

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,

)

Plaintiff-Appellee,

)

Filed September 29, 1981

vs.

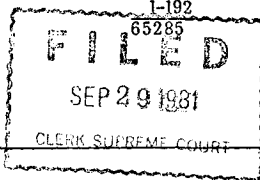
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GERALD DEAN ENLOW,

)

Defendant-Appellant.

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Appeal from Marshall District Court. David R. Hansen, Judge.

Defendant appeals his jury conviction of the crime of conspiracy in violation of section 706.1, The Code 1979. Defendant argues that the trial court erred both in overruling his motion for a directed verdict of acquittal, and in allowing rebuttal testimony concerning alleged threats made by defendant to the State's chief witness. AFFIRMED.

James D. Robertson, of Hauptert, Robertson, & King, Marshalltown, Ia., for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and John Messina, Assistant Attorney General for plaintiff-appellee.

Submitted to Oxberger, C. J., and Donielson, Snell, Carter, and Johnson, JJ.

This is an appeal from judgment sentencing defendant to a term of not more than five years in the Men's Reformatory following his conviction for conspiracy in violation of section 706.1, The Code 1979. We affirm.

The State alleged that the defendant, his brother, and the State's chief witness, Eric Bestland, had a conspiratorial conversation in which they agreed that Bestland and defendant's brother would burglarize a local antique shop. According to their agreement, after they had burglarized the store they were to take the goods to defendant's business which was located near the antique shop.

Bestland testified about the conversation, and said that after they had first taken the stolen property to defendant's business, they later took them to defendant's mobile home where they divided the stolen goods.

Our review of this criminal conviction is on error assigned. Iowa R. App. P. 4.

I. Directed Verdict of Acquittal

Defendant's first assignment of error is that the trial court overruled his motion for a directed verdict of acquittal. Charged with conspiracy in violation of section 706.1, The Code 1979, defendant alleges that no agreement, no combination, and no concert of action was shown by substantial evidence. Defendant argues that the testimony from Bestland, and the fact that the stolen items were seized from defendant's mobile home, do not constitute sufficient evidence upon which a jury could have found defendant guilty of conspiracy in the burglary, and that a judgment of acquittal was necessary.

We must view the evidence in a light most favorable to the State. All legitimate inferences which may fairly and reasonably be understood from the evidence will be accepted. State v. Schrier, 300 N.W.2d 305, 306 (Iowa 1981), citing authorities. All evidence must be considered when determining the sufficiency of the evidence to support a guilty verdict. State v. Robinson, 288 N.W.2d 337, 340 (Iowa 1980).

Mrs. Stone identified the goods seized from defendant's mobile home as being those stolen from her shop. Two police officers testified that they found the goods identified by Mrs. Stone in the defendant's trailer. Another police officer testified that Bestland had a conversation with him about the possibility of fencing the stolen goods which defendant had.

Possession of the stolen goods alone would not be sufficient evidence upon which to

convict defendant of conspiracy. Bestland's testimony, however, ties defendant directly to the crime, and taking the officers' testimony together with Bestland's testimony, there is sufficient evidence upon which a rational trier of fact could have found defendant guilty.

On appeal, defendant raises for the first time the adequacy of the corroboration evidence of Bestland's testimony. We refuse to consider such matters first raised on appeal. State v. Whiteside, 272 N.W.2d 468, 472 (Iowa 1978). State v. Willis, 218 N.W.2d 921, 923 (Iowa 1974). However, we feel we need to analyze the adequacy of the corroboration evidence, and upon analysis have found adequate corroboration. We affirm the trial court's refusal to direct a verdict of acquittal for defendant.

II. Rebuttal Testimony

Bestland was asked by the State whether he had ever been threatened by the defendant since the evening of the burglary. Bestland answered affirmatively. Defendant objects to this rebuttal testimony as being inflammatory, prejudicial, and confusing and misleading to the jury.

Rebuttal testimony is "that which explains, repels, controverts, or disproves evidence which is produced by the other side." State v. Bakker, 262 N.W.2d 538, 543 (Iowa 1978)(citing authorities.) The trial court has considerable discretion in admitting rebuttal evidence and the court's ruling should be disturbed only upon a clear abuse of discretion. Id.

"The action complained of must have been unreasonable in light of attendant circumstances - the discretion must have been exercised for reasons clearly untenable or to an extent clearly unreasonable [and] the action must have resulted prejudicially to the rights of the party complaining." (Emphasis in the original.) State v. Gartin, 271 N.W.2d 902, 910 (Iowa 1978), quoting Donahoo, The Scope of Judicial Discretion in the Iowa Criminal Trial Practice, 58 Iowa L. Rev. 1023, 1024 (June 1973).

The rebuttal testimony offered in this case tends to controvert defendant's claim that he purchased the stolen items from Bestland, and that he did not know the true character of the items. A threat against Bestland would be contrary to defendant's defense of innocence. We reject defendant's claim that the trial court abused its discretion in overruling defendant's objection to the rebuttal testimony.

Appellant failed to follow Iowa R. App. P. 14(a)(3) in the format of his appellate brief. We deem it our duty to dispose of appeals on their merits whenever possible. Agans v. General Mills, 242 Iowa 978, 48 N.W.2d 242, 243 (1951). However, we direct that defense counsel follow the rule in the future.

AFFIRMED.