STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1454

State of Minnesota,
Respondent,

vs.

Yusuf Odowa Ali,
Appellant.

Filed August 14, 2017
Affirmed
Smith, Tracy M., Judge

Steele County District Court
File No. 74-CR-15-1452

Lori Swanson, Attorney General, Edwin W. Stockmeyer, Assistant Attorney General, St. Paul, Minnesota; and

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

Cathryn Middlebrook, Chief Appellate Public Defender, Michael W. Kunkel, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Peterson, Judge; and Connolly, Judge.

U N P U B L I S H E D O P I N I O N

SMITH, TRACY M., Judge

Appellant Yusuf Odowa Ali challenges the sufficiency of the evidence to support his conviction of first-degree robbery. Specifically, Ali argues that his conviction

depended on accomplice testimony that was not adequately corroborated. Because sufficient evidence supports a finding that the witness at issue was not an accomplice to the robbery, and because, in any event, that witness's testimony was adequately corroborated, we affirm.

FACTS

This case arises from a drug sale that turned into an aggravated robbery of the seller and his friends.

Four high school students—A.H, Cha.H., Che.H., and B.H.—met S.P. at a house in Owatonna on April 20, 2015. A.H. asked S.P. if he knew anyone who wanted to buy marijuana. Later that day, S.P. contacted A.H. and arranged for A.H. to sell marijuana to S.P.'s friends.

A.H. drove Cha.H., Che.H., and B.H. to a park to sell marijuana to S.P. and his friends. When A.H. and his companions arrived, they parked next to a Chevy Impala. S.P. got out of the Impala, and A.H. partially opened his car door to speak with S.P. While A.H. was speaking with S.P., someone walked up to A.H., pulled him out of the car, and began punching him in the face. Someone else pulled Cha.H. out of the car and hit him on the head with a baseball bat. Che.H. was pulled out of the car and pushed to the ground. Someone dragged B.H. out of the car and tried to take her purse. Another person hit B.H. in the eye with a bottle. Among other things, the assailants took A.H.'s wallet. S.P. watched the incident but did not intervene. The assailants and S.P. then left in the Impala.

A.H. drove Cha.H., Che.H., and B.H. to the hospital and contacted the police. B.H. told a police officer that S.P. was at the robbery and that the assailants had been driving an

Impala. The police found the Impala in front of S.P.'s house and discovered that the Impala was registered to Ali's mother. At a photo lineup the next day, A.H., Cha.H., Che.H., and B.H. identified Ali as a participant in the robbery. Ali was charged with first-degree aggravated robbery and aiding and abetting first-degree aggravated robbery.

A jury trial was held. A.H., Cha.H., Che.H., B.H., S.P., and several police officers testified.

A.H., Cha.H., and Che.H. testified that they were "pretty certain" that the person they identified in the photo lineup was present at the robbery. A.H. also testified that the person he identified in the photo lineup had punched him. But the four victims offered conflicting in-court identifications. Cha.H. testified that he remembered seeing Ali at the robbery. Che.H. testified that Ali was not the person who punched A.H. A.H. and B.H. could not identify Ali at trial.

S.P. testified about the events that occurred before, during, and after the robbery. According to S.P., Ali and three of Ali's friends picked S.P. up in an Impala. Ali and his friends wanted to purchase some marijuana. S.P. then contacted A.H. and arranged for A.H. to meet the group at a park. Once the two cars arrived at the park, S.P. got out of the Impala and spoke with A.H. As S.P. was speaking to A.H, Ali grabbed A.H. and began punching him in the face. One of Ali's friends pulled Cha.H. out of the car and hit him on the head with a baseball bat. Another friend pulled either Che.H. or B.H. out of the car and tried to take her cellphone. S.P. testified that Ali and his friends took two phones, A.H.'s wallet, and the marijuana. The district court instructed the jury to determine whether S.P.

was an accomplice and, if the jury found that S.P. was an accomplice, whether his testimony was corroborated by other evidence.

The jury returned a verdict finding Ali guilty of first-degree aggravated robbery and aiding and abetting first-degree aggravated robbery. The district court entered a judgment of conviction for first-degree aggravated robbery.[1]

Ali appeals.

D E C I S I O N

Ali argues that the evidence is insufficient to support Ali's conviction because the evidence is insufficient to support a finding that S.P. was not an accomplice and the state failed to adequately corroborate S.P.'s testimony, which, he asserts, was indispensable to proving his guilt. Ali does not argue that he was entitled to a jury instruction identifying S.P. as an accomplice as a matter of law. *Cf. State v. Pendleton*, 759 N.W.2d 900, 907 (Minn. 2009) (holding that a district court did not err in failing to give an instruction identifying a witness as an accomplice). The state counters that sufficient evidence supported Ali's conviction because (1) sufficient evidence supports a finding that S.P. was not an accomplice requiring corroboration and (2) even if S.P. was necessarily an

[1] At sentencing, the district court entered a judgment of conviction of first-degree aggravated robbery but not aiding and abetting first-degree aggravated robbery because the two crimes arose from the same behavioral incident under the same course of conduct. But the district court's warrant of commitment stated that Ali was convicted of both first-degree aggravated robbery and aiding and abetting first-degree aggravated robbery. While this appeal was pending, the district court amended its warrant of commitment to correctly reflect Ali's conviction of only first-degree aggravated robbery. The district court's correction of the clerical error was proper under Minn. R. Crim. P. 27.03, subd. 10.

accomplice, his testimony was sufficiently corroborated. The district court instructed the jury to decide (1) whether S.P. is an accomplice and (2) if S.P. was an accomplice, whether sufficient evidence corroborates S.P.'s testimony. We may affirm Ali's conviction if sufficient evidence supports a finding that S.P. was not an accomplice or if the evidence sufficiently corroborated S.P.'s testimony.

Accomplice testimony must be "corroborated by such other evidence as tends to convict the defendant of the commission of the offense, and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof." Minn. Stat. § 634.04 (2014).

First, we ask whether sufficient evidence supports a finding by the jury that S.P. was not an accomplice. If the question of whether a witness is an accomplice is disputed or subject to different interpretations, then the issue is one of fact for the jury. *Pendleton*, 759 N.W.2d at 907. Our review on appeal is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient to permit the jury to find that S.P. was not an accomplice. *See State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989) (describing the standard of review for sufficiency-of-the-evidence challenges generally).

Second, if we conclude that a witness must have been an accomplice, we ask whether sufficient evidence corroborates the witness's testimony. *State v. Clark*, 755 N.W.2d 241, 251 (Minn. 2008). "[I]n reviewing the sufficiency of the corroborating evidence of an accomplice's testimony, we review the evidence just as we would on a sufficiency challenge—in the light most favorable to the prosecution, and with all conflicts

in the evidence resolved in favor of the verdict." *State v. Nelson*, 632 N.W.2d 193, 202 (Minn. 2001); *see Clark*, 755 N.W.2d at 253-55.

I. Sufficient evidence supports a finding that S.P. was not an accomplice to the robbery.

Ali argues that the evidence is insufficient to support a finding that S.P. is not an accomplice and, therefore, corroboration of his testimony was required under Minn. Stat. § 634.04. The state counters that corroboration of S.P.'s testimony was not required because sufficient evidence supports a finding that S.P. was not an accomplice to the robbery.

"An accomplice is one who could have been charged with and convicted of the crime with which the accused is charged" and who appears to have cooperated with, aided, or assisted the defendant in the commission of the crime either as a principal or an accessory. *State v. Vasquez*, 776 N.W.2d 452, 457 (Minn. App. 2009) (quotation omitted). Mere presence at the scene of a crime is insufficient to establish that the witness is an accomplice; the witness must have played a "knowing role" in the crime. *Pendleton*, 759 N.W.2d at 907. A witness who is guilty of one crime is not necessarily an accomplice to the accused's separate and distinct crime. *State v. Pederson*, 614 N.W.2d 724, 733 (Minn. 2000). After-the-fact assistance is not relevant to an accomplice determination. *Pendleton*, 759 N.W.2d at 908.

Ali makes three arguments that S.P. must have been an accomplice. First, Ali argues that S.P. was an accomplice because he helped broker the drug deal where the robbery took

place. But S.P. is not an accomplice to the robbery merely because he was an accomplice to the drug deal. *See Pederson*, 614 N.W.2d at 733.

Second, Ali argues that S.P. must have been an accomplice because he helped spend the money from the robbery and lied to the police. After-the-fact assistance is not relevant in determining whether a witness is an accomplice. *Pendleton*, 759 N.W.2d at 908. S.P.'s decision to lie to the police is after-the-fact assistance and is not relevant to determining whether S.P. was an accomplice to the robbery. *See id.* Moreover it is not clear that S.P. helped spend money from the robbery. When asked whether the group used the money from the robbery to purchase alcohol, S.P. testified, "Not necessarily. They had their own money."

Third, Ali argues that S.P. must have been an accomplice because he led the parties to a secluded location, one of his passengers came with a baseball bat, and he watched the assaults happen without intervening. But conflicting evidence may also support a finding that Ali was not an accomplice. In *Pendleton*, the Minnesota Supreme Court concluded that the district court did not err in failing to instruct the jury that a witness was an accomplice because the jury could have reasonably found that a witness to a murder was not an accomplice. 759 N.W.2d at 907. The witness was with the appellant the night of the murder, opened the door while the appellant carried the victim to the car, remained with the appellant after the murder, and lied to the police about the events of the night. *Id.* at 905, 908. In reviewing the evidence, the supreme court noted that the witness stayed near the car during the murder and that the witness's decision to open the door was just as consistent with acting out of fear as acting to aid the crime. *Id.* at 908. The supreme court

thus concluded that the evidence was susceptible to conflicting interpretations and the jury could have reasonably found that the witness was not an accomplice to the murder. *Id.*

Like in *Pendleton*, the evidence in this case leads to conflicting interpretations. S.P. remained by the car during the robbery and did not intervene on behalf of either the victims or Ali and his friends. According to S.P.'s testimony, S.P. remained with the group after the robbery because Ali and his friends wanted to "know what [he] was doing." S.P. testified that he initially lied to the police because he was afraid he would "get hurt" by Ali and his friends. S.P.'s actions are consistent with acting out of fear of retaliation. *See id.* Other evidence suggests that S.P. did not know that Ali and his friends intended to rob the victims. *See id.* Viewing the evidence in the light most favorable to the verdict, we conclude that sufficient evidence supports a finding that S.P. was not an accomplice to the robbery, making corroboration of his testimony unnecessary.

II. Even if S.P. was an accomplice, his testimony was sufficiently corroborated.

Assuming that S.P. was an accomplice to the robbery, Ali argues that the state did not sufficiently corroborate S.P.'s testimony. "[T]he accomplice's testimony need not be corroborated on every point." *State v. England*, 409 N.W.2d 262-64 (Minn. App. 1987). "Corroborating evidence may be found in a defendant's association with others involved in the crime in such a way as to suggest joint participation, from the defendant's motive and opportunity to commit the crime, and from his proximity to the place where the crime was committed." *State v. Her*, 668 N.W.2d 924, 927 (Minn. App. 2003) (quotation omitted), *review denied* (Minn. Sept. 30, 2003). Corroboration is sufficient if it "reinforces the truth of the accomplice's testimony and points to the defendant's guilt in some

substantial degree." *State v. Bowles*, 530 N.W.2d 521, 532 (Minn. 1995). But when the corroborating evidence is as consistent with the defendant's innocence as with his guilt, the evidence is not sufficient to corroborate accomplice testimony. *See State v. Wallert*, 402 N.W.2d 570, 571 (Minn. App. 1987), *review denied* (Minn. May 18, 1987).

We conclude that sufficient evidence corroborates S.P.'s testimony in three material respects. First, S.P. testified that they drove Ali's maroon Impala to the park. Cha.H. testified that the car was "reddish-maroon," A.H. testified that the car appeared to be an Impala, and an officer testified that the Impala was registered to Ali's mother. Second, S.P. identified Ali as the person who pulled A.H. out of the car and punched him in the face. All four victims testified that someone pulled A.H. out of the car and began punching him in the face. All four victims identified Ali as a person who was present at the robbery at a photo lineup, and Cha.H identified Ali again at trial. A.H. testified at trial that the person he identified at the photo lineup was the person who hit him. Finally, S.P. testified that Ali had A.H.'s wallet when they left the park. A.H. testified that his wallet was missing after the incident. The corroborating evidence shows that Ali's vehicle was used to drive to the park, Ali was present at the robbery, Ali punched A.H., and A.H.'s wallet was missing. *See Her*, 668 N.W.2d at 927. Sufficient evidence reinforces the truth of S.P.'s testimony and points to Ali's guilt to a substantial degree. *See Bowles*, 530 N.W.2d at 532.

Ali argues that the corroborating evidence is as consistent with his innocence as with his guilt because Che.H. testified that Ali was not the one that punched A.H. and neither A.H. nor B.H. could identify Ali at trial. *See Wallert*, 402 N.W.2d at 571. Weighing the conflicting in-court identifications and photo-lineup identifications is an

evidentiary and credibility issue left to the jury. *See State v. Dahlin*, 695 N.W.2d 588, 596 (Minn. 2005). The jury may have reasonably found that the photo lineup was more reliable than the in-court identifications because the photo lineup occurred the day after the robbery. Moreover, the jury may have reasonably found that Che.H. was not credible because her testimony was substantively different from the testimony of the other witnesses. Unlike the other witnesses, Che.H. testified that there were a total of eight or nine people who robbed them and that not everyone arrived in the Impala. Viewing the evidence in the light most favorable to the verdict, the jury may have reasonably found that the photo-lineup identifications were more credible than Che.H.'s in-court identification. The corroborating evidence is not equally consistent with Ali's innocence as with his guilt. *See Wallert*, 402 N.W.2d at 571.

We thus conclude that, even if S.P. was an accomplice, his testimony was sufficiently corroborated. *See* Minn. Stat. § 634.04.

Affirmed.