STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0977

State of Minnesota,
Respondent,

vs.

Aaron James Beaulieu,
Appellant.

Filed September 9, 2013
Affirmed
Peterson, Judge

Mille Lacs County District Court
File No. 48-CR-10-1656

Lori Swanson, Attorney General, James B. Early, Assistant Attorney General, St. Paul, Minnesota; and

Janice S. Jude, Mille Lacs County Attorney, Milaca, Minnesota (for respondent)

Jennifer Holson Chaplinski, Special Assistant Public Defender, Chaplinski Law Office, St. Cloud, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Bjorkman, Judge; and Klaphake, 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

PETERSON, Judge

In this appeal from a conviction of aiding and abetting second-degree murder, appellant argues that the district court committed plain error that affected his substantial rights by failing to instruct the jury on the requirement that accomplice testimony be corroborated. We affirm.

FACTS

On the evening of July 16, 2010, the victim attended a party hosted by his girlfriend. Early the next morning, the girlfriend found the victim across the street at Nathan Bugg's residence with Bugg, Joshua Boyd, and appellant Aaron Beaulieu. The girlfriend went home, and the victim remained at Bugg's residence. Six days later, the victim's partially burned body was found in a wooded area.

Appellant was charged with one count of aiding and abetting second-degree intentional murder, two counts of aiding and abetting second-degree unintentional murder, one count of third-degree assault, and one count of misdemeanor assault. The case was tried to a jury.

Bugg testified at trial that, at some point while the victim was at Bugg's residence, appellant became angry and began yelling at the victim. The victim did not yell back, and the situation calmed down for a while. But then appellant came running out of the house, charged the victim, knocked him to the ground, and began punching him in the head. Bugg testified that the victim was down on the ground trying to protect himself

and that appellant stood over the victim and punched him in the head more than five times.

Bugg testified that, when appellant stopped punching the victim, Boyd dragged the victim into the garage, and someone closed the garage door. Boyd then began kicking the victim in the body and head. Bugg testified that he kicked the victim because he was afraid of Boyd and that he and appellant tried to pull Boyd away from the victim. Although at trial Bugg could not recall whether appellant kicked the victim in the garage, a few days after the offense, Bugg had told B.M. that Boyd and appellant were stomping on the victim's head. Bugg testified that, when they stopped assaulting the victim, they left him moaning on the garage floor and went inside the house to talk and drank more alcohol.

Bugg and Boyd then loaded the victim into the back of Boyd's Suburban. Bugg testified that the victim was snoring and unconscious when they loaded him into the Suburban. Bugg testified that appellant told Boyd to take the victim home, but no one called the police, an ambulance, or the victim's mother or girlfriend.

At about 8:30 a.m. on July 17, J.B. saw Boyd driving a Suburban and "cruising in the field" near the intersection of Timber Trails Road and Wakidaaki Road. J.B. had never seen anyone driving in that field. At 9:24 a.m., police found Boyd's Suburban abandoned in a ditch at the intersection of 452nd Street and Timber Trails Road. Also that morning, K.B. saw Boyd walk from the woods to Boyd's mother's home. Boyd's shirt was white with a dark color that, at the time, K.B. thought was blood; at trial, K.B. testified that it could have been mud.

Appellant's cousin M.J. testified at trial that appellant told him about the assault. M.J. testified:

> Q. Okay. And did something happen, besides drinking, that [appellant] told you about?
> A. Yes. He said [he] and [the victim] got into a fight.
> . . . .
> Q. Okay. And what happened during that fight?
> A. He told me that he -- they got into a fight and he beat [the victim] up.
> Q. Okay. Did he tell you specifically what he did or –
> A. He just -- he just told me he beat him up.
> Q. Okay. Did he tell you whether or not after that [the victim] was knocked out or on the ground?
> A. Yes. He told me that he beat him up and he fell, and then he picked him up.
> Q And what did he do with him after he picked him up?
> A. He said he shook his hand and brushed the -- brushed the dirt off of him or whatever.
> . . . .
> Q Okay. And when you said that "[Boyd] lost it," did he say that he snapped out and that they, both of them, started fighting with [the victim]?
> A. He told me that [Boyd] started beating up [the victim].
> . . . .
> Q. Okay. And then what happened?
> A. He said that he started beating up [the victim], and he told me that [the victim] fell down, or whatever, and [Boyd] started, like, stomping on him, and that [Bugg] jumped in and started helping [Boyd], like, kick him a little bit and --
> Q. Okay. And then what happened?
> A. He said that he was stomping on his head and that [the victim] was shaking, or whatever, like he was -- like he was knocked out or something.
> . . . .
> Q. Did [appellant] tell you whether or not while [the victim] was on the ground he did anything to him?
> A. I don't believe so. I don't recall.
> . . . .
> Q. You gave a statement in this case; is that correct?
> A. Yes.

> Q. I'd ask you to look at the part I've highlighted right there. Just read it to yourself, not out loud. Able to read it as much as you needed to?
> A. Yes.
> Q. Did [appellant] tell you he did anything?
> A. Yes. I recall he said that he didn't kick him in the face or nothing. He just kicked him in the -- like in the body and in the back.
> Q So [appellant] told you that while [Boyd] was kicking him he also kicked him?
> A. Yes.
> Q. But not in the head?
> A. Yes.

Appellant told M.J. that, when appellant asked Boyd what he had done with the victim, Boyd said that it was better that appellant not know, and the two of them laughed about it. Appellant also told M.J. that appellant and Boyd talked to potential witnesses and told them not to say anything.

On July 23, a search party found the victim's body in the woods near Timber Trails Road. The body had been partially burned, and some of the grass in the area had also been burned.

Dr. Barbara O'Connell, an anthropologist specializing in human skeletal remains, testified that the right side of the victim's skull had sustained suture separations and a series of linear fractures. One fracture on the left side of the skull could have resulted from force impacting the right side of the skull and being transmitted through the brain or from the skull being stable on the floor while being hit on the right side. The fractures extended from the temporal region to the bottom of the skull and were on both the inside and outside of the skull with some fractures going all the way through. O'Connell

testified that there were multiple blows to the skull. Pathologist Anne Bracey opined that the cause of death was homicidal violence.

The jury found appellant not guilty of aiding and abetting intentional second-degree murder and guilty of the remaining charges. This appeal followed sentencing.

D E C I S I O N

Appellant argues that he is entitled to reversal of his conviction because the district court failed to instruct the jury that a conviction cannot be based on the uncorroborated testimony of an accomplice. Because appellant did not request the instruction at trial, we review the district court's failure to give the instruction under the plain-error standard. *State v. Barrientos-Quintana*, 787 N.W.2d 603, 612 (Minn. 2010). "Under plain-error analysis, [the defendant] must show that: (1) there was error; (2) that was plain; and (3) his substantial rights were affected. . . . If these three prongs are met, the reviewing court then assesses whether it should address the error to ensure the fairness and integrity of the judicial proceedings." *State v. Brown*, 815 N.W.2d 609, 620 (Minn. 2012) (quotations omitted).

Under the accomplice-testimony statute, "[a] conviction cannot be had upon the testimony of an accomplice, unless it is corroborated by such other evidence as tends to convict the defendant of the commission of the offense." Minn. Stat. § 634.04 (2012). "District courts must instruct juries on accomplice testimony in any criminal case in which it is reasonable to consider that a witness testifying against the defendant is an accomplice." *State v. Cox*, 820 N.W.2d 540, 548 (Minn. 2012). "This duty arises from the very real possibility that a jury might discredit all testimony except the accomplice

testimony, and thus find the defendant guilty on the accomplice testimony alone." *Id.* (quotations omitted). "[C]ourts distrust accomplice testimony because the accomplice might have chosen to testify against the defendant in the hope of or upon a promise of immunity or clemency or to satisfy other self-serving or malicious motives." *Id.* (quotations omitted).

Appellate courts "determine whether an accomplice testimony instruction is necessary" based on "whether the alleged accomplice/witness could have been indicted and convicted of the same crime for which the defendant is charged." *Id.* (quotation omitted). A district court commits plain error by failing to give an accomplice-testimony instruction "wherever a witness can reasonably be considered an accomplice." *Barrientos-Quintana*, 787 N.W.2d at 612. When the facts are undisputed, the district court determines whether a witness might reasonably be considered an accomplice, but when the "evidence is disputed or susceptible to different interpretations, then the question whether the witness is an accomplice is one of fact for the jury." *State v. Flournoy*, 535 N.W.2d 354, 359 (Minn. 1995).

There was conflicting evidence about Bugg's participation in the assault. There was evidence that Bugg participated in the assault by kicking the victim while he was on the ground and that Bugg participated in covering up the crime by helping Boyd load the victim into the Suburban. But there was also evidence that Bugg only kicked the victim a little and did so because he was afraid of Boyd and that Bugg tried to stop the assault. As the state concedes, on this evidence, whether Bugg was an accomplice was a fact question for the jury. *See State v. Ostrem*, 535 N.W.2d 916, 915-16 (Minn. 1995)

(reinstating convictions for aiding and abetting burglary and theft when there was "convincing evidence indicating not only that [defendant] was [present] while the crime was being committed but also that he did nothing to 'thwart its completion' and . . . passively condoned . . . efforts to cover up the crime"). The district court, therefore, committed plain error by failing to instruct the jury on the use of accomplice testimony. *See, e.g.*, *State v. Clark*, 755 N.W.2d 241, 252 (Minn. 2008) (concluding that district court plainly erred by "failing to instruct the jury on accomplice testimony" when "it was reasonable for a jury to consider [a witness] to be an accomplice").

"To satisfy the third [plain-error] prong, [the defendant] bears the heavy burden of showing that there is a reasonable likelihood the error had a significant effect on the verdict." *State v. Davis*, 820 N.W.2d 525, 535 (Minn. 2012) (quotation omitted). In cases in which a district court plainly errs by failing to provide the jury an accomplice-testimony instruction, an appellant court "must decide whether there is a reasonable likelihood that the jury's verdict would have been significantly affected if the jurors had known they could not convict [the defendant] of [the charged offense] unless they found that [the accomplice's] testimony was corroborated by other evidence in the record." *Barrientos-Quintana*, 787 N.W.2d at 612.

"In determining whether an accomplice's testimony is corroborated, the defendant's entire conduct may be looked to for corroborating circumstances," and "[c]ircumstantial evidence may be sufficient to corroborate the [accomplice's] testimony." *Clark*, 755 N.W.2d at 254 (quotations omitted). "[T]he corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof."

Minn. Stat. § 634.04. But the "evidence need only be sufficient to restore confidence in the truthfulness of the accomplice's testimony. The evidence need not, standing alone, be sufficient to support a conviction, but it must affirm the truth of the accomplice's testimony and point to the guilt of the defendant in some substantial degree." *Barrientos-Quintana*, 787 N.W.2d at 612–13 (quotations omitted). "Corroborating evidence may consist of: physical evidence associated with the crime, the testimony of eyewitnesses and experts at trial, inadequacies and admissions in a defendant's testimony, and suspicious and unexplained conduct of an accused before or after the crime." *State v. Pederson*, 614 N.W.2d 724, 732 (Minn. 2000) (quotations omitted).

Appellant's admissions to M.J. corroborated Bugg's testimony: appellant admitted that he was present when the victim was assaulted; appellant began a fight with the victim during which the victim was knocked down; appellant admitted kicking the victim when the victim was on the ground being kicked by Boyd; appellant did not claim that he attempted to help the victim or get him medical attention; when Boyd said that it was better for appellant not to know what Boyd had done with the victim, appellant and Boyd laughed about it; and appellant and Boyd talked to potential witnesses and told them not to say anything.

There was also evidence of appellant lying to police and to the victim's girlfriend. He told police that he had no idea where the victim was and that the last time he had seen the victim was about 11:00 p.m. on July 16. When the victim's girlfriend called appellant, he said that he had not seen the victim since the night of July 16 and later assured her that the victim would be okay and would be found or show up.

Untruthfulness can indicate consciousness of guilt. *Eggersgluss v. Comm'r of Pub. Safety*, 393 N.W.2d 183, 185 (Minn. 1986) ("Defendant obviously was not being truthful in his response, and his lack of truthfulness showed consciousness of guilt."); *see also State v. Andersen*, 784 N.W.2d 320, 331-32 (Minn. 2010) (relying on defendant's repeated false statements to police as evidence of guilt).

Based on the evidence corroborating Bugg's testimony, we conclude that there is not a reasonable likelihood that the district court's failure to instruct the jury on the use of accomplice testimony had a significant effect on the jury's verdict. Because appellant has failed to show that the district court's failure to instruct the jury on the use of accomplice testimony affected his substantial rights, we do not address the fairness-and-integrity prong of plain-error analysis.

Affirmed.