STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1901

State of Minnesota,
Respondent,

vs.

Casey Renard Cordell,
Appellant.

Filed October 5, 2010
Affirmed in part, reversed in part, and remanded
Kalitowski, Judge

Hennepin County District Court
File No. 27-CR-09-655

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

Michael O. Freeman, Hennepin County Attorney, Thomas A. Weist, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Rochelle R. Winn, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

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

KALITOWSKI, Judge

On appeal from his conviction of four counts each of first-degree burglary, first-degree attempted aggravated robbery, and second-degree assault, appellant Casey Renard

Cordell argues that (1) the evidence was legally insufficient to convict him as an accomplice, or to prove that he or his alleged accomplices committed second-degree assaults against three of the victims; (2) the district court erred by imposing convictions and sentences for four counts of first-degree burglary; and (3) the district court erred by imposing more than one sentence per victim. We affirm in part, reverse in part, and remand.

D E C I S I O N

I.

Appellant challenges the sufficiency of the evidence supporting his convictions. In considering a challenge to the sufficiency of the evidence, our review "is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did." *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). This 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 where resolution of the case depends on conflicting testimony, because weighing the credibility of witnesses is the exclusive function of the jury." *State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980). The reviewing court will not disturb the verdict if the fact-finder, 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).

The same standards apply to court trials. *State v. Hughes*, 355 N.W.2d 500, 502 (Minn. App. 1984), *review denied* (Minn. Jan. 2, 1985).

Accomplice Liability

Appellant contends that the evidence was insufficient to convict him as an accomplice in the commission of these crimes. We disagree.

A person is criminally liable for an offense 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 (2008). Accomplice culpability can be established if the person had a "knowing role in the commission of the crime" and "does nothing to stop the act." *State v. Flournoy*, 535 N.W.2d 354, 359 (Minn. 1995) (quotation omitted). For purposes of imposing accomplice liability, the court should "distinguish between [a person] playing a knowing role in the crime and having [a] mere presence at the scene, inaction, knowledge and passive acquiescence." *State v. Palubicki*, 700 N.W.2d 476, 487 (Minn. 2005) (second alteration in original) (quotation omitted).

Here, the record indicates that appellant (1) entered S.W.'s home uninvited, with his face covered; (2) held a gun at various times; (3) ordered one of S.W.'s daughters to turn her phone off; and (4) was at the door looking out and was "watching the people." A "[d]efendant's entire conduct may be looked at for corroborating circumstances along with the defendant's association with those involved in the crime, or any opportunity, motive or proximity to the crime." *Flournoy*, 535 N.W.2d at 360. Besides accomplice testimony against appellant, his convictions are supported by victim testimony, by his

"entire conduct," and by his association with his accomplices. The evidence, viewed in the light most favorable to the conviction, is sufficient to show that appellant was not merely present at the scene but played a knowing role in the commission of the crimes and did nothing to stop them. *See id.* at 359 (finding accomplice liability when a person has a "knowing role in the commission of the crime" and "does nothing to stop the act" (quotation omitted)). Thus we conclude that the district court did not err in convicting appellant as an accomplice.

Second-Degree Assault Convictions

Appellant also contends that the evidence is legally insufficient to support his convictions of the second-degree assaults of S.W.'s three daughters because the evidence only established that a gun was pointed at S.W. We disagree.

A person commits assault in the second degree if he or she performs an act "with intent to cause fear in another of immediate bodily harm or death" with a dangerous weapon. Minn. Stat. §§ 609.02, subd. 10, .222, subd. 1 (2008). A firearm is a dangerous weapon. Minn. Stat. § 609.02, subd. 6 (2008). The term "with intent to" means that "the actor either has a purpose to do the thing or cause the result specified or believes that the act, if successful, will cause that result." *Id.*, subd. 9(4) (2008). Intent may be proved by circumstantial evidence, including drawing inferences from the defendant's conduct, the character of the assault, and the events occurring before and after the crime. *Davis v. State*, 595 N.W.2d 520, 525-26 (Minn. 1999). "The intent of the actor, as contrasted with the effect upon the victim, becomes the focal point for inquiry." *State v. Hough*, 585 N.W.2d 393, 396 (Minn. 1998) (quotation omitted). But "[t]he ordinary effect upon

others of the acts alleged to constitute the crime may naturally be taken into account to determine intent." *State v. Johnson*, 773 N.W.2d 81, 88 (Minn. 2009) (alteration in original) (quotation omitted).

Pointing a weapon at another person has been held to supply the requisite intent to cause fear. *See, e.g.*, *State v. Kastner*, 429 N.W.2d 274, 275 (Minn. App. 1988) (stating defendant pointed scissors and screwdriver at victim, assumed a position that the victim considered offensive, and made threatening statements to victim), *review denied* (Minn. Nov. 16, 1988); *State v. Patton*, 414 N.W.2d 572, 574 (Minn. App. 1987) (concluding defendant brandished a knife in such a manner that the jury could have found it was used as a dangerous weapon to cause fear in another of immediate bodily harm); *State v. Soine*, 348 N.W.2d 824, 826-27 (Minn. App. 1984) (affirming defendant's convictions of second-degree assault because he brandished a knife "within striking distance" of his victims), *review denied* (Minn. Sept. 12, 1984).

Here, appellant argues that the gun was not pointed directly at S.W.'s three daughters, and therefore, the convictions of second-degree assault against those individuals cannot stand. We disagree. Brandishing a weapon "in such a manner that the jury could have found it was used as a dangerous weapon to cause fear in another of immediate bodily harm" has been found sufficient to support an assault conviction. *Patton*, 414 N.W.2d at 574 (quotation omitted). And the record supports the finding that appellant brandished a gun in the presence of all three girls. One daughter testified that appellant's accomplice entered an upstairs bedroom with a gun and demanded to know where the "stuff" was. Another daughter told appellant's accomplice, "don't kill my

mom, kill me," then he told her to come with him. This daughter testified that while holding a gun, the accomplice told her to "sit back down" and not use her phone. Finally, when the police arrived all three girls were huddled on a couch with their mother, crying.

On this record, the district court could have reasonably believed that appellant and his accomplices used a dangerous weapon "with intent to cause fear . . . of immediate bodily harm or death" in S.W.'s daughters. *See* Minn. Stat. §§ 609.02, subd. 10, .222, subd. 1. It "was not unreasonable for the [district court] to infer, using [its] discretion," that the actors intended to cause such fear when, while brandishing a gun, they demanded "stuff" and money, told a victim to turn off her phone and to come with them. *See Soine*, 348 N.W.2d at 826-27 (affirming defendant's convictions of second-degree assault when he brandished a knife and told a victim to shut up). Further, appellant and his accomplices brandished a weapon within striking distance, as in *Soine*, and ransacked a house. We conclude that, based on this record, the district court had sufficient evidence on which to convict appellant of the second-degree assaults of all four victims.

II.

Appellant claims that the district court erred by imposing convictions and sentences for four counts of first-degree burglary. We agree.

A defendant who commits a burglary of a single dwelling, where multiple victims are present, can only be convicted of one count of burglary. *State v. Hodges*, 386 N.W.2d 709, 711 (Minn. 1986). Consequently, we conclude, and the state agrees, that the district court erred by convicting appellant of four separate counts of first-degree burglary when

appellant took part in a single burglary that involved four victims. Thus, we remand to the district court to vacate three of the convictions and sentences.

III.

Appellant claims that the district court erred by imposing multiple sentences per victim. We agree.

If a defendant commits multiple offenses during a single behavioral incident, the defendant may generally be sentenced for only one of the offenses. *See* Minn. Stat. § 609.035 (2008). The factors used to determine whether the offenses constitute a single behavioral incident are "time, place, and whether the offenses were motivated by a desire to obtain a single criminal objective." *State v. Soto*, 562 N.W.2d 299, 304 (Minn. 1997). The state bears, by a preponderance of the evidence, the burden to show that the conduct does not constitute a single behavioral incident. *State v. Williams*, 608 N.W.2d 837, 841-42 (Minn. 2000). Appellate courts will not reverse a district court's determination of whether the conduct arose from a single behavioral incident unless that determination is clearly erroneous. *State v. Heath*, 685 N.W.2d 48, 61 (Minn. App. 2004), *review denied* (Minn. Nov. 16, 2004). The determination is clearly erroneous if it is unsupported by the record. *Id*.

Here, appellant's convictions and sentences all arose from the same incident; they occurred at the same time, on the evening of January 4, 2009; at the same place, S.W.'s house; and were motivated by the same objective, to obtain money and drugs.

But the multiple-victim exception to section 609.035 allows a district court to impose one sentence per victim if multiple sentences do not result in "punishment grossly

out of proportion to the defendant's culpability." *State v. Schmidt*, 612 N.W.2d 871, 878 (Minn. 2000) (quotation omitted). Here, the district court sentenced appellant on 12 convictions, 9 of which we affirm, that arose out of offenses committed against four victims. But appellant could only receive five sentences: one sentence per victim and one additional sentence for the burglary conviction. *See* Minn. Stat. § 609.585 (2008) (stating that a burglary conviction is not a bar to punishment "for any other crime committed on entering or while in the building entered." We therefore reverse and remand for resentencing.

Affirmed in part, reversed in part, and remanded.