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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1246**

In the Matter of the Welfare of: J. S. H., Child

**Filed June 2, 2009
Affirmed
Randall, Judge***

Anoka County District Court
File No. 02-JV-08-1164

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

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Considered and decided by Bjorkman, Presiding Judge; Klaphake, Judge; and
Randall, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

RANDALL, Judge

Appellant challenges the sufficiency of the evidence to adjudicate him delinquent, arguing that his adjudication is based entirely on uncorroborated accomplice testimony.

We affirm.

FACTS

M.D. Sr. owns a 2002 Cadillac Escalade bearing license plates “ROCKY6.” The Escalade contained about \$15,000 worth of installed custom stereo equipment. On the morning of June 2, 2007, M.D. Sr. discovered that the Escalade, which he had parked in the garage the night before, was missing. M.D. Sr. also discovered that the keys to the Escalade, which he had hung on a key rack near the door to his house, were missing as well. There were no signs of a break-in.

Shortly before M.D. Sr. called the police to report the theft, Officer Jay Backer observed a juvenile male exit the Escalade in the parking lot of a fast-food restaurant across the street from a New Ulm gas station where he was refueling. The vehicle caught his attention because there were “not too many” Escalades in New Ulm, and it seemed odd that someone who appeared to be aged 15-17 would be driving one. After observing the juvenile speak to the occupants of an older-style maroon van parked directly next to the Escalade, Backer called in the “ROCKY6” license plate to determine whether it was stolen, resulting in a “delayed hit” on the vehicle. Several days later, the police contacted M.D. Sr. and informed him that they had found his vehicle abandoned in a quarry. When M.D. Sr. came to claim it, he found that the stereo system had been “ripped out.”

Based on this incident, 15-year-old appellant J.D.H. and his 16-year-old girlfriend, D.P., were charged with motor-vehicle theft for the Escalade, Minn. Stat. § 609.52, subd. 2(17) (2006), and theft of more than \$2,500 for the stereo equipment, Minn. Stat. § 609.52, subd. 2(1) (2006). At the joint trial, M.D. Sr.'s 13-year-old son, M.D. Jr., testified that he was friends with appellant and S.P. and that he had agreed to give them keys to the Escalade so that they could steal and sell a subwoofer installed inside. M.D. Sr. confirmed that appellant, D.P., and M.D. Jr. were all at his house when he came home from work on the night the Escalade was stolen. And M.D. Sr. also testified that appellant had been impressed with the custom stereo equipment when appellant had been at his house on previous occasions.

Another accomplice, S.M., testified that appellant and D.P. contacted him about buying the Escalade and the custom stereo equipment. S.M. testified that, on the morning of June 2, D.P.'s sisters picked him up in an older, red van and drove to the quarry, where appellant and D.P. were waiting with the Escalade. S.M. declined to buy the Escalade but purchased several stereo components. The district court adjudicated appellant delinquent, and this appeal followed.

D E C I S I O N

Appellant challenges the sufficiency of the evidence to adjudicate him delinquent for auto theft and theft of property over \$2,500. When reviewing a challenge to the sufficiency of the evidence, we conduct a painstaking analysis of the record to determine whether the fact-finder could reasonably find the defendant guilty of the offenses charged based on the facts in the record and the legitimate inferences that can be drawn from

them. *State v. Chambers*, 589 N.W.2d 466, 477 (Minn. 1999). In doing so, we view the evidence in the light most favorable to the verdict and assume that the fact-finder believed the evidence supporting the verdict and disbelieved any contrary evidence. *Id.* We will not disturb a guilty verdict if the fact-finder, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, reasonably could conclude that the defendant was guilty of the charged offense. *State v. Alton*, 432 N.W.2d 754, 756 (Minn. 1988).

Appellant argues that the evidence is insufficient because the state's case depends on uncorroborated accomplice testimony. A juvenile may not be adjudicated delinquent based on uncorroborated accomplice testimony. Minn. Stat. § 634.04 (2006); *In re Welfare of S.H.H.*, 741 N.W.2d 917, 919 (Minn. App. 2007) (stating that Minn. Stat. § 634.04 applies in juvenile cases). The credibility of an accomplice is “inherently untrustworthy,” *State v. Evans*, 756 N.W.2d 854, 877 (Minn. 2008), because such individuals “might be disposed to shift or diffuse responsibility in order to curry the favor of law enforcement officials,” *State v. Azzone*, 271 Minn. 166, 170-71, 135 N.W.2d 488, 493 (1965).

The quantum of corroboration is a function of the circumstances of a given case. *State v. Her*, 668 N.W.2d 924, 927 (Minn. App. 2003), *review denied* (Minn. Dec. 16, 2003). The corroborating evidence must do more than show that the offense was committed or the circumstances of its commission. Minn. Stat. § 634.04. But it does not need to establish a prima facie case or even relate to every element of the offenses charged. *State v. Lemire*, 315 N.W.2d 606, 610 (Minn. 1982). Rather, the corroborating

evidence need only be sufficient to “restore[] confidence in the accomplice’s testimony, confirming its truth and pointing to the defendant’s guilt in some substantial degree.” *Her*, 668 N.W.2d at 927. Such corroboration may include evidence of the defendant’s motive and opportunity to commit the crime, his proximity to the place where it was committed, and his association with others involved when it suggests joint participation. *Id.*

Here, there were two accomplices who testified against appellant: M.D. Jr. and S.M. M.D. Jr. testified that he agreed to steal his father’s keys and give them to appellant so that appellant could remove and sell stereo components from the Escalade. M.D. Jr. also testified that he provided the keys to appellant when he came over on the night that the vehicle was stolen. Although M.D. Jr. testified that he did not intend appellant to steal the Escalade itself,¹ his testimony places the keys to the Escalade in appellant’s possession on the night it was stolen and explains how the Escalade could have been taken without any signs of a break-in.

M.D. Sr.’s testimony is sufficient to restore confidence in his son’s testimony. M.D. Sr.’s testimony that appellant had been impressed with the custom stereo system provides a motive for appellant to steal it. *See id.* (stating that evidence of motive may corroborate accomplice testimony). M.D. Sr.’s testimony that the keys were missing and that there were no signs of a break-in suggest that the person who stole the Escalade

¹ Appellant suggests that the district court “rejected” M.D. Jr.’s testimony. This assertion is not supported by the record. The district court specifically found that M.D. Jr. agreed to give appellant the keys to the Escalade, remarking only that it was unclear whether he intended appellant to take the entire vehicle or merely stereo components from inside.

possessed the keys and had access to the vehicle; his testimony that appellant was at his house on the night the Escalade was stolen places appellant in physical and temporal proximity to the theft and supports M.D. Jr.'s testimony that he gave appellant the keys while at the house. *See id.* (stating that evidence of opportunity to commit the crime and of proximity to the place where the crime was committed may corroborate accomplice testimony). Based on M.D. Jr.'s corroborated testimony, it was reasonable for the factfinder to conclude that appellant used the keys given to him by M.D. Jr. to steal the Escalade and the stereo equipment inside. Officer Backer's testimony also corroborates S.M.'s testimony about appellant's attempt to sell him the Escalade and the custom stereo equipment the following morning. S.M. testified that D.P.'s sisters picked him up in an older, red van and drove to the quarry, where appellant and D.P. were waiting with the Escalade. This is corroborated by Officer Backer's observation of a juvenile male of appellant's approximate age exit the stolen Escalade and speak to the occupants of an older, maroon van before driving off. Although not strong corroboration by itself, it is sufficient to restore confidence in S.M.'s testimony.

Affirmed.