

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CV-14-1012

M.J.

APPELLANT

Opinion Delivered April 15, 2015

APPEAL FROM THE BENTON
COUNTY CIRCUIT COURT
[NO. J-14-70]

V.

HONORABLE THOMAS E. SMITH,
JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

PHILLIP T. WHITEAKER, Judge

M.J., a minor, was adjudicated delinquent by the Circuit Court of Benton County, which found that he had committed the offenses of breaking or entering and first-degree criminal mischief, both Class D felonies. He was placed on supervised probation and ordered to pay restitution. On appeal, he contends that the State failed to corroborate the testimony of an accomplice thereby rendering the State’s proof insufficient. We affirm.

The law in Arkansas concerning accomplice testimony is clear: a person cannot be convicted based on the testimony of an accomplice “unless corroborated by other evidence tending to connect the defendant . . . with the commission of the offense.” Ark. Code Ann. § 16-89-111(e)(1)(A) (Supp. 2013). Corroboration is not sufficient if it “merely shows that the offense was committed and the circumstances of the offense.” Ark. Code Ann. § 16-89-111(e)(1)(B) (Supp. 2013). Moreover, corroboration must be evidence of a substantive nature, since it must be directed toward proving the connection of the accused with the

Cite as 2015 Ark. App. 242

crime, and not directed toward corroborating the accomplice's testimony. *Camp v. State*, 2011 Ark. 155, 381 S.W.3d 11. Corroborating evidence need not, however, be so substantial in and of itself to sustain a conviction. *Id.* Rather, it need only, independently of the testimony of the accomplice, tend in some degree to connect the defendant with the commission of the crime. *MacKool v. State*, 365 Ark. 416, 231 S.W.3d 676 (2006). Using this standard, we will now consider the evidence presented.

This case involves several acts of vandalism perpetrated over several hours in December 2013. In a delinquency petition, the State charged M.J. with three counts of misdemeanor criminal mischief in the first degree, one count of felony breaking or entering, and one count of felony criminal mischief in the first degree for his alleged role in the vandalism. Separately, the State also charged another juvenile, L.J., with the same acts. M.J. subsequently pled guilty to the misdemeanor charges for damages to a shop building and two vehicles. The felony charge, which related to the entry into and the intentional flooding of a yoga studio, were set for a hearing.

At the adjudication hearing, the State presented evidence from three witnesses: the property owner, the investigating officer, and the alleged accomplice, L.J. The property owner, David Lenkovitzki, testified that his yoga studio had been vandalized when someone broke the glass door and clogged and flooded the sink and bathtub. He reported that approximately \$17,000 in damages had been sustained as a result. The investigating officer, Deputy Blake Simmons, testified concerning his investigation of Lenkovitzki's report of vandalism. During his investigation, M.J. and L.J. were identified as potential suspects in the

Lenkovitzki matter. Both M.J. and L.J. were involved in a separate investigation of other incidents of vandalism that evening. Simmons's investigation confirmed that both M.J. and L.J. were together on the night in question. M.J. was spending the night at L.J.'s house. L.J.'s house was in close proximity to Lenkovitzki's yoga studio. L.J. admitted his involvement in the criminal activity at the yoga studio. M.J. admitted being with L.J. on the night of the incident, and admitted that he observed L.J. throw a rock through the yoga studio door. However, M.J. denied entering the yoga studio or causing any damage. He claimed to have left after L.J. broke the glass door. Simmons admitted that his investigation contained no direct evidence linking M.J. to the yoga studio other than the statement of his accomplice, L.J.

L.J. testified that M.J. was spending the night with him and that they collectively decided to go "tear up things." He admitted damaging the car, the shed, and the yoga studio. He asserted that M.J. was an active participant in all of the incidents, including the yoga studio. He stated that M.J. entered the studio with him and that he (L.J.) flooded the bathtub and M.J. flooded the sink. This testimony from L.J. was the only evidence that directly placed M.J. in the studio and causing the damage.

At the close of the State's evidence, counsel for M.J. moved for a directed verdict, arguing that, other than L.J.'s testimony, there was insufficient evidence presented to link M.J. to the crimes. The court, while expressing concern about corroboration, nevertheless denied the motion, citing the fact that M.J. and L.J. had pled guilty to a string of other incidents that evening.

M.J. then testified in his defense. He admitted damaging other property with L.J. on the night of the incident, but denied involvement in the damage to the yoga studio. He reiterated the statement he gave to the police that he left when L.J. broke the door to the studio. At the conclusion of the hearing, the trial court adjudicated M.J. delinquent and entered an adjudication order. M.J. appeals that order, asserting that there was insufficient evidence to corroborate the testimony of his accomplice, L.J.

On appeal, we treat a motion for directed verdict as a challenge to the sufficiency of the evidence. *Smoak v. State*, 2011 Ark. 529, 385 S.W.3d 257. In reviewing a challenge to the sufficiency of the evidence, this court determines whether the verdict is supported by substantial evidence, direct or circumstantial. *Anderson v. State*, 2011 Ark. 461, 385 S.W.3d 214. Substantial evidence is evidence forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture. *Camp, supra*. On appeal, we review the evidence in the light most favorable to the State and consider only the evidence that supports the verdict. *Williams v. State*, 2011 Ark. 432, 385 S.W.3d 157. Specifically, M.J. challenges the sufficiency of the evidence to corroborate the testimony of his accomplice. The test for corroborating evidence is whether, if the testimony of the accomplice were totally eliminated from the case, the remaining evidence independently establishes the crime and tends to connect the accused with its commission. *Meadows v. State*, 2012 Ark. 57, 386 S.W.3d 470.

We hold that if the testimony of L.J. were totally eliminated from the case, the remaining evidence is sufficient to establish that M.J. committed the delinquent acts. Disregarding L.J.'s testimony, the evidence presented was as follows: On December 29, 2013,

Cite as 2015 Ark. App. 242

M.J. and another juvenile, L.J., spent the night together. On that night, the yoga studio owned by David Lenkovitzki was vandalized causing approximately \$17,000 in damage to the property. Prior to the yoga studio vandalism, M.J. and L.J. were involved in a string of incidents of vandalism. M.J. admits that he was involved with L.J. in the string of incidents prior to the yoga studio. He also admits that he was present at the yoga studio and that he observed L.J. throw a rock through the door. His admissions of proximity to the crime, opportunity to engage in the crime, and involvement in similar criminal activity with the accomplice immediately prior to the crime, are all suggestive of joint participation and tend to connect him to the crime. The presence of an accused in the proximity of a crime, opportunity, and association with a person involved in a crime in a manner suggestive of joint participation, are relevant factors in determining the connection of an accomplice with the crime. *Parker v. State*, 355 Ark. 639, 144 S.W.3d 270 (2004) (quoting *Andrews v. State*, 344 Ark. 606, 613–14, 42 S.W.3d 484, 489 (2001)). Admittedly, M.J. denied any involvement in the vandalism to the yoga studio. However, this is a matter of credibility, which is for the finder of fact to determine. See *M.W. v. State*, 2013 Ark. App. 123. Thus, there was sufficient corroborating evidence to support the adjudication.

Affirmed.

VIRDEN and GRUBER, JJ., agree.

Amos J. Richards, for appellant.

Leslie Rutledge, Att’y Gen., by: *Evelyn D. Gomez*, Ass’t Att’y Gen., for appellee.