

IN THE COURT OF APPEALS OF IOWA

No. 6-245 / 05-1179

Filed July 12, 2006

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JOSE ALFREDO GOMEZ,
Defendant-Appellant.

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

Jose Alfredo Gomez appeals his conviction for possession of cocaine with
intent to deliver. **AFFIRMED.**

Douglas Johnston, Muscatine, for appellant.

Thomas J. Miller, Attorney General, Robert Ewald, Assistant Attorney
General, Gary Allison, County Attorney, and Alan Ostergren, Assistant County
Attorney, for appellee.

Considered by Zimmer, P.J., and Miller and Hecht, JJ.

MILLER, J.

Jose Alfredo Gomez appeals his conviction for possession of cocaine with intent to deliver. He contends there was insufficient evidence to corroborate his confession and insufficient evidence to support his conviction. We affirm.

On January 21, 2005, the Muscatine County Drug Task Force obtained and executed a search warrant at 514 Spring Street in Muscatine following a controlled buy of cocaine by a confidential informant at that address. There were five individuals within the residence when the officers entered: the defendant, Jose Gomez (Gomez); his brother, Juan Gomez; his uncle Jose Luis DeAlejandro; Gorge Leza; and Brenda Moreno.¹ As the search began Gomez was entering the kitchen from the basement stairs. DeAlejandro and Moreno were in the kitchen and Leza and Juan Gomez were in the bathroom area.

Officers found four ounces of cocaine in a pocket of a size XXL black leather jacket hanging on the back of a chair in the kitchen. DeAlejandro was the only person in the house large enough to fit the jacket and thus the officers believed the cocaine belonged to him. In a drawer in the kitchen officers found a smaller quantity of cocaine, less than half a gram, and an electronic scale. A box of plastic sandwich baggies was also found in the kitchen. In the basement police found \$2350 of cash. None of the bills found in the house matched those used in the controlled buy.

While the search was still ongoing, Iowa Department of Public Safety Agent Daniel Stepleton advised Gomez of his Miranda rights and interviewed him in a back bedroom of the house. Stepleton testified at trial he told Gomez the

¹ An eight-year-old girl was also present.

Task Force had purchased drugs from the residence earlier that evening and Gomez admitted a female had come over to his residence earlier that evening and he had sold cocaine to her. He further testified Gomez told him the female's daughter came over shortly thereafter and said not to deal with her mom because her mom was acting funny and the "narcs" were following her around the neighborhood. Stepleton also testified that Gomez told him he then tore up the money he had received from the informant and flushed it down the toilet and that there was \$1,800 under a table in the basement.

When Stepleton was later advised that the cocaine, electronic scale, and plastic baggies had been found in the kitchen he re-interviewed Gomez, asking about those items. Stepleton testified that Gomez responded he had

forgotten about the electronic scale and the quantity of cocaine in the drawer, that they were both his, and that the Glad sandwich bags here that were found just above those two items were the same Glad sandwich bags that he had used to package the cocaine that had been sold that night.

Based on the evidence found in the residence and Gomez's confession to Stepleton the State charged Gomez, by trial information, with delivery of cocaine and possession of cocaine with intent to deliver, in violation of Iowa Code section 124.402(1)(c)(2)(b) (2005).² The case proceeded to jury trial. Gomez moved for judgment of acquittal at both the close of the State's case and the close of all of the evidence,³ arguing in part that there was insufficient evidence to corroborate his confession to Agent Stepleton. The court overruled the motion, concluding that based on the evidence of the controlled buy, together with the cocaine,

² Gomez was charged as an habitual offender under section 902.8 on both counts as well.

³ Gomez presented no evidence on his behalf.

scales, and plastic baggies found in the residence, the confession did have sufficient corroboration to be submitted to the jury. The jury acquitted Gomez of the delivery charge and found him guilty of possession of cocaine with intent to deliver. The court sentenced him to an indeterminate prison term not to exceed fifteen years.

Gomez appeals, contending the State failed to present sufficient evidence to corroborate his confession as required by Iowa Rule of Criminal Procedure 2.21(4), and failed to present sufficient evidence to support his conviction.

Our scope of review and many of the standards of review that apply in sufficiency-of-the-evidence challenges are set forth in *State v. Webb*, 648 N.W.2d 72, 75-76 (Iowa 2002), and need not be repeated here. The following additional standards are applicable as well. Inherent in our standard of review of jury verdicts in criminal cases is the recognition that the jury was free to reject certain evidence, and credit other evidence. *State v. Anderson*, 517 N.W.2d 208, 211 (Iowa 1994). A jury is free to believe or disbelieve any testimony as it chooses and to give as much weight to the evidence as, in its judgment, such evidence should receive. *State v. Liggins*, 557 N.W.2d 263, 269 (Iowa 1996). The existence of corroborating evidence is a legal question for the court to resolve. *State v. Bugley*, 562 N.W.2d 173, 176 (Iowa 1997). Once its legal adequacy is established, its sufficiency is for the jury. *Id.*

Iowa Rule of Criminal Procedure 2.21(4) provides, “The confession of the defendant, unless made in open court, will not warrant a conviction, unless accompanied with other proof that the defendant committed the offense.” The corroboration “need not be strong nor need it go to the whole case so long as it

confirms some material fact connecting the defendant with the crime.” *State v. Polly*, 657 N.W.2d 462, 467 (Iowa 2003). The “other proof” required by rule 2.21(4) “does not have to prove the offense beyond a reasonable doubt or even by a preponderance” of the evidence. *Id.* Instead, it “merely fortifies the truth of the confession, without independently establishing the crime charged.” *Id.* (quoting *Wong Sun v. United States*, 371 U.S. 471, 489, 83 S. Ct. 407, 418, 9 L. Ed. 2d 441, 456 (1963)).

We conclude there was ample evidence corroborating Gomez’s confession and supporting his conviction. According to Stepleton, Gomez admitted specifically that a female had come to *his* residence and *he* was the one who sold her the cocaine. He later admitted the cocaine, scale, and plastic baggies found in the kitchen of the residence were his and that he had used those baggies to package the cocaine he sold to the female. The evidence found in the house, including the cocaine, the electronic scale, the large amount of cash, and the plastic baggies, was consistent with Gomez’s confession to possessing cocaine and possessing it with the intent to sell it rather than having it for mere personal use. Although not controlling, the absence of any paraphernalia commonly used in the consumption of cocaine also suggests a sales operation and not mere personal use.

In addition, the fact the Task Force found only a small amount of cocaine that could be tied to Gomez by his confession was explained by Agent Stepleton’s testimony regarding the cycle of drug trafficking. He testified that although people who sell drugs normally have larger quantities, having only a small amount of cocaine, plus a bunch of money such as \$1,800 sitting

underneath a table,⁴ would be consistent with having already sold recently acquired cocaine. This explanation is supported by and consistent with the evidence of the recent controlled buy made by officers prior to the execution of the search warrant at Gomez's residence.

Finally, it was the jury's duty to weigh the evidence and assess witness credibility, see *Liggins*, 557 N.W.2d at 269, including the credibility of Agent Stepleton and the truth of Gomez's statements to him. Apparently the jury, as was its prerogative, determined Gomez was being truthful with Stepleton and not falsely admitting ownership of the drugs to protect family members as he suggested at trial, and that Stepleton's testimony regarding Gomez's confession to him was truthful and accurate.

We conclude Gomez's confession was sufficiently corroborated and thus met the requirement of rule 2.21(4). Based on his corroborated confession and the additional evidence in the record, we conclude a reasonable jury could find Gomez guilty beyond a reasonable doubt of possession of cocaine with intent to deliver.

AFFIRMED.

⁴ Although \$2350 was found on a laundry room table in the basement, according to Stepleton's testimony Gomez had told him there was \$1800 next to a washer and dryer downstairs.