STATE OF MINNESOTA
IN COURT OF APPEALS
A08-109
A08-207

In the Matter of the Welfare of:
J.L.S., Child
(A08-109)

and

In the Matter of the Welfare of:
K.S.W., Child
(A08-207)

Filed February 3, 2009
Affirmed
Ross, Judge

Anoka County District Court
File Nos. 02-JV-07-1614; 02-JV-07-1613

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

Robert M.A. Johnson, Anoka County Attorney, Kathryn M. Timm, Assistant County Attorney, Anoka County Government Center, 2100 Third Avenue, Suite 720, Anoka, MN 55303-5025 (for respondent)

Lawrence Hammerling, Chief Appellant Public Defender, Jodi L. Carlson, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant J.L.S.)

Bradford W. Colbert, Legal Assistance to Minnesota Prisoners, 875 Summit Avenue, Suite 254, St. Paul, MN 55105 (for appellant K.S.W.)

Considered and decided by Connolly, Presiding Judge; Ross, Judge; and Bjorkman, Judge.

U N P U B L I S H E D O P I N I O N

ROSS, Judge

In these consolidated appeals from their convictions after being adjudicated delinquent for aiding and abetting simple robbery, J.L.S. and K.S.W. argue that they received ineffective assistance of counsel and that the evidence was not sufficient to convict them. They also both argue that the district court's failure to issue factual findings prevents meaningful appellate review of their convictions, although K.S.W. expressly withdrew this challenge at oral argument. Because the evidence supports their convictions, because their trial counsel was not ineffective, and because the lack of factual findings does not prevent our review, we affirm.

FACTS

Michael Veal was riding his bicycle in Columbia Heights when he stopped momentarily and was approached by four teenage boys. After he greeted them, one brandished a weapon and demanded money while the other three stood close by. Veal handed over $40 and then fled on his bicycle. He rode to a nearby Dairy Queen, found Columbia Heights police officer Eric Hanson, and reported the crime.

Veal told Hanson about the robbery and described the robbers as four young, African-American males wearing black shirts. One of them wore a shirt bearing dollar symbols and another had a red bicycle. Police began looking for the robbers. They eventually apprehended three boys who matched the description, J.L.S. and K.S.W. among them. Police detained the trio while another officer drove Veal to them for him to indicate whether they were involved in the robbery.

The police conducted a "show-up" identification; that is, they drove Veal to a neutral location in a squad car, stood each suspect in front of the car separately, and illuminated each in turn with the car's spotlight. Each suspect was handcuffed behind his back while a police officer stood beside him. Veal identified all three suspects, but he said that none was the individual who brandished the weapon and demanded money. The state charged J.L.S., K.S.W., and the other apprehended juvenile with aiding and abetting simple robbery. An officer arrested the fourth juvenile about two weeks later.

The state prosecuted J.L.S. and K.S.W. in a joint trial. Veal, several police officers, K.S.W., and the two other robbery participants testified at the trial. Veal reaffirmed his confidence in his out-of-court identification of the defendants. He also identified J.L.S. in the courtroom, but not K.S.W.

Before K.S.W. testified, his trial counsel moved for acquittal because Veal had not identified him in court and because the state purportedly failed to prove that he aided and abetted the robbery. J.L.S. joined this motion.[1] The state argued that juvenile delinquency proceedings do not allow for motions for acquittal and that sufficient evidence supported the aiding-and-abetting charge. The district court concluded that the state had met its burden of proof and denied the motions.

K.S.W. then testified, offering his alibi. He admitted that he was with the other three boys before the robbery, but he presented a video recording that demonstrated that

[1] At oral argument in this appeal, K.S.W.'s counsel discussed a potential challenge regarding the district court's handling of his motion of acquittal. The issue, however, was not briefed on appeal and is therefore not before us for review. *See State v. Butcher*, 563 N.W.2d 776, 780–81 (Minn. App. 1997) (noting that issues not briefed on appeal are deemed waived), *review denied* (Minn. Aug. 5, 1997).

he was in a gas station for about one minute near the time of the robbery. He testified that he saw Veal before the robbery, that he thought that Veal would be robbed, but that he left the group fearing that if Veal fought back they would have to pummel him. K.S.W. also testified that he rejoined the other three after going to the gas station and that he stayed with them until the police stopped them. In other words, K.S.W. attempted to persuade the district court that although he was with the group immediately before and after the robbery, although he knew the group discussed robbing Veal, and although Veal identified him, he was not truly present during the robbery.

The district court disbelieved K.S.W.'s alibi and found J.L.S. and K.S.W. guilty of aiding and abetting simple robbery, and it adjudicated them delinquent. J.L.S. and K.S.W. separately appeal their convictions. We consolidated their appeals for this opinion.

D E C I S I O N

I

J.L.S. and K.S.W. argue that they received ineffective assistance of counsel because their trial counsel did not seek to suppress the show-up identification evidence. We review ineffective assistance of counsel claims de novo. *Opsahl v. State*, 677 N.W.2d 414, 420 (Minn. 2004). To establish that he received ineffective assistance of counsel, a defendant must prove that his counsel's assistance "fell below an objective standard of reasonableness" and that a reasonable possibility exists that but for the deficiency, the proceeding would have led to a different outcome. *Id.* at 420–21 (quotation omitted). Defense counsel is presumed to have performed in a competent

manner. *State v. Doppler*, 590 N.W.2d 627, 633 (Minn. 1999). Her representation is objectively unreasonable if she fails to "exercise[] the customary skills and diligence that a reasonably competent attorney would . . . under the circumstances." *Id*. (quotation omitted). We may address either prong in any order and resolve an ineffective-assistance-of-counsel claim without analyzing both. *Anderson v. State*, 746 N.W.2d 901, 906 (Minn. App. 2008).

J.L.S. and K.S.W. have not shown that they suffered actual prejudice from their trial counsels' failure to move to suppress the show-up identification. Excluding the identification evidence would have altered the outcome of neither case. K.S.W. was present with the other three when he saw Veal before the robbery. Veal testified that four juveniles approached him. K.S.W. and two other juveniles testified that the four of them were together before and after the robbery. K.S.W. testified that he left the group just before the robbery because he thought they intended to rob Veal and that they would have to pummel the victim if he resisted. The show-up identification evidence established little more than what the uncontradicted evidence proved independently. The remaining evidence supports the inference that K.S.W. was one of the four present at the time of the robbery. The evidence similarly implicates J.L.S. as one of the four. Cementing that implication, Veal identified J.L.S. in court as a participant in the robbery. Neither J.L.S. nor K.S.W. has demonstrated that admission of the show-up identification evidence prejudiced them at trial. Because both J.L.S. and K.S.W. fail to satisfy the prejudice prong of the ineffective-assistance-of-counsel analysis, their challenge fails and we need not address the other prong.

II

J.L.S. and K.S.W. argue that the evidence is insufficient to prove that they aided and abetted simple robbery. When considering the sufficiency of the evidence, we analyze the record to determine whether the evidence, "when viewed in the light most favorable to the conviction," reasonably supports the conviction. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989); *In re Welfare of S.A.M.*, 570 N.W.2d 162, 167 (Minn. App. 1997). We assume that the district court appropriately resolved issues of witness credibility and weighed contradictory evidence. *S.A.M.*, 570 N.W.2d at 167.

A person aids and abets if he "intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime." Minn. Stat. § 609.05, subd. 1 (2008). Because accomplice testimony is suspect, it may not be the exclusive basis for a conviction. *State v. Strommen*, 648 N.W.2d 681, 689 (Minn. 2002). The state may support accomplice testimony with corroborating evidence. *Id.* Corroborating evidence may support conviction if it links a defendant to the crime, and it need not make the prima facie case for guilt. *State v. Houle*, 257 N.W.2d 320, 324 (Minn. 1977) (quotation omitted).

J.L.S.'s and K.S.W.'s convictions certainly rely heavily on accomplice testimony, but the state presented sufficient corroborating evidence to prove that both J.L.S. and K.S.W. aided and abetted the robbery. One accomplice, T.J., testified that J.L.S. served as a lookout, and that J.L.S. was present when the fourth accomplice suggested that they "hit a lick" (trial testimony established that "hitting a lick" is a slang phrase to describe obtaining money by force or intimidation). K.S.W. testified that he was present during

the conversation, which supports the credibility of T.J.'s testimony. K.S.W. admitted seeing Veal before the robbery, which supports Veal's identification and testimony about four juveniles robbing him. Veal's testimony bolsters T.J.'s testimony that all four juveniles were together before and after the robbery. This evidence supports the inference that K.S.W. remained with the group during the robbery.

Police testimony corroborates the inculpatory accomplice testimony. Police ultimately found four males matching the timely description given by Veal. One of the boys fled when police approached, which supports the inference that the group had acted illegally. *See State v. French*, 400 N.W.2d 111, 116 (Minn. App. 1987) (noting that "flight suggests consciousness of guilt"), *review denied* (Minn. Mar. 25, 1987). The police found other corroborating physical evidence, such as the bicycle, which supports the credibility of the accomplice testimony that implicates both K.S.W. and J.L.S. We conclude that the evidence sufficiently corroborates the accomplice testimony with respect to both K.S.W. and J.L.S.

Because T.J.'s testimony established J.L.S.'s presence and active participation in the scheme to take money from the victim by force or intimidation, the evidence reasonably supports his conviction. Likewise, because the evidence establishes that K.S.W. knew of the plan to intimidate Veal for money, and that K.S.W. lent his presence to that effort, we conclude that it also reasonably supports K.S.W.'s conviction as a participant in the robbery. Although K.S.W. offered an alibi that conflicted with the evidence placing him at the robbery scene, the district court apparently did not find his testimony credible. The totality of the evidence supports the conclusion that J.L.S. and

K.S.W. knew of the pending robbery and intimidated Veal by their proximity and support to assist in the robbery. Sufficient evidence proves that they aided and abetted robbery.

III

Although K.S.W. withdrew the argument, J.L.S. argues that because the district court did not issue specific factual findings, we cannot meaningfully review his conviction. Specific findings of fact are not required in juvenile delinquency adjudications. *In re Welfare of J.L.Y.*, 596 N.W.2d 692, 695 (Minn. App. 1999), *review granted* (Minn. Sept. 28, 1999), *order granting review vacated* (Minn. Feb. 15, 2000); Minn. R. Juv. Delinq. P. 13.09. A challenge to the sufficiency of the evidence requires this court to independently and "painstakingly" review the record to determine whether the evidence reasonably supports the verdict. *State v. Webb*, 440 N.W.2d at 430. We were able to conduct that review here. Although specific factual findings by the district court would help, they are not necessary for meaningful appellate review.

Affirmed.