IN THE COURT OF APPEALS OF IOWA

No. 1999-592 (9-833) / 99-733
Filed February 23, 2000

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CLERK SUPREME COURT

STATE OF IOWA,
Plaintiff-Appellee,

vs.

FRANCISCO HERNANDEZ,
Defendant-Appellant.

Appeal from the Iowa District Court for Woodbury County, Dewie J. Gaul Judge.

Francisco Hernandez appeals his conviction, judgment, and sentence, following a jury trial, for delivery of more than five grams of methamphetamine and failure to affix a tax stamp. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and John P. Messina, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Mary Tabor, Assistant Attorney General, Thomas S. Mullin, County Attorney, and James J. Katcher, Assistant County Attorney, for appellee.

Considered by Huitink, P.J., and Streit and Miller, JJ.

HUITINK, P.J.

I. Background Facts and Proceedings.

Francisco Hernandez was charged with delivery of more than five grams of methamphetamines and a related drug tax stamp violation following a drug transaction with Douglas Hoppe and Ferdinand Molina. Molina was also charged with the same offense. Hoppe was charged with possession of methamphetamines with intent to deliver more than five grams of methamphetamines.

According to the State's version, Hernandez purchased methamphetamines from Molina and delivered them to Hoppe. At trial Hoppe testified he gave Hernandez $1500 to purchase methamphetamines from Molina. Hoppe's testimony described Hernandez's efforts to locate Molina and their subsequent rendezvous in a Hy-Vee parking lot in Sioux City where Hernandez purchased methamphetamines from Molina and delivered them to Hoppe.

The State's evidence also included testimony from police officers who observed Hernandez's several meetings with Molina and Hoppe. These officers also testified concerning the discovery of methamphetamines on Hoppe's person and large amounts of cash Molina was carrying when they arrested Hernandez, Molina, and Hoppe.

At the conclusion of the State's evidence, Hernandez moved for judgment of acquittal citing the State's failure to offer evidence corroborating Hoppe's testimony. The district court denied Hernandez's motion, and the jury returned guilty verdicts on both counts. Hernandez's motion for new trial citing the same

grounds was denied, and the judgment and sentence were entered in accordance with the jury's verdict.

On appeal Hernandez contends the evidence supporting his conviction for delivery of methamphetamines lacks sufficient evidentiary support. He argues Hoppe was Hernandez's accomplice and the State failed to offer evidence corroborating Hoppe's testimony.

II. Standard of Review.

Our standard of review on the question raised is for errors of law. Iowa Rule of App. P. 4; *see State v. Jones*, 511 N.W.2d 400, 404 (Iowa App. 1993). The existence of corroborating evidence is a legal question for the court to resolve. *See State v. Bugely*, 562 N.W.2d 173, 176 (Iowa 1997).

III. Merits

The jury, without objection from the State, was instructed that Hoppe was an accomplice and on the law requiring corroboration of accomplice testimony.[1] Iowa Rule of Criminal Procedure 20(3) requires that testimony of an accomplice be corroborated:

> A conviction cannot be had upon the testimony of an accomplice or a solicited person, unless corroborated by other evidence which shall tend to connect the defendant with the commission of the offense; and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof.

Iowa R. Crim. P. 20(3). The requirement of corroboration is designed to eliminate the suspicion aroused by an accomplice's testimony. *Jones*, 511 N.W.2d at 404. Corroboration evidence may be direct or circumstantial. *State v.*

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[1] Whether Hernandez was in fact an accomplice is not an issue raised on appeal. We, like the State, will assume for purposes of this appeal that he was.

Vesey, 241 N.W.2d 888, 890 (Iowa 1976). Corroboration need not be strong. *Jones*, 511 N.W.2d at 404. It must, however, support some material part of the accomplice's testimony and tend to connect the accused to the commission of the crime. *Bugely*, 562 N.W.2d at 176. The existence of corroborative evidence is a question of law for the court, but its sufficiency is a question of fact for the jury. *Jones*, 511 N.W.2d at 404.

As noted earlier, the record includes testimony from three police officers who saw the encounter between Hernandez and Molina at the Hy-Vee parking lot in Sioux City. Although the officers did not see the actual exchange of drugs or money, the details of their observations were consistent with Hoppe's testimonial version of the drug transaction involving Molina and Hernandez. Moreover, the drugs and cash seized following the arrests made in this case are also consistent with Hoppe's testimony. We, like the district court, find this evidence corroborative of Hoppe's testimony and accordingly affirm the judgment of the district court.

AFFIRMED.