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STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2248

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

Filed January 8, 2008
Reversed
Randall, Judge

Roseau County District Court
File No. 68-J9-06-050025

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Lisa Hanson, Roseau County Attorney, Michael P. Grover, Assistant Roseau County Attorney, 606 Fifth Avenue Southwest, Room 10, Roseau, MN 56751 (for respondent)

Considered and decided by Randall, Presiding Judge; Kalitowski, Judge; and Hudson, Judge.

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

RANDALL, Judge

Appellant J.S.G. challenges the district court's adjudication finding him delinquent on one count of first degree criminal damage to property and one court of misdemeanor theft. The only evidence connecting appellant to the crimes was the testimony of his co-defendants and the testimony of the Roseau County Sheriff that several sets of footprints in the snow led to the apartment building where appellant lived. Because the district

court's decision was based almost exclusively on the testimony of his two accomplices and there was insufficient corroborating evidence directly linking appellant to the crimes, we reverse.

FACTS

Appellant was charged with one count of first-degree criminal damage to property and one count of misdemeanor theft. During the court trial, two juvenile co-defendants testified about appellant's involvement in vandalizing several trucks and equipment at Warroad Redi-Mix and the theft of a radio from inside one of the trucks. Both co-defendants testified that appellant was directly involved in causing damage to the trucks and equipment and that appellant had stolen the radio. One co-defendant testified that following the incident, the participants walked to the street where appellant lives.

The Roseau County Sheriff also testified at trial. He described the extent of the damage at Warroad Redi-Mix. The sheriff stated that after he learned about the damage, he found four different sets of footprints in the snow leading to appellant's building, a four-plex. He did not compare the footprints with appellant's shoes. The sheriff testified that two of appellant's co-defendants admitted that they had broken several windows at the Redi-Mix and had taken a radio. The co-defendants, whose statements were taken separately, implicated appellant. The sheriff testified that he had spoken with the mother of one of appellant's co-defendants, who told him that her daughter had brought home a radio the night before. The radio matched the description of the one that had been taken from the Redi-Mix. When the sheriff spoke with appellant, he denied having any knowledge of the incident.

Following the adjudicatory hearing, the district court issued an order finding appellant delinquent of both counts.

D E C I S I O N

Appellant argues that there was insufficient evidence for the district court to adjudicate him delinquent. Because the evidence corroborating the testimony of appellant's accomplices did not implicate appellant even when viewed in the light most favorable to the verdict, we agree.

"'[T]he Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.'" *State v. Clausen*, 493 N.W.2d 113, 116 (Minn. 1992) (quoting *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 1073 (1970)). The prosecution is held to this same standard in a juvenile delinquency proceeding. Minn. R. Juv. Delinq. P. 13.06.

In considering a claim of insufficient evidence, this court's review 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 allow the fact-finder to reach the verdict that it did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). Judging witness credibility is the exclusive province of the fact-finder. *Dale v. State*, 535 N.W.2d 619, 623 (Minn. 1995). And this court will defer to the fact-finder's credibility determinations. *State v. Kramer*, 668 N.W.2d 32, 37 (Minn. App. 2003), *review denied* (Minn. Nov. 18, 2003). The reviewing court must assume that the fact-finder believed the state's witnesses and disbelieved any evidence to the contrary. *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). An adjudication of delinquency must stand "if the [fact-

finder], acting with due regard for the presumption of innocence and for the necessity of overcoming it by proof beyond a reasonable doubt, could reasonably conclude that a defendant was proven guilty of the offense charged." *State v. Alton*, 432 N.W.2d 754, 756 (Minn. 1988).

Appellant maintains that the district court improperly convicted him based on accomplice testimony. A conviction may not be based on the uncorroborated 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 (2004). Thus, the corroborating evidence must connect the individual charged to commission of the crime. *State v. Bergeron*, 452 N.W.2d 918, 924 (Minn. 1990). The evidence must "tend[] to affirm the truth of [the accomplice's] testimony and to point to the guilt of the defendant," although "[i]t need not be sufficiently weighty that standing alone it would make out a prima facie case or sustain a conviction." *State v. Rasmussen*, 241 Minn. 310, 313, 63 N.W.2d 1, 3 (1954). Corroborating evidence is viewed in the light most favorable to the adjudication. *State v. Pederson*, 614 N.W.2d 724, 732 (Minn. 2000).

Here, the corroborating evidence consists of (1) the sheriff's testimony about the damage at the Redi-Mix and (2) the physical evidence – four sets of footprints found in the snow and leading from the Redi-Mix to appellant's building. Neither of these directly implicates appellant. The sheriff's testimony merely confirms that the crime was committed. The footprints led to appellant's apartment building, but not directly to his

apartment within the four-plex. Further, it was never determined whether the footprints matched appellant's shoes, meaning, "anyone" could have made the footprints.

Even if the footprints belonged to appellant, there is nothing beyond the accomplices' testimony to show appellant participated in the crime. Rational explanations exist for the presence of footprints in the snow going from the Redi-Mix plant toward appellant's apartment building. Appellant could have walked home with friends not knowing what they did. He could have known what they did without actively or passively aiding the crime.

The problem with this case is exactly what the evidentiary rule is designed to address. The state probably has the right people charged, including appellant. The rule against letting convictions stand alone on uncorroborated testimony is an ancient one. Our precious freedoms are deemed too important to rest *solely* in the hands of co-perpetrators who can sell out another accomplice, snitch, roll-over, or just make up facts if need be, all in an attempt to gain leniency from the state for themselves.

Here, the sheriff, other law enforcement personnel, and the trial judge were aware of every nuance of the accomplices' testimony. Everyone connected with the case could say, "one of those sets of footprints belongs to appellant; other friends of his who were right there told us."

But when you set aside the testimony of the accomplices, there is nothing left except the facts of the crime. The state concedes that the simple fact that a crime was committed is not by itself corroboration. The law is clear about that. Even if appellant accompanied the other defendants, there is nothing, aside from their testimony, that

suggests that he participated in the vandalism. There is simply no corroborating evidence pointing directly to appellant.

Reversed.