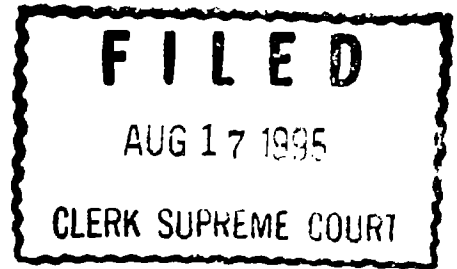


IN THE COURT OF APPEALS OF IOWA

No. 5-322 / 94-0461



STATE OF IOWA,

Appellee;

vs.

THERON MONTGOMERY,

Appellant.

Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge.

The defendant appeals the judgment and sentence entered upon his conviction of third-degree burglary in violation of Iowa Code sections 713.1 and 713.6A (1993).

AFFIRMED.

John P. Messina, Des Moines, for appellant.

Thomas J. Miller, Attorney General; Richard J. Bennett, Assistant Attorney General; Thomas J. Ferguson, County Attorney; and Anthony Janney, Assistant County Attorney, for appellee.

Considered by Donielson, C.J., and Hayden and Huitink, JJ.

DONIELSON, C.J.

The defendant, Theron Montgomery, appeals from his conviction on the charge of third degree burglary. He argues the accomplice's testimony was not corroborated and he was entitled to judgment of acquittal as a matter of law. Our standard of review is on errors of law. *State v. Jones*, 511 N.W.2d 400, 404 (Iowa App. 1993). We affirm.

Iowa Rule of Criminal Procedure 20(3) provides:

Corroboration of accomplice or person solicited. 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 has been recognized as serving two purposes. "First, it independently tends to connect the defendant to the crime." *State v. Larsen*, 512 N.W.2d 803, 806 (Iowa App. 1993). "Secondly, it serves as a counterweight against the dubious credibility of an accomplice, whose motivation to testify is suspect because the person would have a natural self-interest in focusing the blame on the defendant." *Id.*

To be sufficient, corroborative evidence must corroborate a material aspect of the accomplice's testimony connecting the defendant with the commission of the crime charged. *State v. Gillespie*, 503 N.W.2d 612, 617 (Iowa App. 1993). Each case must be governed by its own circumstances, and evidence which merely raises

a suspicion the accused is the guilty party is not sufficiently corroborative of the testimony of an accomplice to warrant a conviction. *Id.*

Corroborative evidence need not be strong nor entirely inconsistent with innocence. *Id.* It need not confirm every material fact of the accomplice's testimony; nor need it confirm all the elements of the crimes charged. *Jones*, 511 N.W.2d at 404. Corroborative evidence may be direct or circumstantial. *Id.* at 405. The State need not establish corroborative evidence beyond a reasonable doubt. *State v. King*, 256 N.W.2d 1, 10 (Iowa 1977).

The Levi Brothers pawn shop in Waterloo, Iowa, was burglarized on July 29, 1993. Several handguns were stolen, including a Colt .45 semi-automatic pistol. Four days later police were summoned to investigate a robbery at the Farris pawn shop in Waterloo. One of the suspects was described as a black male wearing all black clothing.

Officers pursued two suspects who matched the description of the robbery suspects. In the course of the pursuit an officer observed two men peeking out from behind a duplex at 415/419 Fowler street. One of the men was dressed in all black clothing. The officer had the impression the men were looking to see if anyone was coming. When the men saw the officer they fled, but they were subsequently apprehended.

The defendant, dressed in all black clothing, was one of the men arrested. The Colt .45 pistol stolen four days earlier from the Levi Brothers pawn shop was found during a search of the area surrounding 415/419 Fowler.

Witness Robin Mitchell testified he, the defendant, and an unidentified third person had committed the burglary of the Levi Brothers pawn shop. The defendant contends this accomplice testimony was not corroborated. It was undisputed the Levi Brothers pawn shop was burglarized on July 29, 1993, and a Colt .45 semi-automatic pistol was stolen. Four days later that weapon was found in an areas where the defendant had fled following the robbery of another pawn shop. A defendant's possession of property stolen in the alleged offense is corroborative evidence. *State v. Dickerson*, 313 N.W.2d 526, 629 (Iowa 1981). A defendant's possession of the stolen property need not be exclusive. *Id.*

"Any corroborative evidence which tends to connect the accused with the commission of the crime and thereby supports the credibility of the accomplice is sufficient." *Larsen*, 512 N.W.2d at 806 (quoting *State v. Vesey*, 241 N.W.2d 888, 890 (Iowa 1976)). There is circumstantial evidence to indicate the defendant and/or his companion possessed and discarded the weapon stolen in the first pawn shop theft when they fled from police after the robbery of the second shop. This corroborative evidence does more than raise a mere suspicion that the accused is a guilty party, and, in fact, it tends to link the defendant with the commission of the

burglary of the Levi Brothers pawn shop. The defendant's motions for judgment of acquittal were properly denied, and the defendant's conviction is affirmed.

AFFIRMED.