

IN THE COURT OF APPEALS OF IOWA

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6-373

85-1681

STATE OF IOWA,)

Plaintiff-Appellee,)

vs.)

MICHAEL ALBERT HANSON,)

Defendant-Appellant.)

Appeal from the Iowa District Court for Webster County (No. 14147)

- Russell J. Hill, Judge.

Defendant appeals from his conviction for arson in the second degree, asserting that the evidence was insufficient to either corroborate the testimony of an accomplice or support the jury's verdict of guilty and that he should have been permitted to cross-examine the accomplice concerning an unrelated burglary charge pending against him. **AFFIRMED.**

Gerald R. Ralph and Joseph G. Bertogli of Des Moines for defendant-appellant.

Thomas J. Miller, Attorney General and David L. Dorff, Assistant Attorney General, for plaintiff-appellee.

Heard by Oxberger, C.J., Snell and Schlegel, JJ.

In this appeal the defendant, Michael Albert Hanson, challenges the jury's verdict finding him guilty of arson in the second degree in violation of sections 712.1 and 712.3 of the Iowa Code. The defendant argues: (1) that the evidence was insufficient to corroborate the testimony of an alleged accomplice who was the State's chief witness; (2) that the State failed to present evidence sufficient to support the jury's verdict; and (3) that the trial court erred in refusing to allow the defendant to cross examine the accomplice concerning an unrelated burglary charge pending against him. We reject each of these contentions, and affirm.

I. CORROBORATION OF ACCOMPLICE TESTIMONY

The defendant first contends that the trial court erred in overruling his motion for judgment of acquittal in which he argued that the testimony of his alleged accomplice was insufficiently corroborated. It is well established that "[a] conviction cannot be had upon the testimony of an accomplice or a solicited person, unless corroborated by other evidence which [tends] to connect the defendant with the commission of the offense." Iowa R. Crim. P. 20(3); see also State v. Cuevas, 281 N.W.2d 627, 629 (Iowa 1979). The purpose for requiring corroborative evidence is two-fold: First, it establishes a connection between the accused and the crime charged; secondly, it enhances the dubious credibility of an accomplice whose motivation to testify is inherently suspect because of his interest in placing the blame upon the defendant. State v. Berney, 378 N.W.2d 915, 918 (Iowa 1985). Corroborative evidence need not be strong as long as it can fairly be said to connect the accused with the commission of the crime and to support the credibility of the accomplice. Id.; see also State v. Ware, 338 N.W.2d 717, 718 (Iowa 1983).

After examining the record in the present case in the light most favorable to the verdict, we conclude that sufficient evidence corroborated the testimony of the defendant's alleged accomplice, Anthony Trueblood. Trueblood testified that the defendant offered to pay him "a couple thousand" dollars if he would set fire to the defendant's home. Pursuant to their agreement, the defendant was to pay Trueblood after he received the insurance proceeds from the fire. Trueblood testified that the two arranged for the fire to be set the following Sunday evening at approximately ten o'clock. Trueblood stated that he arrived at the defendant's home as planned and entered through a sliding glass door which the defendant had left open. Inside, he found several jugs of gasoline which the defendant left for him to use. After spreading the gasoline throughout the house, he started the fire.

At trial, the State elicited the following evidence which tended to corroborate Trueblood's testimony and to connect the defendant with the commission of the crime. First, the defendant's aunt and neighbor, Esther Patterson, testified that approximately three hours before the fire, she observed the defendant's entire family leaving their home, taking their dog with them. Mrs. Patterson further stated that she had never before seen the defendant's entire family leave the home together. This evidence corroborates Trueblood's testimony that the defendant told him the "place would be all set" when he arrived. Similarly, the record discloses that on the night of the fire, the defendant parked his motorcycle a considerable distance from the home rather than in its usual parking place next to the house. This further corroborates Trueblood's testimony.

In addition, the evidence generated as a result of the investigation following the fire corroborates Trueblood's account of the incident. First, the chemical analyses conducted by the Division of Criminal Investigation revealed that

gasoline was used to start the fire. Secondly, after the fire was extinguished, containers filled with gasoline, identical to those described by Trueblood, were found in the house; the containers were found in the places Trueblood specified. Finally, a fire investigator from the State Fire Marshal's Office testified that the sliding glass door had been left open prior to the fire.

Moreover, the record reflects that the defendant was facing financial problems, and may have had a strong motive for wanting to collect the insurance proceeds on his home. The record discloses that the defendant had recently executed a confession of judgment totaling \$6,000 to a local refrigeration company; this judgment was subject to execution the day following the fire. In addition, the defendant owed nearly \$17,000 in unpaid fuel bills to a local cooperative, and he had fallen behind in his mortgage payments.

Finally, the evidence contradicting the defendant's version of the facts lends credibility to Trueblood's testimony and tends to implicate the defendant. At trial, the defendant argued that a burglar had stolen several items of property from the home and then started the fire. The defendant maintained that a large amount of cash and approximately fifty rifles and handguns were stolen contemporaneously with the arson attempt. The State elicited testimony, however, which indicated that the rifles were large and bulky, and that it would have taken more than one person or some type of equipment to completely remove them in a short period of time; the defendant's neighbors testified that they never observed any vehicles in the driveway while the family was away. Furthermore, there was no evidence that the defendant's home had been forcibly entered.

On the basis of this evidence, we conclude that the trial court properly determined that Trueblood's testimony was corroborated, and that the court committed no error in overruling the defendant's motion for judgment of acquittal.

II. SUFFICIENCY OF THE EVIDENCE**169**

The defendant also argues that, even if Trueblood's testimony is found to have been properly corroborated, the State did not present evidence sufficient to support the jury's verdict. The principles governing our review of an attack levied against the sufficiency of evidence are well established. We view the evidence in the light most favorable to the State. State v. Mulder, 313 N.W.2d 885, 888 (Iowa 1981). We consider all of the evidence, and we may indulge all legitimate inferences arising reasonably and fairly therefrom in support of the jury's verdict. Id. The verdict is binding if it is supported by substantial evidence. State v. Robinson, 288 N.W.2d 337, 339 (Iowa 1980). "Substantial evidence" is that which could convince a rational trier of fact that the defendant is guilty beyond a reasonable doubt. State v. Mulder, 313 N.W.2d at 888.

We think that the evidence delineated in Part I of this opinion is substantial evidence of the defendant's guilt beyond a reasonable doubt. The defendant argues that substantial evidence has not been adduced because the State's case is premised upon Trueblood's testimony, which is inherently suspect. The proper weight given to Trueblood's testimony, however, is a matter resting within the province of the jury. State v. Jellema, 206 N.W.2d 679, 681 (Iowa 1979).

Nor are we persuaded by the defendant's argument that the evidence is insufficient because it is entirely circumstantial. We have repeatedly recognized that circumstantial evidence is equally as probative as direct. State v. Blair, 347 N.W.2d 416, 421 (Iowa 1984). What is required is that the State's evidence, whether direct or circumstantial, raise a fair inference of guilt rather than a mere speculation. Id. We think that such an inference was generated in the case at bar.

III. SCOPE OF CROSS EXAMINATION

Finally, the defendant contends that the trial court erred in prohibiting him from cross-examining Trueblood concerning a pending, unrelated burglary charge. We agree with the defendant's assertion that he was entitled to inquire into the concessions Trueblood hoped to receive or had been promised in exchange for his testimony. See State v. Donelson, 302 N.W.2d 125, 131 (Iowa 1981); State v. Armento, 256 N.W.2d 228, 229 (Iowa 1977). The rationale underpinning this general rule is the recognition that an accomplice's testimony may be influenced by a promise or expectation of leniency; consequently, "[a] defendant should be permitted wide latitude in seeking to show bias of an alleged accomplice who testifies for the prosecution." Armento, 256 N.W.2d at 229.

The record in the present case discloses that the defendant was allowed to cross examine Trueblood concerning any concessions or promises he expected to receive in connection with his participation in the arson. In response, Trueblood testified that it was his understanding that he would not be charged. The defendant argues that Trueblood's unrelated burglary charge had also been put on "hold" pending his testimony in the case at bar. The record, however, contains no evidence supporting this assertion. Moreover, any bias that Trueblood was likely to have harbored was exposed to the jury when he testified that he was not being charged for his participation in the arson. In these circumstances, we find no abuse of discretion in the trial court's refusal to allow inquiry into the unrelated burglary charge.

AFFIRMED.