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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A13-1059**

State of Minnesota,  
Respondent,

vs.

Arthur Bruce Clark,  
Appellant.

**Filed June 30, 2014  
Affirmed  
Hooten, Judge**

Clay County District Court  
File No. 14- CR-11-2231

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

Brian Melton, Clay County Attorney, Heidi M.F. Davies, Chief Assistant County Attorney, Moorhead, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Richard Schmitz, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Chutich, Judge; and Reyes, Judge.

**UNPUBLISHED OPINION**

**HOOTEN**, Judge

On appeal from his conviction of third-degree controlled substance crime, appellant argues that insufficient evidence corroborates the accomplice's testimony that

appellant went to a gas station to sell methamphetamine to appellant's wife so she could sell it to a confidential informant. Because we conclude that the accomplice's testimony was sufficiently corroborated by evidence linking appellant to the crime, we affirm.

### **FACTS**

In August 2010, Fargo police officer Brett Witte's confidential informant contacted him regarding an individual, later identified as Amanda Clark, who would be selling methamphetamine to the informant later that day in Minnesota. Officer Witte coordinated with Officer John Burkel of the Clay County Sheriff's Department to set up a controlled buy, with Officer Witte acting as the buyer. While preparing for the controlled buy at the police station, the informant received a phone call from a female who told the informant that "the persons that she would be meeting with would be gone soon if the [informant] didn't hurry up [and] get to that location for the deal."

That afternoon, Officer Witte drove himself and the informant to an area with a gas station in downtown Dilworth. Officer Witte parked between a fast-food restaurant and a bank that were located east of the gas station. At some point, Amanda walked over to their vehicle. The informant stepped out of the car, introduced Officer Witte to Amanda, and gave Amanda \$100 for the drugs. According to Officer Witte, Amanda did not give the informant anything immediately, but instead walked away from the car. Officer Witte did not see where Amanda walked to, and he and the informant stayed at the car. After "approximately three to four minutes," Amanda returned and handed the informant a small yellow baggy. Amanda then asked for a ride, and Officer Witte and the

informant dropped her off at a location in Dilworth. Officer Witte gave Officer Burkel the baggy, which was later confirmed to contain methamphetamine.

Officer Burkel, in an unmarked police car, observed the controlled buy from north of the gas station. According to him, Amanda was waiting nearby when Officer Witte and the informant arrived at the location. Officer Burkel saw Amanda walking toward the gas station after meeting with Officer Witte and the informant. He also observed a black Jeep Grand Cherokee parked next to the gas station's convenience store entrance. Officer Burkel testified that "as [Amanda] came across the parking lot, the passenger in this vehicle got out of the passenger side and also entered the [store] at the same time as [Amanda]." The passenger, later identified as appellant Arthur Clark, "appeared to meet or greet" Amanda, and "they appeared to say something to each other as they went into the store." Officer Burkel did not enter the convenience store. According to him, Amanda was inside the store "for a short period of time, less than a couple minutes." After exiting the store, Amanda met with Officer Witte and the informant. Clark exited the gas station, entered the Cherokee, and drove away.

Moorhead police officer Adam Torgerson also observed the controlled buy. He testified that he was within a block of the gas station and saw Clark and Amanda enter the convenience store together. He stated that it "appeared that they were conversing or acknowledg[ing] each other." After "about a minute," Officer Torgerson followed them inside. Clark walked out of the store just as Officer Torgerson was walking in. "After a short period of time" inside the store, Officer Torgerson saw Amanda exit the store's restroom. Amanda then left the gas station and met with Officer Witte and the informant.

Officers Torgerson and Burkel followed the Cherokee until they abandoned the surveillance to preserve the confidentiality of an ongoing investigation.

The driver of the Cherokee, later identified as Dustin Braaten, testified that he was friends with Clark and that he drove Clark to the gas station. Braaten testified that he supplied Clark with the methamphetamine and that they went to the gas station to sell the methamphetamine to Amanda. But, they waited “for a long time . . . [a]t least an hour” for Amanda. Eventually, Braaten saw Clark go inside the gas station’s store with Amanda, but he did not go inside himself.

Amanda, as a defense witness, testified that she was married to Clark when the controlled buy occurred, but that they had stopped living together for some time. She stated that, after she received the money from the informant, she walked to the gas station to buy cigarettes. Amanda denied having arranged a meeting with Clark. According to her, she ran into Clark in front of the gas station by coincidence and she asked Clark for money to buy a prescription drug to treat a hand wound. Amanda testified that she always asked Clark for money even though they were separated. Amanda denied that Clark supplied her with the methamphetamine that she sold to the informant. She refused to name her supplier.

Following a trial before a jury, the district court instructed the jury that Braaten’s testimony as an accomplice needed to be corroborated with other evidence. Clark was convicted of third-degree controlled substance crime in violation of Minn. Stat. § 152.023, subd. 1(1) (2010). Clark appeals.

## DECISION

Clark argues that the evidence was insufficient to support his conviction because Braaten was an accomplice whose testimony was not corroborated.<sup>1</sup> We disagree.

To convict Clark of a controlled substance crime in the third degree, the state had to prove beyond a reasonable doubt that Clark sold the methamphetamine to Amanda. *See* Minn. Stat. § 152.023, subd. 1(1). “Sell” means “(1) to sell, give away, barter, deliver, exchange, distribute or dispose of to another, or to manufacture; or (2) to offer or agree to perform an act listed in clause (1); or (3) to possess with intent to perform an act listed in clause (1).” Minn. Stat. § 152.01, subd. 15(a) (2010). Because the state did not submit evidence based on personal knowledge of the alleged drug transaction between Clark and Amanda, the state’s proof of this essential fact was based on circumstantial evidence.

We apply a two-step analysis when reviewing sufficiency-of-the-evidence challenges based on circumstantial evidence. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). “The first step is to identify the circumstances proved,” and “[t]he second step is to determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *Id.* at 598–99 (quotation omitted). In the first step, “we defer to the jury’s acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the State.” *Id.* (quotation omitted). “[W]e construe conflicting

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<sup>1</sup> The parties do not dispute that Braaten was an accomplice.

evidence in the light most favorable to the verdict and assume that the jury believed the State's witnesses and disbelieved the defense witnesses." *Id.* at 599 (quotation omitted).

If the testimony of an accomplice is involved, we must engage in a threshold analysis to determine whether the accomplice testimony should be considered in identifying the circumstances proved. *See* Minn. Stat. § 634.04 (2010) (providing that a conviction cannot be based on the uncorroborated testimony of an accomplice). We consider accomplice testimony in identifying the circumstances proved only if it has been sufficiently corroborated. *See State v. Clark*, 755 N.W.2d 241, 257 n.5 (Minn. 2008) (considering accomplice testimony in identifying the circumstances proved when such testimony was sufficiently corroborated).

"[T]he issue of whether an accomplice's testimony has been sufficiently corroborated is a question of fact to be determined by the jury." *Id.* at 251. We review corroborating evidence "to determine whether a reasonable jury could conclude that [an accomplice's] testimony was corroborated." *Id.* at 253.

Because the accomplice testimony rule is based on the fear of self-serving dishonesty by accomplice witnesses, we have long held that evidence is sufficient to corroborate an accomplice's testimony when it is weighty enough to restore confidence in the truth of the accomplice's testimony. This burden is met when the defendant is linked to the alleged crime by corroborating evidence that in some substantial degree tends to affirm the truth of [the accomplice's] testimony and to point to the guilt of the defendant. The precise quantum of corroborative evidence needed necessarily depends on the circumstances of each case, but corroborative evidence does not need to be sufficient to establish a prima facie case of the defendant's guilt or sustain a conviction.

In determining whether an accomplice's testimony is corroborated, [t]he defendant's entire conduct may be looked to for corroborating circumstances. Circumstantial evidence may be sufficient to corroborate the testimony of an accomplice. Relevant facts that may be used to corroborate an accomplice's testimony and link the defendant to the crime include: participation in the preparation for the criminal act; opportunity and motive; proximity of the defendant to the place where the crime was committed under unusual circumstances; association with persons involved in the crime in such a way as to suggest joint participation; possession of an instrument or instruments probably used to commit the offense; and unexplained affluence or possession of the fruits of criminal conduct.

*Id.* at 253–54 (alterations in original) (quotations and citations omitted).

We conclude that Braaten's testimony was corroborated with sufficient evidence linking Clark to the crime. Amanda and Clark were not strangers who happened to be at the same place at the same time, going about their own business. Rather, they were closely associated as husband and wife. And despite their separation, Amanda still consistently asked Clark for money. Moreover, the informant was told that the individuals involved in "the deal" had been waiting, corroborating Braaten's testimony that he and Clark waited around the area of the gas station for a long time before Clark eventually entered the gas station's convenience store. At the precise moment that Amanda approached the store entrance, Clark exited the Cherokee and conversed with Amanda, supporting Braaten's testimony that Clark was at the gas station for the purpose of meeting Amanda. Clark and Amanda's association on the day of the controlled buy suggests their joint participation in a drug transaction that took place inside the gas station's store because of Clark's temporal and geographical proximity to the alleged

crime. Indeed, Clark and Amanda both entered the store at exactly the same time and both exited after mere minutes.

This chain of events happened just minutes after Amanda received money from the informant but before she gave the methamphetamine to the informant. Amanda did not produce the methamphetamine herself, but was instead supplied with the drugs. That Amanda gave the methamphetamine to the informant after interacting with Clark at the gas station corroborates Braaten's testimony that Clark was Amanda's supplier. And while Clark and Amanda were both inside the gas station's store, Clark had the opportunity to supply Amanda with the methamphetamine. The officers' surveillance, moreover, revealed no evidence that Amanda interacted with anyone else other than Clark while at the gas station. Finally, Braaten testified that he supplied Clark with methamphetamine, the same type of drug that Amanda sold to the informant. Based on all this evidence, we conclude that the corroborating evidence affirmed the truth of Braaten's testimony in a substantial degree.

Clark argues that Braaten's testimony was insufficiently corroborated, and he cites *State v. Williams* for the proposition that "[m]ere presence at the scene of a crime does not, by itself, prove liability for the crime of another." 759 N.W.2d 438, 443 (Minn. App. 2009). But *Williams* is inapposite because corroborating evidence need not prove liability for a crime; it need only restore confidence in the truth of an accomplice's testimony. And as explained, the corroborating evidence comprised more than Clark's mere presence at the gas station.

Clark does not argue that the evidence is insufficient to support his conviction if Braaten's testimony is sufficiently corroborated. But we note that our analysis of the second step—whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt—compels us to conclude that the evidence is sufficient to establish Clark's guilt beyond a reasonable doubt. Braaten's testimony establishes that Clark went to the gas station to sell methamphetamine to Amanda, which is circumstantial evidence that Clark in fact sold the methamphetamine to Amanda. The corroborating evidence that we already discussed in detail supports that Clark carried out his intent to sell the methamphetamine to Amanda. Although Amanda denied that Clark supplied her with the methamphetamine, we must assume that the jury disbelieved her as a defense witness because “[a]ssessing the credibility of a witness and the weight to be given a witness's testimony is exclusively the province of the jury.” *State v. Mems*, 708 N.W.2d 526, 531 (Minn. 2006). Based on this record and our deference to the credibility findings of the jury, we conclude that the circumstances proved point to only one reasonable inference—that Clark is guilty of third-degree controlled substance crime.

**Affirmed.**