FILED
OCT 28 1982
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

343

STATE OF IOWA,)

Plaintiff-Appellee,) Filed October 28, 1982

vs.)

DAVID JOINER,) 2-295
2-67232

Defendant-Appellant.)

Appeal from Scott District Court - C. H. Pelton, Judge.

Defendant appeals from his conviction and sentence on a charge of second degree burglary in violation of Iowa Code §§ 713.1, .3 (1981), challenging the sufficiency of corroborative evidence and sufficiency of evidence to support a guilty verdict. AFFIRMED.

Francis C. Hoyt, Jr., Chief Appellate Defender, and Chris Odell, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, Michael K. Jordon, Assistant Attorney General, and William Davis, Scott County Attorney; for plaintiff-appellee.

Heard en banc.

After a jury trial, defendant, David Joiner, was found guilty of second degree robbery in violation of Iowa Code §§ 713.1, .3 (1981). In this appeal from his conviction and sentence, defendant assigns two errors: (1) trial court erred in ruling that the testimony of an accomplice was sufficiently corroborated as required by Iowa R. Crim. P. 20(3); and (2) the prosecution failed to present sufficient evidence to support a guilty verdict. We find no merit in defendant's assignments of error and affirm the trial court's judgment.

I. Scope of Review. Our review is limited to assigned errors. Iowa R. App. P. 4.

II. Accomplice's Testimony. Mark Houk testified that on April 8, 1981, he broke into the apartment of Cathy Simons in Davenport. Houk testified that earlier that day he and the defendant discussed the possibility of breaking into Simons' home to steal a television set and a gun. Houk claimed that defendant agreed to drive the getaway car and "to keep an eye out for" Houk.

A. Applicability of Iowa Rule of Criminal Procedure 20(3). Iowa Rule of Criminal Procedure 20(3) provides:

> 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.

Defendant argues that the corroborative evidence requirement of rule 20(3) has not been met. Our first inquiry is whether or not the rule applies. Our initial focus is on Houk's status, i.e., was he an accomplice thereby bringing rule 20(3) into play. We hold that he was.

"The general rule for determining whether a witness is an accomplice is if he could be charged with and convicted of the specific offense for which an accused is on trial." State v. Johnson, 318 N.W.2d 417, 440 (Iowa 1982) (quoting State v.

Jennings, 195 N.W.2d 351, 356 (Iowa 1972)); State v. Bestmann, 317 N.W.2d 847, 851 (Iowa Ct. App. 1982). In the instant case, Houk was charged with the crime of breaking and entering and adjudicated a juvenile delinquent on that basis. Defendant in the instant case was similarly so charged and convicted. We, therefore, conclude that Houk is an accomplice within the meaning of rule 20(3) as interpreted by Johnson and Bestmann.

B. Corroboration. In addition to Houk's testimony, the prosecutor introduced the testimony of the victim Simons and two police officers. Simons testified that on the day, and at the time in question, she saw a car, later identified as defendant's, being driven on the street near her apartment. Defendant stopped his car, alighted from it, and raised the hood, in an apparent response to an engine problem. Simons testified that defendant walked toward her apartment but that she lost sight of him because of a hedge near her front porch. Shortly thereafter Simons heard the door bell ring but did not open the door because she "knew who was there." Simons then heard a crash of her basement window and, upon further investigation, saw Houk attempting to gain entry into the basement. Simons screamed for help and Houk, apparently frightened, ran away. Simons did not see defendant again until after his arrest.

The two police officers testified that Simons gave them a description of defendant's car and that, based on the description, they arrested defendant. At the time of his arrest, defendant was alone in his car.

In his motion for directed verdict of acquittal, motion for new trial, and now on appeal, defendant claims that the testimony of Simons and the police officers were insufficient to corroborate Houk's testimony as required by rule 20(3). The State contends trial court was correct in ruling that the accomplice's testimony was sufficiently corroborated. We agree with the State.

Rule 20(3) clearly states that uncorroborated accomplice testimony is insufficient to support a conviction. The Iowa Supreme Court has on many

occasions considered the question of sufficiency of corroborative evidence. These cases will serve as the guiding principles for our analysis.

Initially, we note that the question of the existence of corrobative evidence is a legal one. State v. Dickerson, 313 N.W.2d 526, 529 (Iowa 1981). In contrast, the question of the sufficiency of corroborative evidence is one for the factfinder. See State v. Nepple, 211 N.W.2d 330, 332 (Iowa 1973).

> Generally, the credibility of witnesses and the weight to be given their testimony is the sole province of the jury. Rule 20(3), by requiring corroboration of the testimony of an accomlice or solicited person, represents an exception to the general rule. There is a two-fold purpose for requiring corroborating evidence of an accomplice's testimony: (1) to connect the defendant with the commission of the crime, and (2) to add credibility to the accomplice, whose believability is severely eroded by involvement in the matter and obvious self-interest in focusing the blame on the defendant.

State v. Williams, 315 N.W.2d 45, 58 (Iowa 1982). Consistent with the Williams enunciation of the purpose of rule 20(3), the supreme court has repeated held that

> corroborating evidence need not be strong. All that is necessary is that the accomplice(s) be corroborated in some material fact, which tends to connect the defendant with the crime, and therefore supports the credibility of the accomplice(s)' testimony. It is not necessary that the evidence corroborating the accomplice(s)' testimoy relate to all of the elements material to the defendant's commission of the crime.

State v. Horn, 282 N.W.2d 717, 731 (Iowa 1979).

Applying the Williams and Horn standards to the instant case, we find that Houk's testimony was corroborated by the testimony of both Simons and defendant. This testimony placed defendant at the scene of the crime, a material fact that connects him with the crime. State v. Harrington, 284 N.W.2d 244, 249 (Iowa 1979); see State v. Cuevas, 281 N.W.2d 627, 630 (Iowa 1979) (corroborating witness saw defendant with accomplice). In addition, although he claimed that he was visiting a friend who lived next door to the victim, defendant denied driving

Houk to the scene until he was confronted with Houk's statement to the contrary. This testimony bolsters the State's theory and enhances the accomplice's credibility. State v. Bizzert, 212 N.W.2d 466, 469 (Iowa 1973). Further, Officer Hammes testified that he observed defendant and Houk together in front of the pool hall just after the burglary was reported. We believe the cumulative evidence sufficiently corroborates the accomplice's testimony to satisfy rule 20(3).

III. Substantial Evidence. Defendant also alleges the evidence was insufficient to support his conviction as an aider and abettor of the crime of burglary.

> In reviewing motions for a directed verdict and a new trial based upon sufficiency of the evidence in criminal cases, 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. [citations] It is necessary to consider all of the evidence when determining evidential sufficiency. [citation] 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. [citation] Similarly, a jury 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. [citations] 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) (footnote omitted).

Our review of the record in accordance with the Schrier principles satisfies us that there is substantial evidence to support a guilty verdict. The jury could have found that the defendant planned the burglary with his accomplice and that defendant was the driver of the getaway car. A rational jury could have found beyond a reasonable doubt that the defendant was guilty as charged.

Having found no error, we affirm trial court's judgment.

AFFIRMED.