

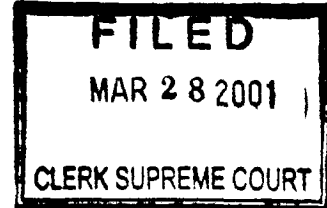
IN THE COURT OF APPEALS OF IOWA

No. 1-102 / 00-607
Filed March 28, 2001

STATE OF IOWA,
Plaintiff-Appellee,

vs.

TIMOTHY D. LINCICUM,
Defendant-Appellant.



Appeal from the Iowa District Court for Woodbury County, John D. Ackerman, Judge.

Timothy Lincicum appeals from the judgment and sentence entered following his conviction for possession of amphetamine with intent to deliver and failure to affix a drug tax stamp. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Shellie L. Knipfer, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney General, Thomas S. Mullin, County Attorney, and James J. Katcher, Assistant County Attorney, for appellee.

Considered by Streit, P.J., and Hecht and Vaitheswaran, JJ.

STREIT, P.J.

Timothy Lincicum appeals his convictions for possession of amphetamine with intent to deliver, in violation of Iowa Code section 124.401(1)(b)(8) (1999), and failure to affix a drug tax stamp, in violation of sections 453B.1 and 453B.12. He claims the State did not present sufficient evidence to corroborate the testimony of two accomplices. He also claims the district court did not give adequate reasons for imposing consecutive sentences. We affirm defendant's convictions and sentences.

Denise Downing testified that on October 2, 1999, Lincicum came to the home where she lived with Travis Hamman. Downing, Hamman, and Lincicum smoked methamphetamine together. Lincicum then stated he had to go to Sioux City to pay Tony, his drug dealer, and Downing and Hamman decided to go with him. Hamman drove them in Downing's red Ford Probe. At Tony's house, Downing saw Lincicum get money out of his wallet, but did not actually see him purchase drugs. Lincicum asked Downing for the cellophane wrapper from her cigarettes, which was a material often used to package drugs. Hamman showed Downing some drugs he obtained from Tony.

As they were driving back to the farm home where Hamman and Downing lived, Hamman exceeded the speed limit. A deputy sheriff came up behind them with his lights and siren on. Hamman began to go faster and led the officer on a high-speed chase. The officer hit the car, and it stopped. Lincicum ran away from the stopped vehicle. Downing testified she threw Hamman's drugs away

after they were stopped. All criminal charges against Downing were dropped in exchange for her cooperation in the prosecution of Hamman and Lincicum.

Hamman's testimony was very similar to that of Downing. He admitted obtaining about one ounce of "crank" from Tony.¹ He did not know if Lincicum purchased any drugs from Tony at that time. He did not know what happened to the drugs he purchased after they were stopped. Hamman entered into a plea agreement in which he agreed to cooperate in the prosecution of Lincicum.

Deputy Sheriff Michael Wingert testified he followed a red Probe that was speeding, and was led on a high-speed chase. He saw two men and one woman exit the car after it was stopped. One of the men ran away. He arrested Hamman and Downing, who had stayed by the vehicle. He then alerted his police dog to follow the trail of the other man. A one-ounce bag of amphetamine was found on the trail of the missing man. The police dog lost the trail eventually. Hamman and Downing identified the missing man as defendant. Lincicum's car was found parked in front of the home where Hamman and Downing lived.

A jury found Lincicum guilty of possession of amphetamine with intent to deliver and failure to affix a drug tax stamp. He was sentenced to a term of imprisonment not to exceed twenty-five years on the first charge, and a term of imprisonment not to exceed five years on the second charge, the sentences to be served consecutively. Lincicum appeals.

¹ Evidence in the case showed the term "crank" could refer to methamphetamine or amphetamine. The drug recovered in this case was amphetamine.

I. Corroboration.

Lincicum contends the State did not present sufficient evidence to support his conviction. In particular, he contends the State did not present any evidence to corroborate the testimony of the two accomplices in this case, Hamman and Downing.²

We review challenges to the sufficiency of the evidence for errors at law. *State v. Rohm*, 609 N.W.2d 504, 509 (Iowa 2000). We will uphold a finding of guilt if substantial evidence supports the verdict. *Id.* Circumstantial and direct evidence are equally probative. *State v. Boley*, 456 N.W.2d 674, 679 (Iowa 1990).

Iowa Rule of Criminal Procedure 20(3) states:

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.

The requirement of corroborative evidence is met if it can fairly be said the accomplice is corroborated in some material fact tending to connect the defendant to the commission of the crime. *State v. Astello*, 602 N.W.2d 190, 198 (Iowa Ct. App. 1999). A small amount of corroborative evidence is all that is required. *State v. Shortridge*, 589 N.W.2d 76, 80 (Iowa Ct. App. 1998). "Corroborative evidence need not be strong and need not be entirely inconsistent with innocence." *State v. Ware*, 338 N.W.2d 707, 710 (Iowa 1983). It is not

² The State concedes Hamman was an accomplice, but asserts Downing was not an accomplice. For purposes of this appeal, we will assume Hamman and Downing were both accomplices.

necessary to confirm every detail of the accomplice's testimony. *State v. Taylor*, 557 N.W.2d 523, 528 (Iowa 1996).

We find there is sufficient evidence in the record to corroborate the testimony of Hamman and Downing. Deputy Wingert saw a third person with Hamman and Downing when he stopped the car, and that person ran away. When Deputy Wingert sent his police dog to track the person, the dog found a bag of amphetamine on the trail. In addition, Lincicum's car was parked in front of Hamman and Downing's home on the evening in question. This evidence supports the testimony of Hamman and Downing that Lincicum participated in their activities on that evening and was guilty of the crimes charged.

II. Sentencing.

Lincicum asserts the district court did not give sufficient reasons on the record for giving consecutive sentences. He argues the court gave reasons for giving a prison sentence instead of a suspended sentence, but did not give any reasons for imposing consecutive sentences.

Our review of sentencing procedures is for an abuse of discretion. *State v. Duckworth*, 597 N.W.2d 799, 800 (Iowa 1999). Such abuse will only be found if the district court's discretion was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *State v. Millsap*, 547 N.W.2d 8, 10 (Iowa Ct. App. 1996).

Under Iowa Rule of Criminal Procedure 22(3)(d), a trial court must state on the record its reasons for selecting a particular sentence. *State v. Oliver*, 588 N.W.2d 412, 414 (Iowa 1998). A court must also give reasons for its decision to

impose consecutive sentences. *State v. Jacobs*, 607 N.W.2d 679, 690 (Iowa 2000). A statement may be sufficient, even if terse and succinct, as long as the brevity of the court's statement does not prevent review of the exercise of the trial court's sentencing decision. *State v. Johnson*, 445 N.W.2d 337, 343 (Iowa 1989).

In the present case, the court stated:

Your sentence for count four, the possession with the intent to deliver amphetamine is 25 years, indeterminate term of 25 years. I am not going to impose the minimum. Your sentence for the -- the mandatory minimum. The sentence for count four -- or count five, the drug tax stamp violation, is an indeterminate term of five years. However, I'm going to make those sentences consecutive. The fine is \$5,000 for count four, \$750 for count five. The fines are suspended. There is a \$5 D.A.R.E. surcharge for count four; that is not suspended.

The court believes that the sentence imposed will provide for the maximum opportunity for the defendant's rehabilitation, protect the community from further offenses, hopefully deter others from committing such crimes. The Court has taken into consideration the defendant's prior record, the contents [of] the presentence investigation.

We find the district court gave sufficient reasons for imposing consecutive sentences in this case. Defendant claimed the court gave reasons for giving a prison sentence instead of a suspended sentence, but did not give any reasons for imposing consecutive sentences. We find, however, the court's statement of reasons, following immediately after its statement the sentences were consecutive, explains the court's reasoning in imposing consecutive sentences. The court stated its reasons as part of the overall sentencing plan.

We affirm defendant's convictions and sentences.

AFFIRMED.

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