STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0353

In the Matter of the Welfare of: R. R., Child.

Filed November 23, 2020
Affirmed in part, reversed in part, and remanded
Florey, Judge

Lac qui Parle County District Court
File No. 37-JV-19-182

Cathryn Middlebrook, Chief Appellate Public Defender, Sara L. Martin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Richard G. Stulz, Lac qui Parle County Attorney, Lori Buchheim, Assistant County Attorney, Madison, Minnesota (for respondent)

Considered and decided by Florey, Presiding Judge; Hooten, Judge; and Gaïtas, Judge.

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

FLOREY, Judge

On appeal from an adjudication of delinquency, appellant argues that: (1) he was denied effective assistance of counsel; (2) the evidence was insufficient to support the adjudication for first-degree criminal damage to property; and (3) the district court failed to make the required findings that appellant had the ability to pay or that restitution would serve his rehabilitation. Because appellant was not denied effective assistance of counsel

and the evidence sufficiently supports his conviction, we affirm in part. Because the district court's restitution order did not make the requisite findings, we reverse and remand in part.

FACTS

On or about May 3, 2019, three businesses in downtown Dawson, Minnesota, were vandalized with black spray paint. Cumulatively, the damage was $1,306.

The state filed delinquency petitions against appellant R.R. and codefendant A.A., charging them with first-degree damage to property in violation of Minnesota Stat. § 609.595, subd. 1(4) (2018). The state and A.A.'s attorney proposed a joint trial for "judicial efficiency," and appellant's attorney did not object. Prior to trial, the court questioned both juveniles on proceeding with the joint trial. With their consent, the state prosecuted appellant and codefendant A.A. jointly.

At the bench trial, Officer Jordan Baldwin testified that surveillance footage from a nearby area led to the identification of appellant and A.A. The video footage showed A.A. and appellant: (1) running from Main Street to behind the pharmacy, near where the first act of vandalism occurred; (2) talking to appellant's parents; (3) running down Main Street and a back alley towards Lac qui Parle Mutual, one of the vandalized buildings; and (4) leaving Lac qui Parle Mutual.

Baldwin's interview with A.A. was admitted into evidence. A.A. initially denied any involvement in the vandalism, but later admitted that he and appellant "spray painted buildings, using black spray paint." During an interview with appellant and his mother, appellant admitted to "hanging out" with A.A. on the night in question but denied spray

painting the buildings. Outside of appellant's presence, his mother stated that appellant had access to cans of spray paint in their home. She testified at trial that there was a can of spray paint on her counter that had gone missing.

At trial, A.A. confirmed he was with appellant on the night in question but denied spray painting the buildings. The district court found both appellant and A.A. guilty of first-degree damage to property. The court adjudicated appellant delinquent, placed him on probation, and ordered him to pay joint and several restitution. This appeal follows.

D E C I S I O N

Ineffective Assistance of Counsel

Appellant first argues he was denied effective assistance of counsel because his attorney failed to adequately advise him of the potential ramifications of a joint trial and that he was prejudiced by the joint trial due to the admission of A.A.'s statement to the investigating officer implicating appellant.

This court reviews ineffective-assistance-of-counsel claims under the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668, 687 (1984). In order to prevail, appellant must prove: (1) defense counsel's representation fell below "an objective standard of reasonableness" and (2) a reasonable probability exists that, but for counsel's errors, the proceeding would have resulted in a different outcome. *Scruggs v. State*, 484 N.W.2d 21, 25 (Minn. 1992) (quoting *Strickland*, 466 U.S. at 688, 694).

The Confrontation Clause bars the "admission of testimonial out-of-court statements unless the declarant is unavailable and the defendant had a prior opportunity to cross-examine the declarant. *Andersen v. State*, 830 N.W.2d 1, 9 (Minn. 2013) (citing

Crawford v. Washington, 541 U.S. 36, 68 (2004)). Thus, in a joint trial, a defendant's Confrontation Clause rights are violated when an "out-of-court confession of a nontestifying codefendant that implicates the defendant is introduced into evidence." *State v. Usee*, 800 N.W.2d 192, 197 (Minn. App. 2011) (citation omitted).

Here, A.A.'s statement implicating himself and R.R would only be admissible if he testified, regardless of whether the codefendants were tried jointly or separately. As appellant points out, in separate trials, A.A. could have invoked his Fifth Amendment privileges, rendering his out-of-court statement inadmissible. But here, A.A. did testify and was subject to cross-examination. Similarly, A.A.'s statement would have been inadmissible at the joint trial if he elected not to testify. However, we cannot preclude other scenarios that would have allowed A.A.'s statement in separate trials, such as the admission of the statement for impeachment purposes or if A.A. were tried first. Presumably, defense counsel considered these scenarios and weighed the advantages and disadvantages of joinder before rendering advice. Further, the record indicates that it was the trial strategy of both counsel for appellant and A.A. to attack A.A.'s statement as the product of suggestive interview techniques by the officer, and thus, not a credible confession. *See Crow v. State*, 923 N.W.2d 2, 14 (Minn. 2019) ("This court does not review matters of trial strategy or the particular tactics used by counsel.")

Although we cannot be certain exactly what defense counsel advised appellant out of court concerning the advantages and disadvantages of a joint trial, the record clearly establishes that the district court informed appellant that A.A.'s testimony could be used against him. During two separate on-the-record conversations, appellant was made aware

of the potential ramifications of proceeding with a joint trial, including the use of incriminating testimony elicited from his codefendant against him. Appellant confirmed that he understood these risks, and nonetheless wanted to proceed with the joint trial.[1]

Appellant asserts that the court's advisory alone was insufficient because he was not explicitly informed that A.A.'s prior statement could be used against him. He argues that a heightened standard should apply where the defendant is a juvenile. As part of this argument, appellant points to *In re Welfare of B.R.C.*, where this court held that the consent of a juvenile defendant must be express and placed on the record before a concession of guilt can be made as part of a trial strategy. 675 N.W.2d 348, 352-53 (Minn. App. 2004). However, unlike a defendant's right to plead guilty, joinder and severance of defendants is a procedural issue not subject to the rigorous waiver standard applicable to fundamental rights. *Santiago v. State*, 644 N.W.2d 425, 444 (Minn. 2002). Appellant fails to cite any directly applicable legal authority for the proposition that the district court's acknowledgement of risk was insufficient for a juvenile in this proceeding.

Further, even if a different attorney would have opposed the joint trial, and assuming the district court would have granted separate trials for the two juveniles, there is not a reasonable probability that the outcome would have been different because there was sufficient evidence to support appellant's delinquency adjudication. Although A.A.'s admission did directly implicate appellant, the circumstantial evidence was sufficient to

[1] Although not addressed below by the district court or counsel, we observe that Minn. R. Juv. Delinq. P. 13.07, provides that it is in the discretion of the court whether two or more juvenile defendants are tried jointly or separately, and in this appeal, it is not being claimed that the district court abused its discretion.

prove beyond a reasonable doubt that appellant committed first-degree damage to property. *See State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010) (noting that this court views the circumstances as a whole to determine whether they form a "complete chain" that "leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt."). The evidence presented at trial established that appellant and A.A. were walking and running around the vicinity of the vandalized buildings on the night in question, and that appellant had access to a can of black spray paint that later went missing from appellant's home. Further, A.A. and appellant were the only suspects shown on the video footage. Collectively, this evidence creates the only reasonable inference that A.A. and appellant vandalized the buildings and sufficiently supports appellant's delinquency adjudication. Absent A.A.'s statement, the record still contains sufficient evidence to adjudicate appellant delinquent of first-degree damage to property.

Because there is a strong presumption that counsel acted appropriately, and because the record before this court shows that appellant was warned of the potential consequences of a joint trial, defense counsel's actions were not objectively unreasonable. *See Crow*, 923 N.W.2d at 14. Further, because the circumstantial evidence sufficiently supports appellant's delinquency adjudication, there is not a reasonable probability that separate trials would have produced a different result.

Sufficiency of Evidence

Appellant also argues that there was insufficient evidence to: (1) prove that he personally caused over $1,000 of property damage in the absence of an aiding-and-abetting charge and (2) corroborate A.A.'s statement directly implicating him.

In a delinquency adjudication, the state is required to prove every element of the charged crime beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 368 (1970). In order to convict appellant of first-degree damage to property, the state was required to prove beyond a reasonable doubt that he "intentionally cause[d] damage to physical property of another without the latter's consent" and "the damage reduce[d] the value of the property by more than $1,000 measured by the cost of repair and replacement." Minn. Stat. § 609.595, subd. 1(4). When reviewing the sufficiency of evidence to support a conviction, this court conducts a "painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction," is sufficient to allow a factfinder to reach a verdict of guilty. *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (quotation omitted).

Appellant contends that, because this was not charged as an aiding-and-abetting case, the state had to prove that he, as the principal, personally caused at least $1,000 worth of damage. Appellant further argues that there was insufficient evidence to corroborate the only direct evidence that he actually caused the property damage—A.A.'s statement to the investigating officer. A conviction may not be based on the testimony of an accomplice "unless it is corroborated by such other evidence as tends to convict the defendant of the commission of the offense." Minn. Stat. § 634.04 (2018). Sufficient corroborative

evidence may include factors such as appellant's association with those involved in the crime, opportunity to commit the crime, and proximity to the crime scene. *State v. Adams*, 295 N.W.2d 527, 533 (Minn. 1980). This court views corroborating evidence in the light most favorable to the verdict. *State v. Pederson*, 614 N.W.2d 724, 732 (Minn. 2000).

The circumstantial evidence is sufficient to corroborate the accomplice testimony that appellant caused the damage, including: (1) video footage; (2) appellant's mother's testimony; and (3) appellant's admission. Here, appellant's association with A.A. is undisputed, and he conceded to being with A.A. on the night in question. Both the video footage and appellant's mother's testimony place appellant and A.A. in close proximity to the vandalized buildings at the time they were damaged. Further, appellant's mother testified that appellant had access to a can of black spray paint that went missing from her home, which established appellant's opportunity to commit the crime. When viewed in a light most favorable to appellant's adjudication, there was sufficient evidence to corroborate A.A.'s testimony, which directly implicates appellant as a principal in the commission of the offense, which involved damage in excess of $1,000. *See State v. Ezeka*, 946 N.W.2d 393, 408 (Minn. 2020) (observing that there is no need to rely on aiding-and-abetting theory of liability when the criminal act is committed by the accused because a person is directly liable for his actions as a principal).

Because A.A.'s testimony was sufficiently corroborated, and because we assume the fact-finder believed testimony supporting the adjudication of delinquency and disbelieved contrary evidence, we conclude that there was sufficient evidence in the record to support the adjudication. *See, e.g., State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016)

(holding that evidence must be 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).

Restitution

Appellant challenges the district court's award of restitution, arguing that the district court's order did not include required findings as to whether appellant had the ability to pay and whether restitution would serve appellant's rehabilitation. In juvenile delinquency cases, restitution is governed by both the restitution provision of the delinquency statutes, and the general restitution statute. *In re Welfare of H.A.D.*, 764 N.W.2d 64, 66 (Minn. 2009) (citing Minn. Stat. § 260B.189, subd. 1(5); Minn. Stat. § 611A.04, subd. 1). We review applications of these statutes to undisputed facts de novo. *Id.*

Where a juvenile's conduct results in damage to the property of another, the court may order "reasonable restitution" when "necessary to the rehabilitation of the child." Minn. Stat. § 260B.198, subd. 1(5) (2018). When ordering restitution, the court must consider the "economic loss sustained by the victim[s]" and the "income, resources, and obligations of the defendant." Minn. Stat. § 611A.045, subd. 1(a)(2) (2018). The court's order for a disposition "shall contain written findings of fact to support the disposition ordered." Minn. Stat. § 260B.198, subd. 1(b) (2018); *In re Welfare of I.N.A.*, 902 N.W.2d 635, 642 (citing Minn. R. Juv. Del. P. 1505, subd. 2(a)). Failure to make the requisite written findings in a juvenile delinquency dispositional order amounts to a reversible error requiring remand. *Id.*

Because the district court failed to make written findings addressing appellant's income, resources, or obligations in its February 2020 restitution order, we reverse and remand to the district court to make these required findings.

Affirmed in part, reversed in part, and remanded.