STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1209

In the Matter of the Welfare of: A. D. F., Jr.

Filed April 5, 2011
Affirmed
Kalitowski, Judge

Hennepin County District Court
File No. 27-JV-10-2130

David W. Merchant, Chief Appellate Public Defender, Jodie Lee Carlson, Assistant Public Defender, St. Paul, Minnesota; and

Jill Clark, Jill Clark, P.A., Special Assistant Public Defender, Golden Valley, Minnesota (for appellant A.D.F. Jr.)

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

Michael O. Freeman, Hennepin County Attorney, Thomas A. Weist, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Kalitowski, Presiding Judge; Stauber, Judge; and Collins, Judge.*

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

KALITOWSKI, Judge

Appellant challenges the sufficiency of the evidence to sustain his juvenile-delinquency adjudication of aiding and abetting simple robbery. We affirm.

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

D E C I S I O N

On the afternoon of March 6, 2010, a group of four young men accosted the complainant near a Minneapolis intersection. The group demanded the complainant's cell phone. The parties stipulated that when the complainant refused, A.A., one of the young men in the group, punched him in the face, breaking his nose. The complainant fell to the ground, and the assailants kicked him repeatedly. One of the assailants took the complainant's wallet.

Immediately after the attack, the complainant called 911 on his cell phone and followed three of the assailants on foot, reporting their movements to the dispatcher. The assailants entered a pawn shop located one block east of the site of the robbery. Before the complainant reached the pawn shop, police arrived, entered the pawn shop, and handcuffed the only three customers meeting the complainant's descriptions: appellant, A.A., and S.M. As the police escorted the three suspects from the pawn shop, the complainant approached, pointed to the suspects, and stated, "those are the guys."

At trial, the complainant identified appellant as one of the four attackers. He testified that he saw his assailants' faces when he turned around in response to their demands for his cell phone. The complainant testified that appellant took part in the physical attack by kicking him.

S.M., who pleaded guilty to simple robbery for this incident before appellant's trial, testified that he and appellant had merely observed the offense. He testified that A.A. and another person, who did not enter the pawn shop, were the perpetrators. The

state impeached S.M. with his plea testimony that he had served as a lookout during the robbery and had "help[ed] out."

Appellant gave the same account as S.M. at trial. Appellant testified that after the robbery, A.A. accompanied appellant and S.M. to the pawn shop. Appellant admitted that he, A.A. (his cousin), and S.M. (his close friend) had spent "the whole day" together before the robbery.

The district court adjudicated appellant delinquent on the charge of aiding and abetting simple robbery, and placed him on probation.

Appellant challenges the sufficiency of the evidence to sustain his delinquency adjudication. In reviewing this issue, we view the evidence in the light most favorable to the state and decide whether the fact-finder could have reasonably found the defendant guilty. *In re Welfare of M.E.M.*, 674 N.W.2d 208, 215 (Minn. App. 2004). The district court's findings of fact are upheld unless clearly erroneous. *Id.*

Findings of fact

Appellant challenges several of the district court's findings of fact. He first asserts that the district court's factual description of the criminal offense is erroneous. But the district court's findings are supported by the record, including (1) the complainant's testimony that he saw the faces of his four assailants before the physical assault, that "they all were kicking [him]," that the assault lasted approximately five minutes, that the four assailants ran into a nearby alley, and that he followed three of them to the pawn shop; and (2) the complainant's 911 call, in which he stated that his assailants had walked east after the attack and had entered a pawn shop.

Second, appellant appears to argue that the complainant's use of the word "they" is somehow exculpatory. But during cross-examination, the complainant explained that he used the word "they" to mean the four persons who attacked him because he did not know their names.

Third, appellant makes unclear arguments regarding (1) his claimed presence at a fast-food restaurant near the pawn shop on the afternoon of the robbery and (2) the district court's summary of his interview with a police sergeant. Because appellant has failed to brief these arguments adequately, we decline to consider them. *See State, Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to address issue in absence of adequate briefing); *see also State v. Hurd*, 763 N.W.2d 17, 32 (Minn. 2009) (citing *Wintz Parcel Drivers* in a criminal case).

Fourth, appellant appears to assert that S.M. was not allowed to testify. But S.M. did testify at appellant's trial and was permissibly impeached under Minn. R. Evid. 613 (allowing witness to be examined concerning a prior inconsistent statement).

Intent

Appellant argues that the state failed to prove that he acted with the requisite criminal intent. "[I]ntent is an inference drawn by the [fact-finder] from the totality of the circumstances." *State v. Fardan*, 773 N.W.2d 303, 321 (Minn. 2009) (quotation omitted). Here, ample evidence shows that appellant intentionally aided the robbery. Appellant admitted to a police sergeant that he, A.A., and S.M. had spent "the whole day" together before the robbery. The complainant testified that appellant was one of a group of four persons who approached him and demanded his cell phone. The

complainant also testified that appellant participated in the physical assault that ensued when the complainant refused to surrender the cell phone. Finally, appellant fled the robbery scene with A.A., who broke the victim's nose, and S.M., who admitted to serving as a lookout in his plea proffer. *See State v. Bias*, 419 N.W.2d 480, 485 (Minn. 1988) (stating that "evidence of flight suggests consciousness of guilt").

From this evidence, the district court could have reasonably concluded that appellant (1) helped plan the robbery with his relative and close friend; (2) participated in the robbery by approaching the complainant in a small group that demanded his cell phone; and (3) participated in the robbery by either physically assaulting the complainant, or serving as a lookout during the robbery. *See State v. Parker*, 282 Minn. 343, 355, 164 N.W.2d 633, 641 (1969) (noting that serving as a lookout is a "classic example" of aiding and abetting).

Identification of appellant

Appellant argues that the complainant's identification of appellant was not sufficient. First, appellant contends that the complainant could not see the assailants before he was attacked from behind. But the complainant testified that he saw the faces of his assailants before the physical assault began.

Second, appellant contends that it was physically impossible for the complainant to have seen appellant kick him while the complainant was lying "face down." But the district court's finding that "all four men kicked [the complainant] as he lay on the ground" is supported by the complainant's testimony that it was his impression that the four attackers "all were kicking [him]."

Third, appellant contends that the complainant's identification of him as a perpetrator of the robbery was tainted by the complainant seeing police lead appellant from the pawn shop in handcuffs. But the district court was entitled to believe the complainant's testimony that seeing the police escort appellant from the pawn shop did not influence his identification. *See State v. Miles*, 585 N.W.2d 368, 373 (Minn. 1998) (stating that fact-finder "determines the weight and credibility of individual witnesses"). And before the police arrived, the victim had already told the 911 dispatcher that his assailants had entered the pawn shop.

Fourth, appellant contends that the complainant's identification lacks corroboration. But no corroboration was required because the district court found the complainant's testimony to be credible. *See id.* (stating that a conviction may rest on the testimony of a single credible witness and that the fact-finder determines credibility). Furthermore, the complainant's testimony was corroborated: (1) by S.M.'s plea testimony that he was involved in the robbery, which contradicts appellant's testimony that he and S.M. were innocent bystanders; and (2) evidence of appellant's close association with A.A. and S.M. before and after the robbery.

Appellant's involvement

Finally, appellant argues that the evidence supports the theory that he was "simply watching" the robbery. But the evidence, taken in the light most favorable to the state, supports the conclusion that appellant was not a mere innocent observer. The complainant testified that appellant was one of four persons who approached him from behind, demanded his cell phone, and beat him when he refused. Appellant fled the

scene in the company of his cousin, who broke the complainant's nose, and his friend, who admitted to serving as a lookout. The district court could have reasonably concluded that appellant helped plan the robbery and either physically assaulted the complainant or acted as a lookout. Any of these actions meets the elements of aiding and abetting simple robbery.

Because appellant has not shown the district court's factual findings to be clearly erroneous, and because the district court could reasonably have found appellant guilty of aiding and abetting simple robbery, we affirm appellant's delinquency adjudication.

Affirmed.