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STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1508

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

Filed September 16, 2008
Affirmed and remanded
Toussaint, Chief Judge

Olmsted County District Court
File No. 55-JV-07-1669

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Mark A. Ostrem, Olmsted County Attorney, Karen A. Arthurs, Assistant County Attorney, 151 Fourth Street Southeast, Third Floor, Rochester, MN 55904 (for respondent State of Minnesota)

Considered and decided by Schellhas, Presiding Judge; Toussaint, Chief Judge; and Hudson, Judge.

UNPUBLISHED OPINION

TOUSSAINT, Chief Judge

At a dispositional hearing, appellant D.M.D. was adjudicated delinquent for aiding and abetting aggravated robbery. He challenges the adjudication, arguing that the

evidence does not support it. In the alternative, appellant agrees with respondent State of Minnesota that the dispositional order should be modified to reflect that appellant's adjudication was based only on the charge of aiding and abetting aggravated robbery.

Because a factfinder could reasonably have determined that appellant was guilty of aiding and abetting aggravated robbery, we affirm the adjudication; we remand for the purpose of modifying the order to specify that appellant's adjudication is based only on that determination.

D E C I S I O N

1. Sufficiency of the Evidence

On appeal from an adjudication of delinquency, this court "is limited to ascertaining whether, given the facts and legitimate inferences, a factfinder could reasonably make that determination." *In re Welfare of S.M.J.*, 556 N.W.2d 4, 6 (Minn. App. 1996). "We are required to view the record in the light most favorable to the determination and assume that the factfinder believed the testimony supporting the determination and disbelieved any contrary evidence." *Id.*

Appellant argues that the district court could not reasonably have determined that he aided and abetted aggravated robbery and aided and abetted threatening the use of force to compel acquiescence. But trial testimony supports the determination.

Appellant gave his BB gun to C.G., a friend, before the two of them went to a park. In the park, they saw and approached S.M., a school acquaintance, who was sitting in his car. C.G. got into the car and asked S.M. how much money there was in the wallet visible on S.M.'s leg. S.M. said he did not have any money. C.G. then showed S.M.

part of the BB gun concealed in the pocket of C.G.'s sweatshirt. S.M. testified that, when C.G. was threatening him with a gun, he "looked around to see where the other white male [i.e., appellant] was. And as soon as I looked over and see where he was he flashed a gun, too." S.M. testified further, "I saw him [appellant] wandering around the right side of my car and . . . he showed the clip of a—or the hammer of the silver—silver gun."

> To impose liability for aiding and abetting, the state must show that the defendant played a knowing role in the commission of the crime. . . . [A]ctive participation in the overt act that constitutes the substantive offense is not required, and a defendant's presence, companionship, and conduct before and after an offense is committed are relevant circumstances from which [the factfinder] may infer criminal intent.

State v. Gates, 615 N.W.2d 331, 337 (Minn. 2000), *overruled on other grounds by Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354 (2004). Physical and temporal proximity to the perpetrator and the victim while a crime is being committed support a verdict of aiding and abetting. *Id.* at 338. Assuming that the district court believed S.M.'s testimony, it could reasonably have determined that appellant was guilty of aiding and abetting aggravated robbery.

Appellant argues that, because C.G. testified he did not have a plan to rob S.M. when he and appellant got together, appellant could not have known C.G. planned to rob S.M., and therefore did not play "a knowing role in the commission of the crime." *Id.* at 337. But several circumstances, taken together, support the inference that appellant played a knowing role. Appellant knew C.G. had appellant's BB gun. Appellant and C.G. approached S.M.'s car together. Appellant was present near the car when C.G. took S.M.'s money and threatened S.M . The car window was partly open. Appellant testified

that he could see C.G. inside the car. S.M. testified that, after C.G. threatened him, S.M. looked at appellant, who was outside to the right of the car. Shortly after taking money from S.M., C.G. gave $5 to appellant, who accepted it, and gave the BB gun back to appellant, who accepted and concealed it.

"[Appellant's] presence, companionship, and conduct before and after an offense is committed are relevant circumstances from which [the factfinder] may infer criminal intent." *Id.*; *see also State v. Swanson*, 707 N.W.2d 645, 659 (Minn. 2006) (concluding that defendant intentionally aided kidnapping because he was at scene when victim was restrained and tied up; perpetrators were defendant's friends, defendant arrived with perpetrators, and defendant left scene of crime with perpetrators); *State v. Pierson*, 530 N.W.2d 784, 788-89 (Minn. 1995) (upholding conviction of accomplice based on witnesses' testimony that he was present during shooting of one victim, was friend of perpetrator and in his company before and during robbery of another victim, was aware that perpetrator possessed gun, participated in attempted robbery of shooting victim, did not object or protest when perpetrator first shot that victim, and fled scene with perpetrators). The district court's finding that appellant played a knowing role in the robbery of S.M. could be properly inferred from appellant's presence near the car, companionship with C.G., and conduct before, during, and after the robbery.

Particularly in light of the duty "to view the record in the light most favorable to the determination and assume that the factfinder believed the testimony supporting the determination and disbelieved any contrary evidence," *S.M.J.*, 556 N.W.2d at 6, we see no basis to reverse appellant's adjudication.

2. Dispositional Order

At the end of the trial, the district court explicitly found appellant guilty of both aiding and abetting aggravated robbery and aiding and abetting terroristic threats. At the dispositional hearing, the district court adjudicated him delinquent only of aggravated robbery. But the dispositional order lists as charges "1st Degree Aggravated Robbery, 2nd Degree Assault, Terroristic Threats" and states that appellant "is adjudicated delinquent" without specifying the charge or charges on which the adjudication is based. Respondent State of Minnesota agrees with appellant that the dispositional order should be modified to reflect that appellant was adjudicated delinquent only of aiding and abetting aggravated robbery. Thus, we remand for this modification.

Affirmed and remanded.