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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1868**

State of Minnesota,
Respondent,

vs.

Christopher James Larson,
Appellant.

**Filed November 4, 2019
Affirmed
Stauber, Judge***

Koochiching County District Court
File No. 36-CR-17-852

Keith Ellison, Attorney General, Matthew Frank, Assistant Attorney General, St. Paul, Minnesota; and

Jeffrey Naglosky, Koochiching County Attorney, International Falls, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Julie Loftus Nelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Larkin, Judge; and Stauber, Judge.

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

UNPUBLISHED OPINION

STAUBER, Judge

Appellant Christopher James Larson was convicted of first-degree aggravated robbery and fleeing a police officer on foot. On appeal, he argues that the accomplice testimony presented at trial was not sufficiently corroborated to establish his guilt. We affirm.

FACTS

Around midnight in November 2017, a man walked into a Freedom gas station in International Falls, Minnesota. The cashier's attention was drawn to the man because he was wearing a scarf over his face and had the hood of his sweatshirt up over his head, despite it not being particularly cold that night. Because of the way the man was dressed, the cashier was unable to clearly view his face, and she could not definitively identify him. She later told police that she was "not sure who it was, but it was in the category of like [C.A.]" and others. The man eventually made his way to the cash register and after some hesitation pulled out a gun—putting it on the counter—and demanded that the cashier give him all of the money in the cash register. The cashier gave the man about \$300 from the cash register. Once he left the gas station, she called the police.

Deputy Gary Jensen of the Koochiching County Sheriff's Department was one of several law enforcement personnel to respond to the robbery. The deputy went to the area around the gas station and encountered a man in an alleyway. While the man was wearing different clothing from what the robber was described as wearing, Deputy Jensen instructed the man to stop and put his hands in the air so that he could be identified. The man asked

what was going on, and the deputy informed him that there had been a robbery and that he wished to identify the man before letting him go on his way. As Deputy Jensen reached for his radio to contact other officers, the man ran away. Deputy Jensen and some other officers searched for the man but were unable to find him, so they went back to the law enforcement center where Deputy Jensen was able to look at photos in an attempt to identify the man. The deputy found a picture of C.A., who he believed had similar features to the man in the alleyway, and he went to C.A.'s residence. When the deputy made contact with C.A., it appeared he had just woken up—his hair was messy, his eyes were glossy, and there were physical impressions on his face consistent with him sleeping on his side. C.A. also appeared different in person from the man Deputy Jensen had encountered in the alleyway, so the deputy determined it must have been someone else.

Officer Justin Franz of the International Falls Police Department also responded to the robbery. While searching the area around the gas station, he encountered J.K.R., whom he knew from prior contacts. Officer Franz searched J.K.R. for weapons and, not finding any, let J.K.R. go when he heard Deputy Jensen calling over the radio regarding the man in the alleyway running away from him.

International Falls Police Officer Joshua Mastin learned of the gas station robbery when he came in for his day shift the next morning. He looked at video footage from the gas station and then searched the general area around the gas station. In some nearby garbage cans, Officer Mastin found clothes that resembled those worn by the robber. The clothing included a sweatshirt, a scarf, camouflage gloves, a dark gray stocking cap, and black athletic pants with a white stripe down the leg. The officer testified that the

sweatshirt, gloves, and athletic pants looked like the sweatshirt, gloves, and pants that the robber was wearing in the surveillance footage.

Later that day, Officer Mastin and Sergeant Michael Kostiuk of the International Falls Police Department spoke with J.K.R., who admitted to Sergeant Kostiuk that he acted as a lookout during the robbery and that Larson was the other man involved in the robbery. That same day, Officer Mastin created a photographic lineup for Deputy Jensen to view. Officer Mastin created the lineup based on the characteristics that Deputy Jensen had described to him of the man in the alleyway. Included in the lineup were photos of C.A. and Larson. Deputy Jensen chose Larson's picture, believing him to be the man he encountered in the alleyway.

As a result of J.K.R.'s statement implicating Larson, Officer Mastin arrested Larson. After learning of the arrest, Deputy Jensen inquired and confirmed that Larson was wearing gray sweatpants with a stain on the right thigh when he was arrested, which matched the stained sweatpants that Deputy Jensen had seen on the man in the alleyway. Officer Mastin also testified that the boots Larson was wearing when he was arrested looked similar to the boots worn by the robber due to the distinct coloring on the heels.

Law enforcement later searched a garage in the area near where the man from the alleyway had fled from Deputy Jensen, and they found a gun matching the description of the one used in the robbery. At trial, the cashier from the gas station identified this gun as the one used in the robbery. A forensic scientist with the Minnesota Bureau of Criminal Apprehension (BCA) testified that DNA testing was performed on the gun. From the safety lock and de-cock buttons of the gun, the scientist found a DNA mixture from three or more

individuals. From this mixture, the scientist was able to interpret a major profile that matched Larson. The scientist testified that this profile “would not be expected to occur more than once among unrelated individuals in the world’s population.” DNA testing also revealed that the dark gray stocking cap contained a major mixture of two individuals and that Larson could not be excluded from being a possible contributor to this mixture, whereas 99.99999999% of the population could be excluded.

Larson was charged with first-degree aggravated robbery in violation of Minn. Stat. § 609.245, subd. 1 (2016), and fleeing an officer on foot in violation of Minn. Stat. § 609.487, subd. 6 (2016).¹ The case proceeded to a jury trial in July 2018. J.K.R. testified to the following at trial. Larson called or texted him the night of the robbery, asking him to meet up. When they met near the gas station, Larson explained that he was going to rob it, and he showed J.K.R. the gun he had tucked in his waistband. J.K.R. assisted Larson in committing the robbery by waiting in an alleyway holding a backpack with a change of clothes in it for Larson. After Larson came back from the gas station, he removed some of the clothes that he was wearing, put them in a garbage can, and the two split up. Larson later gave J.K.R. \$50 for helping him. J.K.R. also testified that for his involvement he pleaded guilty to first-degree aggravated robbery and was granted a downward dispositional sentencing departure in exchange for his testimony at trial.

Larson’s stepmother also testified. She explained that Larson was living at her home in November 2017. She identified the gun that law enforcement found in the garage and

¹ Larson was also charged with introducing contraband into a jail in violation of Minn. Stat. § 641.165, subd. 2(a) (2016), but the state dismissed the charge at the start of the trial.

had DNA matching Larson on it as “exactly like the one that used to hang in” her garage. Larson’s stepmother also identified the sweatshirt and the scarf that police found in the garbage can as belonging to her and her daughter respectively. She explained that she realized that the gun, sweatshirt, and scarf were missing when law enforcement came to her home and asked her about the gun.

One of Larson’s friends testified at trial that he was with Larson from 7:30 p.m. on November 17 until 1:30 a.m. on November 18. And another man testified that C.A. admitted to him that he had robbed the gas station with J.K.R.

The jury convicted Larson of first-degree aggravated robbery and fleeing an officer on foot. The district court sentenced him to 105 months in prison. This appeal follows.

D E C I S I O N

Larson argues that his convictions should be overturned because J.K.R.’s accomplice testimony was not sufficiently corroborated. The requirement that accomplice testimony be corroborated is statutory in nature:

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 (2018). Corroborative evidence is required because accomplice testimony is considered inherently untrustworthy due to the accomplice’s possible incentive to testify in hopes of obtaining a more favorable result in his or her own case. *State v. Thoresen*, 921 N.W.2d 547, 551 (Minn. 2019). Thus, the purpose of the

corroborative evidence is to restore “confidence in the accomplice’s testimony.” *Id.* at 552 (quotation omitted).

Accomplice testimony is sufficiently corroborated “if the corroborative evidence in some substantial degree tends to affirm the truth of [the accomplice] testimony and to point to the guilt of the defendant.” *Id.* at 551 (alteration in original). This can be done through either direct or circumstantial evidence. *Id.* at 551-52. Importantly, the corroborative evidence “need not establish a prima facie case of the defendant’s guilt.” *Id.* at 552 (quotation omitted). It need only tend to point to the defendant’s guilt “in some substantial degree.” *Id.* We review the sufficiency of corroborative evidence “in the light most favorable to the prosecution, and with all conflicts in the evidence resolved in favor of the verdict.” *Id.* at 551.

As an initial matter, it is undisputed that J.K.R. was an accomplice in the robbery and that his testimony constitutes accomplice testimony.

Thus, the question before us is whether J.K.R.’s inculpatory accomplice testimony was corroborated at trial. We conclude that it was corroborated by several pieces of evidence. First, we note the evidence about the gun. The cashier identified the gun that law enforcement found in the garage as the one used in the robbery. Larson’s stepmother said that it looked identical to the one she had in her own garage and which was missing when law enforcement came to her residence a few days after the robbery. And Larson’s DNA was found on the gun.

Second, we consider the evidence presented of the clothing found in the garbage can. There was testimony that established that the clothing in the garbage can looked

similar to the clothing worn by the robber. And DNA testing indicated that DNA found on the hat was consistent with Larson's DNA. This corroborates J.K.R.'s testimony that after committing the robbery, Larson removed some clothing and put it in a garbage can. Additionally, Larson's stepmother testified that the sweatshirt and scarf belonged to her and her daughter and that they had gone missing from her residence. In light of her testimony that Larson was living in the residence at the time of the robbery, and that he had free rein of the residence, it is reasonable to infer that Larson could have taken the sweatshirt, scarf, and gun to commit the robbery, corroborating J.K.R.'s version of events.

And third, Deputy Jensen's identification of Larson is significant. The deputy identified Larson as the man he saw in the alleyway, and this identification was further bolstered by the fact that Larson had gray sweatpants with a stain on the right thigh, matching the description of the sweatpants the deputy observed on the man in the alleyway. While Larson's presence in the alleyway is by no means conclusive evidence that he was involved in the robbery, it is suggestive of it, and it contradicts his alibi witness's testimony that Larson was in Big Falls with him until 1:30 a.m. on the night of the robbery.

This evidence presented at trial "in some substantial degree tend[s] to point to the defendant's guilt," *Thoresen*, 921 N.W.2d at 552, so we conclude that J.K.R.'s testimony was sufficiently corroborated.

Affirmed.