

**IN THE COURT OF APPEALS OF IOWA**

No. 8-353 / 07-0167  
Filed June 11, 2008

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

**vs.**

**TERRELL ONTERIAL LOBLEY,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Scott County, J. Hobart Darbyshire,  
Judge.

Defendant appeals his convictions and sentencing. **CONVICTIONS  
AFFIRMED. SENTENCES VACATED AND REMANDED FOR  
RESENTENCING.**

Mark C. Smith, State Appellate Defender, and Shellie L. Knipfer, Assistant  
State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant  
Attorney General, Michael J. Walton, County Attorney, and Amy Devine,  
Assistant County Attorney, for appellee.

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

**EISENHAUER, J.**

After a jury trial, Terrell O. Lobley was convicted of second-degree murder and intimidation with a dangerous weapon. Lobley argues there was insufficient “other proof” to corroborate his confession. Additionally, Lobley argues the court failed to provide adequate reasons in support of consecutive sentences. We affirm the convictions but remand for resentencing.

**I. Corroboration.**

On August 19, 2006, nineteen-year-old Vincelina Howard was sitting on a bench in her grandmother’s back yard in Davenport when she was killed in a drive-by shooting. Lobley gave statements to the police on two occasions and was eventually arrested. While in jail, Lobley shared a cell with Roy Washington. Washington testified for the State at Lobley’s trial. On appeal, Lobley argues his confession to cellmate Washington was not sufficiently corroborated by other evidence. We review for correction of errors at law. Iowa R. App. P. 6.4.

“Out-of-court confessions cannot support a conviction unless corroborated by other evidence.” *State v. White*, 319 N.W.2d 213, 214 (Iowa 1982); see Iowa R. Crim P. 2.21(4). The existence of corroborative evidence is an issue for the court while the sufficiency of the corroborative evidence is a fact issue for the jury. *Id.* The corroborating evidence need not corroborate every element of the crime and need not be strong “so long as it confirms some material fact connecting the defendant with the crime.” *State v. Robertson*, 351 N.W.2d 790, 793 (Iowa 1984). “Although individual items of circumstantial evidence may be insufficient corroboration, the combination of the circumstances may permit a jury to conclude the confession . . . was corroborated.” *State v. Liggins*, 524 N.W.2d

181, 187 (Iowa 1994). The “other proof” must support the essential facts admitted by the defendant sufficiently to justify the jury’s inference of the truth of the confession. *State v. Polly*, 657 N.W.2d 462, 467 (Iowa 2003).

Washington testified:

[Lobley] said that a friend of his was killed in April of this year [2006], around the 19th, and it was a very close friend of his. In fact, the guy was so close that [Lobley] had tattooed the date that the guy was born and the date that he got killed.

. . .

[Lobley] stated that he and some friends did a drive-by. . . . It was on the east side of Davenport . . . It was [in] retaliation [for] his friend that got killed. [Lobley] stated after his friend had got killed, every month on the 19th . . . they would do walks from the guy’s parents’ house to where he got killed at Rock Island. And August 19 . . . they met and they did their walk, but there was some drinking and marijuana involved . . . the emotions came up and they got angry because the guy that killed their friend was from Davenport. . . . [T]hey rented a van from a guy that smoked crack. He didn’t know why they wanted the van. He just . . . gave them the van for the crack. But prior, [Lobley] had been renting a motel from August 1 to August 19th, leading up to that night on the 19th of August.

. . .

[S]o that’s why they did the drive-by on the Howards, because it would confuse the police.

. . .

His younger brother . . . was driving the van.

. . .

[A] couple of the guys weren’t familiar with Davenport, so they had to trail [Lobley] over to Davenport. . . . So they trailed him over, they parked the car. . . . [T]hey drove through like two or three times before they actually slid the [van] door back and started shooting.

. . .

[Lobley] said the van quit working, it blew up, it was a raggedy van. After the shooting it turned a few corners, it started giving them trouble, they made it as far back as [Lobley’s car], everybody piled in [Lobley’s car] went back across the bridge, dropped him back off at the hotel.

For present purposes Lobley argues, and we assume, his statements amounted to a confession and thus required corroboration. Our review of the

record shows a multitude of “other proof” evidence supporting the essential facts admitted by Lobley in his statements to Washington. First, the victim was shot at a social gathering of the Howards in east Davenport on August 19, 2006, and the State’s Exhibit 18 was a picture of the tattoo on Lobley’s arm: “R.I.P. . . . 3-18-86 4-19-06.”

Second, a neighbor of the victim’s grandmother was emptying his trash and saw a van moving at a slow rate of speed and then saw the doors open up and saw and heard gunfire.

Third, Mark Helton testified he loaned his girlfriend’s van to Ron Millbrook in exchange for crack cocaine. Helton believed Millbrook was borrowing the van to move a washer and dryer. The police testified to finding the Helton van abandoned in Davenport with a trail of transmission fluid leading from the shooting scene to the van. Additionally, the police recovered bullet casings, Millbrook’s cell phone, and Millbrook’s fingerprints from the abandoned van. Lobley told the police he was with the crowd gathered for the memorial walk until he left and spent time with his brother and Ron Millbrook at Millbrook’s residence.

Fourth, the police found the thumbprint of Lobley’s brother on the van’s driver’s-side window crank. Finally, Lobley told the police he had lived in east Davenport and further stated he was staying at the American Motor Inn on the night of the shooting. The State’s Exhibit 116 was Lobley’s registration card for the American Motor Inn.

With these examples, as well as other evidence in the record, Lobley’s confession was supported by credible “other proof” a jury would be substantially justified in believing. The court was right in finding the evidence as a whole was

sufficient for jury consideration and in letting the jury determine the sufficiency of the corroborative evidence. The evidence was sufficiently reliable to support the jury's finding of guilt.

## **II. Consecutive Sentences.**

Lobley argues the court did not give sufficient reasons for its decision to impose consecutive sentences and requests a remand for resentencing. We review the trial court's discretionary action in sentencing for an abuse of discretion. *State v. Delaney*, 526 N.W.2d 170, 178 (Iowa Ct. App. 1994). Iowa Rule of Criminal Procedure 2.23(3)(d) requires a trial court to state on the record its reasons for selecting a particular sentence. The court generally has discretion in deciding to impose concurrent or consecutive sentences for convictions on separate counts. *Delaney*, 526 N.W.2d at 178. "[T]he duty of a sentencing court to provide an explanation for a sentence includes the reasons for imposing consecutive sentences." *Id.* This explanation must provide enough detail to permit review of the court's discretionary action. *State v. Johnson*, 445 N.W.2d 337, 343 (Iowa 1989). The reasons need not be specifically tied to the imposition of consecutive sentences, but may be found from the reasons expressed for the overall sentencing plan. *Id.*

At the sentencing hearing the State requested consecutive sentences and noted consecutive sentences were recommended in the pretrial sentencing report. Lobley's attorney requested the sentences run concurrently. The court stated:

As you know, Mr. Lobley, the sentence for second-degree murder is a mandatory sentence. There is no discretion on the part of the court. The sentence, I believe, is justified, certainly in light of the careless, callous manner in which the crime was committed. And

the court intends to impose those sentences for the conviction under Count I and Count II consecutive, not concurrent.

The January 18, 2007 sentencing order provides no additional reasoning or clarification.

We do not believe the district court provided sufficient reasoning for the consecutive sentences. The reasons expressed by the court during the hearing relate to the propriety of the mandatory sentence in light of Loble's actions. Additional explanation concerning the decision to impose consecutive sentences is needed to enable judicial review. Therefore, we remand for resentencing. *Compare State v. Jacobs*, 607 N.W.2d 679, 690 (Iowa 2000) (remanding where court did not provide reasons for consecutive sentence decision), *and Delaney*, 526 N.W.2d at 178 (remanding where court did not provide adequate reasons for consecutive sentence), *with State v. Leckington*, 713 N.W.2d 208, 216-17 (Iowa 2006) (upholding sentencing where court stated serious conduct required the serious sentence of consecutive sentences and stated consecutive periods needed to make sure other young people remained safe), *and Johnson*, 445 N.W.2d at 343 (upholding consecutive sentencing where court "singled out the fact that separate victims were affected by defendant's separate crimes" and sentences were part of an overall sentencing plan).

**CONVICTIONS AFFIRMED. SENTENCES VACATED AND CASE  
REMANDED FOR RESENTINCING.**