STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0607

State of Minnesota,
Respondent,

vs.

Shaunda Genene Gadsden,
Appellant.

Filed February 11, 2013
Affirmed
Crippen, Judge*

Olmsted County District Court
File No. 55-CR-09-6365

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

Mark A. Ostrem, Olmsted County Attorney, James P. Spencer, Assistant County Attorney, Rochester, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Kerri Stahlecker Hermann, Special Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Kalitowski, Judge; and Crippen, Judge.

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

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

CRIPPEN, Judge

Appellant Shaunda Gadsden challenges her convictions on two counts of aiding and abetting third-degree sales of controlled substances in violation of Minn. Stat. §§ 152.023, subd. 1(1), 609.05, subd. 1 (2008), arguing that the evidence was insufficient to support the jury's verdict. We affirm because the record reveals sufficient evidence to convict her on both counts; there is no authority to support appellant's contention that the evidence must show appellant's participation in the principal actor's criminal action.

FACTS

In February 2009, appellant met Eric Brooks, and the two began a romantic relationship. At the time they met, appellant lived in Winona, and Brooks lived in Rochester. Prior to the date of the offenses, Brooks had not informed appellant that he was a drug dealer, although appellant testified that she was aware of it.

In late June and early July 2009, appellant was visiting Brooks in Rochester. Around that same time, Rochester police arranged to have a confidential reliable informant (CRI) participate in several controlled buys from Brooks. On July 1, 2009, at the direction of Rochester police, the CRI arranged to meet Brooks at a parking lot in Rochester in order to purchase crack cocaine. The CRI testified that when Brooks arrived, Brooks was driving the car, and appellant was in the passenger's seat.

After Brooks pulled up, the CRI approached his window and handed him money to purchase drugs. The CRI testified that Brooks handed the money to appellant and that she thought she observed appellant counting the money "because of the way her hands

were moving." Brooks then gave the CRI five baggies of crack cocaine. After the transaction was complete, the CRI drove directly to meet with Rochester police and told them a version of the events consistent with her testimony at trial.

The following day, on July 2, 2009, the same CRI agreed to arrange another controlled buy with Brooks in which she would wear a body bug. The CRI called Brooks and arranged to meet him at another parking lot in Rochester later that day. The CRI called Brooks's phone again when she arrived at the parking lot. This time, appellant answered Brooks's phone and told the CRI that they would be there soon. This conversation was recorded and reveals that there was no mention of drugs during the phone call.

Shortly after the phone call, Brooks and appellant arrived, and the CRI followed them in her car to a nearby street. The CRI testified that the transaction was similar to the event on July 1, except that appellant did not count the money or otherwise participate in the exchange. After the sale, the CRI again drove directly to meet Rochester police and told them a version of the events consistent with her testimony at trial.

Later in the day on July 2, 2009, Rochester police arrested appellant and Brooks. In searching Brooks's vehicle, the police found baggies of cocaine on the passenger seat. Brooks eventually pleaded guilty to three counts of controlled-substance sales stemming from the controlled buys.

Appellant was charged with two counts of aiding and abetting the sale of controlled substances in violation of Minn. Stat. §§ 152.023, subd. 1(1), 609.05, subd. 1. A jury trial was held in Olmsted County on October 25, 26, 27, and 28, 2011. The jury

found appellant guilty of both counts. Appellant received a stay of imposition with supervised probation for five years, 30 days of jail time with work release, and 100 hours of community service.

D E C I S I O N

In reviewing a challenge to the sufficiency of the evidence, an appellate court views the evidence in a light most favorable to the verdict and determines whether the evidence and the reasonable inferences drawn from the evidence were sufficient to support the verdict. *State v. Brown*, 732 N.W.2d 625, 628 (Minn. 2007). The reviewing court assumes that the jury believed the state's witnesses and disbelieved contrary evidence. *State v. Bias*, 419 N.W.2d 480, 484 (Minn. 1988).

1.

Appellant first argues that the state failed to prove beyond a reasonable doubt that she was present at the July 1 sale. "It is well established that a conviction can rest upon the testimony of a single credible witness." *State v. Bliss*, 457 N.W.2d 385, 390 (Minn. 1990).

The state established appellant's presence at the July 1 sale entirely through the testimony of the CRI, who testified that appellant was a passenger in Brooks's car during the July 1 sale. The CRI's testimony is wholly consistent with the statement she gave immediately after the transaction. Officer Jeffrey Sobczak testified that he did not see a passenger in the car and also testified that he had intended to video the entire transaction but inadvertently turned the camera off just as Brooks arrived. The video is inconclusive as to whether or not appellant was in the car during the controlled buy. Appellant argues

that although the video did not capture the transaction, it was apparent from the portion of the video leading up to the transaction that Officer Sobczak "had a reasonably good view of the vehicle and, having seen the entire transaction, would have seen if there were any passengers." But it was not unreasonable for the jury to believe the CRI's testimony and conclude that Officer Sobczak was not able to determine whether a passenger was in the car. When viewed in the light most favorable to the verdict, the CRI's testimony is sufficient to establish appellant's presence during the July 1, 2009, controlled buy.

2.

Appellant also argues that even if the jury found that she was present at the sales, the state failed to prove beyond a reasonable doubt that she furthered or encouraged the commission of a crime. A person is guilty of a third-degree controlled-substance crime if he or she "unlawfully sells one or more mixtures containing a narcotic drug." Minn. Stat. § 152.023, subd. 1(1). A person may be criminally liable for aiding and abetting "if the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime." Minn. Stat. § 609.05, subd. 1.

As appellant argues, "[m]ere presence at the scene of a crime does not alone prove that a person aided or abetted, because inaction, knowledge, or passive acquiescence does not rise to the level of criminal culpability." *State v. Ostrem*, 535 N.W.2d 916, 924 (Minn. 1995). The aiding-and-abetting statute "implies a high level of activity on the part of an aider and abettor in the form of conduct that encourages another to act." *State v. Ulvinen*, 313 N.W.2d 425, 428 (Minn. 1981).

But there is no merit in appellant's contention that appellant's guilt rests on her "level of participation" in the offense, or proof that Brooks "would not have sold the drugs" without appellant's presence. The defendant need not have actually participated in the crime to impose aiding-and-abetting liability. *State v. Hawes*, 801 N.W.2d 659, 668 (Minn. 2011) (citing *Bernhardt v. State*, 684 N.W.2d 465, 477 (Minn. 2004)). The state must prove that the defendant knew the crime would occur and intended his or her presence or actions to further the commission of the crime. *Id.* The jury may infer the defendant's intent from the defendant's presence at the scene of the crime, close association with the principal before and after the crime, and lack of objection or surprise under the circumstances. *Id.*

Appellant challenges the sufficiency of the evidence to convict her for aiding and abetting the July 1, 2009 sale because there is no evidence that she furthered the acts of Brooks. Appellant also challenges the credibility of the CRI's testimony. But we must assume that the jury believed the state's witnesses and disbelieved contrary evidence. *Bias*, 419 N.W.2d at 484. Moreover, the testimony of one credible witness is sufficient to uphold a conviction. *See Bliss*, 457 N.W.2d at 390. Appellant knew that Brooks was a drug dealer, and it was reasonable for the jury to infer under the circumstances that appellant knew he was engaging in the sale of drugs during the July 1 transaction.

The jury was also entitled to believe the CRI's account that appellant counted the money. Appellant argues that there is no evidence that Brooks relied on her count to complete the transaction and thus no evidence that she participated in the crime. But the requirement for aiding and abetting is a knowing role in furthering the crime, not actual

participation in the crime itself. *See Hawes*, 801 N.W.2d 668. Appellant's presence at the scene, knowledge that Brooks was dealing drugs, and companionship with Brooks before, during, and after the crime allowed the jury to infer a knowing role in the crime. *See id.* This evidence, coupled with evidence that appellant counted the drug money was sufficient to convict her of aiding and abetting the sale of drugs.

Appellant also challenges the sufficiency of the evidence to convict her of aiding and abetting the July 2, 2009 sale because the July 2 phone call did not contain words indicating that the conversation was related to a sale of drugs. The phone call reveals only that the CRI called Brooks's phone and stated, "I'm here" and that appellant responded that they would be there in a minute. Both Brooks and appellant testified that appellant did not know that the person on the other line was calling to arrange the purchase of drugs. Appellant also testified that when she answered the phone, she was not intending to help Brooks sell drugs.

But the jury could have inferred appellant's intent from her knowledge that Brooks was a drug dealer, her prior course of conduct in playing a knowing role in Brooks's sale of drugs on July 1, and her companionship with Brooks before, during, and after the crime. *See id*. However free of incriminating words the phone call itself was, the jury was entitled to consider all of the circumstances and conclude that appellant intended the phone call to facilitate the sale of drugs. Viewing the evidence in the light most favorable to the verdict, this evidence was thus sufficient to convict appellant of aiding and abetting the sale of drugs.

Affirmed.