

IN THE COURT OF APPEALS OF IOWA

No. 7-696 / 06-2059
Filed January 16, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JAMES DEAN RAYMOND,
Defendant-Appellant.

Appeal from the Iowa District Court for Floyd County, Bryan H. McKinley,
Judge.

Appeal from the district court's denial of defendant's motion for judgment
of acquittal. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Robert Ewald, Assistant Attorney
General, Marilyn J. Dettmer, County Attorney, and David Kuehner, Assistant
County Attorney, for appellee.

Considered by Sackett, C.J., and Zimmer and Eisenhauer, JJ.

SACKETT, C.J.

Defendant-appellant, James Raymond, appeals from the district court's denial of his motion for judgment of acquittal. He contends there was insufficient evidence to convict him of first-degree murder and the court erred in denying his motion based on insufficient evidence. We affirm.

Background

In November of 2005 the State charged defendant with the first-degree murder of Jesse Patchin, alleging it occurred about October 1, 2005. In the October 2006 jury trial, one of the State's primary witnesses was Charles Gallmeyer, who testified pursuant to a plea agreement. He testified defendant stabbed the victim in the neck and then Gallmeyer stabbed the victim several times in the back. After the close of the State's evidence defendant moved for "a directed verdict of acquittal," contending there was not sufficient evidence for a jury to find defendant committed first-degree murder. Defense counsel asserted there was no evidence defendant stabbed the victim, or aided and abetted in the stabbing, or acted with malice aforethought, or acted willfully, deliberately, or premeditatedly with intent to kill the victim. Counsel further asserted the court "could and should" find there was no corroboration of the testimony of Charles Gallmeyer. In denying the motion, the court assumed Gallmeyer was an accomplice, found "compelling corroborative evidence," and found "sufficient evidence in which these matters should be brought to the attention of the jury."

Scope and Standards of Review

Our review of a trial court's ruling on motions for judgment of acquittal is for correction of errors at law. *State v. Corsi*, 686 N.W.2d 215, 218 (Iowa 2004).

“[W]e apply a sufficiency-of-the-evidence test and view the evidence in the light most favorable to the State.” *State v. Shanahan*, 712 N.W.2d 121, 134 (Iowa 2006).

In determining the correctness of a ruling on a motion for judgment of acquittal, we do not resolve conflicts in the evidence, pass upon the credibility of witnesses, or weigh the evidence. [S]uch matters are for the jury. Instead, we ascertain whether the evidence could convince a rational jury of the defendant’s guilt beyond a reasonable doubt. Evidence that raises only a suspicion or generates only speculation is not substantial. In evaluating the evidence, we consider all the evidence in the record, and we view it in the light most favorable to the jury’s verdict.

State v. Hutchison, 721 N.W.2d 776, 780 (Iowa 2006) (citations and internal quotations omitted). Jury members are free to give testimony such weight as they think it should receive and are free to accept or reject any of a witness’s testimony. *Shanahan*, 712 N.W.2d at 135. “If the jury’s verdict is supported by substantial evidence, it is binding on the court.” *Corsi*, 686 N.W.2d at 218.

Analysis

Defendant first argues the evidence to convict him is insufficient because all of the testimony was that Gallmeyer stabbed and murdered Patchin, but no physical evidence connects defendant to the crime. While we agree that, because of the condition of the victim’s remains, it was not possible to determine all of his possible injuries, so there was no physical evidence defendant stabbed him in the neck, there certainly was substantial evidence from which a rational fact finder could find defendant committed the murder. See *State v. Greene*, 592 N.W.2d 24, 29 (Iowa 1999) (noting substantial evidence is evidence that could convince a rational trier of fact the defendant is guilty of the charged crime beyond a reasonable doubt). Much of the evidence comes from Gallmeyer’s

testimony, but defendant's own statements made to his brother, his mother, and another person all support a finding he was involved in the murder at the scene.

Because the most substantial evidence against defendant comes from Gallmeyer's testimony, we must consider whether there is sufficient corroboration of his testimony. The district court assumed Gallmeyer was an accomplice when it analyzed the need for corroboration of his testimony. In our analysis we make the same assumption because it requires a stricter test than if he were merely an uninterested witness. 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.

Corroborative evidence can be direct or circumstantial. *State v. Vesey*, 241 N.W.2d 888, 890 (Iowa 1976). Its existence is a legal question for the court to determine. *State v. Dickerson*, 313 N.W.2d 526, 529 (Iowa 1981). It "need not be strong and need not be entirely inconsistent with innocence." *Id.* "It must, however, support some material part of the accomplice's testimony and tend to connect the accused to the commission of the crime." *State v. Bugely*, 562 N.W.2d 173, 176 (Iowa 1997). In the case before us, defendant's own words corroborate Gallmeyer's testimony. Gallmeyer testified defendant stuck the knife in Patchin's throat. Defendant told his brother he slit Patchin's throat. He told another person Patchin "was not coming back" and Patchin "had his knife, so to speak." When referring to comments about stabbing Patchin, defendant said "it wasn't in the middle, it was on the side, which don't hurt nothin'." We, like the district court, conclude Gallmeyer's testimony was sufficiently corroborated.

Defendant also attacks Gallmeyer's credibility, arguing his testimony was not consistent, he already had lied to the State, and he had a motive to implicate defendant as part of his plea agreements with the State. As we noted above, it is the fact finder's province to weigh the evidence and assess credibility, not ours. See *Shanahan*, 712 N.W.2d at 121 (citing *State v. Blair*, 347 N.W.2d 416, 420 (Iowa 1984); *State v. Schrier*, 300 N.W.2d 305, 309 (Iowa 1981)).

We conclude sufficient evidence supports defendant's conviction of first-degree murder and affirm both his conviction and the district court's denial of his motion for judgment of acquittal.

AFFIRMED.