IN THE COURT OF APPEALS OF IOWA

No. 5-721 / 95-224

STATE OF IOWA,

Plaintiff-Appellee,

vs.

ALCIDE ALONZO COATES,

Defendant-Appellant.

FILED
FEB 12 1996
CLERK SUPREME COURT

Appeal from the Iowa District Court for Buena Vista County, John P. Duffy, Judge.

Alcide Alonzo Coates appeals the judgment and sentence entered upon his convictions, following a jury trial, of first-degree theft and second-degree burglary in violation of Iowa Code sections 714.2(1) and 713.5 (1993). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and James G. Tomka, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney General, and Philip E. Havens, County Attorney, for appellee.

Heard by Sackett, P.J., Huitink, J., and Perkins, S.J.*

* Senior judge from the Fifth Judicial District serving on this court by order of the Iowa Supreme Court.

SACKETT, P.J.

Defendant-appellant Alcide Alonzo Coates appeals the judgment and sentence entered upon his convictions, following a jury trial, of first-degree theft and second-degree burglary in violation of Iowa Code sections 714.2(1) and 713.5 (1993). Defendant argues there was not sufficient evidence to corroborate the testimony of an alleged accomplice that he participated in the theft. We affirm.

Defendant was charged with first-degree theft and second-degree burglary following an August 15, 1994 break-in at Paul Parks Construction Company in Storm Lake where eleven guns were stolen.

The State's theory was defendant and four other men were involved in the break-in. The State contended three of the men, Tony Thongvanh, Luis Garcia, and Ernie Carr, and defendant went to the scene in a car driven by Lanell Tillmon.

The State's evidence defendant planned and participated in the burglary and theft come from the testimony of defendant's accomplices.

Thongvanh testified defendant told him he knew where some guns were before the night of the break-in. Thongvanh said on August 15, he, Carr, Garcia, defendant, and Tillmon were at defendant's girlfriend's house and decided to go for a drive. Tillmon drove the car. He said defendant gave Tillmon directions to Paul Parks Construction Company. Thongvanh said when they reached the construction company, defendant got out of the car, looked in the window of the business and said "it was clear", and Garcia pushed open a window and Thongvanh crawled through

and let Garcia and Carr inside. Thongvanh testified Garcia broke open a cabinet containing guns and they threw the guns out the window and went back to the car. Thongvanh said defendant and Tillmon put the guns in the trunk of the car. Later that evening, Thongvanh saw defendant had several guns.

Garcia testified the men were at defendant's girlfriend's house and defendant talked about getting the guns from a construction place. Garcia said they left the house, drove around, and ended up at the construction company. He said defendant showed him where the guns were and he and Thongvanh went into the building. Garcia said he broke into the gun cabinet and they threw the guns out the window. He said defendant helped put the guns in the trunk. Garcia also said he saw defendant with several of the guns later that evening.

Carr testified he was also at defendant's girlfriend's house on August 15, and rode with Tillmon, Garcia, Thongvanh, and defendant to the construction company. He first heard about the guns from Garcia when they were in the car. Carr stated he went into the building with Garcia and Thongvanh, threw the guns out the window, and put them in the trunk of the car.

Defendant testified in his own defense that he, Garcia, Thongvanh, Carr, and Tillmon were at his girlfriend's house on August 15. Defendant said Garcia asked him to ask Tillmon for a ride. When the group was in the car, Garcia then directed Tillmon to the construction company. Garcia told defendant they were there to "get some stuff." Garcia, Carr, and Thongvanh left the car. Garcia returned about ten

minutes later and put something in the back seat of the car. The next day, defendant learned the others had taken guns from the construction company.

Defendant was interviewed following the incident. On the tape, he said he told Tillmon where to drive on August 15.

The jury found defendant guilty as charged. Defendant then filed a combined motion for new trial and motion in arrest of judgment in which he argued the accomplice testimony of Thongvanh and Garcia was not sufficiently corroborated; therefore, there was insufficient evidence to support his convictions.

The district court denied defendant's motions finding "defendant, by his own testimony, presented evidence which would connect him with the commission of this crime . . . . [t]he court also feels the taped statement of defendant does connect the defendant to the commission of this crime, and there is more than substantial evidence" to support his convictions.

Defendant, on appeal, argues neither his trial testimony nor his taped statement provided corroborative evidence of his accomplices' testimony regarding his commission of the offense. Defendant maintains his testimony and taped statements merely corroborated the accomplice testimony he was present when the crime occurred.

The State first argues defendant has not preserved error on the issue he raises on appeal. The State, while noting defendant twice moved for a judgment of

acquittal, contends he did not address the issue of sufficient evidence of corroboration until the motion for new trial.

Without deciding if error was preserved, we address defendant's challenge there was not sufficient evidence to corroborate the accomplices' testimony.

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.

The existence of corroborative evidence is a question of law; the sufficiency of that evidence ordinarily is a question of fact. *State v. Brown*, 397 N.W.2d 689, 694 (Iowa 1986). The requirement of corroborative evidence with respect to accomplice testimony serves two purposes. First, it tends to independently connect the defendant with the crime. *Id.* 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.*

The question is whether defendant, by the tape recorded statement and his own testimony, provided the necessary corroboration.

Corroborative evidence is not sufficient if it merely supports an accomplice's testimony showing the defendant had an opportunity to commit a crime. *State v. Vesey*, 241 N.W.2d 888, 891 (Iowa 1976). It must support testimony raising more than a suspicion of the defendant's guilt. *Id.* Evidence asserted as corroborative of

an accomplice's testimony will be sufficient to create a jury question if that evidence corroborates some material aspect of the accomplice's testimony tending to connect the defendant to the commission of the crime and thereby supports the credibility of the accomplice. *Brown*, 397 N.W.2d at 694-95; *State v. Berney*, 378 N.W.2d 915, 918 (Iowa 1985). Corroborative evidence may be either direct or circumstantial and need not be strong. *Berney*, 378 N.W.2d at 918. The evidence need not confirm each material fact of the accomplice's testimony and does not need to be entirely inconsistent with innocence. *Vesey*, 241 N.W.2d at 890.

Defendant's own testimony at trial corroborated the fact he was with the other men at his girlfriend's house, he got in the car with the other men, and he gave Tillmon, who was not familiar with the area, directions on driving. Defendant also testified he was in the car when it was near the construction company, and Garcia told him they were going to get some junk.

On tape, defendant said Garcia asked him if he remembered how to get to the construction company, and he agreed to give Garcia directions. Defendant further admitted he was giving Tillmon directions on where to drive, and he was familiar with the construction company because he had trespassed there when he was fourteen years old.

We agree with the trial court these statements are sufficient corroboration coupled with physical evidence showing the guns were in the front window and glass had to be broken to get them out. These facts show defendant's association with the

accomplices, presence at the crime scene, and suspicious circumstances suggestive of defendant's participation in the offense. *See State v. Horstman*, 222 N.W.2d 427, 432 (Iowa 1974); *State v. Gray*, 199 N.W.2d 57, 59 (Iowa 1972).

We affirm.

AFFIRMED.