COURT OF APPEALS
DECISION
DATED AND FILED

August 24, 2004

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 04-0817-FT **Cir. Ct. No. 03FO96**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CURTIS P. JOHNSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Burnett County: MICHAEL J. GABLEMAN, Judge. *Affirmed.*

¶1 PETERSON, J.[1] Curtis Johnson appeals his judgment of conviction for using his wife's bear tag to register a bear that he shot, contrary to WIS. STAT. § 29.024(2)(e). Johnson argues that the circuit court erred when it denied his motion to dismiss for lack of corroboration of his out-of-court statement. Johnson

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). This is an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

claims that the corroboration rule applies to forfeitures and that there was no corroboration here. Because we conclude that Johnson's statement was sufficiently corroborated, we need not decide whether the corroboration rule applies to forfeitures. Johnson also argues that the court erroneously exercised its discretion when it sentenced him to a one-year revocation of his hunting and fishing license. We disagree and affirm the judgment.

BACKGROUND

¶2 In September of 1999, Curtis Johnson and his wife, Lynne, were hunting bear together. Lynne had a class A license, which allowed her to kill a bear. Johnson had a class B license, which allowed him to accompany and assist another hunter, but not to kill a bear. A bear was shot, killed and tagged with Lynne's permit.

¶3 On February 19, 2003, two Department of Natural Resources (DNR) wardens interviewed Johnson and Lynne as part of an ongoing investigation. One of the wardens memorialized the information obtained in the interview in a written statement that was signed by both Johnson and Lynne. The written statement contained admissions that: (1) both Johnson and Lynne shot at the bear, (2) Lynne's shot missed the bear, (3) Johnson's shot killed the bear, and (4) Lynne tagged the bear with her tag.

¶4 On April 1, 2003, Johnson was issued citations for hunting a bear without a class A license in violation of WIS. STAT. § 29.184(3)(a) and for using another's bear tag in violation of WIS. STAT. § 29.024(2)(e).

¶5 At the trial, the February 19, 2003 written statement was admitted into evidence. The State's other evidence included the bear tag and the testimony

of the two wardens who interviewed Johnson and Lynne. Johnson and Lynne also testified. Contrary to the written statement, their trial testimony was that Lynne had fatally shot the bear but that, because the bear did not immediately die and was presenting a danger to Lynne and the hunting dogs, Johnson shot the bear merely to "finish the bear off."

¶6 After the State presented its case, Johnson moved for dismissal. Johnson contended that the corroboration rule applied, preventing conviction solely on the basis of his uncorroborated out-of-court statement. Johnson argued that the written statement was his statement alone and that the State had failed to corroborate it. The State contended that the written statement was a joint statement by both Johnson and Lynne. Accordingly, it argued, Lynne's participation in the written statement corroborated Johnson's statement.

¶7 Johnson's motion to dismiss was taken under advisement. The jury acquitted Johnson of hunting without a license but convicted on the charge of using another's tag. The court later denied Johnson's motion to dismiss in a written order after post-trial briefing. Johnson was sentenced to a forfeiture of $40 and revocation of his DNR privileges for one year.

DISCUSSION

Corroboration Rule

¶8 Johnson argues that the circuit court erred by denying his motion to dismiss. Johnson contends that he cannot be convicted solely on the basis of his out-of-court statement to the wardens because the State failed to corroborate it. Johnson's argument contains two parts: (1) the corroboration rule applies to forfeitures and (2) his statement was not corroborated. Because we conclude

Johnson's statement was sufficiently corroborated, we need not decide whether the corroboration rule applies to forfeitures. *See* ***Gross v. Hoffman***, 227 Wis. 296, 300, 277 N.W. 663 (1938) (only dispositive issues need be addressed).

¶9 Developed at common law, Wisconsin's corroboration rule, also known as the *corpus delicti* rule, requires that "conviction of a crime may not be grounded on the admission or confessions of the accused alone." ***State v. Verhasselt***, 83 Wis. 2d 647, 661, 266 N.W.2d 342 (1978). Instead, there must be corroboration of a "significant fact." ***Holt v. State***, 17 Wis. 2d 468, 480, 117 N.W.2d 626 (1962). Corroboration is necessary to "insure the reliability of the confession." ***State v. Hauk***, 2002 WI App 226, ¶24, 257 Wis. 2d 579, 652 N.W.2d 393. Whether Johnson's confession was sufficiently corroborated involves the determination of whether facts fulfill a particular legal standard. That is a question of law that we review independently. ***Nottelson v. DILHR***, 94 Wis. 2d 106, 116, 287 N.W.2d 763 (1980).

¶10 First, we examine whether the written statement was only Johnson's or was a joint statement by Johnson and Lynne. Since Johnson does not challenge the admissibility of the statement, we need only consider whether there is sufficient evidence from which a reasonable fact-finder could conclude this was a joint statement. *See* ***State v. Poellinger***, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990). If the written statement was Johnson's only, under the corroboration rule, the statement must be independently corroborated. *See* ***Verhasselt***, 83 Wis. 2d at 661. If it was a joint statement, however, Johnson was not convicted solely on his out-of-court statement in violation of the corroboration rule because, by definition, the statement was not solely Johnson's. We conclude that Lynne's statement corroborates Johnson's statement, and therefore no independent corroborating evidence is necessary.

¶11 Johnson contends that trial testimony established that the statement was only his. However, after reviewing the record, we determine there was sufficient evidence from which a fact finder could conclude that the statement was also Lynne's. *See* ***Poellinger***, 153 Wis. 2d at 507. Both wardens testified that Lynne actively participated in the interview that resulted in the written statement. Lynne also testified that she contributed information to the statement. Additionally, both Lynne and Johnson signed the statement.

¶12 In any event, even if the statement was Johnson's alone, the bear tag sufficiently corroborates the statement. Johnson argues that Lynne's bear tag does not corroborate any "significant fact." *See* ***Holt***, 17 Wis. 2d at 480. Though Johnson correctly asserts that the bear tag does not establish any of the elements of the charge, corroboration of all the elements is unnecessary. As the ***Holt*** court explained:

> All the elements of the crime do not have to be proved independently of an accused's confession …. The corroboration … can be far less than is necessary to establish the crime independently of the confession. If there is corroboration of any significant fact, that is sufficient under the Wisconsin test.

Id. The bear tag corroborates that a bear was killed with a gun, the date and location of the kill, and that the tag belonged to Lynne. While this corroboration, absent Johnson's confession, does not independently establish that Johnson used Lynne's tag on a bear that he shot, the tag does corroborate Johnson's confession. *See* ***Hauk***, 257 Wis. 2d 579, ¶24 (purpose of corroboration rule is to produce confidence in the truth of the confession).

Sentencing

¶13 Johnson contends the circuit court erroneously exercised its sentencing discretion when it revoked Johnson's DNR privileges for a period of one year. Johnson argues that the sentence is excessive in light of the "minor, technical offense" for which he was convicted.

¶14 Because sentencing is a discretionary function of the court, our review is limited to whether the court erroneously exercised its discretion. ***State v. Echols***, 175 Wis. 2d 653, 681, 499 N.W.2d 631 (1993). Accordingly, if the record contains evidence demonstrating that the circuit court properly exercised its discretion, we will not disturb its judgment on appeal. ***State v. Cooper***, 117 Wis. 2d 30, 39, 344 N.W.2d 194 (Ct. App. 1983).

¶15 Under WIS. STAT. § 29.971(11m)(b), any person who violates a statute relating to "the validation of a bear carcass tag or registration of a bear" is subject to a forfeiture of up to $1,000. Additionally, the court may revoke or suspend a violator's hunting and fishing privileges for up to three years. WIS. STAT. § 29.971(12). Johnson was sentenced to a forfeiture of $40 and a one-year revocation of privileges.[2]

¶16 Johnson contends that the one-year revocation of DNR privileges is excessive in light of the minor nature of the offense of which he was convicted. However, the record reveals that the circuit court considered the severity of the

[2] At the sentencing hearing, the State's position was that the forfeiture amount for Johnson's violation under the bond schedule was $40. Johnson argued that the maximum forfeiture was either $100 under WIS. STAT. § 29.971(4) or $500 under § 29.971(9m). However, it appears that the standard above is the correct forfeiture maximum.

offense along with the need to protect the public's resources and tailored its sentence accordingly. *See* ***State v. Sarabia***, 118 Wis. 2d 655, 673, 348 N.W.2d 527 (1984). As part of its reasoning, the court considered the purposes of the DNR rules, including making and enforcing procedures for those who use Wisconsin's natural resources in order to preserve those resources for everyone's enjoyment. Additionally, the sentence imposed is well within the maximum penalties authorized by the legislature. Accordingly, we conclude that the circuit court did not erroneously exercise its sentencing discretion.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.