

IN THE COURT OF APPEALS OF IOWA

FILED

AUG 26 1982

CLERK SUPREME COURT

STATE OF IOWA,

)

Plaintiff-Appellee,

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Filed August 26, 1982

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vs.

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BRUCE ALLEN ROUSH,

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2-263

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Defendant-Appellant.

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Appeal from Story District Court - David R. Hansen, Judge.

Defendant appeals his conviction of second degree burglary in violation of Iowa Code §§ 713.1, .3. AFFIRMED.

Timothy J. Finn of Murray, Curtis & Finn, Ames, Iowa, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Joseph P. Weeg, Assistant Attorney General, for plaintiff-appellee.

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

Defendant appeals his conviction of second degree burglary in violation of Iowa Code §§ 713.1, .3. He claims there was no evidence to corroborate the testimony of an accomplice and that there was insufficient evidence to support a finding that he had the requisite criminal intent. We affirm.

I. Under our rules, a person may not be convicted of a crime solely on the basis of testimony from an accomplice unless that testimony is "corroborated by other evidence which shall tend to connect the defendant with the commission of the offense." Iowa R. Crim. P. 20(3). Defendant claims the trial court erred in overruling his motion for a judgment of acquittal on the ground that there was no corroboration of the testimony of one of defendant's accomplices.

We disagree. The question whether corroborative evidence exists is a legal one. State v. Dickerson, 313 N.W.2d 526, 529 (Iowa 1981). "All that is required is that the accomplice's testimony be supported in some material fact that tends to connect the defendant with the crime charged and, therefore, supports the credibility of the accomplice's testimony." State v. Aldape, 307 N.W.2d 32, 41 (Iowa 1981). In this case, Rick Christian, the accomplice, testified regarding defendant's participation in the burglary and his share of the money and goods that were taken. The trial court found his testimony corroborated by two other witnesses. Elizabeth Bothner testified that defendant told her what he did with his share of the money from "the job" which Bothner understood from conversations with others involved to be the burglary here at issue. John Skjoldal testified that defendant once admitted his participation in the burglary.

We cannot say the trial court erred in concluding that the testimony of Bothner and Skjoldal corroborated that of the accomplice. It follows that the court correctly overruled defendant's motion for judgment of acquittal on that basis.

II. Defendant also contends that there was insufficient evidence to support a finding that he had the required criminal intent to commit the offense beyond a

reasonable doubt. Burglary is a specific intent crime, Iowa Code § 713.1 ("Any person, having the intent to commit a felony, assault or theft therein . . . commits burglary.") (emphasis added); thus, the State has the burden of proving that intent as an element of burglary. State v. Sangster, 299 N.W.2d 661, 662 (Iowa 1980).

Defendant claims that he was so intoxicated at the time of the burglary that he could not have had the specific intent required. Intoxication may be shown where relevant to a determination of a person's specific intent to commit a crime. Iowa Code § 701.5. "Intoxication alone does not necessarily amount to an excuse for the commission of a crime, but becomes so only when the mental capacity produced thereby is such as to make the person incapable of forming a criminal intent." State v. Watts, 244 N.W.2d 586, 590 (Iowa 1976).

After viewing all of the evidence in the light most favorable to the State, State v. Robinson, 288 N.W.2d 337, 340 (Iowa 1980), we conclude that there was sufficient evidence by which the trial court could find that defendant had the requisite intent. Although he was intoxicated to some degree, there was sufficient evidence that defendant acted deliberately in acceding to the burglary plans, in participating in the actual breaking and entering of the building, in pilfering various items and in counting out his share of an amount of money taken. We are satisfied that the State met its burden of proof regarding defendant's specific intent.

Finding no error below, we affirm defendant's conviction.

AFFIRMED.