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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A17-0649**

State of Minnesota,  
Respondent,

vs.

Kevin Lawrence Johnson,  
Appellant.

**Filed April 9, 2018  
Affirmed  
Florey, Judge**

Hennepin County District Court  
File No. 27-CR-16-18163

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

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

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

Considered and decided by Bratvold, Presiding Judge; Larkin, Judge; and Florey, Judge.

**UNPUBLISHED OPINION**

**FLOREY**, Judge

Appellant was part of a group of housemates who lured an unsuspecting victim to their Minneapolis home where they kidnapped and robbed him. The victim escaped and

led police to the other housemates who implicated appellant in the crime. Police then arrested and interviewed appellant where he made incriminating statements about his role in the crime. Appellant took his case to trial and was convicted of first-degree aggravated robbery and kidnapping. On appeal, he argues that his conviction should be reversed because there was insufficient corroboration for his accomplice's testimony and his incriminating statements to police were not made voluntarily. We affirm.

### **FACTS**

This case revolves around a robbery that occurred at a home in Hennepin County, Minnesota. Approximately six people lived in this home, including appellant Kevin Lawrence Johnson, as well as Michael Bassett—one of the accomplices to the robbery.

Prior to the robbery, Bassett bought his girlfriend—who also lived in the home—a cell phone previously owned by a prostitute. The victim of the robbery in this case had solicited sex from the prostitute in the past, but he did not know her phone had changed hands. So when the victim called the phone and left a message soliciting sex, Bassett, his girlfriend, and Johnson received it and made a plan to lure and rob the victim.

Bassett's girlfriend pretended to be the prostitute and invited the victim to the home. When the victim arrived early in the morning of May 28, 2016, Bassett's girlfriend took him into another room. Once the victim was inside, Bassett and Johnson entered the room; Bassett was holding a pellet gun wrapped in black tape but the victim did not know the weapon was only a pellet gun. At trial, Bassett testified that Johnson was wearing a blonde, straight, shoulder-length wig as a disguise. The victim would later testify that one of the

men (Bassett) was “skinny” and the other (Johnson) was taller than the victim and muscular. The victim would also testify that Johnson had some kind of “Bob Marley hair.”

Bassett and Johnson forced the victim to strip to his underwear to see if he had any money. Seeing none, but finding an ATM card, the men demanded the pin number, which the victim gave. Bassett’s girlfriend took the card and left for an ATM.

Right about this time, there was a knock at the door. Bassett gave the gun to Johnson and left the room to answer the door, leaving the victim and Johnson alone together. At the front door, Bassett discovered a friend named Milan Busby. Bassett told Busby that there was “a hostage situation” inside, and Busby replied that he wanted “in on it.” Just then, both men heard a commotion in the room where the victim and Johnson were.

Just after Bassett left to check on the front door, the victim panicked and grabbed Johnson’s hand. A struggle ensued, and both men fell to the ground, wrestling for control of the gun. As the two struggled, Bassett and Busby rushed in. Busby pulled out his own real pistol and pointed it to the victim’s head, telling him to “[s]top resisting.” The victim and Johnson stopped fighting and separated, then Johnson struck the victim in the head.

The victim started screaming so Bassett, Johnson, and Busby moved him to the garage. There, Busby told the victim that if he did not “shut up” Busby would “kill him and dump him in the river.” After five to ten minutes, the men moved the victim to the front of the house. As they moved, they met Bassett’s girlfriend, who had just returned from an ATM with cash acquired with the victim’s card. Bassett, Bassett’s girlfriend, Busby, and Johnson split the money amongst themselves.

The victim was allowed to put on most of his clothes around this time. He asked for a glass of water and Bassett went inside to get one. The other accomplices also left the area, and the victim used this opportunity to escape. He ran to a nearby police station, leaving his shoes behind. Johnson took the victim's keys and drove away in the victim's car.

The police quickly found video footage of Bassett's girlfriend using the victim's ATM card. This information led them to the home where the robbery took place. The victim eventually identified Bassett's girlfriend from the surveillance video, and police executed a search warrant on the home where they found the victim's shoes. The victim was then shown photo arrays, and he was able to identify Busby, but not Bassett. The victim was not shown an array with Johnson because the victim did not think he could identify him. Bassett, Bassett's girlfriend, and Busby were all arrested. All three implicated Johnson in the robbery.

Johnson was arrested, and a police sergeant tried to interview him the next day but was turned away because Johnson was experiencing drug withdrawal. The sergeant waited until the following Monday, returned and was able to interview Johnson. In that interview, Johnson admitted to participating in the robbery, claiming that Bassett and Bassett's girlfriend originally masterminded the robbery and that Bassett "battered him up" into participating by tempting him with the cash they would receive. Johnson also confirmed details of the robbery, such as Bassett giving him the pellet gun and being in a struggle with the victim.

Johnson was charged with two counts of aiding and abetting aggravated robbery in the first degree. The state eventually added a third count of aiding and abetting kidnapping. Johnson took his case to a jury trial and was convicted on all three counts. The district court sentenced him to 111 months in prison for the first-degree aggravated-robbery charge and a consecutive 21 months for kidnapping. The court did not impose a sentence on the second count of aggravated robbery. Johnson appealed.

## D E C I S I O N

### **I. The evidence was sufficient to corroborate the accomplice testimony against Johnson.**

Johnson argues that the testimony from accomplices was not sufficiently corroborated and requests that this court vacate his convictions. Minnesota requires that accomplice testimony must be independently corroborated. The rule states:

A conviction cannot be had upon the testimony of an accomplice, unless it is corroborated by such other evidence as tends to convict the defendant of the commission of the offense, and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof.

Minn. Stat. § 634.04 (2016). The rule is designed to protect against an accomplice who “may testify against another in the hope of or upon a promise of immunity or clemency or to satisfy other self-serving or malicious motives.” *State v. Shoop*, 441 N.W.2d 475, 479 (Minn. 1989).

We review the sufficiency of the evidence tending to corroborate an accomplice’s testimony “in the light most favorable to the verdict.” *State v. Chavarria-Cruz*, 839 N.W.2d 515, 519 (Minn. 2013) (quotation omitted). “Corroborating evidence must link or

connect the defendant to the crime. It is not necessary that it establish a prima facie case of the defendant's guilt." *State v. Ford*, 539 N.W.2d 214, 225 (Minn. 1995). "Corroborating evidence is sufficient if it 'restores confidence in the accomplice's testimony, confirming its truth and pointing to the defendant's guilt in some substantial degree.'" *Id.* (quoting *State v. Scruggs*, 421 N.W.2d 707, 713 (Minn. 1988)).

Bassett and Busby each testified that Johnson was the third man involved in the robbery. The state believes it corroborated this accomplice testimony with four pieces of evidence: (1) the victim's testimony that his assailant was muscular and tall, which matches Johnson's build; (2) the fact that Johnson lived in the house where the victim was kidnapped and robbed; (3) the fact that the victim's shoes were discovered in the basement of the home where Johnson was known to spend a lot of time; and (4) Johnson's own admissions to police that he participated in the robbery with the accomplices. Johnson's appeal focuses attention on the victim's identification testimony and his statements to police.

We first turn to the victim's identification testimony. Johnson argues that this testimony contradicts the accomplices' statements and cannot be used as corroboration. He emphasizes the victim's testimony that his assailant had "Bob Marley hair," but both accomplices testified that Johnson was wearing a blonde wig during the robbery. The state counters that even if we assume Johnson was wearing a wig, the record does not reveal how much of his head was covered by it. The state also argues that isolating the "Bob Marley" comment without context is misleading because the prosecutor immediately

followed up the “Bob Marley” comment by asking if the victim meant “dreadlocks.” The victim replied that he did not know what dreadlocks were.

We agree with the state. The record shows that the victim did not know that his “Bob Marley” description implied a certain type of hairstyle. This means that the victim’s description is not necessarily contradictory. This conclusion is supported by additional evidence in the record where the victim also described his assailant’s hair as “[s]hort but like short not long short,” and motioned his hand to about eye level. This description is also inconsistent with the typical hair style implied by the victim’s “Bob Marley” comment. And finally, the victim was never asked whether his assailant was wearing a wig at trial, something that Johnson could have cross-examined the victim about, but chose not to do. The record convinces us that the victim’s “Bob Marley” description did not necessarily mean that Johnson had dreadlocks and long hair in contradiction to the accomplice testimony, as Johnson argues. Therefore, the victim’s description is not necessarily inconsistent with the accomplice testimony.

We next turn to Johnson’s own incriminating statements to police. Johnson argues that these statements cannot be used as corroboration because he was detoxing from drugs and alcohol at the time and was not lucid enough to give an accurate statement. Police did try to interview Johnson just after he was arrested, but they were turned away because Johnson was experiencing withdrawal symptoms. A sergeant returned the following Monday and was able to interview Johnson, which is when he made the incriminating remarks. Johnson argues that he was still under the influence of drugs and alcohol, but the sergeant testified that Johnson was “very alert,” his eyes were not bloodshot, he seemed

awake, and overall, “looked just of a clear mind” and not like “somebody who had just gotten out of three days of detox.” The sergeant also testified that Johnson appeared “well rested,” was tracking the sergeant’s questions, and provided “direct, clear answers and responses.”

Johnson also argues that his statements to police cannot be used as corroboration because the interviewing sergeant fed him too many details before the interview, which Johnson then inserted into his responses. Johnson identifies nineteen different details that the sergeant provided before starting the interview. The state argues that Johnson “had the opportunity to, and in fact, did cross-examine” the sergeant about the interview techniques and the jury was “fully apprised of the ‘trustworthiness’ of [Johnson]’s admissions.”

We review the corroborating evidence in a light that favors the jury’s verdict. *Chavarria-Cruz*, 839 N.W.2d at 519. This corroborating evidence does not have to make out a prima facie case against Johnson; it only needs to restore confidence in the accomplices’ testimonies by confirming the accomplices’ truthfulness and pointing to Johnson’s guilt in “some substantial degree.” *Ford*, 539 N.W.2d at 225 (quotation omitted). Here, the victim’s description of his assailant matches Johnson’s build, Johnson lived at the home where many of the residents conspired together to commit the robbery, and Johnson himself admitted to the crime during a police interview. The inconsistencies Johnson identifies, such as the “Bob Marley” hair description, are minor compared with this other evidence. Additionally, the victim’s trial testimony implied that he did not understand what typical “Bob Marley” hair meant, undercutting this description. We also believe Johnson’s confession was not made under the haze of withdrawal symptoms, as

evidenced by the sergeant's testimony that Johnson seemed alert, well-rested, and was able to track and understand what the sergeant was saying. In light of this evidence and the record, we believe the corroborating evidence restores confidence in the accomplices' testimonies and confirms Johnson's guilt in some substantial degree.

**II. The district court did not err in its determination that Johnson's confession was voluntary.**

Johnson next argues that the district court erred by not suppressing his incriminating statements to police because they were made involuntarily. Johnson claims his statements were not voluntary because he was still experiencing drug and alcohol withdrawal which was coupled with a previous traumatic brain injury that causes him memory defects.

"A defendant is deprived of constitutional due process of law if he is convicted on the basis of an involuntary confession." *State v. Blom*, 682 N.W.2d 578, 614 (Minn. 2004). "[T]he state has the burden of proving voluntariness by a fair preponderance of the evidence." *State v. Thaggard*, 527 N.W.2d 804, 807 (Minn. 1995). We review the district court's findings for clear error and its determination of whether a confession was voluntarily given de novo. *Id.*

The appellate court is not bound by a district court's determination of voluntariness. Rather, the appellate court's duty is to "independently determine, on the basis of all factual findings that are not clearly erroneous, whether or not the confession was voluntary." *Id.* In independently determining whether a confession or statement was involuntary or coerced, a reviewing court considers all relevant factors including age, maturity, intelligence, education, experience, ability to comprehend, lack of or adequacy of

warnings, length and legality of detention, nature of interrogation, physical deprivations, and limits on access to family and friends. *Blom*, 682 N.W.2d at 614.

Johnson claims that at the time of his police interview, he was experiencing a severe lack of sleep (Johnson claimed he was up for 13 or 14 days), was hallucinating, and was still detoxing from drugs and alcohol four days after his arrest. He also claims to have suffered a previous traumatic brain injury that affects his memory and causes auditory hallucinations.

As discussed above, the sergeant who interviewed Johnson testified that Johnson appeared normal, saying that,

[Johnson] looked very alert, his eyes weren't bloodshot, he looked very awake, he looked just of a clear mind and it didn't look like somebody who had just gotten out of three days of detox and as I was gathering biographical information I was talking to him it was very clear that he was well rested, he was tracking my questions, I was asking him direct questions he was giving me direct, clear answers and responses and I felt very comfortable with moving forward with the interview.

The district court credited the sergeant's testimony as evidence of Johnson's ability to comprehend the circumstances. The court then discussed other relevant factors including Johnson's prior arrests and experience with the criminal-justice system. The court then noted that the sergeant provided Johnson with adequate warnings and even told Johnson that if any question did not make sense, Johnson could ask the sergeant for clarification—all of which Johnson said he understood. The court also found that Johnson was 42 years old and of sufficient maturity and intelligence.

The district court also addressed Johnson's claim that he was still experiencing withdrawal symptoms when he made the incriminating statements. The district court first accepted that Johnson had been a methamphetamine user in addition to other drugs and alcohol. But it found that Johnson was arrested on a Thursday and was not interviewed until the following Monday. The court found that any alcohol or other drug effects should have purged from his system by then, and in light of the sergeant's testimony that Johnson did not appear to be suffering any health effects during the interview, the district court concluded that any withdrawal effects did not unreasonably interfere with Johnson's voluntariness.

Lastly, the district court addressed Johnson's claim of a previous traumatic brain injury. The district court noted that the court file contained a forensic-evaluation report prepared by a forensic psychologist.<sup>1</sup> That report noted that Johnson would sometimes claim that he could not remember certain items or details, only to remember and give detailed descriptions of those items later in the same interview. It also noted that Johnson tested lower than people with traumatic brain injuries normally do, leading the examiner to believe that Johnson was feigning his memory deficits. The report concluded that Johnson was "likely exaggerating his memory deficits."

The district court then reviewed Johnson's interview with police and found that Johnson demonstrated his ability to comprehend what was happening. The court discussed its observation of similar deceptive behavior to what was discussed in the psychological

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<sup>1</sup> The report was prepared for the purpose of evaluating whether Johnson was competent to proceed in a prior court case.

report. For example, Johnson claimed that he did not remember if he used a gun during the robbery, only to later say that the gun he used during the robbery was fake.

Based on an independent review of the record, we believe the district court correctly determined that Johnson's statement was voluntary. *See Thaggard*, 527 N.W.2d at 807 (stating that appellate courts independently review whether a statement was voluntary). Given Johnson's age, his prior experience with the court system, the sergeant's testimony regarding Johnson's mental state during the interview, the previous psychological report concluding that Johnson was mentally fit and prone to feigning poor mental health, and the fact that Johnson exhibited behavior in accordance with that psychological report's findings in this case, we conclude that Johnson's statements to police were voluntarily made.

### **III. The district court's jury instructions were not in error.**

Johnson's final issue is whether the district court erred in its jury instruction stating that Johnson could be convicted of aiding and abetting if he was present and knew that his accomplices were about to—or were in the process of—committing a crime. But this court recently addressed this issue in the case of *State v. Smith*, where we held that a similar jury instruction on the requisite knowledge was not erroneous. 901 N.W.2d 657, 663 (Minn.

App. 2017), *review denied* (Minn. Nov. 14, 2017).<sup>2</sup> Because this issue is controlled by *Smith*, we conclude that the district court's instruction was not in error.

**Affirmed.**

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<sup>2</sup> Johnson included this argument to preserve this issue in case the Minnesota Supreme Court grants review of *Smith*, but conceded that our opinion in that case was dispositive of this issue.