STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2246

State of Minnesota,
Respondent,

vs.

Edisson Daniel Lema,
Appellant.

Filed December 28, 2010
Affirmed
Connolly, Judge

Hennepin County District Court
File No. 27-CR-09-29239

Lori A. Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Paul Scoggin, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Bradford S. Delapena, Special Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Klaphake, Judge; and Connolly, Judge.

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

CONNOLLY, Judge

Appellant argues that the evidence was insufficient to support his convictions of aiding and abetting attempted intentional second-degree murder for the benefit of a gang and aiding and abetting second-degree assault. Because there was sufficient evidence to support the two convictions, we affirm.

FACTS

On February 27, 2009, appellant Edisson Lema, age 17, and his friend E.M., also a juvenile, both members of the South Size Raza gang (SSRG), were on the second floor of a shopping mall. They were seen by C.C., age 18, a member of the rival Vatos Locos gang (VLG), and four young men who were with him, including J.V., age 15; and N.G., age 14, who were on the first floor. The members of each gang made signs that disparaged the other.

Appellant and E.M. then came down to the first floor, and appellant suggested the two groups go outside to fight. Five of the young men then went to the parking lot, where appellant fought first with J.V., and then with N.G., while E.M. fought with C.C.

A surveillance video photo shows that appellant was standing very close to E.M. and was looking at him. When appellant was questioned about the photo during his testimony, he gave the following answers:

> THE PROSECUTOR: And in fact, you are in very close proximity facing [E.M.], aren't you?
> THE DEFENDANT: Yes.
> THE PROSECUTOR: Actually it looks like you are having a conversation with him?

> THE DEFENDANT: Does it look like we are having a conversation?
> THE PROSECUTOR: You appear to be having a conversation with your friend.
> THE DEFENDANT: Is there a recording of the conversation?
> THE PROSECUTOR: I'm referring to the stance and way you are facing your friend.
> THE DEFENDANT: Right, but who knows if we were talking to each other.

The surveillance camera did not record sound.

E.M. took a gun from his backpack and first shot C.C., wounding him in the torso; he then sprayed the building with shots, one of which hit J.V. in the leg.

C.C., J.V., and N.G. all testified that appellant told E.M. to shoot C.C., but their testimony differs as to what appellant actually said. C.C. testified that appellant yelled to E.M. in Spanish, "Matalos, matalos," (meaning, "Kill them, kill them"). J.V. testified that appellant "told [E.M.] to pull out the gun, but in English, and he said, 'Blast that sh[--],'" (referring to C.C.). N.G. was asked, "Before [E.M.] fired the gun, did [appellant] do something . . . ?"; N.G. answered, "[Appellant] told [E.M.] to take it out and shoot, shoot him so – something like that." N.G. also testified that appellant was speaking English at the time.

Appellant was certified for adult prosecution. He waived his right to a jury trial. After a bench trial, the district court found him guilty of one count of aiding and abetting attempted intentional second-degree murder for the benefit of a gang in regard to C.C. and one count of aiding and abetting second-degree assault in regard to J.V.

Appellant challenges his convictions, arguing that the evidence was not sufficient to support them.

D E C I S I O N

This court "review[s] criminal bench trials the same as jury trials when determining whether the evidence is sufficient to sustain convictions." *State v. Hough*, 585 N.W.2d 393, 396 (Minn. 1998). Review on a challenge to the sufficiency of the evidence "is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did." *State v. Bakken*, 604 N.W.2d 106, 111 (Minn. App. 2000) (quotation omitted), *review denied* (Minn. Feb. 24, 2000).

To convict appellant of aiding and abetting the attempted intentional second-degree murder of C.C. for the benefit of a gang[1] and the attempted second-degree assault of J.V., the state had to prove that he intentionally aided, advised, hired, counseled, or conspired with E.M. or otherwise procured E.M. to shoot C.C. and J.V. *See* Minn. Stat. § 609.05, subd. 1 (2008); *see also State v. Mahkuk*, 736 N.W.2d 675, 682 (Minn. 2007) ("[To prove aiding and abetting, the state had to prove that the defendant] knew that his alleged accomplices were going to commit a crime and that [he] intended his presence or

[1] Appellant does not appear to dispute that this crime was committed for the benefit of a gang. *See* Minn. Stat. § 609.229, subds. 1 (defining a "criminal gang" as a group of three or more persons that has, (1) as a primary activity, committing such crimes as murder, assault, burglary, kidnapping, false imprisonment, manslaughter, and robbery, (2) a common name and identifying sign or symbol, and (3) members who have engaged in a pattern of criminal activity); 2 (providing that "[a] person who commits a crime for the benefit of, at the direction of, in association with, or motivated by involvement with a criminal gang, with the intent to promote, further, or assist in criminal conduct by gang members is guilty of a crime") (2008).

actions to further the commission of that crime."); *State v. Gates*, 615 N.W.2d 331, 337 (Minn. 2000) ("To impose liability for aiding and abetting, the state must show that the defendant played a knowing role in the commission of the crime.") *overruled on other grounds by Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354 (2004); *State v. Russell*, 503 N.W.2d 110, 114 (Minn. 1993) ("To impose liability for [aiding and abetting], the state must show that the defendant encouraged the principal to take a course of action which he might not otherwise have taken." (quotation omitted)).

Appellant argues that the state cannot prove aiding and abetting because the testimony of C.C., J.V., and N.G. was "hopelessly inconsistent." The district court found that "[t]heir testimony was consistent regarding [appellant] and his statement directing [E.M.] to shoot [C.C.]" The evidence supports this finding. All three testified that, prior to E.M. firing any shots, appellant told him to shoot.

> This court has recognized that inconsistencies and conflicts in some particular area between one state witness and another do not constitute false testimony nor any basis for reversal. They are a sign of the fallibility of human perception—not proof that false testimony was given at trial. This is especially true when the testimony goes to the particulars of a traumatic and extremely stressful incident.

State v. Stufflebean, 329 N.W.2d 314, 319 (Minn. 1983) (quotation and citation omitted); *see also Bakken*, 604 N.W.2d at 111 (citing *Stufflebean* and rejecting argument that 13-year-old victim's prior inconsistent statements contributed to an evidentiary deficiency). Here, all three witnesses had been involved in a traumatic and extremely stressful incident; C.C. and J.V. were its victims. Their failure to agree on appellant's wording

when he told E.M. to take the gun and shoot does not indicate that their testimony was false or provide a basis for reversal.

Affirmed.