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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-0855**

State of Minnesota,  
Respondent,

vs.

Sally El-Bazi,  
Appellant.

**Filed May 6, 2008  
Affirmed  
Stoneburner, Judge**

Dakota County District Court  
File No. K1061491

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

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Considered and decided by Lansing, Presiding Judge; Stoneburner, Judge; and Worke, Judge.

## **UNPUBLISHED OPINION**

**STONEBURNER**, Judge

Appellant challenges her convictions of first- and second-degree burglary, arguing that the evidence, which she asserts consisted only of the uncorroborated testimony of accomplices, is insufficient to sustain the convictions. Because the accomplice evidence was corroborated, we affirm.

### **FACTS**

The Anderson home was burglarized three times on April 27, 2005: once at approximately 2:00 a.m., once at approximately 9:00 a.m., and once at approximately 11:00 a.m. It is undisputed that on April 27, appellant Sally Emanouil El-Bazi used her mother's car without permission to drive Jacob Strayer and Nicholas Cayeaux to the Anderson home at about 2:00 a.m. El-Bazi stayed in the car while Strayer and Cayeaux walked around to the back of the home. When they came back around the house, El-Bazi saw that they were carrying a tackle box. Strayer testified that the group had discussed the burglary before it occurred. Cayeaux testified that he and Strayer had discussed the burglary before it occurred, but he was not sure that El-Bazi heard the discussion. He testified that once they got to the Anderson home, El-Bazi "had to know that something was going on" given the circumstances. The group returned to El-Bazi's home where they spent the night in her bedroom. Strayer testified that the tackle box and a power drill that they also stole from the Anderson home were taken into El-Bazi's house.

Later that morning at about 9:00 a.m., El-Bazi, Cayeaux, and Strayer went to the Anderson house a second time in a vehicle driven by Justin Slack. Strayer testified that

this time El-Bazi and Cayeaux entered the house. Slack, El-Bazi, and Cayeaux testified that only Cayeaux and Strayer entered the house and that El-Bazi remained in the vehicle. A Federal Express van arrived at Anderson's house while Slack's vehicle was parked outside. The Federal Express driver saw only two people in the vehicle and did not know if they were males or females. He heard noises in the house but no one came to the door. A neighbor saw Slack's vehicle with a female in the front passenger seat and a person in the back who looked like Strayer, whom she did not know by name but recognized because he had lived with the Andersons for several weeks prior to this incident. The neighbor saw Strayer leave the vehicle, walk behind the house, and later return to the vehicle with a box that looked like a video game system under his coat. Slack drove Strayer, Cayeaux, and El-Bazi to El-Bazi's home, and Slack left. Both Cayeaux and Strayer testified that El-Bazi knew that they were returning to the Anderson home to steal things. A Nintendo GameCube (GameCube) and game cartridges were stolen.

Strayer and Cayeaux testified that Cayeaux and El-Bazi went back into the Anderson home a third time at about 11:00 a.m. to get the cords for the GameCube that was taken earlier. El-Bazi denied that she went to the house the third time, but in her statement to the investigating officer, she acknowledged that the power cords for the GameCube were not taken during the 9:00 a.m. entry.

When Thomas Anderson, who went to high school with Strayer, Cayeaux, and El-Bazi, got home from school on April 27, he noticed that the GameCube and associated equipment were missing. He called his father who came home to find that money, liquor, a drill, and a tackle box were also missing. There was no sign of forced entry but the

garage service door was unlocked. The Andersons suspected Strayer, who had recently lived with them.

El-Bazi was charged with committing or aiding and abetting first-degree burglary for the 2:00 a.m. burglary that occurred when the Andersons were at home. She was charged with two counts of committing or aiding and abetting second-degree burglary for the two subsequent entries into the house.

El-Bazi's defense was that she did not know that Strayer and Cayeaux intended to commit a burglary the first time that they went to the Anderson home, and that the next morning, she was merely present in a vehicle outside the home and did not aid Strayer and Cayeaux in committing burglary at that time. A recording of the statement that El-Bazi gave to the investigating officer was played for the jury at trial. In the statement, El-Bazi denied driving Strayer and Cayeaux to the Anderson home in her mother's car, but during trial testimony, she admitted that this was a lie. At trial, El-Bazi testified that she did not remember a power drill being stolen, but in her statement, she told the officer that she was not with Cayeaux and Strayer when they broke in and stole the power drill, but rather that they had the power drill when they came to her house. El-Bazi also told the officer that "[i]t was all [Strayer]'s idea, every thing [sic] was." At the end of her statement, El-Bazi told the officer that she "admitted everything," but at trial she testified that she only meant that she was admitting being present, not that she knew burglaries were occurring.

A jury found El-Bazi guilty of first-degree burglary for the 2:00 a.m. incident and of second-degree burglary for the 9:00 a.m. incident, but not guilty of second-degree

burglary for the 11:00 a.m. incident. The district court stayed imposition of sentence and placed El-Bazi on probation for five years with conditions, including 90 days in jail. This appeal followed.

## D E C I S I O N

El-Bazi argues that because only the uncorroborated testimony of accomplices implicated her in the burglaries, the evidence is insufficient to support her convictions.

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, and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof.

Minn. Stat. § 634.04 (2004). It is undisputed that Strayer and Cayeaux, who were also charged with burglary, are accomplices. *See State v. Swyhingan*, 304 Minn. 552, 555, 229 N.W.2d 29, 32 (1975) (defining an accomplice as a witness who could have been indicted and convicted for the same crimes with which a defendant is charged). The requirement for corroboration of accomplice testimony reflects the “common law’s long-standing mistrust of the testimony of the accomplice. . . . [who] may testify against another in the hope of or upon a promise of immunity or clemency or to satisfy other self-serving or malicious motives.” *State v. Shoop*, 441 N.W.2d 475, 479 (Minn. 1989).

“When reviewing the sufficiency of evidence to corroborate accomplice testimony, we view the evidence in the light most favorable to the [verdict] and all conflicts in the evidence are resolved in favor of the verdict.” *Turnage v. State*, 708 N.W.2d 535, 543 (Minn. 2006) (quotation omitted). Corroboration through the testimony

of another accomplice is insufficient. *In re Welfare of K.A.Z.*, 266 N.W.2d 167, 169 (Minn. 1978). Although corroborating evidence “need not establish a prima facie case of the defendant’s guilt,” *State v. Johnson*, 616 N.W.2d 720, 727 (Minn. 2000), it “must be weighty enough to restore confidence in the accomplice’s testimony, confirming its truth and pointing to the defendant’s guilt in some substantial way,” *State v. Hooper*, 620 N.W.2d 31, 39 (Minn. 2000) (quotation omitted).

With regard to the conviction of first-degree burglary, the state argues that the evidence sufficiently corroborates the accomplices’ testimony that El-Bazi aided and abetted their burglary by providing them transportation to and from the Andersons’ house. “A person is criminally liable for a crime committed by another 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 (2004). “Under this statute, liability attaches when one plays some knowing role in the commission of the crime and takes no steps to thwart its completion.” *State v. Swanson*, 707 N.W.2d 645, 658-59 (Minn. 2006) (quotation omitted). Although “inaction, knowledge, or passive acquiescence” is not enough to establish the requisite criminal intent, “active participation in the overt act which constitutes the substantive offense is not required, and a person’s presence, companionship, and conduct before and after an offense are relevant circumstances from which a person’s criminal intent may be inferred.” *State v. Ostrem*, 535 N.W.2d 916, 924 (Minn. 1995).

A jury may infer liability from “factors such as defendant’s presence at the scene of the crime, defendant’s close association with the principal[s] before and after the

crime, [and] defendant's lack of objection or surprise under the circumstances." *State v. Pierson*, 530 N.W.2d 784, 788 (Minn. 1995). The jury in this case was properly instructed regarding the requirement for corroboration of accomplice testimony.

El-Bazi admitted that (1) she took her mother's car without permission; (2) she drove Strayer and Cayeaux to Anderson's house at 2:00 a.m.; and (3) she saw them go to the back of the house and return a short time later carrying a tackle box. Although El-Bazi testified that she thought that Strayer and Cayeaux were just "borrowing" the tackle box, the jury obviously discredited this testimony and inferred from El-Bazi's presence, close association with Strayer and Cayeaux, and lack of objection or surprise that the boys entered an occupied home at 2:00 a.m. and returned after a brief time carrying property, that El-Bazi was aware of and aided the burglary. And far from objecting, El-Bazi transported the boys and their haul back to spend the night in her bedroom.

El-Bazi admits that she was present when Strayer and Cayeaux returned to the Anderson home at approximately 9:00 a.m. Her presence is corroborated by two non-accomplices: Slack and the Andersons' neighbor. Although El-Bazi denied seeing Strayer or Cayeaux carrying anything away from the house at that time, the neighbor clearly saw someone carrying what looked like a video game system under his coat. This property was taken to El-Bazi's house, and she acknowledged to the investigating officer that the power cords had not been taken at this time. The circumstantial evidence is sufficient to support the jury's reasonable inference that El-Bazi aided and abetted this burglary: she was at the home a second time within eight hours, did nothing to thwart the burglary, and knew what property had been taken.

Because direct and circumstantial evidence corroborated Strayer's and Cayeaux's accomplice testimony that El-Bazi aided and abetted both burglaries, the evidence was sufficient to support the verdict.

**Affirmed.**