

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0602**

State of Minnesota,
Respondent,

vs.

Sao Yim, Jr.,
Appellant.

**Filed February 14, 2022
Affirmed
Florey, Judge**

Olmsted County District Court
File No. 55-CR-18-1865

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

Mark A. Ostrem, Olmsted County Attorney, James E. Haase, Assistant County Attorney,
Rochester, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

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

NONPRECEDENTIAL OPINION

FLOREY, Judge

Appellant argues that his convictions of second-degree unintentional felony murder and possession of a firearm by an ineligible person are based on insufficiently corroborated accomplice testimony and must therefore be reversed. We affirm.

FACTS

Respondent State of Minnesota charged appellant Sao Yim, Jr., with second-degree unintentional felony murder in violation of Minn. Stat. § 609.19, subd. 2(1) (2016), and possession of a firearm by an ineligible person in violation of Minn. Stat. § 624.713, subd. 1(2) (2016). Appellant waived his right to a jury trial, and the case was tried to the district court.

The testimony at trial established that appellant and his three friends, Eric Lee, Traequan Bamlounghong, and Deante Stanifer, gathered at appellant's townhome, which he shared with his girlfriend. After appellant and his girlfriend observed a car hit appellant's parked car, the four men went outside to investigate the collision. Appellant's girlfriend remained inside.

The car that appellant believed to have struck his car belonged to A.A.N. (the victim). As the four men looked at appellant's car, the victim approached. Appellant and the victim argued about the collision, with the victim denying that he hit appellant's car.

Lee, Bamlounghong, and Stanifer each testified about what happened next.

Lee's Testimony

Lee testified that appellant pulled out a gun. The victim then pulled out his cell phone, apparently to record the four men. At that point, the four men ran away. The victim chased appellant, with Lee following behind the victim. Lee observed appellant "twist over his shoulder" and "shoot [the victim]." The victim fell to the ground. Lee passed the victim, but, at appellant's instruction, returned to retrieve the victim's cellphone. Appellant

and Lee then returned to the townhome with the victim's cellphone and proceeded to appellant's bedroom. The district court found Lee's testimony credible.

Bamlounghong's Testimony

Bamlounghong testified that after appellant and the victim began arguing about the collision, the victim pulled out his cellphone and pointed it at the four men. After that, appellant pulled out "something that looked like a gun and pointed it towards [the victim]." The four men then ran away, and Bamlounghong heard a gunshot. He ran around the housing complex before returning to the townhome sometime after appellant and Lee. He testified that neither he, Lee, nor Stanifer had a gun on the night of the incident. He also stated that he did not see appellant with a gun. The district court found Bamlounghong's testimony credible.

Stanifer's Testimony

Stanifer testified that the victim came running at the four men with his cellphone out, and the other three then ran away. He heard a gunshot, at which point he also started running. He went to a friend's house for the rest of the night. Stanifer testified that neither he, Bamlounghong, nor Lee had a gun on that night and that he did not see a gun or know whether appellant had a gun. The district court also found Stanifer's testimony credible.

Other Testimony and Evidence

Appellant's girlfriend also testified, stating that the four men went outside to investigate the collision, and she stayed inside. Subsequently, she heard a loud bang and looked out the window, observing a person on the ground and two individuals running left and two running right. She testified that appellant and Lee returned to the townhome a

little later and went upstairs to appellant's bedroom, eventually joined by Bamlounghong. She stated that less than a week prior to the incident, she had picked up appellant's jacket and found a "black handgun" in its pocket. The district court found her testimony credible.

Surveillance cameras picked up parts of the incident, and the district court accepted the surveillance video into evidence at trial. The district court found that the surveillance video showed one person approaching the area where appellant parked his vehicle, four people approaching the area from the direction of appellant's townhome, a person falling to the ground, two people running to the left, those two people returning to the fallen person, one of the two bending down by the fallen person, and those same two people approaching the back door of the townhome.

On the evening of the incident, law enforcement responded to a 911 call reporting shots fired. An officer tried to help the victim, who had been shot in the chest and was pronounced dead at the scene. Another officer found a .22 magnum rimfire bullet casing with an "H" on it near the victim's body.

On the day after the incident, officers executed a search warrant at the townhome. In appellant's bedroom, the officers found a wallet containing appellant's ID; a jacket containing Bamlounghong's ID; a backpack containing Lee's ID as well as .380 caliber and 9 millimeter ammunition; and, between the mattress and box spring, an iPhone later identified as belonging to the victim. The officers found a .22 caliber semi-automatic handgun and two boxes (one empty) of .22 caliber Hornady brand ammunition in the bedroom's floor vent. The bullet casing found near the victim's body was "similar in brand, caliber and style" to the ammunition found in the floor vent.

DNA evidence obtained from the victim's iPhone revealed a mix of four or more individuals' DNA and was compared with samples from appellant, Lee, Bamlounghong, and Stanifer. A major profile matched appellant. The gun found in appellant's bedroom was also tested for DNA evidence, but the DNA found on the gun was a mixture of five or more individuals and a major profile could not be identified.

Appellant did not testify at trial, but the district court accepted a video recording of his statement to police after the incident. There, appellant stated that he was sleeping during the incident and had no idea what happened. The district court found that his false statement was "evidence of [appellant's] consciousness of guilt."

After receiving written closing arguments from the parties, the district court found appellant guilty and convicted him of both counts. It sentenced appellant to a 180-month prison term for the unintentional-felony-murder count to be served concurrently with a 60-month term for the ineligible-person-in-possession-of-a-firearm count. This appeal follows.

DECISION

Appellant argues that Lee, Bamlounghong, and Stanifer are all accomplices and that his convictions must be reversed because they rest on these witnesses' insufficiently corroborated testimony. We disagree.

A person may not be convicted solely on the testimony of an accomplice. Minn. Stat. § 634.04 (2020). This is because accomplice testimony, which may be motivated by a promise of immunity or other suspect reasons, is "inherently untrustworthy." *State v. Strommen*, 648 N.W.2d 681, 689 (Minn. 2002). Accomplice testimony must therefore be

“corroborated by such other evidence as tends to convict the defendant.” Minn. Stat. § 634.04 (2016).

We must first determine whether the district court clearly erred by finding that Lee, Bamlounghong, and Stanifer were not accomplices. A witness is an accomplice if the witness could have been charged with and convicted of the crime with which the defendant was charged. *State v. Pendleton*, 759 N.W.2d 900, 907 (Minn. 2009). The test for whether a witness might have been charged with and convicted for another’s offense asks whether the witness “intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime.” Minn. Stat. § 609.05 (2020); *see also Pendleton*, 759 N.W.2d at 907. To meet this statutory test, the witness must play a knowing role in the crime and take no steps to thwart it. *State v. Ostrem*, 535 N.W.2d 916, 924 (Minn. 1995). The witness’s “mere presence at the scene” is insufficient, *Pendleton*, 759 N.W.2d at 907, unless it “somehow aids the commission of the crime,” *Ostrem*, 535 N.W.2d at 925. “[I]naction, knowledge, or passive acquiescence” also do not make a witness an accomplice. *Ostrem*, 535 N.W.2d at 924. But we may look to the witness’s “presence, companionship, and conduct” before and after the crime to infer criminal intent. *Id.*

When whether a witness is an accomplice is disputed, it is an issue of fact for the jury. *Pendleton*, 759 N.W.2d at 907. In this case, appellant waived his right to a jury trial, so the district court was the factfinder. Appellate courts review a district court’s findings of fact for clear error, asking whether “there is reasonable evidence to support” the findings. *State v. Colvin*, 645 N.W.2d 449, 453 (Minn. 2002).

Appellant disputes the district court's finding that Lee, Bamlounghong, and Stanifer were not accomplices because: (1) all three men knew appellant's vehicle had been hit; (2) all three men went outside to confront the victim together with appellant; (3) all three men were present during the commission of the crime; (4) none of the three men did anything to stop appellant when he allegedly took out his gun; (5) all three men fled the scene along with appellant; and (6) all three men initially lied to police.

However, none of these circumstances indicate that Lee, Bamlounghong, or Stanifer played a knowing role in the shooting.¹ *Ostrem*, 535 N.W.2d at 924. Although all three were present during the confrontation with the victim, the evidence does not support appellant's assertion that the four men went outside specifically to confront the victim. Rather, the evidence indicates that they went outside to investigate the collision. Additionally, only appellant appears to have spoken to the victim. No evidence suggests that Lee, Bamlounghong, or Stanifer knew that appellant had a gun, let alone that he would use it. And the supreme court has stated that lying to the police to cover up a crime after the fact does not make a witness an accomplice. *See State v. Cox*, 820 N.W.2d 540, 550 (Minn. 2012) (noting that witness lied to police after crime was committed but concluding that no accomplice instruction was necessary). Thus, the three witnesses were present at the crime scene but did not knowingly participate in the shooting. Because mere presence is insufficient and an accomplice must instead play a "knowing role" in the crime, we

¹ Although Lee picked up the victim's cellphone at appellant's direction, the state charged Lee as an accessory after the fact for that action. An accessory after the fact is not an accomplice. *State v. Henderson*, 620 N.W.2d 688, 701 (Minn. 2001).

conclude that the district court did not clearly err by finding that Lee, Bamlounghong, and Stanifer were not accomplices.

Appellant cites two cases in which the alleged accomplices did not actively participate in the crime but were nevertheless found to be accomplices. *See Ostrem*, 535 N.W.2d at 926; *State v. Barrientos-Quintana*, 787 N.W.2d 603 (Minn. 2010). Both cases are distinguishable. In *Ostrem*, the state presented evidence of the defendant's presence for the duration of a burglary and theft, failure to thwart those crimes, and passive acquiescence to another participant covering up those crimes *while they were in progress*. 535 N.W.2d at 925-26. And the crimes took place over the course of an entire morning. *Id.* at 918. Here, in contrast, the shooting took place within minutes so that the witnesses had little to no opportunity to thwart it. And their actions of covering up the crime by lying occurred afterward at most make them accessories after the fact rather than accomplices. *See Henderson*, 620 N.W.2d at 701.

In *Barrientos-Quintana*, the witness and two others planned to go to a house to shoot someone, and, despite knowing that plan, the witness remained with the group before, during, and after the shooting. 787 N.W.2d at 611-12. The supreme court noted that it has found accomplice liability in similar cases in which the witness "must have known of the crime and made no effort to stop it." *Id.* at 612 (quoting *Ostrem*, 535 N.W.2d at 925) (alteration in original). Here, in contrast, the shooting occurred as a reaction to a recently occurring event and a rapidly escalating confrontation. No evidence suggests that any of the three witnesses helped plan the shooting or knew that appellant had a gun or planned to use a gun; thus, they had no opportunity to stop the shooting.

Because we conclude that the district court did not clearly err by finding that Lee, Bamlounghong, and Stanifer were not accomplices, we need not address whether these witnesses' testimonies were sufficiently corroborated.

Affirmed.