

**IN THE COURT OF APPEALS OF IOWA**

No. 1-074 / 10-0318  
Filed April 27, 2011

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**CHARLES DANIEL SIMS,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Scott County, Nancy S. Tabor,  
Judge.

The defendant appeals his judgment and sentence for second-degree  
arson and third-degree burglary as a habitual offender. **CONVICTIONS  
AFFIRMED; SENTENCE VACATED IN PART, AND REMANDED FOR  
RESENTENCING.**

Mark C. Smith, State Appellate Defender, and Bradley M. Bender,  
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Darrel Mullins, Assistant Attorney  
General, Michael J. Walton, County Attorney, and Kimberly Shepherd and James  
Cosby, Assistant County Attorneys, for appellee.

Heard by Vogel, P.J., Vaitheswaran, J., and Mahan, S.J.\* Tabor, J., takes  
no part.

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

**VAITHESWARAN, J.**

Charles Daniel Sims appeals his judgment and sentence for second-degree arson and third-degree burglary as a habitual offender. He claims (A) there was insufficient evidence to support the jury's findings of guilt, (B) the district court abused its discretion in denying his motion for new trial based on newly discovered evidence, and (C) the district court erred in imposing a mandatory one-third minimum sentence based on his habitual offender status.

***I. Background Facts and Proceedings***

A fire destroyed an abandoned three-story building located at 1402 Harrison Street in Davenport. The fire was suspicious given its intensity, burn pattern, and the speed with which it spread through the building. Police later learned that Sims had worked at the building as a maintenance man and was fired several months earlier.

The State charged Sims with second-degree arson and third-degree burglary as a habitual offender. See Iowa Code §§ 712.1(1), 712.3, 713.1, 713.6A (2009). Two witnesses, Jason Manchester and Chris Stephenson, implicated Sims. Manchester testified Sims told him he wanted to "burn 1402 Harrison down" because he was fired. Stephenson testified that Sims wanted to make sure the building caught on fire. Both men were with Sims when gasoline was purchased and poured around the building. Based on this and other evidence, a jury found Sims guilty as charged.

Sims filed a motion for new trial challenging the sufficiency of the evidence and asserting that newly-discovered evidence absolved him. The newly-discovered evidence claim was based on the testimony of Stephenson's

cellmate. He asserted that, according to Stephenson, Stephenson rather than Sims set the fire, although Sims paid Stephenson to do it.

The district court denied the new trial motion, committed Sims to prison, and imposed “the mandatory one-third minimum pursuant to Iowa Code section 902.8.” Sims appealed.

## ***II. Analysis***

### ***A. Challenge to Sufficiency of the Evidence***

The jury was instructed the State would have to prove the following elements of second-degree arson:

1. On or about the 20th day of February 2009, the defendant caused a fire.
2. The defendant intended to destroy or damage the property or knew the property would probably be destroyed or damaged.
3. The property was a building, a structure, or real property.

The jury was further instructed the State would have to prove the following elements of third-degree burglary:

1. On or about the 20th day of February 2009 the defendant broke into 1402 Harrison Street, Davenport, Iowa.
2. The building was an occupied structure . . . .
3. The defendant did not have permission or authority to break into the building.
4. The defendant did so with the specific intent to commit an arson.

Sims contends the State failed to present sufficient evidence “that he caused a fire or broke into the building.” He specifically maintains that Manchester and Stephenson were accomplices, their testimony accordingly

required independent corroboration, and corroborating evidence was lacking. See Iowa R. Crim. P. 2.21(3).<sup>1</sup>

Sims did not raise this accomplice/corroboration issue in his motion for judgment of acquittal. For that reason, we conclude error was not preserved. See *State v. Westeen*, 591 N.W.2d 203, 206 (Iowa 1999) (noting this court's review is limited to the specific grounds and issues argued in a motion for judgment of acquittal). We may nonetheless review the issue under an ineffective-assistance-of-counsel rubric, as Sims contends. See *State v. Barnes*, 791 N.W.2d 817, 824 (Iowa 2010). Under that rubric, Sims must establish (1) breach of an essential duty and (2) prejudice. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984).

We begin and end with the prejudice prong. For purposes of this analysis, we will assume without deciding that Manchester and Stephenson were accomplices. See *State v. Douglas*, 675 N.W.2d 567, 571 (Iowa 2004) (stating an accomplice is a person who could be charged with and convicted of the specific offense for which an accused is on trial). The only question, then, is whether there is sufficient independent evidence to corroborate their stories. See *Barnes*, 791 N.W.2d at 824. If there is, counsel's failure to raise a challenge to the sufficiency of the corroborating evidence could not be prejudicial. See *State v. Truesdell*, 679 N.W.2d 611, 616 (Iowa 2004).

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<sup>1</sup> The rule states in pertinent part:

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. 2.21(3).

Manchester's mother testified that Sims told her "he was gonna burn" 1402 Harrison Street because he was mad about being fired. A transaction journal from a local convenience store showed a prepaid gas purchase of \$2 shortly before the fire at 1402 Harrison Street. Two individuals testified Sims was in the area of the fire, despite the fact he lived in another town. And, Sims's cell phone records indicated that Sims was in Davenport when the fire was set. This evidence corroborated key facts elicited from the presumed accomplices and amounted to sufficient corroboration of the accomplice testimony. See *Barnes*, 791 N.W.2d at 824 ("Corroborative evidence need not be strong as long as it can fairly be said that it tends to connect the accused with the commission of the crime and supports the credibility of the accomplice." (citation omitted)). Accordingly, trial counsel's failure to challenge the sufficiency of the corroborating evidence did not result in *Strickland* prejudice, and the ineffective-assistance-of-counsel claim fails.

***B. Newly Discovered Evidence***

Sims next asserts the district court should have granted a new trial based on the cellmate's testimony. To prevail, he had to show:

(1) that the evidence was discovered after the verdict; (2) that it could not have been discovered earlier in the exercise of due diligence; (3) that the evidence is material to the issues in the case and not merely cumulative or impeaching; and (4) that the evidence probably would have changed the result of the trial.

*Jones v. State*, 479 N.W.2d 265, 274 (Iowa 1991). Sims's claim fails on the fourth prong.

The jailhouse cellmate who implicated Stephenson in the fire-setting incident testified that Stephenson returned to the jail after his testimony in the

Sims case and told him Sims was not the one who set the fire. The State, however, pointed out that Stephenson did not return to the jail in which this cellmate was housed. Instead, Stephenson “was put on a Greyhound bus back to Kansas” and “never returned to jail after he testified in the Sims trial.” This professional statement was uncontroverted. Based on this statement, we conclude the district court did not abuse its discretion in concluding that the cellmate’s testimony probably would not have changed the result of the trial. See *State v. Miles*, 490 N.W.2d 798, 799 (Iowa 1992) (noting “[u]nusually broad discretion is vested in a trial court in ruling on a motion for new trial on the basis of newly-discovered evidence”).

**C. *Illegal Sentence***

Sims next contends the district court erred in imposing a mandatory one-third minimum sentence based on his habitual offender status. The State agrees this was error. See Iowa Code §§ 902.8, 902.9(3) (stating habitual offenders are subject to a fifteen-year prison term, of which *three years* must be served). We vacate this portion of the sentence and remand for resentencing to a three-year mandatory minimum sentence based on Sims’s habitual offender status. See, e.g., *State v. Iowa Dist. Ct.*, 616 N.W.2d 575, 581 (Iowa 2000) (vacating sentence where mandatory minimum was not imposed and remanding for resentencing).

**CONVICTIONS AFFIRMED; SENTENCE VACATED IN PART, AND  
REMANDED FOR RESENTENCING.**