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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A08-0975**

State of Minnesota,  
Respondent,

vs.

Farhia Abdulkadir Adeed,  
Appellant.

**Filed May 19, 2009  
Affirmed  
Stoneburner, Judge**

Olmsted County District Court  
File No. 55K205002734

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

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Considered and decided by Stoneburner, Presiding Judge; Bjorkman, Judge; and Muehlberg, Judge.\*

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

## **UNPUBLISHED OPINION**

**STONEBURNER**, Judge

Appellant challenges her convictions of aiding and abetting and conspiracy to commit controlled substance crimes, arguing that the evidence was insufficient to support her convictions. We affirm.

### **FACTS**

Rochester police arranged several controlled substance “buys” in which E. B., working as a confidential informant, purchased crack cocaine and powdered cocaine from Mohamed Abdi Hussein. Appellant Farhia Adeed, who lived in an apartment with Hussein, drove Hussein to or near a gas station near the location of each arranged buy. While Adeed waited or bought gasoline, Hussein would walk a short distance, conclude the transaction with E.B., and then return to the car driven by Adeed. On one occasion, as police followed their vehicle from the scene of the transactions, Adeed engaged in driving conduct that the officers characterized as “counter-surveillance.” Adeed was observed by surveillance officers getting into the car with Hussein shortly before E.B. called to arrange one of the buys. A woman answered that call and told E.B. that Hussein would return the call shortly, which he promptly did to arrange the location of the buy.

After the third buy, police executed a search warrant at the apartment that Adeed and Hussein shared. In the apartment, police found a 2.0-gram rock of crack cocaine in the pocket of a man’s sport coat hanging in the bedroom closet; a 1.9-gram rock of crack cocaine in a kitchen cupboard behind a bag of potato chips; and three plastic bindles of cocaine with a combined weight of 7.9 grams on the kitchen counter wrapped in a paper

towel. Adeed and Hussein were detained just as they were entering their car, and the cell phone that Bowman called to arrange the buys was found in Adeed's purse.

Adeed was charged with five counts of aiding Hussein in controlled substance sales and one count of conspiracy to commit controlled substance crime. A jury convicted her of all six counts. The district court vacated the count charging conspiracy and one count of aiding first-degree controlled substance crime and sentenced Adeed to concurrent prison terms of 27, 27, 39, and 114 months on the remaining convictions. The district court stayed execution of sentence and placed Adeed on probation for 20 years with conditions. This appeal followed.

## DECISION

In considering a claim of insufficient evidence, this court's review is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the jurors to reach the verdict that they did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing court must assume that "the jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). This is especially true when resolution of the matter depends mainly on conflicting testimony. *State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980).

This court examines corroborating "evidence in the light most favorable to the verdict and do[es] not require it to establish a prima facie case of the defendant's guilt." *State v. Jackson*, 726 N.W.2d 454, 460 (Minn. 2007) (alteration in original) (quotation omitted). The reviewing court will not disturb the verdict if the jury, acting with due

regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476–77 (Minn. 2004).

“[A] conviction based entirely on circumstantial evidence merits stricter scrutiny than convictions based in part on direct evidence.” *State v. Jones*, 516 N.W.2d 545, 549 (Minn. 1994). “While it warrants stricter scrutiny, circumstantial evidence is entitled to the same weight as direct evidence.” *State v. Bauer*, 598 N.W.2d 352, 370 (Minn. 1999). When a conviction is based entirely on circumstantial evidence, “the circumstantial evidence must do more than give rise to suspicion of guilt; it must point unerringly to the accused’s guilt.” *Jones*, 516 N.W.2d at 549 (quotation omitted). A jury is normally in the best position to evaluate circumstantial evidence, and its verdict is entitled to due deference. *Webb*, 440 N.W.2d at 430.

A person may be held liable for the crimes of a principal if she “intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime.” Minn. Stat. § 609.05, subd. 1 (2004). To establish aiding-and-abetting liability, the state must prove that a defendant played a “knowing role” in the crime and took no steps to thwart its commission. *State v. Ostrem*, 535 N.W.2d 916, 925 (Minn. 1995). But active participation in the overt act that constitutes the substantive offense is not required. *Id.* The jury may infer the necessary intent from factors such as the person’s presence at the scene of the crime, the person’s close association with the principal before and after the crime, the person’s lack of objection or surprise under the circumstances, and the person’s flight from the scene of the crime with the principal. *State v. Swanson*, 707

N.W.2d 645, 659 (Minn. 2006). But evidence of mere presence at the scene of the crime, without more, is not sufficient to establish aiding-and-abetting liability. *See Ostrem*, 535 N.W.2d at 924–25 (reinstating convictions for aiding and abetting burglary and theft where there was “convincing evidence indicating not only that [defendant] was [present] while the crime was being committed, but also that he did nothing to ‘thwart its completion’ and in fact, . . . passively condoned” cover-up efforts). To sustain a conviction of aiding and abetting the sale of a controlled substance, the state must establish that a defendant took “affirmative action” in evincing an intent to sell the controlled substance. *State v. Kessler*, 470 N.W.2d 536, 542 (Minn. App. 1991).

Adeed argues that to prove criminal conspiracy the state had to prove that she entered into an agreement with Hussein to sell cocaine and performed an overt act in furtherance of the sale and failed to do so. But Adeed’s conviction of conspiracy was vacated by the district court. Adeed was sentenced for aiding and abetting controlled-substance sales.

Adeed also argues that the state failed to prove that she knew a crime was going to be committed or that she intended to aid or encourage the commission of the crime. Adeed contends that nothing about her conduct before the drug transactions indicates that she knew of Hussein’s plans or agreed to help him.

The state argues that there is sufficient evidence that Adeed both agreed to aid and actually aided Hussein in the controlled-substance sales because Adeed drove Hussein to the site of each buy, carried and answered the cell phone that was used to arrange the

buys, and lived with Hussein in the apartment where the drugs were readily found.<sup>1</sup> The state also points to the counter-surveillance driving conduct denied by Adeed but observed by officers surveilling the buys, and to Adeed's observed presence in the car with Hussein during one of the phone conversations in which Hussein arranged a buy.

Adeed disputes that she had dominion or control over the drugs found in her apartment, and argues that the state did not prove that she was aware of the drugs found on the kitchen counter, and did not prove that even if she was aware of the drugs that she knew they were for sale rather than for Hussein's personal use.

The jurors saw video surveillance tapes of Adeed and Hussein in their vehicle and walking to their apartment at the time of the controlled buys and heard an audio tape of one of E.B.'s calls to the cell phone found in Adeed's purse to arrange a buy. The call was answered by a female who immediately put Hussein on the line when E.B. asked "anybody around?" The jurors heard testimony that another one of E.B.'s calls to the cell phone that was answered by a woman occurred shortly after Adeed was seen getting into the car with Hussein, who promptly called E.B. back. Assuming, as we must, that the jury believed the state's evidence and the reasonable inferences to be drawn from that evidence, we conclude that the evidence was sufficient to support Adeed's conviction of aiding and abetting controlled-substance sales.

**Affirmed.**

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<sup>1</sup> Sergeant Scheckel, one of the officers executing the search warrant, testified that he was surprised on finding cocaine on the kitchen counter "because usually people don't leave drugs out like that."