

*This opinion is nonprecedential except as provided by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
A22-0595**

State of Minnesota,
Respondent,

vs.

Mohamed Hassan Abdi,
Appellant.

**Filed May 15, 2023
Affirmed
Wheelock, Judge**

Stearns County District Court
File No. 73-CR-20-8425

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

Janelle P. Kendall, Stearns County Attorney, Michael J. Lieberg, Chief Deputy County Attorney, Ole Tvedten, Assistant County Attorney, St. Cloud, Minnesota (for respondent)

John D. Ellenbecker, St. Cloud, Minnesota (for appellant)

Considered and decided by Gaitas, Presiding Judge; Wheelock, Judge; and
Halbrooks, Judge.*

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

NONPRECEDENTIAL OPINION

WHEELLOCK, Judge

Appellant appeals from a judgment of conviction for first-degree criminal sexual conduct and kidnapping, arguing that (1) there was insufficient evidence corroborating his accomplice's testimony to prove his guilt beyond a reasonable doubt, and (2) the district court abused its discretion by imposing an upward durational sentencing departure. We affirm.

FACTS

Respondent State of Minnesota charged appellant Mohamed Hassan Abdi in an amended complaint with four counts—aiding and abetting kidnapping, aiding and abetting first-degree criminal sexual conduct, first-degree criminal sexual conduct involving force or coercion, and first-degree criminal sexual conduct involving fear of great bodily harm. The complaint alleged that Abdi and two codefendants sexually assaulted a woman in St. Cloud in October 2020. The state also filed a motion seeking an upward durational sentencing departure.

The district court held a jury trial for one of Abdi's codefendants, Abdirahin Ali, in October 2021.¹ Following Ali's trial, Abdi waived his right to a jury trial, and the case proceeded to a two-day bench trial. The parties stipulated that the district court could consider the testimony and evidence that the state presented in its case in chief at Ali's

¹ The state charged Ali with four counts, and the jury found Ali guilty on all of them.

trial. The following summarizes the stipulated testimony and evidence from Ali's jury trial as well as the testimony and evidence offered at Abdi's bench trial.

The victim, M.C., testified that she and a group of friends went to a bar on the evening of October 17, 2020. A bouncer from the bar testified that he saw M.C. leave the bar alone at approximately 1:00 a.m. He also testified that he saw a bluish vehicle waiting outside the bar at the same time M.C. left. The next thing M.C. recalled after leaving the bar was being in a car with a group of men. M.C. testified that when she tried to speak to the men, they threatened to kill her and told her they had a gun. She also testified that she had gaps in her memory of what occurred after she left the bar that evening and that she attributed the gaps in her memory to the trauma associated with the alleged incident.

During the car ride, the men attempted to force M.C. to drink from a bottle of Hennessy alcohol. They arrived at a park, and the men pushed M.C. out of the car and onto a playground slide. M.C. testified that a man raped her on the slide while the other men stood around the slide. M.C. clarified that by "rape," she meant that one of the men vaginally penetrated her with his penis.

M.C. next remembered being back in the car. She testified that the men threatened to kill her if she did not provide oral sex to one of them, and that the other men recorded or took pictures of her while she was forced to do so.

M.C. could not remember how she left the men's car, but she remembered being out of the car and running through a neighborhood. M.C. sought shelter at a nearby house, and soon after, her friends found her there. One of her friends dialed 911, and M.C. reported

the assault to the dispatcher. The dispatcher testified that this call occurred at approximately 2:19 a.m. on October 18.

The officer who responded to the 911 call testified that M.C. described the men who assaulted her as four or five Somali males in their early- to mid-20s.² M.C. did not know the name of the park at which the men assaulted her, but she reported to the officer that she had left a shoe at the park. The officer transported M.C. to the hospital for a sexual-assault examination that included collecting swabs of DNA evidence.

During its investigation, law enforcement located M.C.'s missing shoe at a local park. The lower part of the slide at the park had frost on it that appeared to have been recently disturbed. Law enforcement also located video footage from the surveillance camera of a local gas station that showed Abdi and codefendants Ali and Sahal Hassan coming and going from the gas station on the night of October 17-18. The law-enforcement officer who reviewed the video footage testified that Ali's car, a bluish Chevy, matched the description of the car that the bouncer noticed outside the bar when M.C. was leaving. The officer also testified that the video footage shows the car leaving the gas station at 11:35 p.m. and returning at 1:26 a.m. The officer testified that Hassan appeared in the video footage shortly after the car returned to the gas station at 1:26 a.m., and he was holding a bottle that appeared to be Hennessy.

Law enforcement arrested Abdi, Ali, and Hassan and obtained DNA samples from the men. DNA-analysis results from M.C.'s sexual-assault examination indicated that

² Three of the men have been identified as Abdi and his codefendants.

M.C.'s vaginal swab contained a mixture of DNA from three or more individuals. The major male DNA profile matched codefendant Hassan, and Abdi could not be excluded from being a contributor to the major mixture from M.C.'s vaginal swab. The state introduced testimony from a forensic scientist with the Minnesota Bureau of Criminal Apprehension explaining that all of Abdi's DNA types were present within the major mixture of DNA types and that while 99.999998% of the general population could be excluded from being a contributor to the major mixture, Abdi could not be excluded.

Abdi was excluded as a contributor to the mixture from M.C.'s perineal, cervical, and oral swabs. Hassan's DNA matched the major male profile in M.C.'s perineal and cervical swabs. Ali's DNA matched the major male profile in M.C.'s oral swabs. Ali's DNA also matched a seminal sample taken from the center console and rear center seat of the vehicle. Law enforcement recovered photographs from Ali's phone taken on the night of the assault that depict a woman providing oral sex to Ali in the rear seat of the car.

Hassan pleaded guilty to sexually assaulting M.C. and testified at Ali's trial. Hassan testified that he waited in the car while Abdi raped M.C. on the playground slide, and then he got out of the car and raped M.C. as well. He further testified that, after the sexual assault, he returned to the car and got into the driver's seat of the car, Abdi rode in the passenger seat, and Ali rode in the back seat with M.C. In addition to Hassan's testimony at Ali's trial, the district court admitted into evidence in Abdi's trial a copy of Hassan's plea-hearing transcript and a summary of a county-attorney interview with Hassan.

Abdi testified in his own defense at his bench trial. He testified that he was with Ali and Hassan on the night of October 17, selling marijuana. Ali drove Abdi to and from

a local gas station to make sales. Abdi stated that he and Ali left the gas station at approximately 11:40 p.m. Ali dropped Abdi off with a friend to make a sale, and then Abdi and the friend smoked marijuana together for 40-60 minutes.

Abdi testified that Ali picked him up in the car at approximately 1:10 a.m., and they drove to a park to pick up Hassan. When they arrived, Hassan was at the park with a woman. Abdi stated that the woman appeared cold, and he lent her his jacket. They then gave the woman a ride to a neighborhood with which she was familiar. He testified that he sat in the front passenger seat while Hassan was in the driver's seat and Ali was sitting in the back seat with the woman. Abdi denied having any sexual contact with M.C. He also denied any knowledge that Ali engaged in oral sex with M.C. in the back seat.

The district court issued its verdict and order in December 2021, finding Abdi guilty of all four counts. The district court also found that three aggravating factors were present, including that (1) Abdi “committed the crime as part of a group of three or more persons who all actively participated in the crime”; (2) M.C. “was subjected to multiple forms of sexual penetration”; and (3) M.C. “was threatened with death.” In February 2022, the district court sentenced Abdi to 330 months’ imprisonment, an upward durational departure, for his conviction in count three—first-degree criminal sexual conduct involving force or coercion.

Abdi appeals.

DECISION

I. The evidence corroborating Hassan’s accomplice testimony was sufficient to support Abdi’s conviction.

Abdi argues that the evidence was insufficient to support his conviction; specifically, he argues that there was insufficient corroborating evidence to support Hassan’s accomplice testimony³ that Abdi was present and participated in the offenses in question. We disagree.

Appellate courts apply the same standard of review to evaluate the sufficiency of the evidence in bench trials as in jury trials. *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011). We assess the sufficiency of the evidence by “carefully examin[ing] the record to determine whether the facts and the legitimate inferences drawn from them would permit the [fact-finder] to reasonably conclude that the defendant was guilty beyond a reasonable doubt.” *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016) (quotation omitted). In doing so, appellate courts view the evidence in the light most favorable to the verdict. *State v. Ferguson*, 742 N.W.2d 651, 658 (Minn. 2007). Furthermore, appellate courts assume the fact-finder believed the state’s witnesses and rejected any evidence to the contrary. *State v. Pippitt*, 645 N.W.2d 87, 92 (Minn. 2002).

Minnesota law provides that a “conviction cannot be had upon the testimony of an accomplice, unless it is corroborated by such other evidence as tends to convict the

³ “A witness is an accomplice if the witness could have been indicted and convicted for the crime with which the defendant is charged.” *Staunton v. State*, 784 N.W.2d 289, 297 (Minn. 2010) (quotation omitted). Neither party argues that Hassan is not an accomplice to the crime, and thus, we assume Hassan is an accomplice for the purposes of our analysis.

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 (2022). Appellate courts review the sufficiency of evidence corroborating an accomplice’s testimony in the same way they review a sufficiency challenge: “in the light most favorable to the prosecution, and with all conflicts in the evidence resolved in favor of the verdict.” *State v. Nelson*, 632 N.W.2d 193, 202 (Minn. 2001).

“[C]orroborative evidence [of the accomplice testimony] does not need to be sufficient to establish a prima facie case of the defendant’s guilt or sustain a conviction,” but rather, the corroborative evidence “need only link the defendant to the crime in some substantial degree [that] tends to affirm the truth of [the accomplice’s] testimony and point to the guilt of the defendant.” *Staunton*, 784 N.W.2d at 297 (quoting *State v. Clark*, 755 N.W.2d 241, 253-54 (Minn. 2008)). “The precise quantum of corroborative evidence” that is required to support a guilty verdict “depends on the circumstances of each case.” *Clark*, 755 N.W.2d at 253 (quotation omitted).

Furthermore, “[c]orroborating evidence may be either circumstantial or direct.” *State v. Pederson*, 614 N.W.2d 724, 732 (Minn. 2000); *see also Ferguson*, 742 N.W.2d at 658-59 (holding that circumstantial forensic evidence and bystander testimony were sufficient to corroborate accomplice’s testimony). This court can find corroborating evidence “from the defendant’s association with those involved in the crime in such a way as to suggest joint participation, as well as from the defendant’s opportunity and motive to commit the crime and his proximity to the place where the crime was committed.” *State v. Adams*, 295 N.W.2d 527, 533 (Minn. 1980).

Abdi first argues that Hassan's accomplice testimony at Ali's trial was "wildly inconsistent" from Hassan's testimony in his plea-hearing transcript and his statements in the county-attorney interview. Abdi argues that Hassan's testimony is therefore "unworthy of supporting a finding as to what the facts are that he was alleging." However, "[i]nconsistencies in testimony go to witness credibility, which is an issue reserved for the [fact-finder]." *State v. Epps*, 949 N.W.2d 474, 487 (Minn. App. 2020), *aff'd*, 964 N.W.2d 419 (Minn. 2021). And appellate courts assume that the fact-finder credited the testimony of the state's witnesses and rejected evidence to the contrary. *Pippitt*, 645 N.W.2d at 92. Thus, we assume that the district court found Hassan's testimony at Ali's trial to be credible when reviewing whether other evidence corroborated his testimony.

Abdi next argues that the DNA evidence was insufficient to corroborate Hassan's accomplice testimony. Abdi's sufficiency-of-the-evidence argument fails because the DNA evidence was sufficient to corroborate Hassan's testimony. The DNA evidence established that Hassan's DNA was present in M.C.'s vaginal swab and that Abdi's DNA could not be excluded from the major mixture in the vaginal swab. This is consistent with Hassan's testimony that both he and Abdi raped M.C. on the slide at the park and with M.C.'s testimony that she was vaginally penetrated on the slide. Moreover, even if the DNA evidence were not sufficient by itself, the state presented other evidence that was sufficient to corroborate Hassan's testimony, including Abdi's own testimony and the gas-station security-camera footage. Specifically, Hassan's and Abdi's testimonies and the gas-station security video all placed Abdi with Ali and Hassan, in close proximity to the park where the offense took place, both before and after the time of the offense that night.

And the district court made a finding of fact that the photographs found on Ali's phone depicting the victim providing oral sex to Ali were taken from the front passenger seat of the car, which is where Abdi testified he was sitting while they drove M.C. to the neighborhood where they let her out of the car. We conclude that the state's evidence was sufficient to link Abdi to the crime and affirm the truth of Hassan's accomplice testimony. *See Staunton*, 784 N.W.2d at 297.

Abdi next argues the DNA evidence did not conclusively establish that he had sexual intercourse with M.C. because it did not identify whether the DNA found in M.C.'s vaginal swab was from semen or a different type of body cell, such as skin cells. Abdi suggests that his DNA may have been present in M.C.'s vagina because he gave her his jacket to wear before they drove her to the neighborhood. He claims that his jacket could have left DNA on M.C.'s body, the nurse who performed M.C.'s sexual-assault examination was not experienced in the collection of sexual-assault evidence, and the vaginal swab could have come into contact with Abdi's DNA on another part of M.C.'s body. Abdi's suggested explanation is not a reasonable inference based on the record. The nurse who performed M.C.'s sexual-assault examination had performed "thousands" of pelvic exams and testified that she followed her training when performing M.C.'s sexual-assault pelvic exam. The nurse's testimony conflicts with Abdi's contention that his DNA could have ended up on M.C.'s vaginal swab due to an error in evidence collection during the sexual-assault examination.

Finally, Abdi argues it is "pure speculation" that he was the person who took the photographs of M.C. providing oral sex to Ali that were found on Ali's phone and that this

evidence was not enough to find him guilty beyond a reasonable doubt of aiding and abetting Ali in forcing M.C. to provide oral sex. Abdi testified that he was unaware that oral sex was occurring in the back seat while he was sitting in the passenger seat. However, M.C. testified that one of the men made verbal threats to force her to put Ali's penis in her mouth and that she heard the other men in the car "encouraging" the person who was filming the encounter. And the district court found that the photographs appear to be taken from the front passenger seat, which is where Abdi testified he was sitting at the time. When viewing the evidence in the light most favorable to the guilty verdict, it is reasonable to conclude that Abdi heard the threats to the victim and the encouraging comments of the codefendants, that Abdi was aware of Ali's actions while in the front passenger seat of a five-seat vehicle, and that Abdi participated in the offense by recording or taking photographs of the oral sex while Hassan drove the car.

In sum, we conclude that there was sufficient corroborating evidence to verify the truth of Hassan's accomplice testimony and to support Abdi's conviction.

II. The district court did not abuse its discretion by imposing an upward durational sentencing departure.

Abdi's second argument is that the district court abused its discretion by imposing a greater-than-double durational sentencing departure.

The district court has discretion to impose an upward durational sentencing departure when aggravating circumstances are present, and appellate courts review the district court's decision for an abuse of discretion. *State v. Meyers*, 853 N.W.2d 819, 822 (Minn. App. 2014), *aff'd*, 869 N.W.2d 893 (Minn. 2015). "If the reasons given for an

upward departure are legally permissible and factually supported in the record, the departure will be affirmed.” *State v. Edwards*, 774 N.W.2d 596, 601 (Minn. 2009).

When an upward durational sentencing departure is justified, the upper limit of the departure is generally double the presumptive sentence length. *State v. Evans*, 311 N.W.2d 481, 483 (Minn. 1981). The presumptive sentence length includes the maximum presumptive sentence. *See, e.g., State v. Johnson*, 450 N.W.2d 134, 135 (Minn. 1990) (reducing a greater-than-double durational sentencing departure to double the maximum presumptive sentence).

Here, Abdi was sentenced to 330 months’ imprisonment. Abdi’s offense severity and criminal-history score carried a presumptive sentence of 144 to 172 months. Abdi initially argued that his sentence is a greater-than-double durational departure from the presumptive minimum sentence. However, at oral argument, he agreed that his sentence is lower than double the presumptive maximum sentence, and therefore, the district court did not impose a greater-than-double durational departure.

The district court found three aggravating factors were present in the commission of Abdi’s offense: he committed the crime as part of a group of three or more persons who actively participated in the crime; the perpetrators committed multiple forms of sexual penetration; and the perpetrators threatened the victim with death. The presence of a single aggravating factor supports a departure from the presumptive sentence. *See Minn. Sent’g Guidelines 2.D.3.b(2), (10)* (2020); *see also State v. Barthman*, 938 N.W.2d 257, 270 (Minn. 2020) (recognizing that a criminal-sexual-conduct offense involving multiple forms of penetration is “particularly cruel” and a sufficient reason to justify a durational

departure); *State v. Losh*, 721 N.W.2d 886, 896 (Minn. 2006) (noting the aggravating factor of committing a crime as part of a group of three or more individuals); *State v. Mortland*, 399 N.W.2d 92, 95 (Minn. 1987) (noting the aggravating factor of the defendant's use of death threats). The record supports the district court's finding that aggravating factors supported an upward durational departure.

Therefore, we conclude that the district court did not abuse its discretion by imposing an upward durational departure on Abdi's sentence.

Affirmed.