

**IN THE COURT OF APPEALS OF IOWA**

No. 1-197 / 10-0802  
Filed June 15, 2011

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

**vs.**

**JOHN LEWIS ARTHUR ANDERSON,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge.

John Anderson appeals from judgment and conviction entered following a jury verdict of guilty of the charges of first-degree robbery and first-degree burglary. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and David A. Adams, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney General, John P. Sarcone, County Attorney, and Robert Di Blasi and Jessica Tucker, Assistant County Attorneys, for appellee.

Considered by Sackett, C.J., Potterfield, J., and Mahan, S.J.\* Tabor, J., takes no part.

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

**POTTERFIELD, J.****I. Background Facts and Proceedings**

On April 25, 2009, a group of eight people left Waterloo in two cars, headed for Des Moines. Upon arrival, Katie Hahn and Natasha Elgers checked into a hotel room on the second floor of an Econo Lodge and let their six friends into the hotel through a side door. The group of eight spent time together in the room smoking marijuana and drinking a concoction containing codeine cough syrup and a liqueur.

On a trip to the ice machine, Elgers met Rogerick Powel, who was staying in a room on the first floor with Wayne and Shane Bellanger. Over the course of the next several hours, Elgers went back and forth between the group's room on the second floor and the Bellangers' room on the first floor. At some point in the evening, Powel said something that offended Elgers. She returned to the group's room on the second floor and told its occupants that the men in the other room had disrespected her.

The group then formulated a plan to fight the men who had disrespected Elgers and to take anything of value the men had, including a car in the parking lot. Several members of the group testified that John Anderson led the planning and assigned roles to those involved. Elgers was to return to the men's hotel room and tell the men goodbye with her cell phone on speakerphone so the group could hear when she was leaving. The group planned that as Elgers left the room, they would rush in. According to the testimony of Shane and Wayne Bellanger, this is how the plan was executed. The Bellangers testified that three

to four men burst into the room as Elgers left and said, "Give us all your shit." One of the men was holding a sawed off shotgun.

The record reveals that Anderson, Cory Dreier, and DeJaaron Cassell had been assigned to fight. A man known only as Willie Mack was assigned to hold a gun that Dreier had retrieved from Hahn's car. Hahn and Angelene Garrett were told to start the group's two cars. Cassell also testified Garrett was to have a clean shirt for him in the car so that he could not later be identified based on his clothing.

Garrett and Hahn testified they had heard the group making plans, but neither believed anyone in the group was serious. They testified they believed they had been asked to start the cars because it was checkout time. Hahn checked out of the hotel and started her car. Garrett accompanied Hahn and started an Explorer belonging to Eric Bryant. Garrett and Hahn testified that at the time they went to start the cars, they did not believe they had been sent to drive getaway cars.

The role assigned to the final member of the group, Bryant, is unclear. Garrett and Elgers testified that Bryant was asleep during most of the conversation in which the group planned its attack. Dreier and Cassell testified that Bryant had no role in the incident. Hahn testified Anderson talked to Bryant during the planning stages, but she could not identify a role that was given to Bryant.

Bryant testified he heard the group planning to rob the men who had offended Elgers, but he fell asleep during the conversation. He testified that when he woke up, everyone was leaving, but he continued to lie in the bed.

Garrett testified that when she and Hahn left to start the cars, Bryant was still sitting on the bed, but everyone else was gone. Hahn, however, testified that she and Garrett were the last ones in the room and that she did not know where Bryant was at the time she left to go start the car. Bryant testified that five to ten minutes after everyone left, he grabbed his bag and headed toward the car. He stated that in the hallway of the first floor, he ran into a girl he knew from the internet and stopped to talk to her. As he was talking to her, a door swung open, and he saw a man struggling with Anderson. The man, Shane Bellanger, escaped from Anderson's grasp and ran to the front desk to call police. Shane testified that a male and a female were in the doorway of his room and that he knocked them out of the way as he ran out of the room.

Bryant testified that soon after Bellanger escaped, Anderson, Dreier, Willie Mack, and Cassell left the room and ran outside. Bryant testified he stood where he was for a moment because he was shocked and while he was there, another man came out of the room.

Hahn and Garrett testified that after they started the cars, Elgers, Cassell, Willie Mack, Dreier, and Anderson ran out of the hotel. Anderson pushed Hahn into the passenger seat of her car and drove away. Cassell, Garrett, Elgers, Dreier, and Willie Mack got into Bryant's Explorer and left. Bryant walked outside, but both of the group's cars were gone. Soon after, the brown Explorer returned for Bryant.

The Explorer then left again, heading east on Interstate 80. The group left Willie Mack in an unknown location after he demanded to be let out of the car. The Explorer exited Interstate 80 onto Second Avenue, where it was stopped by

a state trooper. The Bellangers were driven to the scene of the stop and identified all the males in the car (Cassell, Dreier, and Bryant) as being involved in the attack at their hotel room. They also identified Elgers but were not able to identify Garrett as one who had taken part in the robbery.

Hahn and Anderson returned to Waterloo, where, according to Hahn's testimony, Anderson and his girlfriend Rebecca Gladney made plans to establish an alibi for him. Besides Anderson, six members of the group from Waterloo testified at trial. All six testified that Anderson was involved in the robbery. Anderson and Gladney testified that at the time of the incident they were in Colorado visiting members of Gladney's family.

On December 3, 2009, Anderson was charged with first-degree robbery and first-degree burglary. At trial, the district court instructed the jury that Dreier, Cassell, and Elgers were accomplices as a matter of law. It left to the jury the question of whether Hahn, Bryant, and/or Garrett were accomplices. A jury found Anderson guilty on both charges after finding in a special interrogatory that Hahn, Bryant, and Garrett were not accomplices. Anderson now appeals, asserting his counsel was ineffective in failing to object to the district court's instruction that did not identify Hahn, Garrett, and Bryant as accomplices as a matter of law.

## **II. Ineffective Assistance**

We review Anderson's claims of ineffective assistance of counsel de novo. *Taylor v. State*, 352 N.W.2d 683, 684 (Iowa 1984). In order to prove his counsel was ineffective, Anderson must show that: (1) counsel failed to perform an essential duty; and (2) prejudice resulted from that failure. *Id.* In order to

establish the first prong of the test, Anderson must show that his counsel did not act as a “reasonably competent practitioner” would have. *State v. Simmons*, 714 N.W.2d 264, 276 (Iowa 2006). There is a strong presumption that counsel performed competently. *Taylor*, 352 N.W.2d at 684. To satisfy the second prong, prejudice, Anderson “must show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *See id.*

Anderson asserts his counsel was ineffective for failing to object to jury instructions that did not identify Hahn, Garrett, and Bryant as accomplices as a matter of law. Iowa Rule of Criminal Procedure 2.21(3) provides:

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.

The testimony of one accomplice cannot corroborate the testimony of another accomplice. *State v. Barnes*, 791 N.W.2d 817, 824 (Iowa 2010). Anderson argues on appeal the State “would be hard pressed to identify any evidence which corroborated the testimony” of the accomplices if the district court had instructed the jury that Hahn, Garrett, and Bryant were accomplices as a matter of law.

Anderson cannot succeed on his claim of ineffective assistance of counsel because he cannot show a reasonable probability that the result of the proceeding would have been different had counsel objected.

An accomplice is a person who could be charged with and convicted of the specific offense for which an accused is on trial. Thus, proof that the person had knowledge that a crime was planned or proof that the person was present when the crime was committed is insufficient standing alone to make the person an accomplice. It must be established by a preponderance of the evidence that the person was involved in some way in the commission of the crime.

When the facts and circumstances are undisputed and permit only one inference, whether a witness is an accomplice is a question of law for the court. If the facts are disputed, however, or give rise to different inferences, the question is for the jury.

*State v. Douglas*, 675 N.W.2d 567, 571 (Iowa 2004) (internal quotations and citations omitted).<sup>1</sup> In this case, the facts and circumstances were disputed and gave rise to different inferences, at least as to whether Bryant was an accomplice. Though the victims identified Bryant as someone involved in the attack, several members of the group from Waterloo testified Bryant was not assigned a role and was not involved in the robbery. Bryant testified he was not involved in the commission of the crime and gave a plausible explanation for why the victims might have misidentified him as someone involved in the robbery. The district court properly submitted to the jury the question of whether Bryant was an accomplice. Because the facts were disputed and permitted more than one inference, there is no reasonable probability the district court would have found Bryant to be an accomplice as a matter of law had counsel objected to the instruction.

Further, Bryant's testimony corroborated the testimony of the accomplices. Bryant testified Anderson had told members of the group from Waterloo to take anything the Bellangers had. He also testified he saw Anderson struggling with

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<sup>1</sup> We decline Anderson's invitation to adopt a broader definition of who may be considered an accomplice.

one of the Bellangers in the doorway to their hotel room. Thus, Bryant's testimony would have constituted sufficient corroboration of the accomplice testimony even if the district court had instructed the jury that Hahn and Garrett were accomplices. See *State v. Yeo*, 659 N.W.2d. 544, 548 (Iowa 2003) (stating corroborating evidence need not be strong and is sufficient as long as it supports some material part of the accomplice's testimony and tends to connect the defendant to the commission of the crime).

Anderson cannot show a reasonable probability that had his trial counsel objected to the accomplice instruction, the result of the trial would have been different.

**AFFIRMED.**