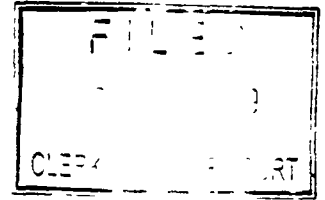


IN THE COURT OF APPEALS OF IOWA

No. 1999-261 (9-491) / 98-1465

Filed November 10, 1999



STATE OF IOWA,
Plaintiff-Appellee,

vs.

KEITH EUGENE LESTER,
Defendant-Appellant.

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

Keith Lester appeals his conviction and sentence for two counts of burglary in the third degree and one count of conspiracy to commit burglary in violation of Iowa Code sections 703.1, 713.6A, and 706.1(1997). **AFFIRMED.**

Chad R. Frese of Moon Law Office, Marshalltown, for appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney General, and Richard Vander Mey, Assistant County Attorney, for appellee.

Heard by Huitink, P.J., and Mahan and Hecht, JJ.

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MAHAN, J.

Keith Lester appeals his conviction on the ground the district court erred in denying his motion for judgment of acquittal as (1) a co-defendant's testimony was insufficiently corroborated, and (2) there was insufficient evidence he aided and abetted in the crimes. Defendant appeals his sentence asserting the court erred in denying his request for a deferred judgment. He asserts the court's reasons were stated so briefly and tersely as to violate the court's duty under section 901.5. We affirm.

Lester, Rodney Cormeny, Brian Shepard, and David Albertson were stopped by police officers as the vehicle in which they were riding was leaving a car dealership in the Tama/Toledo area during early morning hours. Lester consented to a search of his vehicle, and the officers found a pry bar with "fresh marks" on it in the trunk. Lester explained he used the pry bar as a member of a pit crew at a local racetrack to bend and straighten bent metal on race cars. Lester and the other occupants of his vehicle were allowed to leave.

Later that morning, burglaries were reported at the King Tower Cafe in Tama and a Subway in Toledo. Lester and his companions became suspects in the burglaries. Lester appeared nervous when questioned about the burglaries and was unable to produce the pry bar that had been in his trunk during the investigative stop.¹ Shortly thereafter, Shepard gave a statement implicating Lester in the burglaries.

¹ The investigatory stop and consent search was not appealed.

Shepard testified at trial it was his own idea to commit the burglaries and the four men had talked about committing burglaries while they had been "riding around" earlier the same evening. Shepard testified Lester's vehicle was used during the burglaries and Lester also acted as a "look out." Shepard identified Cormeny as the principal in the commission of the burglaries.

Lester offered a different version of the evening's events. He testified he had been in Newton when Cormeny and Albertson called him to pick them up at the Meskwaki Casino. Shepard accompanied him to the casino where they picked up Cormeny and Albertson. Lester stopped in Tama/Toledo on the way back to Newton to look at an automobile at the local car dealership and also to purchase food and drinks. Lester explained he had used the pry bar on his father's race car about one week prior to the stop.

Lester was convicted of two counts of burglary third degree and conspiracy to commit burglary. He was sentenced to a five-year indeterminate term on each count.² The sentence was suspended and Lester was placed on intensive probation for a period of three years.

Lester appeals.

I. JUDGMENT OF ACQUITTAL. We will uphold the trial court's denial of a motion for judgment of acquittal if there is substantial evidence in the record to support the defendant's conviction. *State v. McPhillips*, 580 N.W.2d 748, 752 (Iowa

² The conspiracy conviction was merged with the burglary convictions.

1998). Our review of sufficiency-of-evidence challenges is for correction of errors at law. *State v. Thomas*, 561 N.W.2d 37, 39 (Iowa 1997). The jury's findings of guilt are binding on appeal if supported by substantial evidence. *State v. Hopkins*, 576 N.W.2d 374, 377 (Iowa 1998); *State v. Allen*, 348 N.W.2d 243, 247 (Iowa 1984). Substantial evidence is such evidence as could convince a rational fact finder the defendant is guilty beyond a reasonable doubt. *Allen*, 348 N.W.2d at 247.

In deciding whether there is such substantial evidence, we view the record evidence in the light most favorable to the State. *State v. Torres*, 495 N.W.2d 678, 681 (Iowa 1993). Direct and circumstantial evidence are equally probative. Iowa R. App. P. 14(f)(16). A verdict can rest on circumstantial evidence alone. *State v. Torres*, 506 N.W.2d 470, 472 (Iowa App. 1993). However, "[t]he evidence must at least raise a fair inference of guilt as to each essential element of the crime. Evidence which merely raises suspicion, speculation, or conjecture is insufficient." *State v. Casady*, 491 N.W.2d 782, 787 (Iowa 1992) (citations omitted).

A. Corroboration. Iowa Rule of Criminal Procedure 20(3) requires testimony of an accomplice be corroborated.

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 corroboration rule serves two purposes: (1) to independently connect the defendant to the crime; and (2) to counterbalance the dubious credibility of a witness whose testimony may be motivated by self-interest in casting the blame elsewhere. *State v. Taylor*, 557 N.W.2d 523, 527-28 (Iowa 1996) (citing *State v. Larsen*, 512 N.W.2d 803, 806 (Iowa App. 1993)).

Corroborative evidence may be direct or circumstantial. *State v. Vesey*, 241 N.W.2d 888, 890 (Iowa 1976). It "need not be strong and need not be entirely inconsistent with innocence." *State v. Dickerson*, 313 N.W.2d 526, 529 (Iowa 1981). It must, however, support some material part of the accomplice's testimony and tend to connect the accused to the commission of the crime. *State v. Brown*, 397 N.W.2d 689, 695 (Iowa 1986).

There is no dispute Shepard was involved in the burglaries; details of his account of the burglaries were corroborated by other witnesses. Shepard's statements regarding Lester's involvement are corroborated by the evidence placing Lester with Shepard near the times and the places of the burglaries. Lester admits he was with Shepard on the night of the burglaries and his presence with Shepard near the scene of one of the burglaries is corroborated by the investigatory stop. Lester's vehicle was used in the burglaries. Further, the evidence shows a pry bar was used to gain entry to the businesses. Officers saw Lester had such a tool with pry marks in his trunk during the investigatory stop which he could not later produce. In addition, a motion light in the back of the Subway had been unscrewed as Shepard indicated to law

enforcement. We find this is sufficient corroboration connecting Lester to the burglaries. We also find there is sufficient corroboration of the conspiracy charge.

B. Sufficiency of the Evidence. When a defendant is accused of aiding and abetting in the commission of a crime in which intent is an element, as here, substantial evidence must be in the record to support a finding the defendant either participated with the intent himself or with knowledge the principal had the required intent. *See State v. Jefferson*, 574 N.W.2d 268, 277 (Iowa 1997); *State v. Lott*, 255 N.W.2d 105, 109 (Iowa 1977); *State v. Salkil*, 441 N.W.2d 386, 387 (Iowa App. 1989). The element of intent is rarely capable of direct proof and may be shown by circumstantial evidence. *State v. Delay*, 320 N.W.2d 831, 835 (Iowa 1982). The same can be said for a defendant's knowledge of a principal's intent. *See Salkil*, 441 N.W.2d at 387-88. We conclude Shepard's testimony regarding Lester's involvement in the burglaries, Lester's presence near the businesses on the night of the burglaries, the use of Lester's vehicle, his possession of a pry bar with fresh marks on it, and Lester's demeanor during the investigation of the case all provide substantial evidence from which the jury could find defendant aided and abetted Cormeny and/or Shepard in both burglaries.

II. REASONS FOR SENTENCE IMPOSED. A sentence will be disturbed by a reviewing court only upon a showing the trial court abused its discretion. *State v. Neary*, 470 N.W.2d 27, 29 (Iowa 1991). No abuse of discretion will be found unless the defendant shows such discretion was "exercised on grounds or for reasons

clearly untenable or to an extent clearly unreasonable." *Id.* A district court is required to "state on the record its reason for selecting the particular sentence." Iowa R. Crim. P. 22(3)(d). The purpose of rule 22(3)(d) is to allow a reviewing court to determine whether there has been such an abuse of discretion. *State v. Matlock*, 304 N.W.2d 226, 228 (Iowa 1981); *State v. Mickens*, 462 N.W.2d 296, 299 (Iowa App. 1990). A sentencing court's statement of its reasons satisfies the rule if it recites reasons sufficient to demonstrate the exercise of discretion and indicates those concerns which motivated the court to select the particular sentence which it imposed. *State v. Garrow*, 480 N.W.2d 256, 259 (Iowa 1992).

Lester has not challenged the reasons stated for the district court's imposition of the suspended sentence and probation. Instead, Lester has only appealed the denial of his request for a deferred judgment and contends the district court failed to adequately state its reasons for rejecting his request. The district court was not required to give its reasons for rejecting a deferred judgment sentencing option. *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996); *State v. Loyd*, 530 N.W.2d 708, 713-14 (Iowa 1995). Rather, the district court is only required to explain its reasons for selecting the sentence imposed. *State v. Powell*, 400 N.W.2d 562, 565-66 (Iowa 1987); *State v. Victor*, 310 N.W.2d 201, 205-06 (Iowa 1981). We conclude it was not an abuse of discretion to deny Lester a deferred judgment.

For all of the above reasons, we affirm the convictions of the defendant and affirm the trial court.

AFFIRMED.

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