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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1625**

Kamal Elyas Maqadin, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed April 24, 2017
Affirmed
Cleary, Chief Judge**

Hennepin County District Court
File No. 27-CR-14-6551

Cathryn Middlebrook, Chief Appellate Public Defender, Sara L. Martin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Michael O. Freeman, Hennepin County Attorney, Elizabeth R. Johnston, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Cleary, Chief Judge; and Peterson, Judge.

UNPUBLISHED OPINION

CLEARY, Chief Judge

The district court found appellant guilty of aiding and abetting aggravated robbery in the first degree. Appellant argues that the evidence is insufficient to support the conviction. We affirm.

FACTS

On March 9, 2014, appellant Kamal Elyas Maqadin and his cousin, Dalal Idd, went to Lifetime Fitness (Lifetime) in Eden Prairie. J.C. was exercising at Lifetime, and when he returned to the locker room, Idd beat him to the point of unconsciousness, and stole his cell phone and wallet, which contained about \$200. A Lifetime instructor witnessed the assault perpetrated by Idd, and testified that Maqadin stood by and watched while Idd punched J.C. at least three times. According to the instructor, Maqadin did not try to stop the assault or otherwise intervene.

Maqadin and Idd then sprinted out of Lifetime and drove away in a minivan driven by Maqadin. Using the license-plate information that a witness was able to recall, police officers located the minivan at a townhome complex. Police located Idd inside of an apartment and arrested him. While searching Idd, police located J.C.'s wallet, which contained his driver's license and credit cards but no cash. Police then located Maqadin, who was lying on a bed covered with a blanket. Maqadin was arrested, and while searching him as part of the booking process, an officer heard a "crumpling noise" when Maqadin removed his socks and noticed Maqadin was trying to conceal something. The officer was

able to obtain the item that Maqadin had removed from his sock—a wad of \$20 bills, totaling \$280.

When questioned by police, Maqadin initially denied being at Lifetime or being involved in the incident. However, Maqadin later acknowledged driving Idd to Lifetime and going into the locker room, but claimed that he did not witness the assault. Maqadin stated he received the cash from Idd and drove them away from Lifetime.

At trial, Maqadin testified that he and Idd went to Lifetime on March 9, 2014, to play basketball, like they had done in the past. He stated that they went to the locker room, and while Maqadin looked for a locker where he could put his jacket away, he heard “some noises.” He testified that, after he heard the noises, he went to see what was happening and saw Idd standing over a man, who was lying on the ground covered in blood. He stated that they ran from Lifetime, he drove them to the apartment complex, and Idd gave him money although Idd did not say where he had obtained it. However, Maqadin did admit that when he was driving out of Lifetime’s parking lot, he “figured out what [Idd] had done.”

On August 7, 2014, the district court issued an order finding Maqadin guilty of aiding and abetting first-degree aggravated robbery. The district court stated that Maqadin assisted in the crime in an appreciable way when he “received money from Mr. Idd and knew it was stolen from [J.C.]” and when he, “knowing what Mr. Idd had done, . . . willingly drove Mr. Idd away from the scene of the crime.”

On September 11, 2014, the district court sentenced Maqadin to 57 months in prison, stayed for five years. Maqadin later violated the terms of his probation, and his

prison sentence was executed. This court affirmed the order revoking probation. *State v. Maqadin*, No. 16-0159, 2016 WL 5640774 (Minn. App. Oct. 3, 2016).

On May 12, 2016, Maqadin filed a petition for postconviction relief on the grounds that the evidence was insufficient to convict him of aiding and abetting aggravated robbery. The district court denied Maqadin's motion to vacate his conviction. Maqadin appeals.

D E C I S I O N

Maqadin argues that the evidence was insufficient to prove he aided in the robbery because the state failed to prove Maqadin knew Idd was going to commit an offense or that Maqadin intended to aid in the commission of the crime.

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 court to reach the decision that it did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). 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 the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004). A defendant is liable for a crime committed by someone else "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 (2014). "[T]o be criminally liable for the crimes of another, the State must prove that the defendant knew his alleged accomplice was going to commit a crime and the defendant intended his presence or actions to further the commission of that crime." *State v. Huber*, 877 N.W.2d

519, 524 (Minn. 2016) (quotation omitted). “Mere presence at the scene of a crime does not alone prove that a person aided or abetted.” *State v. Ostrem*, 535 N.W.2d 916, 924 (Minn. 1995). But, “[w]here the accused plays at least some knowing role in the commission of the crime and takes no steps to thwart its completion,” aiding and abetting may be inferred. *State v. Strimling*, 265 N.W.2d 423, 429 (Minn. 1978). “[A]ctive participation in the overt act which constitutes the substantive offense is not required, and a person’s presence, companionship, and conduct before and after an offense are relevant circumstances from which a person’s criminal intent may be inferred.” *Ostrem*, 535 N.W.2d at 924. Whether a defendant intended to aid and abet may be inferred “from a variety of facts, including presence at the scene of the crime, a close association with the principal offender before and after the crime, a lack of objection or surprise under the circumstances, and flight from the scene of the crime with the principal offender.” *State v. Bahtuoh*, 840 N.W.2d 804, 810 (Minn. 2013).

Maqadin argues that receiving stolen property or aiding an offender after the fact was a more appropriate charge because his incriminating actions took place after the commission of the robbery. However, Maqadin was present during the robbery and did not act only after the robbery occurred. While it is possible that Maqadin could have arrived at Lifetime intending to play basketball, his actions show that his intent shifted. Even if he was not aware that Idd was planning to rob someone, Idd’s intent became clear when the first punch was thrown. Maqadin did not withdraw or intervene. In fact, he stood by as the victim was beaten and his property taken. Maqadin and Idd fled Lifetime together, exchanged the victim’s cash, and drove away in a car driven by Maqadin. After

being arrested, Maqadin attempted to conceal the stolen cash that Idd gave him. Although Maqadin may have been merely present at the scene of the assault, he did nothing to thwart the assault and in fact took steps to further the robbery, including driving the getaway car and receiving the stolen cash. The district court did not err by denying Maqadin's motion to vacate his conviction for aiding and abetting aggravated robbery.

Affirmed.