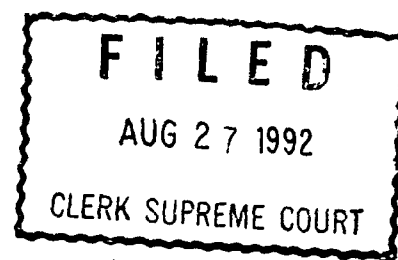


## IN THE COURT OF APPEALS OF IOWA

No. 2-283 / 91-950



STATE OF IOWA,

Appellee,

vs.

SCOTT ROGER SHADDEN,

Appellant.

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Appeal from the Iowa District Court for Tama County,  
L. Vern Robinson, Judge.

Shadden appeals from a conviction of conspiracy to  
commit a nonforcible felony. **AFFIRMED.**

Kermit L. Donahoo of Dunahoo Law Firm, Des Moines, for  
appellant.

Bonnie J. Campbell, Attorney General; Thomas G. Fisher,  
Jr., Assistant Attorney General; and Brent D. Heeren,  
County Attorney, for appellee.

Considered by Oxberger, C.J., and Donielson and Habhab,  
JJ.

HABHAB, J.

FACTS

On January 31, 1990, an automobile was found on a gravel road in Clinton County, Iowa, approximately four miles west of the Mississippi River. The car was badly burned and in a shallow ditch. The police determined the car belonged to Evelyn Shadden, the defendant's mother. The police went to the defendant's job site and questioned him regarding the whereabouts of the car in question. The defendant told the police he assumed the vehicle was at his parents' home. However, when the defendant returned home, he reported the vehicle, as well as a motorbike and some tools, as being stolen from his parents' garage. The motorbike was later discovered.

In July 1990, the defendant was charged with conspiracy to commit a nonforcible felony by conspiring with Brent Melvin, Clint Richmond, and Cameron Smith to commit a fraudulent practice in the first degree. The case against the defendant proceeded to trial.

At trial, Smith testified the defendant asked him if he knew anyone who would steal a car because the defendant wanted his car stolen and destroyed for insurance purposes. He explained the defendant did not care how the car was destroyed. Smith testified he made arrangements, at the defendant's request, for Melvin and Richmond to steal and destroy the car. He testified the defendant agreed to leave the car in his parents' driveway with the

door locks drilled out and the garage opener in the car so the perpetrators could steal the motorbike as payment.

Melvin testified he had been contacted by Smith about doing an insurance fraud but that he never had any contact with the defendant. He stated Smith said to "damage" the car. Melvin and Richmond both testified they stole the car and motorbike, vandalized the car, and then pushed the car into the Mississippi River.

John McKown, the defendant's friend and Smith's roommate, testified the defendant asked him, about a month prior to the theft, whether he knew anybody who would steal a car. James Wandling, a body shop owner, testified he had conversations with the defendant about stolen cars. He also testified the defendant had previously fixed the car after a theft and then stated if the car was ever stolen again he never wanted it back. Wandling then testified he told the defendant to hope the car would burn beyond recognition if that ever happened. Terry Noe, another employee of the body shop, testified the defendant stopped in the shop on January 30, 1990, to borrow a drill bit.

The defendant's mother, Evelyn Shadden, testified the defendant was storing his motorbike in Stuart Eisentrager's shed when she and her husband left on vacation a few days prior to this second theft of defendant's car. However, she also noted the defendant had talked of bringing the motorbike home to trade it in on a snowmobile.

Following the State's evidence, the defendant sought a judgment of acquittal, claiming the testimony of the accomplice, Smith, was not corroborated. The district court overruled this motion based on the fact the motorbike was moved to the garage, the car was burned, and McKown's testimony. Following trial, the jury found the defendant guilty of conspiracy to commit a nonforcible felony. The defendant now appeals. We affirm.

#### SCOPE OF REVIEW

Our scope of review is for errors at law. Iowa R. App. P. 4. "[T]he evidence [is viewed] in the light most favorable to the state regardless of whether it is contradicted and every legitimate inference that may be fairly and reasonably deducted therefrom must be carried to the aid of the evidence." State v. Cuevas, 281 N.W.2d 627, 630 (Iowa 1979)(quoting State v. Ververka, 271 N.W.2d 744, 746-47 (Iowa 1978)).

#### ANALYSIS

On appeal, the defendant contends there was lack of corroboration of Smith's testimony and the district court erred in not ordering judgment of acquittal. We disagree.

Iowa Rule of Criminal Procedure 20(3) provides:

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.

Iowa R. Crim. P. 20(3).

The requirement of corroborative evidence serves two purposes. First, it independently tends to connect the defendant to the crime. State v. Berney, 378 N.W.2d 915, 918 (Iowa 1985); State v. Cuevas, 281 N.W.2d 627, 629 (Iowa 1979); State v. Johnson, 237 N.W.2d 819, 822 (Iowa 1976). Second, 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. Id.

The existence of corroborative evidence is a question of law; the sufficiency of that evidence ordinarily is a question of fact. State v. Doss, 355 N.W.2d 874, 880 (Iowa 1984); State v. Vesey, 241 N.W.2d 888, 890 (Iowa 1976); State v. Ware, 338 N.W.2d 707, 710 (Iowa 1983). Corroborative evidence need not be strong; any corroborative evidence tending to connect the defendant to the commission of the crime supports the credibility of the accomplice and is sufficient. Doss, 355 N.W.2d at 879. Corroborative evidence need not confirm every material fact testified to by an accomplice. Id. (citing State v. Aldape, 307 N.W.2d 32, 41 (Iowa 1981)). All that is required is that the evidence corroborate some material aspect of the accomplice's testimony tending to connect the defendant to the commission of the crime. State v. Berney, 378 N.W.2d at 918; State v. Hutchinson, 341 N.W.2d 33, 37

(Iowa 1983). Such evidence may be direct or circumstantial. Vesey, 241 N.W.2d at 890. While corroborative evidence must tend to connect defendant to the crime and thus must be inculpatory, it need not be entirely inconsistent with innocence. Id. at 890-91.

The defendant's own actions and statements leading up to the car theft corroborate Smith's testimony. He moved his motorcycle from storage to his parents' house less than one week before the theft. He made prior efforts to find someone to steal a car. He expressed a desire that the car be stolen and destroyed. On January 30, 1990, he went to Smith's place of employment to borrow a large drill bit. The defendant now argues these actions and their timing is merely coincidental. The jury disagreed. We find these facts corroborate Smith's testimony. The district court properly submitted the case to the jury. We hold the defendant's conviction and sentence should be affirmed. After considering all issues presented, we affirm the district court.

Costs of this appeal are taxed to the appellant.

**AFFIRMED.**