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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1259**

Dementry James Loyd, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed March 4, 2019
Affirmed
Ross, Judge**

Hennepin County District Court
File No. 27-CR-15-13147

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

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Kelly O'Neill Moller, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Smith, Tracy M., Presiding Judge; Ross, Judge; and Johnson, Judge.

UNPUBLISHED OPINION

ROSS, Judge

A man testified in a bench trial that masked men, including Dementry Loyd, robbed him at gunpoint. The district court credited the testimony and found Loyd guilty of aiding

and abetting first-degree robbery and second-degree assault with a dangerous weapon. Loyd unsuccessfully petitioned for postconviction relief, arguing that the state offered insufficient evidence to convict him. He makes the same argument on appeal from the district court's denial of his postconviction petition, and we affirm because the argument fails.

FACTS

The trial testimony and the district court's findings indicate that the following events took place on an evening in May 2015. E.B. was cleaning his truck near his garage in north Minneapolis when a dark green Chevy Tahoe pulled up. One of its passengers, Dementry Loyd, exited the Tahoe and asked E.B. a question about a phone number. E.B. noticed that Loyd appeared to be looking to see if anybody was around. He also walked around E.B.'s truck, looking at it. After E.B. said he did not have the number that Loyd was seeking, Loyd told E.B. to find the number and that he would be back in five or ten minutes. Loyd walked back to the Tahoe. It appeared to E.B. as if Loyd then "looked back like if he was giving a signal or something." He gestured in a manner that E.B. interpreted as indicating the coast was clear. Loyd entered the Tahoe and it pulled away.

Moments later, three men "came from behind the garage with masks and black hoodies on." One of them, who had shoulder length dreadlocks, was holding a gun. He threatened to shoot E.B. unless E.B. stayed quiet. The two other men rifled through E.B.'s pockets and truck. They took jewelry, cash, credit cards, a cellphone, and the stereo from E.B.'s truck. When they left, E.B. chased after them and saw them enter and leave in the

same green Tahoe that Loyd had arrived and left in shortly before the robbery. E.B. called the police.

Days later, E.B. contacted Minneapolis Police Officer Joseph Schany. E.B. showed Officer Schany images on a Facebook page depicting several individuals with distinctive jewelry stolen in the robbery. E.B. also recognized the shoes, hair, and clothing of the individuals in the photographs as matching what the robbers were wearing. The Facebook account where the images were posted belonged to user “Tommygun Tunchie.” Tommygun Tunchie is actually Loyd.

Police arrested Loyd within five days of the robbery. Loyd was wearing the distinctive chain with a cross pendant that belonged to E.B. and that E.B. had also seen in the Facebook image. A search of Loyd’s home revealed clothes matching E.B.’s description of the robbers’ clothes. A green Tahoe sat in Loyd’s driveway.

The state charged Loyd with first-degree aggravated robbery and second-degree assault with a dangerous weapon.

One witness in Loyd’s bench trial was Darryl Keys, who had pleaded guilty to second-degree assault for his participation in the robbery. Keys had previously testified that he pointed the gun at E.B. while Loyd and the other assailant took E.B.’s property. Keys changed his story at Loyd’s trial. He said that he was the one who took E.B.’s property and that, although Loyd was present during the assault and robbery, Keys alone committed the crime and Loyd and the other man “didn’t know what was going on.” The district court credited Keys’s plea-hearing testimony over his conflicting trial testimony and found Loyd guilty of aiding and abetting both crimes. The district court sentenced Loyd to 88 months

in prison for the first-degree aggravated robbery conviction and 45 months for the second-degree assault conviction, to be served concurrently.

Loyd petitioned for postconviction relief, arguing that there was insufficient evidence to convict him on either count. The district court denied Loyd's motion.

Loyd appeals.

D E C I S I O N

Loyd argues that the district court erred by denying his petition for postconviction relief. We will not reverse a denial of a petition for postconviction relief unless the district court abused its discretion. *Matakis v. State*, 862 N.W.2d 33, 36 (Minn. 2015). We review legal issues de novo, but we will overturn factual findings only if there is insufficient evidence to sustain them. *Id.*

We reject Loyd's argument that postconviction relief is required because the state presented insufficient evidence to prove beyond a reasonable doubt that he was guilty of the two crimes. We review the evidence in the light most favorable to the verdict and determine whether the facts and inferences drawn from them would permit the factfinder to reasonably conclude that the defendant was guilty beyond a reasonable doubt. *State v. Salyers*, 858 N.W.2d 156, 160 (Minn. 2015); *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011) (applying the same standard of review for sufficiency of the evidence to both bench and jury trials). This is not a close case, as the evidence offered to establish Loyd's guilt easily supports his conviction.

Loyd focuses on the *mens rea* element, contending that the evidence does not show that he *intentionally* aided in the robbery or the assault. To prove that a defendant aided

and abetted the commission of a crime, the state must establish that the defendant aided, advised, hired, counseled, or conspired to commit the crime and also that he knew the crime would be committed and intended that his presence or actions would further its commission. Minn. Stat. § 609.05, subd. 1 (2018); *State v. Horst*, 880 N.W.2d 24, 40 (Minn. 2016). Loyd is correct that his knowledge was proved only through circumstantial evidence. When a defendant is convicted based on circumstantial evidence, we apply a two-step test, first determining the circumstances proved by resolving all questions of fact in favor of the verdict, and then determining whether a reasonable inference inconsistent with guilt can be drawn from those circumstances. *State v. Harris*, 895 N.W.2d 592, 598 (Minn. 2017). In applying this standard, we defer to the factfinder's credibility determinations. *See id.* at 599.

The district court's findings inform us of the relevant circumstances proved. The district court credited Darryl Keys's plea-hearing testimony, establishing as a circumstance proved the fact that Loyd stole items from E.B. while Keys held E.B. at gunpoint. This circumstance alone is enough to prove that Loyd knew he was aiding a robbery, since no other reasonable hypothesis could explain his conduct. Other circumstances bolster our conclusion. Loyd was the first one of the robbery band to engage with E.B., arriving and then leaving in the same vehicle the robbers would soon use as their getaway car—the same vehicle police also found outside Loyd's home after they arrested him. Loyd donned a ski mask between the time he spoke with E.B. about a phone number and the time, moments later, when he reappeared with a gunman and took E.B.'s possessions. Loyd was the member of the band who posted images of the robbers displaying one or more of the stolen

items, and Loyd was wearing the stolen necklace when police arrested him. Loyd does not even attempt to offer an innocent explanation for this set of proved circumstances.

Instead Loyd contends that Keys's plea-hearing testimony is inherently incredible because E.B. could not recognize Loyd as one of the robbers. The contention fails because all of the robbers were wearing masks to conceal their identity. Loyd also maintains, "Given that just seconds passed between Loyd driving away and when the three men ran up on E.B., there is no way Loyd was one of those three men." This argument assumes that E.B.'s testimony was precise in his describing the attack as having occurred within only about "five seconds" after Loyd left in the Tahoe. Loyd does not attempt to explain how the three robbers could have fled the scene in the same Tahoe that Loyd had left in before the robbery unless the Tahoe arrived back at the scene contemporaneous to the robbery. More important for our review, it is evident from the findings and the verdict that the district court, sitting as factfinder, either did not treat E.B.'s testimony about the five-second window as literal or did not treat it as accurate. Its findings indicate only that the robbery occurred at some point after Loyd left in the Tahoe. The district court's credibility determination of Keys's plea-hearing testimony implicating Loyd is therefore not clearly erroneous.

In every scenario presented at trial, Loyd was present immediately before and during the robbery, and he possessed stolen goods when he was arrested. The evidence of his guilt was overwhelming, and certainly sufficient.

Affirmed.