustain the verdict. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). In performing this analysis, we assume that the jury believed the state’s witnesses and did not believe any evidence to the contrary. *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). And we will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offenses. *Bernhardt v. State*, 684 N.W.2d 465, 476–77 (Minn. 2004).

Specifically, Farah argues that the evidence does not establish that he played a knowing role in the commission of the crimes and, at best, establishes only his knowledge or passive acquiescence. A person is criminally liable for aiding and abetting “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(2008).

Farah argues that the state’s evidence of his participation is circumstantial. He argues that the evidence showed that Hassan was the perpetrator, and, although Farah was driving the car and was in the ATM vestibule with Hassan and Pieringer, these circumstances plausibly lead to the inference that Hassan may have been forcing Farah to

act the way he did. *See State v. Andersen*, 784 N.W.2d 320, 329–30 (Minn. 2010) (holding that in order to support a conviction based on circumstantial evidence, “all the circumstances proved must be consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis except that of his guilt” (quotation omitted)).

But not all of the state’s evidence was circumstantial. Pieringer testified that it was the driver of the car who demanded his bank card and PIN at the bank, took his bank card and PIN and went into the bank, and returned, telling Pieringer that the card was not working and that Pieringer was “in big trouble right now.” Pieringer testified that it was the driver who demanded that Pieringer get out of the car and accompany both the driver and passenger back into the bank. Pieringer testified that it was the driver who took the \$300 that he withdrew from the ATM and demanded that he withdraw additional money. Farah admits that he was the driver. The evidence is sufficient to support Farah’s convictions and to exclude any rational hypothesis that he is not guilty.

**Affirmed.**