

IN THE COURT OF APPEALS OF IOWA

No. 4-588 / 94-304

STATE OF IOWA,

Appellee,

vs.

MARK ANTHONY HAYDEN,

Appellant.

Appeal from the Iowa District Court for Hancock County, Jon Stuart Scoles, Judge.

Mark Anthony Hayden appeals the judgment and sentence entered upon his conviction, following a jury trial, of third-degree burglary. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Shari Barron, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Angelina M. Smith, Assistant Attorney General, and Ted Hodva, County Attorney, for appellee.

Considered by Hayden, P.J., and Sackett and Huitink, JJ.

HUITINK, J.

At around 12:30 a.m. on February 17, 1993, police officers in Garner, Iowa, responded to an alarm at a gun shop in town called the Gun Room. When they arrived they found a broken window in the store and broken glass on the floor. Police officers subsequently learned fifteen handguns had been taken.

Outside the store the officers found three footprints in the snow made by a Nike tennis shoe. The prints were all made by a right shoe and no distinguishable left footprints were found. Police officers testified the footprints appeared to be fresh and were fairly far apart, as if the person who had made them had been running. A police officer took photographs of the footprints. On February 18, 1993, a police officer noticed Mark Hayden had Nike tennis shoes. The officer made a photocopy of Hayden's shoes and compared it to the footprint still visible in the snow near the Gun Room. The officer concluded the footprints matched.

On March 11, 1993, Jeffrey Larsen and Shane Darnell were arrested after they sold some of the stolen weapons to undercover agents from the department of criminal investigations. Larsen and Darnell subsequently entered into plea agreements with the State. They informed police officers Hayden had participated with them in the burglary of the Gun Room. They stated they had divided the stolen handguns after the crime and that Hayden had left the area with his share of the contraband.

Omaha police recovered two of the stolen guns in April and May 1993. Hayden was living in Omaha at this time.

On November 17, 1993, Mark Anthony Hayden was charged with third-degree burglary in violation of Iowa Code sections 713.1 and 713.6A (1993). Larsen and Darnell testified at Hayden's jury trial. The State also presented the testimony of a witness who stated he saw three or four men running from the Gun Room at about 12:30 a.m. The State presented expert testimony to show defendant's shoes made footprints similar in size and shape to those found in the snow outside the Gun Room. Also, there was evidence to show there was one set of footprints on the broken glass inside the Gun Room.

The jury found Hayden guilty of third-degree burglary. He was sentenced to an indeterminate term not to exceed five years.

Hayden appeals. He argues the State failed to prove beyond a reasonable doubt that he committed third-degree burglary. He contends the State did not present sufficient corroborative evidence to support the accomplice testimony of Larsen and Darnell.

Under Iowa Rule of Criminal Procedure 20(3):

> 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 serves two purposes: (1) it independently tends to connect defendant to the crime; and (2) it supports the credibility of an accomplice whose motives are clearly suspect because of the accomplice's self-interest in focusing blame on the defendant. State v. Brown, 397 N.W.2d 689, 694 (Iowa 1986). The existence of corroborative evidence is a question of law; the sufficiency of that evidence ordinarily is a question of fact. Id.

Corroborative evidence need not be strong as long as it can fairly be said that it tends to connect the accused with the commission of the crime and supports the credibility of the accomplice. State v. Berney, 378 N.W.2d 915, 918 (Iowa 1985). Such evidence need not confirm every material fact testified to by the accomplice, nor need it confirm all the elements of the crime charged. State v. Jones, 511 N.W.2d 400, 404 (Iowa App. 1993). It must only be supported in some material fact tending to connect the defendant to the crime charged. Id.

We find there was sufficient corroborative evidence of the accomplices' testimony in this case. Larsen and Darnell testified they had not committed the crime alone, but had assistance from a third person, Hayden. An eyewitness testified he saw three or four men running from the scene of the crime. Larsen and Darnell testified Hayden had run with them from the scene of the crime. Footprints which were consistent with defendant's

footprints if he had been running from the scene were found in the snow. Larsen and Darnell testified only Hayden entered the Gun Room. Footprints of only one person, other than police officers, were found on the broken glass in the Gun Room. Larsen and Darnell testified they had divided the stolen handguns and Hayden left the area to sell his. Two of the stolen handguns were recovered in Omaha, where defendant was apprehended.

All of these independent factors support the testimony of Larsen and Darnell. While not all of these factors are equally inculpatory, we note that corroborative evidence need not be entirely inconsistent with innocence. See State v. Dickerson, 313 N.W.2d 526, 529 (Iowa 1981).

We conclude there is sufficient evidence in the record to corroborate the testimony of the two accomplices. We affirm defendant's conviction for burglary in the third degree.

AFFIRMED.