FILED
MAR 24 1981
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)
Plaintiff-Appellee,) Filed March 24, 1981
vs.)
JAMES HOWARD AYERS,) 0-381
Defendant-Appellant.) 63422

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

Defendant appeals his conviction of two counts of second degree burglary in violation of section 713.3, The Code 1979, contending that the State failed to produce sufficient evidence to corroborate the trial testimony of his alleged accomplice as required by Iowa R. Crim. P. 20(3) and that the trial court therefore erred in overruling his motions for directed verdict. AFFIRMED.

Donald E. Doyle, Davenport, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Shirley Ann Steffe, Assistant Attorney General, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

DONIELSON, J.

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I.

Following a jury trial, defendant was convicted of two counts of second degree burglary and sentenced to be confined for a term not to exceed ten years on each count with the sentences to run consecutively. At trial, the State called several police officers who testified that they had responded to a burglar alarm at a Davenport business at approximately 2:45 on the morning of December 29, 1978. They discovered a break-in and apprehended defendant's alleged accomplice outside the building. At that time, a van that was parked about one-half block away left the scene at a very high rate of speed and without illuminating its headlights. The police pursued the van until it went out of control, at which time the driver (the defendant) began to flee on foot. Defendant was apprehended and fifteen or sixteen chain saws, later identified as having been stolen from the burglarized business, were found in the van. The officers also testified that their investigation led them to a gas station that had been burglarized and that keys stolen from the station were found on the defendant's person. Bolt cutters and several items stolen from the gas station were later found at the defendant's residence.

At the close of the State's evidence, the defendant moved for a directed verdict on the grounds that the State had failed to establish the essential elements of the crime as charged, failed to generate a jury question, and failed to establish either intent or conspiracy on the part of the defendant. The motion was overruled.

Defendant then took the stand and testified that he had bought the stolen items from his alleged accomplice and that the keys to the gas station had not actually been found in his possession but had instead been found in the possession of the alleged accomplice. Defendant claimed that the extent of his participation in the crime was limited to loading the chainsaws into his van after he bought them. Testifying as a rebuttal witness, the alleged accomplice claimed that the defendant did the breaking at the burglarized business and at the gas station and that both he and the defendant

entered and removed the property at both places. At the close of all the evidence, defendant again moved for a directed verdict on the same grounds; his motion was again overruled.

II.

We note that at no time in making either of his motions for directed verdict did the defendant allege, either expressly or implicitly, that the State had failed to produce sufficient evidence to corroborate the testimony of his alleged accomplice. Therefore, since no ground may be urged on appeal in support of a motion for directed verdict that was not urged as part of the motion before the trial court, State v. Rosewall, 239 N.W.2d 171, 173 (Iowa 1976), we hold that the defendant has not preserved error on this issue.

However, even if we were to find that error had been preserved, defendant's contention is totally lacking in merit. Iowa R. Crim. P. 20(3) requires that in order for a conviction to be obtained on the basis of an accomplice's testimony, that testimony must be corroborated by other evidence that tends to connect the defendant with commission of the offense. Id.; State v. Graham, 291 N.W.2d 345, 350 (Iowa 1980) (citing State v. Vesey, 241 N.W.2d 888, 890 (Iowa 1976)). As the supreme court has recently observed:

> [C]orroborating 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)' testimony relate to all of the elements material to the defendant's commission of the crime. Such evidence may be direct or circumstantial. It must be inculpatory but need not be entirely inconsistent with innocence. Each case must be judged on its own facts. There may be a combination of circumstances which entitled the jury to reach the conclusion the accomplice(s)' testimony has been corroborated.

State v. Horn, 282 N.W.2d 717, 731 (Iowa 1979) (citations omitted). It is clear that just such a "combination of circumstances" was present in the record of this case. Defendant's van was parked close to the burglarized building; he fled when his alleged accomplice was apprehended and continued to flee on foot when he lost control of his vehicle. An initial search of the defendant produced a flashlight and wirecutters, and the stolen chainsaws were found in defendant's van. Items missing from the gas station were found at the defendant's residence and the station keys were found on his person. Footprints matching those of the defendant were found at the burglarized building

leading up to the window that was used to enter the premises; the same footprints were found at the gas station. Although we hold that the defendant has failed to preserve error on the issue of whether the State produced sufficient evidence to corroborate the testimony of the alleged accomplice, we note that the defendant would not have prevailed had error been preserved.

AFFIRMED.