



IN THE COURT OF APPEALS OF IOWA

364

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed September 6, 1984
vs.	)	
KEVIN RAY WILLIAMSON,	)	4-175
Defendant-Appellant.	)	83-276

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	
vs.	)	
DANIEL WAYNE STROUD,	)	4-180
Defendant-Appellant.	)	83-491

Appeal from the Iowa District Court for Appanoose County - James D. Jenkins and James P. Rielly, Judges.

Defendants appeal from their conviction for theft in the second degree in violation of Iowa Code sections 714.1 and 714.2(2) and injury to animals in violation of Iowa Code section 717.1. AFFIRMED.

Charles Harrington, Appellate Defender, and Raymond E. Rogers, Assistant Appellate Defender, for defendant-appellant Williamson.

Luis Herrera, Des Moines, for defendant-appellant Stroud.

Thomas J. Miller, Attorney General, and Steven M. Foritano and Valencia Voyd McCown, Assistant Attorneys General, for plaintiff-appellee.

Heard by Snell, P.J., and Hayden and Sackett, JJ.

SNELL, J.

These appeals arise from a finding by an Appannoose County District Court jury that defendant, Daniel Wayne Stroud, and defendant, Kevin Ray Williamson, were each guilty of the crimes of theft in the second degree in violation of Iowa Code section 714.1 and 714.2 (1981) and cruelty to animals in violation of Iowa Code section 717.2 (1981). Each defendant was charged with these crimes after an incident which occurred on August 28, 1982, in the town of Moulton, Iowa. On that date a llama, which had been a pet of Russell Corder's, was found seriously injured approximately five blocks from the Corder home where it had been tethered. The animal had obviously been dragged behind a motor vehicle for the five-block distance along a gravel road. When the llama was found, half to two-thirds of the bone in its knee joints had been destroyed and its brisket had a large hole in it from the flesh having been scraped off. The animal could only move its head and was destroyed by its owner.

The town of Moulton, Iowa, is located in the southeast portion of Appannoose County, approximately fifteen miles from Centerville, Iowa. Moulton has a population of approximately 600; the population of Centerville is 6-7,000. The trial was held at the Appannoose County courthouse in Centerville.

The llama incident was reported in the Centerville paper. The newspaper coverage included six articles in the two weeks following the crime. From August 30 to September 14, 1982, one article appeared on November 17th. Two of the articles consisted of factual accounts of the crime and the arrest of the defendants and received front-page coverage. An article appearing on September 8th was a two-sentence correction on page two of the September 7th article regarding which law enforcement agency filed charges. On September 1, 1982, the owner of the llama, Russell Corder, placed an ad in the newspaper which appeared on page fifteen offering a \$500 reward for conviction of the perpetrators of the crime. Two editorials deploring the nature of the crime appeared in the

newspaper indicating that those convicted should be punished accordingly. One article consisted of a seven-sentence letter to the editor on page six which ran on August 31. The other article contained a six-sentence comment by a local columnist, also appearing on page six, but ran on September 14th. The November 17th article was a factual account of defendant's motion for change of venue. It appeared on the front page of the newspaper. Only two of the articles mentioned defendants by name, the September 7 article and the November 17 article. No article expressed an opinion as to defendant's guilt.

Defendants were tried jointly. Their appeals have been consolidated for our decision. The following questions have been raised on appeal:

1. Should the venue have been changed or a continuance granted?
2. Was the State's chief witness an accomplice and if so was there insufficient evidence to corroborate his testimony?
3. Was the evidence insufficient as a matter of law to support the verdict?

On November 10, 1982, defendants moved for a change of venue alleging that pretrial publicity was such that a fair trial could not be had. Our review of this question is de novo. We examine the record to determine if the trial court abused its discretion. State v. Hickman, 337 N.W. 2d 512, 514 (Iowa 1983) quoting State v. Love, 302 N.W.2d 115, 122 (Iowa 1981). Defendant must show that the trial court abused its discretion by determining that there was not a substantial likelihood that a fair and impartial trial could not be held in Appanoose County. See State v. Cornelius, 293 N.W.2d 267, 269 (Iowa 1980). This burden can be met by showing either that there was actual prejudice or that publicity was so pervasive and inflammatory that prejudice must be presumed. State v. Marr, 316 N.W.2d 176, 181 (Iowa 1982).

Selection of the jury proceeded after each prospective juror was examined separately from the other jurors. The voir dire of each juror was reported. Out of thirty-two potential jurors, thirty had heard that the incident had occurred.

However, mere exposure to news accounts does not prove a substantial likelihood of prejudice. State v. Chadwick, 328 N.W.2d 913, 916 (Iowa 1983), State v. Hickman, 337 N.W.2d 512, 515 (Iowa 1983). Nor is extensive knowledge in the community of itself sufficient to render a trial constitutionally unfair. Dobbert v. Florida, 432 U.S. 282, 303, 97 S.Ct. 2290, 2303, 53 L. Ed. 2d 344, 362 (1977). In the case at bar, only three prospective jurors indicated that they had formed an opinion as to defendant's guilt. All three were removed by strikes.

Of the twelve jurors finally selected, ten denied that they had formed any opinion as to defendants' guilt. The other two implicitly denied any outside influence or early formation of an opinion. The supreme court has recognized that "Qualified jurors need not, however, be totally ignorant of the facts and issues involved." Murphy v. Florida, 421 U.S. 794, 800, 95 S. Ct. 2031, 2036, 44 L. Ed. 2d 589, 595, accord State v. Hickman, 337 N.W.2d 512, 515 (Iowa 1983). We find defendants have failed to show any actual juror prejudice. We also find that there was not such pretrial publicity that prejudice must be presumed. Cf. Sheppard v. Maxwell, 384 U.S. 333, 363, 86 S. Ct. 1507, 1522, 16 L. Ed. 2d 600, 621 (1966). Only two of the articles mentioned defendant by name. Moreover, only one juror recalled any specific information regarding a defendant, the offense or any particular newspaper article. That juror remembered a small article offering a reward for information about the incident but denied that that would influence her decision.

Defendants also complain that the assignment for trial violated defendants' right to fundamental fairness. Trial was originally set for December 14, 1982. The case was the twelfth case scheduled and was not reached. Thereafter the county attorney gave the court administrator a list of ten cases including defendants' for trial in January. He requested that defendants' cases be tried first. Defendant filed motion to set aside the trial assignment and for a continuance. Defendants' charge that the county attorney sought to take advantage of local prejudice by obtaining an early trial ahead of older cases. In response the county attorney

testified that his interest in an early trial was because these two were of the more protracted cases on the docket, there were a dozen witnesses in the case, and due to the inconvenience of numerous parties. We find these reasons to be legitimate. In view of our holding regarding venue, we also find no sinister motive attributable to the county attorney's action.

Iowa Rule of Civil Procedure 8.1(2) provides that continuances shall not be granted except upon a showing of good and compelling cause. Trial here was originally set for December 14 and continued until January 11. We find that preparation time was adequate and the court did not abuse its discretion in denying a continuance. State v. Marti, 290 N.W.2d 570, 588 (Iowa 1980).

Defendants claim that the State's primary witness, Chuck Lenig, was an accomplice, arises from the fact that Lenig drove the pickup vehicle that dragged the 500-pound llama. However, Lenig testified he knew nothing of the incident until defendant Stroud mentioned dragging the llama. On hearing this, Lenig told Stroud to drop the rope holding the llama, which he did. He then drove the truck back to Centerville. Defendants also cite as unlikely that Lenig did not see defendants or the llama as they walked in front of the pickup just before the incident.

In State v. Jennings, 195 N.W.2d 351, 356-57 (Iowa 1972), the definition of accomplice was stated:

An accomplice is a person who willfully unites in, or is in some way concerned in the commission of a crime. 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.

But something more than mere knowledge that a crime is contemplated, or mere personal presence at the time and place where committed, must be shown in order to make one an accomplice. And it must be established by a preponderance of the evidence that a witness was in fact an accomplice.

We do not find the evidence is sufficient to have charged and convicted Lenig with

either crime of which defendants were convicted. Lenig was not an accomplice and corroborative evidence to his testimony was not required. State v. Vesey, 241 N.W.2d 888, 890 (Iowa 1976).

Defendant Williamson raises as an additional assignment of error separate from the aforesaid questions jointly raised that the evidence is insufficient to support a conviction as a matter of law. On this issue, we view the evidence in the light most favorable to the State. State v. Schrier, 300 N.W.2d 305, 306 (Iowa 1981); State v. Robinson, 288 N.W.2d 337, 340 (Iowa 1980). All legitimate inferences which may be fairly and reasonably deducted from the evidence will be accepted. State v. Overstreet, 243 N.W.2d 880, 883 (Iowa 1976). If there is substantial support for the verdict in the record, the verdict is conclusive. State v. Jones, 271 N.W.2d 761, 763 (Iowa 1978). In our review of the record, we conclude there is substantial evidence to support the conviction of Williamson. He was with defendant Stroud, witness Lenig and the others throughout the evening of drinking at various bars and driving around. When they stopped at the Corder farm, he and Stroud got out of the pickup because they indicated they had to urinate. Witness Lenig saw both men go over to the llama to within three steps of the animal. They stayed with the animal about three minutes and returned to the truck together laughing. Williamson sat between Lenig, who drove the pickup, and Stroud. Five blocks later, Stroud informed Lenig "we was dragging a llama."

Although Williamson denied participation in the offense, part of his testimony was also inconsistent with testimony of other witnesses. We find it was within the jury's province to reject Williamson's account of the incident and accept the evidence indicating guilt. That evidence is legally sufficient.

The assignments of error are without merit. The convictions are affirmed.

AFFIRMED.

All judges concur, except Hayden, J., who specially concurs.

HAYDEN, J. (concurring specially)

I agree with the result reached by the majority and with their analysis of questions one and three. On the issue of accomplice testimony, however, I disagree. The majority holds that the State's chief witness, Chuck Lenig, was not an accomplice and, therefore, no corroboration of his testimony was required. I believe that Lenig was an accomplice and that there was sufficient evidence to corroborate his testimony.

A person is an accomplice if he "willfully unites in, or is in some way concerned in the commission of a crime" in such a way that "he could be charged with and convicted of the specific offense for which the accused is on trial." State v. Jennings, 195 N.W.2d 351, 356-57 (Iowa 1972). Participation in an offense may be inferred from presence, companionship, and conduct before and after the offense is committed. State v. Marsan, 221 N.W.2d 278, 280 (Iowa 1974).

Lenig was the driver of the pickup truck which dragged the llama. He remained inside the truck when defendants got the llama and claims he did not know they were dragging the animal. Lenig testified that the llama was tied south of a barn to his left, but that the llama was dragged from the passenger side of the truck on his right from a rope held by defendant Stroud. Lenig also testified that defendants passed in front of the truck to get back inside. It is not clear from the record whether the llama passed in front of the truck as well, but it is clear that the llama had to get from one side of the truck to the other and it is unlikely that so large an animal could walk around unnoticed. Not only is it unlikely that he would not see the animal before the incident, but once the truck started back up it is inconceivable that Lenig could drag a 500-pound animal for five blocks and not see, hear, or feel the llama by the way the truck handled. Furthermore, it is undisputed that after being told by Stroud that they were dragging the llama Lenig did not stop, inform the owner, inform the police, or in any way attempt to help the animal or correct the situation. I conclude that there is sufficient evidence from which the jury could decide that Lenig participated in the offense as an accomplice.

Iowa Rule of Criminal Procedure 20(3) provides that no conviction can be based upon the testimony of an accomplice unless that testimony is corroborated by other evidence tending to connect the accused with the commission of the offense. Corroborating evidence need not be strong. All that is necessary is that the accomplice be corroborated in some material fact which tends to connect the accused with the crime. It is not necessary that the corroborative evidence relate to all of the elements material to defendant's commission of the crime. State v. Horn, 282 N.W.2d 717, 731 (Iowa 1979). However, the evidence is insufficient if it merely supports accomplice testimony tending to show defendant's opportunity to commit a crime. State v. Vesey, 241 N.W.2d 888, 891 (Iowa 1976). A defendant may himself furnish the required corroboration. State v. Bizzett, 212 N.W.2d 466, 468 (Iowa 1973).

In State v. Martin, 274 N.W.2d 348, 349-50 (Iowa 1979), the supreme court stated that a defendant's admission that he was in the presence of the accomplice and agreeing with the accomplice's version of events, except for those which incriminated him, served as sufficient corroboration of the accomplice's testimony.

In this case both defendants testified that they, Lenig, and two others arrived in Moulton together in Lenig's pickup truck, stayed together while in town, and then left town in Lenig's truck. Stroud admitted being with Lenig both before and after the crucial time and agreed with Lenig's version of events—driving around Moulton, stopping at taverns, and staying together until they all left Moulton. Stroud excuses himself only while the crime is taking place. Williamson admitted being with Lenig and Stroud shortly before the crime was committed. In addition, independent witnesses testified that they saw both defendants with Lenig at taverns at both the south and north ends of Moulton, and that they observed the group driving around Moulton headed in the direction of the farm where the llama was. All of this evidence taken together sufficiently corroborates Lenig's testimony connecting defendants with the crime.