IN THE COURT OF APPEALS OF IOWA

No. 6-821 / 05-1709
Filed January 18, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JASON MICHAEL ROOSE,
Defendant-Appellant.

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

Jason Roose appeals his judgment and sentence for first-degree theft. **AFFIRMED.**

Brent Rosenberg of Rosenberg, Stowers & Morse, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, John P. Sarcone, County Attorney, and Jaki Livingston, Assistant County Attorney, for appellee.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

VAITHESWARAN, J.

A jury found Jason Roose guilty of first-degree theft, after considering the testimony of two accomplices as well as others. Iowa Code §§ 714.1 and 714.2(1) (2003). On appeal, Roose contends the district court erred in (1) denying his "motion for judgment of acquittal and for a new trial based on the insufficiency of the corroborative evidence" and (2) altering the stock accomplice instruction. We affirm.

I. Sufficiency of Corroborative Evidence

Roose maintains the testimony of two accomplices was not sufficiently corroborated. *See* Iowa R. Crim. P. 2.21(3) ("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."). At the district court he raised this issue in two motions: a motion for judgment of acquittal and a motion for new trial. In his motion for judgment of acquittal, he challenged the "sufficiency-of-the-evidence." In his new trial motion, Roose asserted that "the verdict was contrary to the evidence," but then specified that he was challenging the evidence corroborating the accomplice testimony on the ground that it was "insufficient as a matter of law to support the verdict of guilty." The district court denied both motions.

The preliminary question we must address is whether Roose is challenging the sufficiency of the evidence or the weight of the evidence, because the nature of his challenge defines our scope of review.

"Contrary to the evidence" means "contrary to the weight of the evidence." *State v. Ellis*, 578 N.W.2d 655, 659 (Iowa 1998). This phrase is not the same as "sufficiency of the evidence." *Id*. A ruling on a motion for judgment of acquittal alleging insufficiency of the evidence is reviewed for errors of law. *State v. Leckington*, 713 N.W.2d 218, 221 (Iowa 2006). In contrast, a ruling on a new trial motion alleging that the verdict is contrary to the evidence is reviewed for an abuse of discretion. *State v. Reeves*, 670 N.W.2d 199, 202-03 (Iowa 2003).

Although Roose mentioned that the verdict was "contrary to the evidence," we conclude his real challenge in both motions was to the sufficiency of the evidence corroborating the accomplice testimony. Therefore, we will review the court's rulings on both motions for errors of law.

The State charged that Roose committed first-degree theft by receiving stolen property worth over $10,000. The jury was instructed that, to find Roose guilty of first-degree theft, the State would have to prove Roose was in possession of the stolen property, and he "possessed the items with the knowledge they were stolen."

The State elicited testimony from Christine Moran and Jesus Delgado, among others. These individuals stated they sold Roose a stolen mower and trailer, a generator, and an all-terrain vehicle and trailer.

On the question of whether Roose knew the property was stolen, Moran testified that she and Delgado told him the property "came from a long ways away, and it was from another county." The following exchange is instructive:

> Q. Why did you tell Jason Roose that the vehicle – that the trailer and the [all-terrain vehicle] had come from another county?

> A. Because it was stolen and the chances of the owner finding it in Des Moines, when they were from Linn County, that is why.
> Q. What did Mr. Roose say, if anything, in your presence that led you to believe he knew or understood that the [all-terrain vehicle] and the trailer were stolen?
> A. He said he wasn't worried about that. He was going to take it to his farm.

She stated Roose never asked for receipts and he paid cash for the items.

Delgado was also asked whether Roose knew that the items he purchased were stolen. He testified as follows:

> Q. Did Jason Roose know they were stolen?
> A. Yes.
> Q. How did he know they were stolen?
> A. Because we told him from where we took it.
> Q. You told him from where you took it?
> A. Yes.
> Q. What did you tell him?
> A. They was far away from his house.
> Q. Why did you tell him that? How did it come up?
> A. Because if it was close, he was not going to take it.
> Q. If it was close he wasn't going to take it?
> A. Yes.
> Q. How did you know that?
> A. Because he didn't want to get in trouble.
> Q. How do you know that?
> A. All the time he was asking me, to make sure, you know.

Delgado further stated: "He knew everything was stolen already." When asked why he took the all-terrain vehicle and trailer to Roose, Delgado testified:

> Cause, for me, he was the only one. He could buy things like that, but we went and wake him up in the middle of the night, and we ask him if he want to buy it. He didn't really want to buy it, but we sell it cheap to him. That is the only way he would buy it.

It is clear that Moran and Delgado were accomplices. The only question is whether the record contains sufficient evidence to corroborate their testimony. We conclude it does.

First, Roose's possession of the items corroborated the accomplice testimony. *See State v. Dickerson*, 313 N.W.2d 526, 529 (Iowa 1981) ("A defendant's possession of property stolen in the alleged offense is corroborative evidence."). Law enforcement authorities found the stolen mower and trailer on an acreage belonging to Roose. The generator was recovered from Roose's Des Moines residence. The trailer stolen with the all-terrain vehicle was also recovered from Roose's property. Finally, Roose told a detective that he purchased the all-terrain vehicle from Moran and Delgado and he thought it was on his acreage.

Second, Roose's statements to a law enforcement officer as well as testimony from the people who owned the stolen property corroborated the accomplices' testimony that the property was acquired for less than its reasonable value. *See State v. Jones*, 511 N.W.2d 400, 405 (Iowa Ct. App. 1993) ("A defendant's admissions may be considered corroboration."). *See also* Iowa Code § 714.1(4) ("The fact that the person . . . has acquired it for a consideration which is far below its reasonable value, shall be evidence from which the court or jury may infer that the person knew or believed that the property had been stolen."). Roose told a detective that he purchased the all-terrain vehicle for $800. The owner of the vehicle testified that the vehicle was just one month old and was purchased for $6500. Similarly, the detective stated Roose told them he paid $300 for the mower and trailer. The owner said he paid $2500 for the mower and the trailer was worth $700.

As this evidence sufficiently corroborated the accomplice testimony of Moran and Delgado, we conclude the district court did not err in denying Roose's motions for judgment of acquittal and for new trial. *See State v. King*, 256 N.W.2d 1, 10 (Iowa 1977) ("[T]he corroboration of an accomplice's testimony need not be strong, nor must it confirm every material fact testified to by the accomplice. It need only tend to connect an accused with the commission of a given crime.").

II. Jury Instruction

Roose next contends the district court erred in adding language to a stock instruction on accomplice testimony. The added sentence was "[c]orroboration need not be strong." Roose maintains the language tends "to contradict and undermine the reasonable doubt standard." Our review of this issue is for prejudicial error. *State v. Kellogg*, 542 N.W.2d 514, 516 (Iowa 1996).

Roose concedes the "corroboration need not be strong" language is a correct statement of the law. *King*, 256 N.W.2d at 10. He also concedes that jury instructions generally must be considered as a whole. *State v. Stallings*, 541 N.W.2d 855, 857 (Iowa 1995). In our view, these concessions resolve the issue.

The district court instructed the jury that corroboration of accomplice testimony did not need to be strong, but separately instructed the jury that "[t]he burden is on the State to prove the defendant guilty beyond a reasonable doubt." The burden of proof instruction was one of the first instructions given by the court. The accomplice instruction that was later given defined the term "accomplice," specified that testimony from an accomplice needed to be

corroborated, and only then stated "corroboration need not be strong." Contrary to Roose's assertion, we are convinced that when these instructions are viewed in context, they can be "reconciled and understood by the jury." Finding no prejudicial error, we affirm on this issue.

III. Disposition

We affirm Roose's judgment and sentence for first-degree theft.

AFFIRMED.