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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-412**

State of Minnesota,
Respondent,

vs.

Jon Wayne Kruse,
Appellant.

**Filed March 9, 2010
Affirmed
Peterson, Judge**

Pennington County District Court
File No. 57-K7-06-117

Lori Swanson, Attorney General, Paul R. Kempainen, Assistant Attorney General, St. Paul, Minnesota; and

Alan G. Rogalla, Pennington County Attorney, Thief River Falls, Minnesota (for respondent)

Steven J. Meshbesh, Kevin M. Gregorius, Meshbesh & Associates, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Peterson, Judge; and Wright,
Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from convictions of conspiracy to manufacture methamphetamine, aiding and abetting the manufacture of methamphetamine, and possession of a precursor with intent to manufacture methamphetamine, appellant argues that because the accomplice testimony was not sufficiently corroborated, the district court erred in finding him guilty. We affirm.

FACTS

On February 15, 2006, appellant Jon Wayne Kruse's former girlfriend, Carol Strand, went to appellant's house to collect money that he owed her. Appellant asked Strand to buy Sudafed for him and said that he had someone who would cook it into methamphetamine. Ephedrine and pseudoephedrine are precursor chemicals used in manufacturing methamphetamine and can be extracted from over-the-counter products, including decongestants and Sudafed. In February 2006, pharmacies required people who bought products containing pseudoephedrine or ephedrine to sign a log that identified the purchaser and listed the number of milligrams purchased. Strand went to Grand Forks to buy the Sudafed but declined to buy the kind behind the counter that she would have had to sign for and instead bought a product off the shelf that contained a different ingredient. Strand told appellant that she had bought the wrong product, and appellant told her to call him in the morning. The same day, appellant bought a box of Contac cold medicine at a pharmacy in Thief River Falls.

The next day, at 11:37 a.m., Strand called Red Lake County Sheriff's Deputy Brad Johnson, with whom she had had previous contacts, and reported what appellant was asking her to do. Johnson told Strand that he would get back to her and not to do anything until he did. At 11:53 a.m., Johnson called Pennington County Sheriff's Deputy Blaize Zimmerman to discuss the best way to proceed. Based on the information received from Strand, the deputies believed there was a possibility that a clandestine methamphetamine lab was operating in or near Thief River Falls. They concluded that they needed to learn more about the location of the lab and the persons involved before proceeding further. At 12:24 p.m., Johnson called Strand and told her not to buy the cold medicine for appellant.

Notwithstanding Johnson's instructions, Strand went to appellant's house. Appellant gave Strand a cold-medicine label with the name of a cold medicine handwritten on the back and told her that that was the type of cold medicine he needed her to buy. Appellant wanted Strand to get eight to ten boxes of cold medicine, but she bought four from three different stores. After buying the last box, Strand called appellant from a payphone at 3:55 p.m., and he instructed her to leave the cold medicine in the back seat of a truck that belonged to appellant and was parked at P.M.'s house in Thief River Falls.

Strand called Johnson and told him that she had bought the pills and left them in appellant's truck. Johnson, who was about five minutes from Strand's house, went there to meet with her. Johnson took a recorded statement from Strand, in which she described the events of February 15 and 16, 2006.

At about 5:00 p.m., Johnson was approaching P.M.'s residence when he saw a black Chevy Avalanche and recognized appellant as the driver. Johnson parked nearby, where he could watch appellant. Johnson saw appellant stop at P.M.'s residence, get out of his vehicle, walk to the truck, and remove something from behind the seat. Johnson followed appellant, who drove directly to Brian Wilde's home, and saw appellant and Wilde go into Wilde's garage.

About 15 minutes after arriving, appellant left the Wilde residence. A short time later, Johnson and Zimmerman, who had come to assist, saw Wilde leave his house in his vehicle. Wilde made purchases at a convenience store, a grocery store, and a K-Mart. Among the items purchased were coffee filters, which are commonly used in manufacturing methamphetamine, and paper towels, which can also be used as filters and which are often used for clean-up when working with solvents because paper towels can easily be destroyed by fire. Wilde then returned home, and Thief River Falls Police Officer Chris Hoglin conducted surveillance at the Wilde residence while Johnson and Zimmerman left to apply for a search warrant.

Hoglin saw appellant drive his Avalanche to Wilde's house at about 7:00 p.m. Hoglin watched appellant and Wilde make several trips between the garage area and the vehicles parked in the driveway. Almost two hours later, Hoglin saw appellant and a female leave the Wilde residence in the Avalanche.

A search warrant was executed at the Wilde residence within a few minutes after appellant left. Hoglin, who is a clandestine-lab investigator, noted a very strong anhydrous-ammonia smell as he approached Wilde's garage, which indicated to Hoglin

that a methamphetamine lab was in operation. As Zimmerman approached the garage, he noted a strong solvent smell and the odor of anhydrous ammonia, which indicated to him that methamphetamine was being manufactured in the garage. Officers seized numerous items that indicated an active meth lab was being operated in the garage, including four boxes of pseudoephedrine pills.

Appellant was charged with one count each of conspiracy to manufacture methamphetamine in violation of Minn. Stat. §§ 152.021, subd. 21(a), .096, subd. 1 (2004); aiding and abetting the manufacture of methamphetamine in violation of Minn. Stat. §§ 152.021, subd. 2a(a), 609.05 (2004); and possession of substances with intent to manufacture methamphetamine in violation of Minn. Stat. § 152.0262, subd. 1 (2004). Appellant waived his right to a jury trial, and the case was tried to the district court.

At trial, Wilde admitted operating a methamphetamine lab in his garage. Wilde testified that appellant brought him a bag containing packages of Sudafed pills and that Wilde had agreed to give appellant methamphetamine in exchange for the Sudafed.

Strand testified that the four boxes of pseudoephedrine pills found in Wilde's garage matched the boxes that she bought for appellant. Four lithium batteries were found next to the four boxes of pseudoephedrine pills in the garage. A state investigator testified that lithium is an ingredient used in manufacturing methamphetamine and that the location of the lithium batteries next to the pseudoephedrine pills indicated that the pills were intended for use in manufacturing methamphetamine.

Appellant testified at trial that Strand visited him on February 15, 2006, demanding money that he owed her. Appellant testified that he was sick with a cold, and

the only conversation that he had with Strand concerned the money he owed her. According to appellant, Strand called the next day, said she would be going into town, and asked if appellant wanted anything. Appellant said that he could use some peroxide. Strand called later to say that she was running late and would leave the peroxide in appellant's truck. Appellant testified that Strand said that she also left a bag in the truck for Wilde, and she asked appellant to bring the bag to Wilde for her. Appellant testified that he delivered the bag to Wilde without looking inside.

The district court found appellant guilty as charged and sentenced him to concurrent, executed terms of 86 months for the conspiracy offense and 110 months for the aiding-and-abetting offense. This appeal followed.

D E C I S I O N

Appellant argues that the corroboration of the accomplice testimony was insufficient to support his convictions.

A conviction cannot be had upon 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, and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof.

Minn. Stat. § 634.04 (2008). It is undisputed that Strand and Wilde, who both pleaded guilty to first-degree controlled-substance charges, are accomplices. *See State v. Swyningan*, 304 Minn. 552, 555, 229 N.W.2d 29, 32 (1975) (defining accomplice as witness who could have been indicted and convicted for same crimes with which defendant is charged).

“When reviewing the sufficiency of evidence to corroborate accomplice testimony, we view the evidence in the light most favorable to the [verdict] and all conflicts in the evidence are resolved in favor of the verdict.” *Turnage v. State*, 708 N.W.2d 535, 543 (Minn. 2006) (quotation omitted). Corroborating evidence “need not establish a prima facie case of the defendant’s guilt[.]” *State v. Johnson*, 616 N.W.2d 720, 727 (Minn. 2000). But it “must be weighty enough to restore confidence in the accomplice’s testimony, confirming its truth and pointing to the defendant’s guilt in some substantial way.” *State v. Hooper*, 620 N.W.2d 31, 39 (Minn. 2000) (quotation omitted). Corroboration through the testimony of another accomplice is insufficient. *In re Welfare of K.A.Z.*, 266 N.W.2d 167, 169 (Minn. 1978).

Corroborating evidence may be direct or circumstantial, and it need not corroborate the accomplice’s testimony on every point. *State v. England*, 409 N.W.2d 262, 264 (Minn. App. 1987). “The defendant’s entire conduct may be looked to for corroborating circumstances. If his [or her] connection to the crime may be fairly inferred from those circumstances, the corroboration is sufficient.” *State v. Adams*, 295 N.W.2d 527, 533 (Minn. 1980).

The corroborating evidence in this case is very strong. First, officers’ observations corroborated Strand’s report that appellant would be getting a package from the backseat of his truck and delivering it to Wilde. Hoglin saw appellant later return to Wilde’s residence and spend about two hours there, during which appellant and Wilde made several trips between the garage area and vehicles parked in the driveway. Within a few minutes after appellant left Wilde’s residence, officers executed a search warrant on

Wilde's residence and found a methamphetamine lab operating in the garage. Appellant's claim that he was not present when the methamphetamine lab was operating is inconsistent with the officers' detection of a strong solvent smell and a very strong smell of anhydrous ammonia.

Second, appellant admitted that he bought Contac cold tablets on February 15, 2006; met with and talked to Strand on the phone a total of ten times on February 15 and 16, 2006; picked up a bag from behind the seat of the truck early in the evening on February 16, 2006, and then drove directly to Wilde's house; delivered the bag to Wilde, whom appellant knew to be a methamphetamine user; and spent almost two hours at the Wilde residence later that evening. *See Adams*, 295 N.W.2d at 533 ("Corroborating evidence may be secured from the defendant's association with those involved in the crime in such a way as to suggest joint participation, as well as from the defendant's opportunity and motive to commit the crime and his proximity to the place where the crime was committed.").

Third, four boxes of pseudoephedrine pills, as described by Strand, were found in Wilde's garage. Appellant's own testimony shows that he delivered those boxes to Wilde. *See State v. Pederson*, 614 N.W.2d 724, 732 (Minn. 2000) (stating that corroborating evidence may consist of "physical evidence associated with the crime"). Appellant's presence at the garage when the methamphetamine lab was operating undercuts his claim that he was asked to pick up the package from his truck and deliver it to Wilde but did not know what was in the package.

Appellant also argues that the evidence was insufficient to support his convictions because his conduct was as consistent with his explanation of his innocence as with his guilt. But the fact-finder “has no obligation to believe a defendant’s story.” *State v. Ostrem*, 535 N.W.2d 916, 923 (Minn. 1995). And circumstantial evidence need not exclude the possibility of innocence; it need only make that possibility seem unreasonable. *State v. Anderson*, 379 N.W.2d 70, 78 (Minn. 1985).

The evidence was sufficient to support appellant’s convictions.

Affirmed.