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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1998**

Deondre Lashawn Bishop, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed August 26, 2019
Affirmed
Cochran, Judge**

Hennepin County District Court
File No. 27-CR-15-32746

Bradford Colbert, Legal Assistance to Minnesota Prisoners, St. Paul, Minnesota (for appellant)

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

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

Considered and decided by Cochran, Presiding Judge; Johnson, Judge; and Kirk, Judge.*

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

UNPUBLISHED OPINION

COCHRAN, Judge

Appellant Deondre Lashawn Bishop challenges the postconviction court's conclusion that there was sufficient evidence to sustain his convictions for aiding and abetting first-degree criminal sexual conduct (CSC). Because the stipulated facts and evidence support the postconviction court's conclusion that Bishop aided and abetted first-degree CSC, we affirm.

FACTS

The state charged Bishop with first-degree burglary, and two counts of aiding and abetting first-degree CSC. Bishop and the state agreed to submit the matter to the district court based on stipulated facts and evidence. We begin by reviewing the relevant stipulated facts.

In July 2015, officers from the Minneapolis Police Department were dispatched to a residence on the report of a burglary and sexual assaults. The officers found a 14-year-old female (Victim 1) and her mother (Victim 2). Victim 1 and Victim 2 reported that around 11:00 p.m. that evening, three masked men, armed with guns, had entered the home. Victim 1 was grabbed by her throat and led upstairs at gunpoint. The three masked men put pillowcases over the victims' heads, bound them, and led them around the residence demanding money.

The three masked men threatened to burn the victims and to rape them in order to find out where money was located in the home. One of the men vaginally penetrated Victim 1 while holding her at gunpoint. She suffered genital injuries as a result of the

sexual penetration. Another man kissed Victim 1 over the pillow case and rubbed her inner thighs and vagina while he possessed a firearm.

One of the masked men placed his penis into Victim 2's mouth. Victim 2 tried to resist, but the man was able to physically force his penis into her mouth and overcome her with his superior size and strength. One of the masked men digitally penetrated Victim 2's vagina. The penetration was accomplished through the use of force and coercion.

The three masked men placed the victims into the shower and turned on the hot water in an attempt to burn them, but the water did not get hot enough. The three masked men also threatened to burn the victims with an iron, but could not find an iron in the residence. After approximately one-and-one-half hours, the three masked gunmen left the home, taking with them televisions, a cell phone, cash, and various other items. The three masked gunmen were subsequently identified and included Bishop.

In addition to the above stipulated facts, the parties stipulated to the admission of certain evidence, including the grand jury transcript. Victim 2 testified before the grand jury that two of the masked men were taller, and one was shorter. A police officer testified that Bishop is shorter than the other two masked men.

Victim 1 testified that one of the taller men penetrated her and demanded that she tell him where the money was hidden. She further testified that the man told her "he wouldn't have to do that if [she] would just tell him where the money was." She stated that the shorter man, who was standing outside the room, at some point told the taller man "that was enough," at which point the taller man stopped penetrating her and left to look

for money. Victim 1 further testified that the shorter man stayed in the room with her and touched her vagina and inner thighs with his fingers but did not penetrate her vagina.

The stipulated evidence also includes reports prepared by a sexual-assault nurse examiner, who interviewed each of the victims as part of the examination process. Each report refers to the assailants by numbers 1, 2, and 3, but it is not clear whether the numbering is consistent between reports. The report for Victim 1 lists assailant 2 as 5'8" tall, which appears to correspond to Bishop, the shortest of the three men. The report also includes a description of assailant 2 touching her vagina, which is consistent with Victim 1's testimony that the shorter man touched her vagina after telling her first assailant that it was enough. Victim 1's report notes that assailant 3 did not have any physical contact with her.

In contrast, Victim 2's report refers to the shortest individual as assailant 3 and notes that "[h]e was the one with a little compassion." In considering this conflicting evidence, the district court found that it was impossible to know whether or not assailant 3 refers to the same person in both reports.

The district court concluded that the evidence was not clear as to whether Bishop directly sexually assaulted the victims but that Bishop aided and abetted the crimes of first-degree CSC against each victim. The district court convicted Bishop of two counts of aiding and abetting first-degree CSC, one count for each victim. The district court also convicted Bishop of first-degree burglary. Bishop filed a postconviction petition arguing that the evidence was insufficient to support the convictions for aiding and abetting first-degree CSC. The postconviction court affirmed the convictions. This appeal follows.

DECISION

Bishop argues that the postconviction court erred in determining that there was sufficient evidence to support his convictions. On appeal from a postconviction court's denial of relief, "we address questions of law de novo, review the postconviction court's factual findings for clear error, and evaluate the postconviction court's ultimate decision to deny relief for an abuse of discretion." *Lussier v. State*, 853 N.W.2d 149, 153 (Minn. 2014). In reviewing a claim of insufficient evidence, we undertake a "painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient" to support the conviction. *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (quotation omitted). We assume that the fact-finder "believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Caldwell*, 803 N.W.2d 373, 384 (Minn. 2011) (quotation omitted). "[W]e 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 that the defendant was guilty of the charged offense." *Ortega*, 813 N.W.2d at 100. In considering a claim of insufficient evidence, we apply the same standard to both jury and bench trials. *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011).

Bishop admits that he was present during the burglary and that the evidence was sufficient to sustain his conviction for first-degree burglary. Bishop does not deny that his codefendants sexually assaulted Victim 1 and Victim 2 and that the evidence is sufficient to show that his codefendants are guilty of committing first-degree CSC. But he argues

that the evidence was insufficient to prove that he aided and abetted his codefendants in committing first-degree CSC.

The statute defining aiding and abetting, Minn. Stat. § 609.05 subd. 1 (2014), provides that “[a] person is criminally liable for a crime committed by another if the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime.” To prove that Bishop was guilty of intentionally aiding or abetting a crime, the state was required to prove beyond a reasonable doubt that Bishop “(1) knew his alleged accomplices were going to commit a crime, and (2) intended his presence to further the commission of that crime.” *State v. Milton*, 821 N.W.2d 789, 806 (Minn. 2012). “Mere presence at the crime scene does not alone prove that a person aided or abetted, because inaction, knowledge, or passive acquiescence do not rise to the level of criminal culpability.” *State v. Crow*, 730 N.W.2d 272, 280 (Minn. 2007). “However, active participation in the overt act that constitutes the substantive offense is not required, and a defendant’s presence, companionship, and conduct before and after an offense is committed are relevant circumstances from which the jury may infer criminal intent.” *Id.* (quotation omitted).

Here, the stipulated facts state that “[t]he *three* masked men threatened to burn Victim 1 and Victim 2 with hot water, an iron, *and to rape* them in order to find out where the money was.” (Emphasis added.) The stipulated facts also indicate that the “*three* masked men” bound the victims, put pillow cases over their heads, and led them around the residence demanding money. (Emphasis added.) Thus, the stipulated facts indicate

that all three men participated in the threats to rape and burn the victims, in binding the victims, and in putting pillowcases over the victims' heads.

Bishop asserts that he was the shorter man who told the taller man raping Victim 1 that it was “enough.” Bishop argues that this action demonstrates his lack of intent to aid and abet his accomplices in committing first-degree CSC.¹ We are not persuaded. As the postconviction court noted, this comment could be interpreted as an attempt to redirect the group's attention to locating money rather than a lack of intent to aid and abet in the commission of first-degree CSC. We note that Bishop only told his accomplice that it was “enough” after Victim 1 failed to provide useful information about the location of money during the sexual assault. Although Bishop's purpose in breaking into the residence may have been to steal money, the stipulated facts demonstrate that Bishop participated in threatening the victims with rape in order to coerce them into telling him where money was hidden.

Bishop's actions go beyond “passive acquiescence” to his accomplices' actions. *See Crow*, 730 N.W.2d at 280. The stipulated facts and evidence demonstrate that Bishop knew his accomplices intended to commit first-degree CSC against both victims and that he facilitated that crime by threatening the victims and aiding in the binding and blindfolding

¹ We note that although Bishop asserts that he was the individual who told the taller man that the sexual assault on Victim 1 was “enough,” he also asserts that he was the individual who had no sexual contact with Victim 1, described in Victim 1's nursing report as assailant 3. But Victim 1 testified that the same person who told the taller man that it was “enough” then touched her inner thighs and vagina. Thus, Bishop's assertion that he was both the man who had no physical contact with Victim 1 and the person who told the taller man that it was “enough” is inconsistent with the evidence.

of the victims. As the district court correctly determined, “all three of the men contributed to creating the environment that allowed the sexual assaults to happen.” The evidence demonstrates that Bishop intended his presence to further the commission of the CSC in order to further his ultimate goal of stealing money from the residence. Thus, the evidence is sufficient to support Bishop’s convictions for aiding and abetting first-degree CSC, and the postconviction court did not abuse its discretion in denying his petition for postconviction relief. *See Milton*, 821 N.W.2d at 806 (stating that a defendant is guilty of aiding and abetting when he “(1) knew his alleged accomplices were going to commit a crime, and (2) intended his presence to further the commission of that crime”).

Affirmed.