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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1346**

State of Minnesota,
Respondent,

vs.

Khalid Abdullah,
Appellant.

**Filed September 2, 2008
Affirmed
Stoneburner, Judge**

Ramsey County District Court
File No. K5064798

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Susan E. Gaertner, Ramsey County Attorney, Mark Nathan Lystig, Assistant County Attorney, Suite 315, 50 West Kellogg Boulevard, St. Paul, MN 55102 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Bridget Kearns Sabo, Assistant Public Defender, Suite 300, 540 Fairview Avenue North, St. Paul, MN 55104 (for appellant)

Considered and decided by Toussaint, Chief Judge; Shumaker, Judge; and Stoneburner, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant challenges his third-degree burglary conviction, arguing that the evidence was insufficient for the jury to find him guilty beyond a reasonable doubt because the eyewitness identification was unreliable and unduly suggestive. Because the eyewitness positively identified appellant at the scene and at trial and appellant failed to challenge the identification at trial and does not allege plain error on appeal, we affirm.

FACTS

At approximately 11:40 a.m. on a December day, a witness saw a man whom he did not recognize taking a mountain bike from his neighbor's garage at 1770 Van Buren Avenue. The witness called 911 to report the crime and provided a description of the burglar. The witness described the man as being an Asian male in his thirties, approximately 5'7" to 5'9" tall. He told the dispatcher that the man was wearing a dark blue jacket and black hat and fleeing on a silver mountain bike. The witness then left for a scheduled lunch meeting.

St. Paul police officers were dispatched to 1770 Van Buren Avenue. Officer Robert Winsor arrived first, within 10 minutes of the call. He observed that the garage's service door was ajar, a toolbox had been dumped out, and a storage cabinet was open. Officer Roger Leonard also responded to the dispatch and was nearing Van Buren Avenue when he saw a man walking down the sidewalk, later identified as appellant Khalid Yusuf Abdullah, whom he believed fit the description of the burglary suspect.

Abdullah was wearing a dark jacket and dark hat and appeared to be of African descent. Leonard stopped Abdullah, who told Leonard that he had just left a convenience store.

Officer Winsor contacted the witness, who returned to his home. The witness confirmed that he would be able to recognize the person he saw coming out of his neighbor's garage. Winsor told the witness that they had stopped a person "down the alley," and the witness agreed to look at the person to see if he recognized him. Out of the presence of the witness, Winsor asked Leonard to have Abdullah stand away from the squad car without handcuffs. Winsor then drove the witness past Abdullah. The witness positively identified Abdullah "without a doubt" as the man he saw leaving his neighbor's garage. The witness also unequivocally identified Abdullah at trial.

Mounted Officer Andrew Lewis also responded to the dispatch. He rode his horse to the immediate surrounding area to search for the suspect or the mountain bike. Lewis rode down Blair Avenue, which is one block from Van Buren Avenue. Lewis discovered a silver mountain bike leaning against the side of the house at 1812 Blair Avenue. Recent tire tracks in the mud led to the bicycle. Lewis noticed that the bike appeared to be in mint condition and to have been previously stored inside. Abdullah told Lewis that he lived at 1820 Blair Avenue, but Lewis noted that no such address exists. Winsor later determined that Abdullah lived with his sister at 1812 Blair Avenue.

The witness identified the bike as the one he saw the burglar taking from his neighbor's garage. The burglary victim testified at trial that he lived at 1770 Van Buren Avenue in St. Paul, he did not know Abdullah, and he did not give Abdullah permission

to be in his garage. The victim identified the mountain bike recovered at 1812 Blair Avenue as his bike.

Abdullah was charged with third-degree burglary, and a jury found him guilty of the charge. Abdullah was convicted and sentenced to an 18-month stayed sentence. This appeal followed.

D E C I S I O N

Abdullah argues that the evidence was insufficient to prove beyond a reasonable doubt that he committed the burglary because he did not match the physical description the witness gave to the 911 dispatcher. When considering a claim of insufficient evidence, this court “view[s] the evidence in the light most favorable to the verdict” to determine if there was sufficient evidence that the jury could reasonably find the defendant guilty. *State v. Miles*, 585 N.W.2d 368, 372 (Minn. 1998) (citation omitted). Identification of the defendant and the credibility of witnesses are questions of fact for the jury, and identification testimony “is sufficient if the witness expresses a belief that she or he saw the defendant commit the crime.” *Id.* at 373. 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 offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

In determining the trustworthiness of an eyewitness’s identification, the jury must consider the opportunity that the eyewitness had for accurate and deliberate observation while in the presence of the accused. *State v. Gluff*, 285 Minn. 148, 151, 172 N.W.2d 63,

65 (1969). “[A] conviction may rest on the testimony of a single credible witness.” *Miles*, 585 N.W.2d at 373. But when a single witness’s identification of the defendant is made after only “fleeting or limited observation,” corroboration may be required. *State v. Walker*, 310 N.W.2d 89, 90 (Minn. 1981).

In the present case, the witness unequivocally identified Abdullah as the burglar shortly after the crime and at trial. The witness’s identification was corroborated by the police officers’ testimonies about the locations where Abdullah was apprehended and where the mountain bike was found. Plainly, the identification evidence was sufficient to support the conviction.

On appeal, Abdullah asserts for the first time that the show-up identification was unreliable and therefore his conviction must be reversed. Abdullah did not challenge the identification procedure in district court. “Usually we will not decide issues which are not first addressed by the trial court and are raised for the first time on appeal even if the issues involve constitutional questions regarding criminal procedure.” *State v. Sorenson*, 441 N.W. 2d 445, 457 (Minn. 1989). Although we may, in our discretion, decide to hear such issues when the interests of justice require their consideration and addressing them would not work an unfair surprise on a party. *Id.* In this case, Abdullah’s failure to raise the issue in the district court deprived the state of an opportunity to present evidence on the five factors outlined in *State v. Ostrem*, 535 N.W.2d 916, 921 (Minn. 1995). Because the record is inadequate, we decline to address this issue on appeal. *See State v. Sorenson*, 441 N.W.2d at 459 (stating that an issue raised for the first time on appeal could not be decided because of inadequate information in the trial court record).

Abdullah argues that if we decline to address the identification issue on appeal we should remand for “a hearing on ineffective assistance of counsel.” The preferred method for raising an ineffective-assistance-of-counsel claim is to petition for postconviction relief in district court. *State v. Christian*, 657 N.W.2d 186, 194 (Minn. 2003). Abdullah could have sought a stay of his appeal in order to file a postconviction petition on the ineffective-assistance-of-counsel argument and chose not to do so. *See Garasha v. State*, 393 N.W.2d 20, 22 (Minn. App. 1986) (stating that proper procedure for defendant intending to assert an ineffective-assistance-of-counsel claim is to first file direct appeal and then bring a motion to stay the direct appeal pending a postconviction hearing). Therefore we deny Abdullah’s request for a remand. Abdullah’s right to pursue an ineffective-assistance-of-counsel claim in a petition for postconviction relief in district court is preserved.

Affirmed.