FILED
FEB 23 1983
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)

Plaintiff-Appellee,) Filed February 23, 1983

vs.)

RON CRAVENS,) 2-509
68746

Defendant-Appellant.)

Appeal from Wapello District Court - Robert Bates, Judge.

Defendant appeals from his conviction for arson in the second degree in violation of Iowa Code § 712.3, asserting that the evidence was insufficient to corroborate the testimony of an accomplice and that a can found at the scene of the crime approximately two months later should not have been admitted into evidence. AFFIRMED.

Allan C. Orsborn of Barnes & Orsborn, Ottumwa, Iowa, for defendant-appellant.

Thomas J. Miller, Attorney General, and Mary Jane Blink, Assistant Attorney General, for plaintiff-appellee.

Heard en banc.

PER CURIAM

Defendant, Ron Cravens, appeals from his conviction for arson in the second degree in violation of Iowa Code § 712.3, asserting that the evidence was insufficient to corroborate the testimony of an accomplice and that a can found at the scene of the crime approximately two months later should not have been admitted into evidence. We affirm. The facts to which the accomplice testified and the alleged corroboration will be discussed in the pertinent portions of this opinion.

I. Scope of Review. Our review is on assigned error only. Iowa R. App. P. 4.

II. Corroboration of Accomplice's Testimony. Defendant asserts the trial court erred in overruling his motion for a directed verdict of acquittal on the grounds that the testimony of an accomplice was not corroborated. We disagree.

Our first inquiry is whether the witness, John Proctor, was in fact an accomplice requiring the application of Iowa Rule of Criminal Procedure 20(3). "The general rule for determining whether a witness is an accomplice is if he could be charged with and convicted of the specific offense for which an accused is on trial." State v. Johnson, 318 N.W.2d 417, 440 (Iowa 1982) (quoting State v. Jennings, 195 N.W.2d 351, 356 (Iowa 1972)). The record shows that Proctor pled guilty to arson in the third degree for the same fire with which defendant is charged. Under Johnson, we find that Proctor is an accomplice.

Iowa Rule of Criminal Procedure 20(3) provides:

> 3. Corroboration of accomplice or person solicited. 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.

Rule 20(3) clearly states that uncorroborated accomplice testimony is insufficient to support a conviction. The Iowa Supreme Court in many instances has

considered the sufficiency of corroborative evidence. These cases will serve as the guiding principles for our analysis.

The question of the existence of corroborative evidence is a legal one. State v. Dickerson, 313 N.W.2d 526, 529 (Iowa 1981). In contrast, the question of the sufficiency of corroborative evidence is one for the factfinder. See State v. Nepple, 211 N.W.2d 330, 332 (Iowa 1973).

> Generally, the credibility of witnesses and the weight to be given their testimony is the sole province of the jury. Rule 20(3), by requiring corroboration of the testimony of an accomplice or solicited person, represents an exception to the general rule. There is a two-fold purpose for requiring corroborating evidence of an accomplice's testimony: (1) to connect the defendant with the commission of the crime, and (2) to add credibility to the accomplice, whose believability is severely eroded by involvement in the matter and obvious self-interest in focusing the blame on the defendant.

State v. Williams, 315 N.W.2d 45, 58 (Iowa 1982). Consistent with the Williams enunciation of the purpose of rule 20(3), the supreme court has repeatedly held that:

> . . . corroborating 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.

State v. Horn, 282 N.W.2d 717, 731 (Iowa 1979). Defendant's own testimony may be used as corroboration. State v. Martin, 274 N.W.2d 348, 349 (Iowa 1979).

In this case, Proctor testified that he met defendant in a bar at Ottumwa and that defendant asked him for a ride to Kirkville. Defendant offered to pay Proctor $500 for the ride. En route Proctor expressed concern about running out of gas and the two stopped at a service station where defendant filled an empty paint thinner can with gas. Defendant indicated to Proctor that he wanted the container filled with gas to "burn a house down." Defendant told Proctor to go to

a certain house in Kirkville, drop him off, and then pick him up later. The first stop in Kirkville was at the home of friends of Proctor where Proctor requested and received matches from Larry Bankson, Jr. Proctor in turn gave these matches to defendant. Defendant remained in the car while Proctor requested the matches. Defendant then showed Proctor the house where he wanted to be left. Defendant exited the car with the can of gas and Proctor drove off. The car later ended up in a ditch. Proctor's attempts to dislodge the auto proved unsuccessful so he returned on foot to where he had dropped defendant. Defendant did not have the container of gas when Proctor returned. The two then decided to seek assistance at a farm house. Proctor walked ahead of defendant while defendant stopped at the Murphy home. Defendant then ran to catch up to Proctor en route to the farm house. At the farm house defendant called his father who came and drove the two back to Ottumwa.

The State also called as a witness Jeff Barnett who testified he witnessed one man walking from the direction of the Murphy home and another man running in the same direction approximately 15 minutes before he saw smoke from the Murphy house. One Joe Slack also testified he saw two men (one running and one walking) come from the direction of the Murphy home. Both described the men as being white, one with shoulder length hair and the other with shorter hair. Both stated that the man with long hair had a beard and mustache. These general descriptions were consistent with the physical characterisitcs of Proctor and defendant in September 1980. The State also called Bankson, the friend who gave Proctor the matches on the date of the fire; he stated there was an individual seated in Proctor's car at that time. The State also introduced an empty paint thinner can located near the destroyed home similar in appearance to the one the defendant had in his possession the night of the fire. Defendant's father also testified that he picked up defendant and Proctor near Kirkville that evening.

Defendant testified that he met Proctor in Ottumwa on the day in question, that they traveled to Kirkville, and that they stopped for gas. He too stated that

they stopped at the Bankson house (where the matches were obtained), and later went into a ditch. Defendant's testimony, however, differs in that he stated that at the time Proctor alleges defendant was out of the car he was actually asleep in the car.

Applying the Horn and Williams standards to the instant case, we find that Proctor's testimony was corroborated by other witnesses testifying at trial. The testimony, including the defendant's own testimony, places defendant near the scene of the crime, a material fact that connects him with the crime. State v. Harrington, 284 N.W.2d 244, 249 (Iowa 1979); see also State v. Cuevas, 281 N.W.2d 627, 630 (Iowa 1979). Such testimony bolsters the State's theory and enhances Proctor's credibility. See State v. Bizzert, 212 N.W.2d 466, 469 (Iowa 1973). We find Proctor's testimony was sufficiently corroborated to satisfy rule 20(3).

III. Admissibility of Metal Container. Defendant asserts that the trial court erred in admitting over objection a metal container taken into the possession of the Wapello County Sheriff two months after the arson.[1] He complains that the arson scene was not secured by the State and that the empty container was so remote that it had little probative value but caused considerable prejudice. We find no error in the trial court's admission of the container into evidence.

The trial court has considerable discretion in admitting such evidence. State v. Fuhrman, 257 N.W.2d 619, 623 (Iowa 1977). "To warrant the admission in evidence of an instrument or weapon as the one with which the crime was committed, only a prima facie showing of identity and connection with the crime is necessary. Clear, certain, and positive proof is generally not required." State v. Galvan, 181 N.W.2d 147, 151 (Iowa 1971).

---

[1] The condition of the container is not in issue as it was not a basis for defendant's objection.

In his brief, defendant concedes that on the night of the alleged arson he had possession of a container similar to the container introduced at trial and that such a container was observed at the scene shortly after the fire. Defendant argues there is no proof that the specific container introduced was ever in defendant's possession or was in fact connected with the fire. The State, however, was required to show only a reasonable likelihood that the can was so used. See State v. Hansen, 225 N.W.2d 343, 349 (Iowa 1975). We find no abuse of discretion in the trial court's overruling of the objections to this exhibit. Accordingly, we affirm the trial court's judgment.

AFFIRMED.