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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1596**

State of Minnesota,
Respondent,

vs.

Eric Jerome Goodman,
Appellant.

Filed August 28, 2017

Affirmed

Smith, John*

Jay D. Carlson

Becker County District Court

File No. 03-CR-15-2016

Lori Swanson, Attorney General, Karen B. McGillic, Assistant Attorney General, St. Paul, Minnesota; and

Tammy L. Merkins, Becker County Attorney, Detroit Lakes, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rochelle R. Winn, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge, Bratvold, Judge, and Smith, John, Judge.

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

UNPUBLISHED OPINION

SMITH, JOHN Judge

We affirm appellant's conviction of first-degree aggravated robbery because the conviction was not based on uncorroborated accomplice testimony.

FACTS

Two men robbed a tobacco store in Detroit Lakes. One of the men pointed a gun at the cashier and demanded money. The cashier gave the man the cash register. After the men left, the cashier called 911. While reviewing the footage from the security camera, law enforcement noticed one of the men was wearing distinct, bright blue shoes. Several weeks later, law enforcement went to the home of S.B. while investigating an unrelated matter. George Taylor was at the home when law enforcement arrived. Becker County Investigator Dan Skoog observed the blue shoes at the foot of Taylor's bed. Detroit Lakes Police Investigator Eric Bergren subsequently applied for a search warrant. Law enforcement executed the search warrant the same day. They located the shoes, but they were no longer at the foot of the bed. Rather, they had been stuffed inside the arms of a sweatshirt and moved to the basement.

Becker County Sheriff's Deputy Luke Sweere interviewed M.N. about an unrelated burglary. Deputy Sweere asked M.N. if she knew anything about the robbery at the tobacco store. She replied "Yes, I know everything. I was there." She explained that on the day of the robbery she was with her sister B.N., Taylor, and appellant Eric Jerome Goodman. She indicated that Taylor and Goodman wanted to go to the tobacco store. She and B.N. remained in the car. When Taylor and Goodman returned to the car, Goodman had the

cash register. Investigator Bergren later interviewed B.N. B.N. similarly stated that Taylor and Goodman went to the tobacco store and when they returned Goodman had the cash register. Both M.N. and B.N. stated that they did not participate in or know about the robbery beforehand.

Respondent State of Minnesota charged Goodman with one count of first-degree aggravated robbery. Taylor pleaded guilty to second-degree aggravated robbery based on his role in the theft. At Goodman's trial, Taylor testified that he was one of the two men who robbed the tobacco store. But he indicated that Goodman was not the second robber. Rather, he testified that he and K.B. robbed the store, and that K.B. was the individual who took the cash register. B.N. and M.N. testified that Goodman was the second individual who committed the robbery. Goodman argued that B.N. and M.N. were accomplices to the robbery, and therefore that their testimony had to be corroborated. The district court determined that whether B.N. or M.N. were accomplices was a question of fact for the jury. The district court instructed the jury that it would have to determine if either were accomplices, and that if they did determine they were accomplices then their testimony would have to be corroborated. The jury found Goodman guilty. The district court sentenced Goodman to 108 months in prison. .

D E C I S I O N

Goodman argues that B.N. and M.N. were accomplices to the robbery at the tobacco store. Accomplice testimony is inherently suspect and is insufficient to sustain a conviction unless corroborated by other evidence. *State v. Jackson*, 746 N.W.2d 894, 898 (Minn. 2008). Generally, the test for determining whether a witness is an accomplice is whether

she “could have been indicted and convicted for the crime with which the accused is charged.” *State v. Reed*, 737 N.W.2d 572, 582 (Minn. 2007) (quotation omitted). An individual who aids and abets the defendant may be considered an accomplice, but an individual’s mere presence at the scene, knowledge, or passive acquiescence are insufficient to impose liability. *State v. Palubicki*, 700 N.W.2d 476, 487 (Minn. 2005). When the issue of whether an individual should be considered an accomplice is subject to different interpretations, it becomes a question of fact for the jury. *Staunton v. State*, 784 N.W.2d 289, 298 (Minn. 2010). We view the evidence in a light most favorable to the verdict to determine if the jury could have reasonably concluded that an individual was not an accomplice. *Id.*

The state argues that the jury could have reasonably determined that B.N. and M.N. were not accomplices. We agree. During the investigation and trial, both B.N. and M.N. consistently claimed ignorance of the robbery and stated that they did not know about the plan until after the robbery occurred. Goodman essentially argues that this testimony is not credible based on their behavior before and after the robbery. He notes that the group was in B.N.’s car, that M.N. testified that Taylor and Goodman had weapons and were wearing bandanas covering their faces when they left the car, and that M.N. testified she gave Taylor and Goodman pellet guns several days before the robbery. But M.N. testified that she did not know the men were going to rob the store, did not know what the men planned to use the pellet guns for, and denied acting as a lookout. B.N. similarly testified that she did not have knowledge of the robbery until after it occurred. She testified that

when Taylor and Goodman exited the vehicle they just said “they’d be right back.” She did not see a gun until after they returned to the vehicle.

On this record, the jury could reasonably have determined that B.N. and M.N. were not accomplices. We must view the evidence in the light most favorable to the verdict and in doing so we “assume that the jury believed the state’s witnesses and disbelieved evidence contradicting those witnesses.” *State v. Pilot*, 595 N.W.2d 511, 519 (Minn. 1999). Accordingly, we must assume the jury credited the testimony of B.N. and M.N. And while they conceded that they received money following the robbery, being an accessory after the fact does not make an individual an accomplice. *State v. Cox*, 820 N.W.2d 540, 550 (Minn. 2012). Because the jury could reasonably have concluded that B.N. and M.N. were not accomplices, their testimony did not need to be corroborated. Sufficient evidence supports Goodman’s conviction.

Affirmed.