

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0348**

State of Minnesota,
Respondent,

vs.

Benjamin Bobo, III,
Appellant.

**Filed June 1, 2021
Affirmed
Bryan, Judge**

Hennepin County District Court
File No. 27-CR-19-14445

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

Michael O. Freeman, Hennepin County Attorney, Sarah J. Vokes, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Bryan, Presiding Judge; Bjorkman, Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

In this direct appeal from the judgment of conviction for first-degree aggravated robbery, appellant argues that an accomplice's trial testimony was not sufficiently corroborated and that the district court abused its discretion in denying his motion for a

downward dispositional departure based on his particular amenability to probation. We affirm.

FACTS

Respondent State of Minnesota charged Appellant Benjamin Bobo with one count of first-degree aggravated robbery in violation of Minnesota Statutes section 609.245, subdivision 1 (2016). The case proceeded to trial, and the state introduced testimony from several witnesses, including the victim, a police officer, and an accomplice. The jury returned a guilty verdict. At sentencing, Bobo requested a downward dispositional departure based on his particular amenability to probation. The district court denied the motion. Bobo appeals both the conviction and the sentence. Given the issues raised, we first summarize the evidence presented at trial and then address the arguments made at the sentencing hearing.

A. Evidence Presented at Trial

The victim of the robbery, M.C., testified that in 2018, she shared a house with her boyfriend, K.M. M.C. explained that K.M. bred and sold reptiles and feeder insects from the house. K.M. also conducted a second business venture out of the house: selling marijuana. M.C. testified that on June 25, 2018, the accomplice, Douglas Anderson, and another man that she did not know unexpectedly came to the house. M.C. had known Anderson for three or four years because he was friends with K.M. M.C. saw Anderson a handful of times each month and considered him a friend. Because it was common to have unplanned visitors, M.C. let Anderson and the other man into the house. In her trial testimony, M.C. described the other man as an African-American man with “shorter dreads

. . . to the tips of his ears.” She observed that he was taller than Anderson and noticed a tattoo on his neck.

M.C. turned away from the men, took a few steps forward, and heard the clicking of a gun. She turned around to see that the second man was pointing a gun at her head, and he threatened to shoot her if she did not do as he said. Anderson went downstairs to the basement to find the marijuana. When Anderson did not retrieve the marijuana right away, the second man took M.C. to the basement at gunpoint. M.C. gave the two men a bag containing marijuana. The second man commanded that she sit down on the ground and not move. M.C. complied with the command, and the two men left the house, but not before stealing M.C.’s purse and \$800 in cash that she intended to use to pay rent. M.C. called 911 and police were dispatched to M.C.’s house. M.C. testified that she provided a physical description of the second man to the authorities when she reported the robbery.

A few days later, Sergeant Jeffrey Waite interviewed M.C. At trial, M.C. testified that she gave Waite a physical description of the second man. She testified that she told Waite that the second man was a lighter-skinned, African-American male with tattoos, who was taller than Anderson, but around the same age as Anderson. After this interview, M.C. stopped returning Waite’s phone calls and did not respond to his requests for her to participate in a photo lineup. In October 2019, approximately one year and four months after the June 25, 2018 offense, M.C. agreed to participate in a photo lineup after receiving a trial subpoena. M.C. testified that when she met with Waite, she viewed a series of photographs, each in its own folder. M.C. explained to the jury that she thought the second man from the robbery could be one of two men pictured in the photos that she viewed. The

district court admitted Exhibit 4, which contains the six photos that M.C. viewed as well as a form that M.C. filled out stating that she could not specifically or conclusively identify any of the men in the photos as the second man. M.C. reviewed Exhibit 4 while testifying at trial and explained that the person pictured in “Photo No. 2” resembled the second man in two primary respects: the person pictured had a tattoo on his neck that matches the placement of the tattoo on the second man’s neck. According to M.C., the man in Photo No. 2 also had a skin tone that resembled the second man’s skin tone. M.C. also testified that the man pictured in Photo No. 3 had eyes that looked like what she remembered of the second man. On cross-examination, counsel for Bobo confronted M.C. with various discrepancies that existed from one description to the next. For example, M.C. did not mention the second man’s neck tattoo during the 911 call. In addition, although she had described the second man as having “shorter dreads,” M.C. agreed with counsel for Bobo that in the second interview a few days after the robbery, she described the second man as having “medium dreads.”

Anderson also testified at trial, but before he did so, the district court provided the jury with the model instruction regarding corroboration of accomplice testimony. Anderson explained that he only knew Bobo as “Goldy,” but that they have known each other for roughly eight years. Anderson testified that he and K.M. would see each other multiple times a week for many years. Anderson also explained that he would regularly purchase marijuana from K.M. for personal use. On June 25, 2018, Anderson was with Bobo at a residence on Emerson Avenue, in Minneapolis. Anderson testified that Bobo wanted to purchase marijuana, and Anderson mentioned that K.M. could sell him the

marijuana. Anderson then drove Bobo to K.M.'s and M.C.'s house so that Bobo could purchase one ounce of marijuana. Anderson testified that after M.C. let Bobo and him into the house, he began conversing with M.C. about K.M. who was in the hospital at that time. While they talked about K.M., Anderson was surprised by the sound of Bobo cocking a firearm. According to Anderson, Bobo then ordered Anderson to go get the marijuana. Anderson went into the basement but pretended that he could not find any marijuana. Eventually, Bobo came downstairs with M.C. at gunpoint. M.C. retrieved a bag containing marijuana and gave it to Bobo. Bobo and Anderson went back upstairs, and Bobo grabbed M.C.'s purse before he ran out of the house. Anderson left the house with Bobo, got back in his car, and drove Bobo back to the residence on Emerson. On cross-examination, Anderson testified that on June 25, 2018, Bobo had braids, not dreadlocks, that hung down to his shoulders.

The state also introduced the testimony of Waite, a detective in the robbery division of the Minneapolis Police Department who investigated the robbery. Waite testified that after reviewing the police report from June 25, 2018, he contacted M.C. and took her statement. Waite testified that M.C. described the second man as taller than Anderson, with medium dreads, a dark complexion, and tattoos. Waite also interviewed Anderson. Waite testified that Anderson knew the second man as Goldy. Based on the address information that Anderson provided for Goldy, Waite obtained a picture of the person Anderson knew as Goldy. Waite confirmed with Anderson that the person who had committed the robbery was Bobo. Just before trial was to begin in October 2019, Waite met with M.C. and conducted a photo lineup. Waite explained the process to the jury and

testified that while M.C. could not definitively identify the second man, she did pull out two of the six photos. Waite further testified that M.C. told him that the man pictured in Photo No. 2 had a tattoo that was similar to the second man and had “the same, exact skin tone.” Waite then told the jury that the man pictured in Photo No. 2 was Bobo. The jury considered the evidence presented and returned a guilty verdict.

B. Arguments Made at Sentencing

The presentence investigation (PSI) report recommended that Bobo receive a presumptive 48-month prison sentence. Bobo moved for a downward dispositional departure, arguing that he was particularly amenable to probation. In his sentencing memorandum, Bobo argued that the following indicated his need for chemical dependency treatment: the report submitted by the dispositional adviser at the public defender’s office, the chemical dependency assessment report, and the fact that his attorney moved to determine his competency at the initial appearance. In addition to a need for chemical dependency treatment, Bobo argued that he was particularly amenable to probation because of his most recent work history, a favorable report from child protective services about his parenting abilities, and his support network of friends and family. At the sentencing hearing, Bobo presented the testimony of his boss, who described Bobo as a valued and reliable employee as well as a dedicated father. Bobo’s mother and friend also testified relating to Bobo’s character and parenting abilities. The state opposed the departure motion, asking for imposition of the presumptive sentence. Specifically, the state argued that Bobo had not taken responsibility for the offense and described the offense as a particularly “horrendous” crime. The district court agreed with the state, describing the

offense as a “horrendous crime” and emphasizing the risk to public safety that Bobo presented given the seriousness of the offense. The district court sentenced Bobo to 48 months in prison.

This appeal followed.

DECISION

I. Sufficiency of Evidence Corroborating Anderson’s Testimony

Bobo argues that the evidence presented did not sufficiently corroborate Anderson’s testimony.¹ We are not convinced. Because the evidence presented included multiple descriptions that fit Bobo’s physical appearance, and because these descriptions exclude large portions of the general population, we conclude that the state presented sufficient corroborating evidence linking Bobo to the offense.

Minnesota Statutes section 634.04 (2020) prohibits convictions based solely on the testimony of an accomplice: “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” Corroborating evidence is not sufficient if it “merely shows the commission of the offense or the circumstances thereof.” Minn. Stat. § 634.034. Instead, the corroborating evidence must also “link or connect the defendant to the crime.” *State v. Adams*, 295 N.W.2d 527, 533 (Minn. 1980). While the corroborating evidence “need not establish a prima facie case of the defendant’s guilt, it

¹ On appeal, Bobo does not identify any error regarding the admission of M.C.’s trial testimony regarding Exhibit 4. Nor does Bobo challenge the suggestiveness of the identification process in this case.

must point to [the] defendant's guilt in some substantial way." *State v. Johnson*, 616 N.W.2d 720, 727 (Minn. 2000); *State v. Her*, 668 N.W.2d 924, 927 (Minn. App. 2003), *review denied* (Minn. Dec. 16, 2003). In addition, the jury must at least be able to "fairly infer[]" the defendant's involvement in the crime from the corroborating evidence. *Adams*, 295 N.W.2d at 533.

When considering whether the record included evidence sufficient to corroborate accomplice testimony, appellate courts consider whether the corroborating evidence is "weighty enough to restore confidence in the truth of the accomplice's testimony." *State v. Clark*, 755 N.W.2d 241, 253 (Minn. 2008) (quotation omitted). Importantly, the Minnesota Supreme Court has held that "[i]dentification testimony need not be positive and certain; it is enough for a witness to testify that it is his opinion, belief, impression, or judgment that the defendant is the person he saw commit the crime." *State v. Harris*, 405 N.W.2d 224, 228 (Minn. 1987) (quotations omitted) (concluding that a witness's statement that the witness was only "kind of sure, pretty sure" that Harris was involved sufficiently corroborated the accomplice's testimony to affirm the conviction). This court must view the sufficiency of corroborating evidence in the light most favorable to the prosecution, resolving all conflicting evidence in favor of the jury's verdict. *State v. Smith*, 932 N.W.2d 257, 264 (Minn. 2019).

During the trial in this case, the state asked M.C. to describe the physical appearance of the person who pointed a gun at her during the robbery. In addition to this testimony, M.C. and Waite testified regarding three prior occasions in which M.C. provided descriptions of this man: when M.C. reported the robbery to authorities on June 25, 2018;

when Waite interviewed M.C. a few days after the robbery; and when M.C. participated in the photo lineup just prior to trial. M.C. described multiple physical attributes of the gunman, describing him as a light-skinned African American man, who was noticeably taller than Anderson and around the same age as Anderson, with a tattoo on his neck. Each of these descriptors—height, race, skin tone, age, and unique tattoo placement—fit Bobo’s appearance and connect him to the crime. Taken together, these identifying descriptors exclude a significant enough proportion of the general population to sufficiently corroborate Anderson’s testimony that Bobo was the gunman involved in the robbery.

Bobo argues that the identification evidence provided by M.C. is too uncertain to sufficiently corroborate Anderson’s identification of Bobo given various discrepancies in her descriptions. For example, Bobo emphasizes that M.C. initially stated that the gunman had “shorter dreads” while Anderson testified that on June 25, 2018, Bobo had braids, not dreadlocks, that hung down to his shoulders. We are not persuaded that the discrepancies identified by Bobo required the jury to discount or disregard the state’s corroborating evidence for two reasons. First, Bobo raised each discrepancy through cross-examination at trial, and we are bound by the well-established caselaw requiring deference to a jury’s weighing of conflicting evidence. *See Smith*, 932 N.W.2d at 264 (requiring this court to resolve all conflicting evidence in favor of the jury’s verdict). Second, M.C.’s testimony need not be positive or certain, but instead need only point to Bobo’s guilt to a sufficient degree for the jury to fairly infer Bobo’s involvement from Anderson’s testimony. *See Johnson*, 616 N.W.2d at 727; *Harris*, 405 N.W.2d at 226, 228; *Adams*, 295 N.W.2d at 533; *Her*, 668 N.W.2d at 927. We conclude that, like the witness in *Harris* who was only “kind

of sure, pretty sure” of the identification, M.C.’s testimony is sufficient corroboration of Anderson’s testimony for the jury to infer Bobo’s involvement despite the discrepancies in her prior descriptions.

II. Exercise of Sentencing Discretion

Bobo also challenges the denial of his departure motion at sentencing. We conclude that the district court did not abuse its sentencing discretion when it determined that no compelling circumstances existed to justify a probationary sentence.

The Minnesota Sentencing Guidelines establish sentences that are presumptively appropriate. Minn. Sent. Guidelines 2.D.1 (Supp. 2017). The district court must pronounce a presumptive sentence “unless there exist identifiable, substantial, and compelling circumstances to support a departure.” *Id.* The guidelines provide a nonexclusive list of factors that may be used to support a departure. Minn. Sent. Guidelines 2.D.3 (Supp. 2017). A district court is not required to grant a departure even if there are grounds that would justify a departure. *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006); Minn. Sent. Guidelines 2.D.3 (providing that the factors “may” be used to depart). It is also well-established that district courts may consider both offense-related and offender-related factors when deciding whether to grant a request for dispositional departure. *State v. Walker*, 913 N.W.2d 463, 468 (Minn. App. 2018) (“For a downward dispositional departure, a district court may consider both offender- and offense-related factors.”); *see also, e.g., State v. Allen*, 706 N.W.2d 40, 46 (Minn. 2005) (“Upward dispositional departures under the guidelines may be based on either offender- or offense-related aggravating factors.”); *State v. Chaklos*, 528 N.W.2d 225, 228 (Minn. 1995) (stating

that “offense-related aggravating factors may be used to support not only such a dispositional departure but, alternatively, an upward durational departure” (emphasis omitted)). Only in a “rare case” will an appellate court reverse a district court’s refusal to depart. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). We review a district court’s denial of dispositional departure requests for an abuse of discretion. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014).

In this case, Bobo argued for a downward dispositional departure based on particular amenability to individualized treatment in a probationary setting. Minn. Sent. Guidelines 2.D.3.a.(7). For a departure to be warranted on this basis, the defendant must be *particularly* amenable to probation—meaning that “the defendant’s amenability to probation distinguishes the defendant from most others and truly presents the substantial and compelling circumstances that are necessary to justify a departure.” *Soto*, 855 N.W.2d at 309 (quotation omitted); *see also State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982) (listing factors relevant to particular amenability, including age, criminal history, remorse, cooperation, attitude while in court, and the support of friends or family). Bobo argued that he was particularly amenable to probation because of his need for chemical dependency treatment, his most recent work history, a favorable report from child protective services about his parenting abilities, and his support network of friends and family. The district court properly weighed the evidence and arguments in favor of a probationary sentence, but ultimately concluded that these arguments did not compel a departure. The district court described the offense as a “horrendous crime” and emphasized the risk to public safety that Bobo presented given the seriousness of the offense. We

discern no abuse of discretion in the district court's reasoning or in the imposition of the presumptive sentence.

Affirmed.