

IN THE COURT OF APPEALS OF IOWA

FILED
SEP 27 1983
CLERK SUPREME COURT

STATE OF IOWA,

)

Plaintiff-Appellee,

)

Filed September 27, 1983

vs.

)

3-256
83-255

RONALD L. EVANS,

)

Defendant-Appellant.

)

Appeal from Dubuque District Court, Frank D. Gilloon, Jr., Judge.

Defendant appeals from his conviction of theft in the fourth degree in violation of Iowa Code sections 714.1(1) and 714.2(4), asserting that the evidence was insufficient to corroborate testimony of an accomplice. **AFFIRMED.**

Steven J. Hodge, Dubuque, for defendant-appellant.

Thomas J. Miller, Attorney General, and Mary Jane Blink, Assistant Attorney General, and Jonathan Hammond, Student Legal Intern, for plaintiff-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Schlegel, and Hayden, JJ. Sackett, J., takes no part.

OXBERGER, C.J.

Defendant appeals from his conviction of theft in the fourth degree in violation of Iowa Code sections 714.1(1) and 714.2(4), asserting that the evidence was insufficient to corroborate testimony of an accomplice. We affirm.

I. Sufficiency of the Evidence

Our review of motions for directed verdict and a new trial based upon the sufficiency of the evidence in criminal cases is governed by well-known principles.

"This court views the evidence in a light most favorable to the State. All legitimate inferences which may fairly and reasonably be deducted therefrom will be accepted. It is necessary to consider all the evidence when determining evidential sufficiency. A trial court's refusal to direct a verdict for a defendant will withstand challenge if there is any substantial evidence in the record tending to support the charge. Similarly, a verdict of guilty is binding upon this court unless there is no substantial evidence in the record to support it or such finding is clearly against the weight of the evidence. Substantial evidence means such evidence as could convince a rational trier of fact that the defendant is guilty of the crime charged beyond a reasonable doubt."

State v. Schrier, 300 N.W.2d 305, 306 (Iowa 1981)(citations omitted).

Rule 20.3 of the Iowa Rules of Criminal Procedure states that:

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.

This statutory requirement is met if it can fairly be said the accomplice is corroborated in some material fact tending to connect the defendant with the commission of the crime. State v. Vesey, 241 N.W.2d 888, 890 (Iowa 1976). Evans relies on Vesey and argues that its rationale is applicable to the case at bar. However, the accomplice's testimony in Vesey was entirely consistent with the

defendant's innocence. The court held that corroboration of testimony which is not inculpatory is not corroboration of a material fact tending to connect the accused with the crime. Id. at 891.

The evidence in this case can be distinguished. The accomplice's testimony was inculpatory. He said that it was Evans' idea to steal the jacket; that Evans would keep the clerks busy so that he could take the coat; that Evans showed him which coat he wanted. Mr. Wilwert, a clerk in the store, testified that he saw Evans and his friend looking at the jackets; that Evans pointed at the jacket; that when Wilwert asked if he could help them, Evans asked about prices of motoreyes, specifically used motoreyes that were downstairs and out of sight of the jacket area. The owner of the store, Mrs. Wilwert, testified that Evans had been in the store a couple days before and had tried on those same jackets; that when Evans' friend went to leave the store, she saw him nod at Evans and then noticed the sleeve of the jacket hanging out from underneath the friend's vest. Both Mr. and Mrs. Wilwert testified that upon apprehension, Evans offered Mrs. Wilwert \$100, and she could even keep the jacket. The jacket retailed for \$59.99.

We find that the inculpatory facts in the accomplice's testimony were sufficiently corroborated by the testimonial evidence of Mr. and Mrs. Wilwert and that such evidence raised more than a suspicion of Evans' guilt. See Vesey at 891.

AFFIRMED.