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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-193**

State of Minnesota,
Respondent,

vs.

Abdi Mohamed Hassan,
Appellant.

**Filed January 25, 2011
Affirmed
Ross, Judge**

Olmsted County District Court
File No. 55-CR-08-6975

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

Mark A. Ostrem, Olmsted County Attorney, Jeffrey D. Hill, Assistant County Attorney,
Rochester, Minnesota, (for respondent)

David W. Merchant, Chief Appellate Public Defender, Michael F. Cromett, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hudson, Presiding Judge; Ross, Judge; and Schellhas,
Judge.

UNPUBLISHED OPINION

ROSS, Judge

Abdi Hassan appeals from his conviction of aiding and abetting the possession of,
and conspiring to possess with the intent to sell, cathinone, a controlled substance

contained in khat. He contends that his conviction insufficiently rested on uncorroborated accomplice testimony and circumstantial evidence. The challenged accomplice testimony was corroborated by other evidence and the evidence as a whole supports Hassan's conviction, so we affirm.

FACTS

Ahmed Nassib, Mustafe Musse, and Abdi Hassan traveled from Minneapolis to Rochester in Hassan's car. Nassib and Musse then went in a different car to the airport FedEx terminal to pick up two packages. The packages were addressed to "Jennifer Duluw Com. Inc, 1073 Pregrine Drive SE, Rochester, MN." FedEx had attempted to deliver the packages earlier that morning, but a person at the Pregrine Drive address declined, saying that the addressee did not live there. A FedEx employee noticed that one of the packages had a slight opening revealing wet newspaper. She knew that khat, an African plant that contains a controlled substance, is commonly shipped in wet newspapers. She called the police.

Officers from the Rochester Police Narcotics Unit responded and the employee showed them the suspicious packages. One officer saw what he believed was khat. At around 8:20 p.m., Nassib and Musse returned to the FedEx office. Nassib picked up the suspicious packages by presenting a driver's license carrying the name Mohamud Abdulahi and, aside from a slight spelling difference, the Peregrine Drive address. Two officers soon stopped the car that Nassib and Musse left in.

During the stop, Musse told an officer that he had traveled from Minneapolis to Rochester that morning with a man named Abdi Hassan in Hassan's car. At that

moment, Musse saw Hassan driving past, and he pointed out his car. When one of the officers stopped Hassan's car, Hassan identified himself and claimed that he had just dropped his sister off at the airport.

The officers arrested all three men and searched the two cars. In Hassan's car, an officer found a copy of the FedEx tracking papers for the suspect packages folded together with Hassan's driver's license. In the other car, police found the two packages containing khat, computer-generated FedEx papers with tracking numbers that matched the packages, and the false identification that Nassib had used to receive the packages.

The officer confiscated the cellular telephones of all three men and examined their call and textual message histories. They discovered that Hassan's phone called Musse's phone four times and Nassib's phone five times that day and that Nassib's phone called Hassan's phone three times. A one-month-old text message on Hassan's phone read simply, "Jennifer Duluv, 1073 Peregrine Drive Southeast, Rochester, Minnesota 55904." One call from Hassan's phone to Musse's phone occurred at 8:27 p.m., the same time the officers had stopped Musse's car.

The two packages each weighed approximately 16 pounds and contained 60 bundles of khat. The BCA tested the khat and concluded that it contained cathinone, a controlled substance. The state charged Hassan with two counts of controlled substance crime in the fourth degree for aiding and abetting and conspiring to possess cathinone with the intent to sell it. The district court found him guilty. Hassan appeals his convictions, arguing that the state did not present sufficient evidence to prove aiding and abetting or conspiracy.

DECISION

Hassan claims that the evidence was insufficient to prove that he aided and abetted the possession of or conspired to possess cathinone with the intent to sell it. We analyze insufficient-evidence claims by determining whether the evidence, when considered in the light most favorable to the conviction, could reasonably support the verdict. *Bernhardt v. State*, 684 N.W.2d 465, 476–77 (Minn. 2004).

The state introduced no direct evidence of Hassan’s involvement in his companions’ possession of the khat, but the district court received plenty of circumstantial evidence. Circumstantial evidence merits the same weight as direct evidence. *State v. Bauer*, 598 N.W.2d 352, 370 (Minn. 1999). But we apply a stricter degree of scrutiny on review of convictions that depend on circumstantial evidence. *State v. Jones*, 516 N.W.2d 545, 549 (Minn. 1994). In circumstantial-evidence cases, we look both at “whether the inferences leading to guilt are reasonable” and whether “there are no other . . . rational inferences that are inconsistent with guilt.” *State v. Andersen*, 784 N.W.2d 320, 330 (Minn. 2010) (quotation omitted).

The circumstantial evidence supporting the district court’s inference that Hassan aided and abetted and conspired in the possession of khat with intent to sell is substantial: (1) Hassan drove the trio from Minneapolis to Rochester the day of the crime; (2) Hassan was near the FedEx office when his peers accepted the khat-filled packages; (3) Hassan lied to police about his reason for being near the airport; (4) the FedEx tracking papers for the packages were in Hassan’s car folded around his driver’s license; (5) Hassan’s cell phone stored a text message stating only the name and address of the packages’ shipping

labels; and (6) multiple phone calls were exchanged between Hassan, Musse, and Nassib the day of the incident, including one at the exact time of the police stop just moments after the FedEx pick-up. For the following reasons, we have no difficulty holding that this evidence is consistent with guilt and inconsistent with any rational hypothesis other than guilt.

We first address Hassan's contention that the evidence is insufficient to prove that he aided and abetted possession of a controlled substance with intent to sell. A person aids or abets a crime when he "intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime." Minn. Stat. § 609.05, subd. 1 (2008). A person may be charged with aiding and abetting even if he did not actively participate in the act that constitutes the primary offense. *State v. Merrill*, 428 N.W.2d 361, 368 (Minn. 1988). His presence at the crime scene, companionship with the principal before and after the crime, and a lack of objection or surprise may reasonably support a conviction. *See id.* at 367–68.

Hassan's presence near the crime scene, his transporting Musse and Nassib to the city of the crime, and his involvement in the delivery as shown by his possessing the tracking papers and the addressee information on his phone, all support the finding that he played a knowing role in the commission of the crime. Suspending reason entirely, one might concoct an innocent explanation for some of the evidence linking Hassan to the crime. But the story becomes especially difficult, and as far as we can tell, impossible, when it incorporates Musse's trial testimony that he went to Rochester and picked up the package at Hassan's express request and Hassan's apparently fictitious

account of being near the airport because he had just dropped off his sister. Hassan's appellate brief does attempt to offer an innocent story. He asserts that "[a]t best, the evidence showed that Hassan was merely present in the area of the FedEx office at the time of the offense" and that "the three men were acquainted and perhaps planning to drive to Minneapolis together." But the district court rejected Hassan's here-to-drop-off-my-sister story as a lie, and this unravels his innocent version of events. We hold that there was sufficient circumstantial evidence to support the reasonable inference that Hassan aided and abetted the crime of possession, to the exclusion of any rational innocent account.

We are similarly unconvinced by Hassan's argument that the evidence is not sufficient to support his conviction of conspiracy. The state proves a conspiracy beyond a reasonable doubt with evidence that a person agreed "with another to commit a crime" and that one or more of the parties involved overtly acted in furtherance of the conspiracy. Minn. Stat. § 609.175, subd. 2 (2008); *State v. Stewart*, 643 N.W.2d 281, 297 (Minn. 2002). The state's evidence must "objectively indicate[] an agreement." *State v. Hatfield*, 639 N.W.2d 372, 376 (Minn. 2002). But direct evidence is not necessary to establish a conspiracy offense; the conspiracy may be inferred from circumstantial evidence. *State v. Burns*, 215 Minn. 182, 189, 9 N.W.2d 518, 521 (1943). And a jury may reasonably infer an agreement when evidence exists demonstrating a common plan, concerted conduct, or the defendant's involvement with a conspirator. *Hatfield*, 639 N.W.2d at 377.

Viewed most favorably to the verdict, the evidence promotes the reasonable inference of a common plan and Hassan's involvement with co-conspirators. Hassan had the destination of the khat shipment in a text message on his cellular phone one month before the delivery and Musse had the same address saved in his phone that he had sent to another phone three weeks after Hassan had received it. Hassan arranged to drive the men from Minneapolis to Rochester the day of the crime. Hassan had a copy of the FedEx delivery papers in his car and asked his two colleagues to accept the packages. This evidence supports the reasonable conclusion that Hassan at least participated in (if not directed) the agreement to obtain the khat. We need only consider the agreement because Hassan does not contest the state's evidence that 60 pounds of khat exceeds the amount one would possess merely for personal use rather than for sale. The evidence also indicates that Hassan committed an overt act in furtherance of the conspiracy by driving the other men from Minneapolis to Rochester. Given all the circumstances, the district court properly rejected as unreasonable any inference that Hassan was not involved in the conspiracy.

Hassan attempts to undercut the evidence supporting his convictions by challenging as uncorroborated the incriminating accomplice testimony of Musse. A defendant may not be convicted based on an accomplice's testimony unless it is corroborated by other evidence. Minn. Stat. § 634.04 (2008). The rationale for this rule is that accomplice testimony is "inherently untrustworthy," *State v. Evans*, 756 N.W.2d 854, 877 (Minn. 2008), because accomplices "may testify against another in the hope of or upon a promise of immunity or clemency or to satisfy other self-serving or malicious

motives,” *State v. Shoop*, 441 N.W.2d 475, 479 (Minn. 1989). Corroborating evidence may be circumstantial and need not corroborate the accomplice’s testimony on every point. *State v. England*, 409 N.W.2d 262, 264 (Minn. App. 1987).

Musse was an accomplice because he was charged with and convicted of the same offense for which Hassan was tried. *See State v. Henderson*, 620 N.W.2d 688, 701 (Minn. 2001) (holding that a witness is an accomplice if he “could have been indicted and convicted for the crime with which the accused is charged”). And Musse’s testimony is the only direct evidence that Hassan drove the other two men to Rochester and sent the others to retrieve the packages. But the record contains abundant corroborating evidence, outlined above, proving Hassan’s involvement in the crime. Hassan’s convictions did not rest on uncorroborated accomplice testimony.

Affirmed.