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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1089**

State of Minnesota,
Respondent,

vs.

Glen L. Mata,
Appellant.

**Filed August 19, 2008
Affirmed
Harten, Judge***

Ramsey County District Court
File No. KX-06-2707

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

Susan Gaertner, Ramsey County Attorney, Mitchell L. Rothman, Assistant County Attorney, 50 West Kellogg Boulevard, Suite 315, St. Paul, MN 55102 (for respondent)

Lawrence Hammelring, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Hudson, Judge; and Harten, Judge.

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

UNPUBLISHED OPINION

HARTEN, Judge

Appellant Glen L. Mata, convicted by a jury of aiding and abetting second-degree murder, argues that he is entitled to a new trial because his accomplice testified and the district court failed to give a mandatory corroboration instruction. Because appellant fails to show that giving the instruction would have significantly affected the jury's verdict, we affirm.

FACTS

On 9 April 2006, Fernando Morcia and appellant entered a convenience store. Morcia jumped over the counter and repeatedly tried to stab the proprietor with a butcher knife. As the two struggled, the proprietor was able to grasp Morcia's hand. Then appellant grabbed the proprietor from behind and tried to prevent him from grasping Morcia's hand. When the proprietor seized a small knife from behind the counter, Morcia stepped back. Appellant continued to hold the proprietor, then moved away. Morcia told the proprietor to let them go and he agreed. Morcia and appellant then left the convenience store.

Surveillance cameras in the store provided three different perspectives of the assault and enabled police to identify appellant and Morcia as the assailants. Morcia pleaded guilty to attempted second-degree intentional murder.

At appellant's trial, the jury viewed the surveillance camera tapes. The jury also heard transcribed testimony concerning Morcia's guilty plea hearing, wherein Morcia said that he was very intoxicated at the time of the attack, that he stabbed the proprietor,

that he was trying to kill the proprietor when he stabbed him, and that appellant held the proprietor to prevent his escape. The jury heard testimony from the proprietor and from Morcia. The jury also saw the surveillance tapes a second time during the state's closing argument. Appellant's counsel showed a portion of one of the surveillance tapes and argued that it showed appellant pulling the proprietor away from Morcia.

Appellant's counsel submitted proposed jury instructions that included the standard mandatory instruction on corroboration of accomplice testimony, but did not object when the district court's final version of the instructions did not include the corroboration instruction or when the district court failed to give that instruction.

The jury viewed the surveillance tapes one more time during its deliberation and ultimately found appellant guilty as charged. Appellant challenges his conviction on the ground that the district court's failure to give a corroboration instruction entitles him to a new trial.

D E C I S I O N

“[W]here a district court fails to give a required accomplice corroboration instruction and the defendant does not object, an appellate court must apply the plain error analysis.” *State v. Reed*, 737 N.W.2d 572, 584 n.4 (Minn. 2007). The appellate court considers first whether there is “(1) an error, (2) that was plain, and (3) that affected the defendant's substantial rights.” *Id.* at 583. Here, the first two criteria are satisfied: it was plain error not to give the accomplice corroboration instruction.

But appellant cannot satisfy the third criterion:

The “affects substantial rights” language of the third plain error factor is the same language used to define harmless error. Under the third plain error factor, an error affects substantial rights where there is a reasonable likelihood that the absence of the error would have had a significant effect on the jury’s verdict. Unlike a harmless error analysis, the defendant generally bears the burden of persuasion with respect to the third plain error factor.

Id. at 583-84 (quotations and citations omitted). Appellant must show a reasonable likelihood that giving the instruction would have had a significant effect on the jury’s verdict. Appellant cannot meet this standard because the surveillance tapes provided ample corroborative evidence of Morcia’s testimony.

“Corroborative 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.” *Id.* at 584 (quotation omitted). The tapes arguably would have been sufficient to support appellant’s conviction; they affirm Morcia’s testimony and point to appellant’s guilt in a substantial degree.

Finally, the rationale behind the requirement for an instruction that uncorroborated accomplice testimony cannot support a conviction is that “[a]ccomplice testimony is inherently untrustworthy because the accomplice may testify against the defendant in the hopes of obtaining clemency for himself.” *Id.* at 582. Here, Morcia had already pleaded guilty to the crime; there was no possibility of his obtaining clemency as a result of his testimony implicating appellant.

Because appellant cannot show that it is reasonably likely that giving the corroboration instruction would have had a significant effect on the jury's verdict, the third prong of the plain error test is not met, and he is not entitled to a new trial.

Affirmed.