STATE OF MINNESOTA
IN COURT OF APPEALS
A13-2351

In the Matter of the Welfare of:
O. C. W., Child

Filed June 9, 2014
Affirmed
Bjorkman, Judge

Hennepin County District Court
File No. 27-JV-13-5560
Anoka County District Court
File No. 02-JV-13-1555

Cathryn Middlebrook, Chief Appellate Public Defender, Susan Andrews, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Anthony C. Palumbo, Anoka County Attorney; and

Michael O. Freeman, Hennepin County Attorney, Linda K. Jenny, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Bjorkman, Judge; and Huspeni, Judge.[*]

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

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

BJORKMAN, Judge

Appellant challenges his convictions of aiding and abetting attempted first-degree aggravated robbery and aiding and abetting second-degree assault, arguing that the evidence is insufficient to establish that he intentionally aided either offense. We affirm.

FACTS

Around 8:00 p.m. on July 11, 2013, a group of seven or eight young males approached D.P. as he rode his bike in Minneapolis. D.P. recognized one of the males as 17-year-old appellant O.C.W. D.P. did not know O.C.W. well but had "seen him around" and played basketball with him a few times. He also recognized L., with whom he had a long-standing disagreement. As the group approached, D.P. heard L. say something like "go get him." Some of the group also identified themselves as members of the Skitz Squad gang, and one individual, whom D.P. did not know, approached D.P. and ordered him to "get off the bike." D.P. was afraid and fled on his bike, planning to seek refuge in a nearby friend's house. The entire group, including O.C.W., pursued D.P. on their bikes. D.P. heard gunshots and a "ting" noise and believed his bike had been hit by gunfire. D.P. was not able to gain entry at his friend's house and tried to hide in a bush. The group caught up to him. One individual broke off from the others, shot at D.P. several times, and struck him. The group left.

O.C.W. was charged with aiding and abetting attempted first-degree aggravated robbery and aiding and abetting second-degree assault. At trial, D.P. testified that O.C.W. seemed surprised when the group announced the robbery but that O.C.W.

remained with the group the whole time. O.C.W. testified that he was at a friend's house at the time of the incident, and two of his friends presented similar, though not entirely consistent, alibi testimony. The district court found O.C.W. guilty of both charges, and imposed a stayed 24-month sentence under extended juvenile jurisdiction. This appeal follows.

D E C I S I O N

When reviewing a sufficiency-of-the-evidence challenge, we carefully examine the evidence in the record to determine whether the fact-finder could reasonably find the defendant guilty of the charged offenses. *State v. Pratt*, 813 N.W.2d 868, 874 (Minn. 2012). In doing so, we review the evidence in the light most favorable to the conviction and presume the fact-finder believed the state's witnesses and disbelieved any contrary evidence. *State v. Buckingham*, 772 N.W.2d 64, 71 (Minn. 2009). We defer to the fact-finder's credibility determinations. *Id.* This standard applies to both jury and bench trials. *State v. Hough*, 585 N.W.2d 393, 396 (Minn. 1998).

O.C.W. argues the record contains insufficient evidence that he acted with the requisite intent. A person is guilty of aiding and abetting the crimes of another if he or she "intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime." Minn. Stat. § 609.05, subd. 1 (2012). To satisfy the intent element, the state must prove the defendant "had knowledge of the crime and intended his presence or actions to further the commission of that crime." *State v. Hawes*, 801 N.W.2d 659, 668 (Minn. 2011) (quotation omitted). But it need not prove that the defendant actively participated "in the overt act which constitutes the substantive

offense." *State v. Ostrem*, 535 N.W.2d 916, 924-26 (Minn. 1995) (affirming conviction of aiding and abetting burglary because defendant "passively condoned" the crime by directing another party away from the scene). Intent may be inferred from the defendant's: presence at the scene of the crime, close association with the principal actor before and after the crime, "lack of objection or surprise under the circumstances," and flight from the scene with the principal. *State v. Bahtuoh*, 840 N.W.2d 804, 810 (Minn. 2013); *see also State v. Parker*, 282 Minn. 343, 355-56, 164 N.W.2d 633, 641 (1969) (stating that a person's presence during the commission of a crime "without disapproving or opposing it" can indicate intent to aid in the commission of the crime).

When, as here, intent is proved by circumstantial evidence, we apply heightened scrutiny, first identifying the circumstances proved, deferring to the fact-finder's acceptance of the proof of these circumstances and rejection of evidence contrary to the circumstances proved. *State v. Hokanson*, 821 N.W.2d 340, 354 (Minn. 2012), *cert. denied*, 133 S. Ct. 1741 (2013). Next, we independently examine "the reasonableness of all inferences that might be drawn from the circumstances proved" without deferring to the fact-finder's choice between inferences. *State v. Al–Naseer*, 788 N.W.2d 469, 473-74 (Minn. 2010) (quotation omitted). To support a conviction, "the circumstances proved must be consistent with guilt and inconsistent with any rational hypothesis except that of guilt." *State v. Andersen*, 784 N.W.2d 320, 330 (Minn. 2010).

The evidence adduced at trial, viewed in the light most favorable to the verdict, establishes that O.C.W. was among those who approached D.P. on July 11. One of the group urged the group to "get" D.P. and another threatened D.P. and demanded he give

them his bike. O.C.W. did not actively threaten D.P. and "at first seemed surprised when one of the group announced that this was a robbery." But he did not object to or seek to counter his companions' threats and demands, and he joined the others as they pursued D.P., even as one member of the group began shooting at D.P. And O.C.W. was still with the group when D.P. was shot and he then left with the others, rather than aiding D.P.

O.C.W. argues that these circumstances reasonably support the hypothesis that he only remained with the group during the attempted robbery and assault because he "found himself in over his head and too afraid for his own safety to object or withdraw." We disagree. O.C.W. participated in a gunfire-assisted, multi-person pursuit of a single victim. His suggestion that he innocently "remained with the group" as they chased D.P. ignores the violent nature of that pursuit. And his claim that he feared for his own safety lacks support in the record. Having chosen to testify, O.C.W. did not provide that explanation of his conduct but denied being with the group at all. Consequently, there is no evidence from which to infer that O.C.W.'s presence was based on his fear for his own safety. *See Ostrem*, 535 N.W.2d at 924 n.10 (noting that "if [defendant] could point to evidence in the record that is consistent with a rational explanation for his presence other than participation in the crime, then there would be insufficient circumstantial evidence to sustain the convictions," but there was no such evidence because he "relied exclusively on an alibi defense"). We conclude the record contains sufficient evidence to

establish that O.C.W. intentionally aided and abetted the assault and attempted robbery of D.P.

Affirmed.