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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-622**

State of Minnesota,
Respondent,

vs.

Lee Damion Murray,
Appellant.

**Filed June 6, 2011
Affirmed
Toussaint, Judge**

Ramsey County District Court
File No. 62-CR-08-18261

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

John J. Choi, Ramsey County Attorney, Afsheen D. Foroozan, Special Assistant County Attorney, St. Paul, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Jessica B. Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hudson, Presiding Judge; Toussaint, Judge; and
Crippen, Judge.*

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

UNPUBLISHED OPINION

TOUSSAINT, Judge

Appellant Lee Damion Murray challenges his conviction of second-degree intentional murder, arguing that the evidence is insufficient to support the conviction. Because the record contains direct evidence sufficient to sustain appellant's conviction, we affirm.

DECISION

I.

In considering a claim of insufficient evidence, an appellate court's review is "limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did." *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). A reviewing court will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

A criminal conviction may not be based solely on uncorroborated accomplice testimony; the state must present evidence to corroborate the accomplice's testimony that the defendant participated in the charged offense. Minn. Stat. § 634.04 (2008). Corroborating evidence must be "weighty enough to restore confidence in the truth of the accomplice's testimony." *State v. Harris*, 405 N.W.2d 224, 227 (Minn. 1987) (quotation omitted). The evidence "need not establish a prima facie case of the defendant's guilt."

State v. Johnson, 616 N.W.2d 720, 727 (Minn. 2000). But “it must affirm the truth of the accomplice’s testimony and point to the guilt of the defendant in some substantial degree.” *Harris*, 405 N.W.2d at 227-28 (quotation omitted). It is not necessary that there be evidence corroborating every aspect of the accomplice testimony. *State v. Lemire*, 315 N.W.2d 606, 610 (Minn. 1982) (stating that corroboration evidence need not cover every point or element of the crime).

Circumstantial evidence may be sufficient to corroborate accomplice testimony, but that evidence must “clearly support the defendant’s implication in the crime.” *State v. Wallert*, 402 N.W.2d 570, 573 (Minn. App. 1987), *review denied* (Minn. May 18, 1987). “The defendant’s presence in the vicinity of the offense, in company with accomplices and under suspicious circumstances, will constitute adequate corroboration.” *State v. Stave*, 280 Minn. 269, 270-71, 158 N.W.2d 848, 850 (1968).

In the present case, the state’s evidence consisted primarily of the testimony of D.M., who was present at the scene of the crime and is an accomplice. As such, in order to consider D.M.’s testimony in determining whether the evidence is sufficient to affirm the conviction, we must first determine whether the testimony was corroborated. During their investigation, the police discovered a magazine with the decedent’s nickname written on it that D.M. had referred to during his testimony, corroborating D.M.’s description of planning a robbery the night of the murder. The caliber of the bullet found during the decedent’s autopsy matched the caliber of the gun D.M. testified appellant used to shoot the decedent. The weapons recovered from the river match D.M.’s description of the weapons used during the shooting. Consistent with D.M.’s testimony,

officers recovered a Foot Locker bag containing clothing that matched what appellant was allegedly wearing the night of the murder. Most significantly, officers discovered court documents containing appellant's name at the scene of the crime. This evidence, when viewed in a light most favorable to the verdict, is sufficient to corroborate D.M.'s accomplice testimony.

Therefore, there is direct evidence in the record that appellant shot and killed the decedent—namely D.M.'s testimony that appellant shot the decedent in the head with a .22 caliber firearm. Appellant's attempt on appeal to convert the sufficiency-of-the-evidence analysis into a conviction based on circumstantial evidence is therefore unavailing.

The evidence, when viewed in a light most favorable to the state, is sufficient to allow a jury to reasonably conclude that appellant is guilty of the charged offense. *See State v. McBride*, 666 N.W.2d 351, 364 (Minn. 2003) (setting out appellate review on sufficiency-of-the-evidence claim).

II.

Appellant also argues that, even if D.M.'s testimony was corroborated, the testimony is insufficient to sustain the conviction. In support of his argument, appellant asserts that D.M.'s testimony was inconsistent with prior statements D.M. had given to the police, was given in exchange for a substantially reduced sentence, was inconsistent with the testimony of other witnesses, and D.M. had prior felony convictions.

“As a general matter, judging the credibility of witnesses is the exclusive function of the jury.” *Dale v. State*, 535 N.W.2d 619, 623 (Minn. 1995). Appellant was free to

point out these discrepancies and credibility questions to the jury; and he in fact did so during both cross-examination of D.M. and closing arguments. The jury nonetheless found D.M.'s testimony that appellant shot and killed the decedent credible, as was its prerogative.

Appellant attempts to equate this case with three supreme court cases in which the court reversed convictions based on insufficient evidence: *State v. Huss*, *State v. Langteau*, and *State v. Gluff*. Appellant's reliance on these cases is misplaced, and each is distinguishable. In *State v. Huss*, the supreme court reversed a conviction of second-degree criminal sexual conduct when the only direct evidence presented was equivocal on whether abuse had occurred, the victim was unable to accurately identify the defendant as her abuser, and the victim had been exposed to highly suggestive material. 506 N.W.2d 290, 292-93 (Minn. 1993). The supreme court further noted that the holding was limited to the "unusual facts" of the case. *Id.* at 293. In *State v. Langteau*, the supreme court reversed and remanded a conviction of aggravated robbery "in the interests of justice" when the actions of the victim were questionable or unexplained. 268 N.W.2d 76, 77 (Minn. 1978). Finally, in *State v. Gluff*, the supreme court—again citing the interests of justice—reversed an aggravated-robbery conviction because the uncorroborated identification of the defendant lacked probative value when the witness had seen the perpetrator for only a short time and there had been errors in the lineup process. 285 Minn. 148, 151, 172 N.W.2d 63, 65 (1969).

None of these independent concerns are present in the instant case. D.M. was not exposed to suggestive material and unequivocally testified that appellant shot and killed

the decedent. The decedent's actions are not questionable in the light of the evidence. D.M. knew appellant, and there were no photo-identification errors. The present case is more similar to *State v. Reichenberger*, in which the supreme court affirmed a conviction for having sexual intercourse with a minor, even though the victim had made a statement prior to trial that conflicted with her testimony, because her trial testimony was unequivocal and consistent. 289 Minn. 75, 78, 182 N.W.2d 692, 694 (1970). Appellant's argument that D.M.'s testimony was too unreliable to constitute sufficient evidence is therefore without merit and is unavailing.

III.

Appellant has also submitted a pro se supplemental brief in which he raises a number of challenges to his conviction, including the failure to call potential witnesses to testify and the district court's decision not to allow the jury to review interviews of witnesses during deliberations. We have reviewed these arguments and find them to be without merit.

Affirmed.