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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A10-1026**

State of Minnesota,  
Respondent,

vs.

Ahmed Ali,  
Appellant.

**Filed January 14, 2013  
Affirmed  
Bjorkman, Judge**

Hennepin County District Court  
File No. 27-CR-08-41585

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

Michael O. Freeman, Hennepin County Attorney, Michael Richardson, Assistant County  
Attorney, Minneapolis, Minnesota (for respondent)

Mark D. Nyvold, Fridley, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Kalitowski, Judge; and  
Cleary, Judge.

**UNPUBLISHED OPINION**

**BJORKMAN**, Judge

Appellant challenges his attempted first-degree murder and assault convictions,  
arguing that (1) there is not sufficient evidence to corroborate his confession and the

testimony of two accomplices and (2) the district court judge lacked authority to preside over his trial. We affirm.

## **FACTS**

Just after midnight on August 14, 2008, A.A., A.F., and T.G. were sitting in a plaza outside a Minneapolis apartment complex when three men with their faces covered by white towels and bandanas approached them. Two of the men pulled out guns and began shooting. A.A. was shot several times, sustaining a life-threatening abdominal injury. A.F. was shot in the upper thigh, and a bullet grazed T.G.'s finger. The victims could not identify the shooters.

Immediately before the shooting, C.K. was walking her dog behind the apartment complex when she saw a black SUV pull into a parking lot. Three men wearing jeans and white shirts exited the SUV and headed in the direction of the complex. C.K. then heard several gunshots. A few minutes later, three men ran by her, wearing what appeared to be the same clothes as the men she saw earlier. C.K. called 911 and reported the shooting and the SUV's license-plate number.

A short while later, a Metro Transit police officer saw a blue SUV parked in the middle of a street near a freeway wall a few blocks from the apartment complex. One man was standing in a grassy area near the SUV, and another man was running toward the freeway wall. The transit officer followed the SUV until he saw a Minneapolis police squad car monitoring the vehicle.

Other police officers stopped the SUV, which had the same license-plate number that C.K. reported. Six men were in the vehicle, including appellant Ahmed Ali, co-

defendant Abdulsalam Usee, A.N., and M.H. Ali was wearing a black shirt and blue jeans. Inside the vehicle, police found a nine-millimeter cartridge and five white towels.

Police subsequently searched the area where the SUV had been parked and found a nine-millimeter handgun and a .40-caliber handgun. Bullets and shell casings located at the scene of the shooting matched the guns. No fingerprints were recovered, but Usee's DNA was found on the nine-millimeter handgun.

The state charged Ali, Usee, A.N. and M.H. with offenses related to the shooting. Ali and Usee were tried jointly.<sup>1</sup> A.N. and M.H. accepted plea agreements and testified for the prosecution. A.N. stated that he was driving the SUV on the night in question; dropped off Ali, Usee, and M.H. behind the apartment complex; and picked them up shortly thereafter at a nearby fast-food restaurant. A.N. testified that when the three men reentered the SUV, they appeared nervous, and M.H. changed his clothes.

M.H. testified that he went to the apartment complex with Ali and Usee to shoot several young men in retaliation for a prior shooting. Usee had the nine-millimeter handgun, and M.H. had the other weapon. At the last minute, M.H. decided not to go through with the shooting and gave his gun to Ali. Ali and Usee shot the victims. The three men fled the scene and caught up with the SUV near the freeway. M.H. testified that they wiped down the guns and threw them into a grassy area by a bridge that crossed the freeway. Once in the vehicle, Ali removed his white shirt and changed into a black shirt.

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<sup>1</sup> Usee was also convicted, and this court affirmed his conviction on appeal. *See State v. Usee*, 800 N.W.2d 192, 195, 201 (Minn. App. 2011), *review denied* (Minn. Aug. 24, 2011).

The state also offered testimony regarding Ali's jailhouse confession to R.S. In November 2009, while in custody for aggravated robbery, R.S. encountered Ali. Ali told R.S. about the shooting, stating that M.H. had "chickened out," causing Ali to grab the gun and shoot the victims. Ali told R.S. that Usee was the other shooter. R.S. acknowledged that he agreed to testify against Ali in exchange for a reduced sentence.

The jury found Ali guilty of attempted first-degree murder, first-degree assault, and second-degree assault. Ali appealed. This court stayed the appeal to permit Ali to file a postconviction petition challenging the district court judge's authority to preside over his trial based on her failure to reside within her judicial district. Ali's postconviction petition was denied, and his combined appeal was reinstated.

## D E C I S I O N

### **I. Sufficient evidence supports Ali's convictions because his confession and the testimony of his two accomplices were corroborated.**

When reviewing a sufficiency-of-the-evidence challenge, we carefully examine the evidence in the record to determine whether the jury could reasonably find the defendant guilty of the charged offenses. *State v. Buckingham*, 772 N.W.2d 64, 71 (Minn. 2009). We view the evidence in the light most favorable to the conviction and presume the jury believed the state's witnesses and disbelieved any contrary evidence. *State v. Chambers*, 589 N.W.2d 466, 477 (Minn. 1999). Ali argues that the evidence is not sufficient to support his convictions because his confession to R.S. and the testimony of his two accomplices were not corroborated by independent evidence. We address each argument in turn.

A defendant's confession cannot sustain a conviction "without evidence that the offense charged has been committed." Minn. Stat. § 634.03 (2010). Evidence independent of the confession must establish the "body of the crime." *State v. Lalli*, 338 N.W.2d 419, 420 (Minn. 1983); *In re Welfare of C.M.A.*, 671 N.W.2d 597, 601 (Minn. App. 2003). Under this requirement, independent evidence must show that the harm or injury occurred and that it was caused by criminal activity. *C.M.A.*, 671 N.W.2d at 601. Each element of the offense does not need to be individually corroborated; rather, independent evidence must allow the jury to infer the trustworthiness of the confession. *State v. Heiges*, 806 N.W.2d 1, 13 (Minn. 2011).

Ali argues that his confession to R.S. was not independently corroborated. We disagree. First, independent evidence places Ali at the scene of the shooting. T.G. testified that three men with their faces covered by white towels and bandanas came to the apartment complex and two of them started shooting. C.K. witnessed three men exit an SUV, heard gunshots, and then saw three men run by her, wearing the same clothes as the men she saw earlier. C.K. called 911 and reported the SUV's license-plate number. Police stopped the SUV a short while later and found Ali, Usee, A.N., and M.H. in the vehicle along with five white towels and a nine-millimeter cartridge. Shell casings and bullets from the scene matched the nine-millimeter and .40-caliber handguns found near where the SUV had been parked. Usee's DNA was found on the nine-millimeter handgun, substantiating R.S.'s testimony that Usee used one gun and Ali fired the other gun.

Second, M.H.'s testimony corroborates Ali's confession. Accomplice testimony may corroborate a confession. *See State v. Huebsch*, 146 Minn. 34, 35, 177 N.W. 779, 779 (1920) ("But the testimony of an accomplice is corroborated by the confession of the accused, and he may be convicted on such testimony and his confession."). M.H.'s testimony that he gave Ali his gun and Ali began shooting confirms Ali's statement to R.S. that M.H. "chickened out," causing him to grab the gun and shoot the victims. The strong similarities between Ali's confession and M.H.'s testimony further bolster the confession's reliability. On this record, we conclude that independent evidence established the offenses were committed and permitted the jury to infer that Ali's confession was trustworthy.<sup>2</sup>

Convictions grounded on the testimony of an accomplice also require independent evidentiary support. A defendant cannot be convicted based on an accomplice's testimony "unless it is corroborated by such other evidence as tends to convict the defendant of the commission of the offense." Minn. Stat. § 634.04 (2010). Corroborating evidence does not need to establish a prima facie case of the defendant's guilt. *Staunton v. State*, 784 N.W.2d 289, 297 (Minn. 2010). Rather, the evidence must "restore[] confidence in the accomplice's testimony, confirming its truth and pointing to the defendant's guilt in some substantial degree." *State v. Ford*, 539 N.W.2d 214, 225 (Minn. 1995) (quotation omitted). Accomplice testimony cannot be corroborated by the testimony of another accomplice. *State v. Pederson*, 614 N.W.2d 724, 733 (Minn. 2000).

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<sup>2</sup> Ali contends that R.S.'s testimony was not credible because he testified to reduce his sentence. We are not persuaded. The jury was presented with this precise argument, and we defer to the jury's credibility determinations. *See Buckingham*, 772 N.W.2d at 71.

But a defendant's confession may corroborate accomplice testimony. *Huebsch*, 146 Minn. at 35, 177 N.W. at 779; *see also Pederson*, 614 N.W.2d at 732.

Ali asserts that there is insufficient evidence to corroborate the testimony of accomplices M.H. and A.N. We disagree. It is not disputed that M.H. and A.N. are accomplices and that their testimony must be corroborated; they both were charged with the same offenses as Ali. *See State v. Swanson*, 707 N.W.2d 645, 652 (Minn. 2006) (“An accomplice is one who could have been charged with and convicted of the crime with which the accused is charged.”). But the record reveals sufficient independent evidence to corroborate their testimony. First, the evidence cited above that corroborates Ali's confession also corroborates the accomplices' testimony. In *Usee*, this court concluded that this evidence was sufficient to corroborate M.H.'s testimony. 800 N.W.2d at 200. Although DNA evidence linked Usee to one of the guns involved in the shooting, this court did not rely solely on that piece of evidence. Rather, we determined the record as a whole contained ample independent evidence to corroborate the accomplice testimony. *See id.* Second, Ali's confession that he took the gun from M.H. and shot the victims corroborates the accomplices' testimony.

In sum, (1) Ali's confession, (2) T.G.'s and C.K.'s testimony, (3) Ali's presence in the SUV shortly after the shooting, (4) evidence linking the SUV to the guns used in the shooting and the white towels worn by the shooters, and (5) Usee's DNA on the nine-millimeter handgun, confirm the truth of M.H.'s and A.N.'s testimony and point to Ali's guilt to a substantial degree. Based on our careful review of the record, we conclude that sufficient evidence sustains the jury's verdict.

## **II. The district court judge had authority to preside over Ali's trial.**

Ali asserts that the district court judge lacked authority to preside over his trial because the judge vacated her judicial office by residing outside of the district for a three-month period prior to his trial. *See In re Conduct of Karasov*, 805 N.W.2d 255, 265 (Minn. 2011). We disagree. This court has rejected identical arguments concerning the same judge. *See State v. Irby*, 820 N.W.2d 30, 36 (Minn. App. 2012), *review granted* (Minn. Nov. 20, 2012). In *Irby*, we held that the district court judge did not vacate her office and therefore had authority to preside over felony trials. *Id.* at 34. Alternatively, we concluded that violating the residency requirement was only a procedural defect in the district court judge's authority, making her a de facto judge whose acts, including presiding over felony trials, are valid. *See id.* at 35-36 ("A de facto judge is a judge operating under color of law but whose authority is procedurally defective." (quotation omitted)).

**Affirmed.**