

**IN THE COURT OF APPEALS OF IOWA**

No. 3-252 / 12-0820

Filed May 15, 2013

**IN THE INTEREST OF D.F.,  
Minor Child,**

**D.F., Minor Child,  
Appellant.**

---

Appeal from the Iowa District Court for Scott County, Christine Dalton,  
District Associate Judge.

A minor child appeals the juvenile court's ruling adjudicating him to be  
delinquent. **AFFIRMED.**

Stephen P. Wing of Dwyer & Wing, P.C., Davenport, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney  
General, Michael Walton, County Attorney, and Khara Coleman-Washington,  
Assistant County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

**MULLINS, J.**

A minor, D.F., appeals from the order of the juvenile court finding him to be delinquent based on his commission of the following offenses: (1) burglary in the third degree, in violation of Iowa Code section 713.6A(1) (2011); (2) possession of burglary tools, in violation of section 713.7; and (3) criminal mischief in the second degree, in violation of section 716.4. On appeal he alleges the State failed to provide corroboration for the accomplices' testimony linking him to the offenses. He also claims there is not sufficient evidence of his commission of the offenses. For the reasons stated, we affirm his adjudication.

**I. BACKGROUND FACTS AND PROCEEDINGS.**

Fourteen-year-old D.F. and four other minors were walking around Davenport, Iowa, after a party on the night of September 11, 2011. The group entered the park and broke into the concession stand attempting to steal drinks. A witness called police, and when the police arrived, the group took off running. The officers were able to catch three of the juveniles.

A delinquency petition was filed against D.F. and the others. D.F.'s case proceeded to a hearing where three of the other four minors testified. A.R. and M.M. testified for the State after accepting plea deals. D.M.<sup>1</sup> testified on behalf of D.F. Also testifying were the officers who stopped the burglary and an officer who photographed the scene.

The juvenile court adjudicated D.F. delinquent based on his commission of all three counts. It placed D.F. on probation with Juvenile Court Services for one

---

<sup>1</sup> It is unclear on the current record whether D.M. was charged in this case, and if so, whether he had pleaded guilty or was currently awaiting a hearing.

year, ordered him to complete community service and pay restitution, required him to attend school daily and complete all assignments, and ordered him to submit to DNA testing and complete any other referrals made by the JCO. D.F. appeals the adjudication asserting the accomplices' testimony was not sufficiently corroborated and sufficient evidence does not support his adjudication.

## **II. SCOPE AND STANDARD OF REVIEW.**

Our review of delinquency proceedings is de novo. *In re A.K.*, 825 N.W.2d 46, 49 (Iowa 2013). We give weight to the factual findings of the juvenile court, though we are not bound by them. *Id.* “We presume the child is innocent of the charges, and the State has the burden of proving beyond a reasonable doubt that the juvenile committed the delinquent acts.” *Id.* The State in this appeal requests we change the standard of review for sufficiency claims based on the standard of review in criminal proceedings. This request has been addressed and rejected by our supreme court in *A.K.* *Id.* at 49–52.

## **III. ACCOMPLICE CORROBORATION.**

The main testimony against D.F. came from A.R. and M.M. D.F. claims he cannot be convicted based on their testimony alone because they are accomplices, and their testimony has to be supported by corroborative evidence. He claims there is no corroborative evidence that connects him to the crimes, and therefore, we must reverse the adjudication order and order the entry of a judgment of acquittal.

Iowa Rule of Juvenile Procedure 8.13 provides:

An adjudication of delinquency shall not be entered against a juvenile based upon the testimony of an accomplice or a solicited person unless corroborated by other evidence which tends to connect the juvenile 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. Corroboration of the testimony of victims shall not be required.

Like its criminal procedure counterpart, this rule requires an accomplice's testimony to be corroborated before the juvenile can be found delinquent. Iowa Ct. R. 8.13. The first question that must be asked is whether the person testifying is an accomplice. *State v. Douglas*, 675 N.W.2d 567, 571 (Iowa 2004). A person is considered an accomplice, "if he or she could be charged and convicted of the same offense for which the defendant is on trial." *State v. Barnes*, 791 N.W.2d 817, 823 (Iowa 2010). Mere presence at the time and place of the crime or knowledge of the crime is not sufficient to prove someone is an accomplice. *Id.* "[I]t must be established by a preponderance of the evidence the witness was in some way involved in the commission of the crime." *Id.* When the facts are undisputed, the question of whether a witness is an accomplice is for the court to decide as a matter of law; however, where the facts are disputed, the question is for the fact-finder. *Id.*

Here it is accepted that both A.R. and M.M. were accomplices of D.F. in this case. A.R. pleaded guilty to criminal mischief—one of the charges against D.F.—as a result of this incident. He testified the group went to the park after a party. When D.F. found a shovel, the group attempted to break into the concession stand. He recounted how everyone was attempting to gain access to the window and the side door of the stand. A.R. claimed he stood back while the

others took turns trying to gain access to the side door, but he tried to open the window with the others. Once the window opened, A.R. admitted to going inside, but he testified he told everyone to get out because something bad was going to happen. He said the group was looking for Gatorade, though he personally did not grab anything.

M.M. pleaded guilty to “breaking and entering” as a result of this incident—D.F. was charged with burglary. M.M. stated that the entire group attempted to break into the stand using the shovel except for D.M. M.M. stated that everyone went inside the stand once it was opened except again for D.M., who stayed back. Once inside the stand, M.M. stated “we” threw a bunch of Powerade bottles in a trash bag and threw it outside the stand. M.M. stated he was holding the trash bag and T.B.<sup>2</sup> and D.F. helped him fill the bag. He also stated someone tried to use a skateboard to open the back garage door of the concession stand, but he was not sure who owned the skateboard or who used it on the garage door. He stated the skateboard broke as a result of the attempt to open the garage door.

It is less clear whether D.M. is an accomplice. D.M. testified on behalf of D.F. at the hearing. He claimed to be asleep on the picnic table nearby when the others broke into the concession stand. He awoke when he heard a loud bang and saw all four juveniles inside the stand. He jumped in the stand as well to tell the group to put the stuff back. He did see a shovel when he woke up along with other tools. Both M.M. and D.F. claim that D.M. did not participate in the attempt

---

<sup>2</sup> T.B. did not testify at the hearing, and it is unclear whether any charges were brought against him.

to get into the stand or the attempt to steal drinks from the stand. However, A.R. stated that “everyone” was trying to get in and “everyone” was inside the stand. D.M. acknowledged being inside the stand, but this alone would not be enough to charge and convict him of the same crimes with which D.F. was charged. See *Barnes*, 791 N.W.2d at 823. These facts demonstrate D.M.’s mere presence at the time and place of the crime or knowledge of the crime, which is not sufficient to prove he was an accomplice. See *id.* When the facts are disputed, the question of whether a witness is an accomplice is for the fact-finder. *Id.* The juvenile court did not find D.M. credible, stating he took long pauses before answering, he needed questions repeated for him, and his testimony was inconsistent with itself and with the testimony of D.F., M.M., and A.R. As demonstrated below, whether or not D.M. was an accomplice makes no difference in our conclusion.

The corroboration need not be strong, but it must be fairly said that it connects the accused with the commission of the crime and supports the credibility of the accomplice. *Id.* at 817. While an accomplice cannot corroborate the testimony of another accomplice, an accused’s admissions or confessions can provided the needed corroboration. *Douglas*, 675 N.W.2d at 572.

D.F. testified at the hearing that he was present at the concession stand that night. However, he maintained that he was at the picnic table with D.M.—a claim D.M. could not confirm. When he heard a loud bang, he ran around the stand and entered it with T.B. and D.M. D.F. asserted he saw A.R. and M.M. with a garbage bag full of drinks. D.F. testified he then jumped back out of the

building followed by the rest of the group. He did not see or hear anyone trying to break into the stand until the loud bang occurred. He saw the tool found at the scene in one of the group member's hand, though he asserts he did not touch it. He also was aware of the presence of a skateboard at the scene though he did not know who it belonged to.

Officer Lepley was first on the scene at the concession stand. When he arrived, he saw four or five subjects. A couple of individuals were in front of the building and another group was off to his right. He could see something in front of the building that turned out to be the garbage bag full of drinks. When he turned on his lights, the group started running. He ran after the group and was able to apprehend D.F.; he never lost sight of him. Another officer on scene was able to apprehend A.R., and M.M. was also taken into custody. Lepley took photographs of the damage to the building including the side doors, the concession stand window, and the garage door. He also photographed the garbage bag and the skateboard found at the scene with pallets of sports drinks stacked on top of it; the skateboard was intact. He also found a twelve inch garden tool, which he described as a three prong raking hoe. The tool marks on the side door were consistent with the end of the garden tool he found. No finger prints were collected and no photographs of the garden tool were admitted at trial.

D.F.'s own testimony at trial corroborated the testimony of A.R., M.M., and D.M. that he entered the concession stand. Officer Lepley's testimony and his photographs corroborated the testimony of M.M. and D.F. that a garbage bag

was used to take drinks from the stand. In addition, his testimony and photographs corroborated M.M.'s testimony regarding the presence and use of a skateboard at the scene, though the skateboard was not broken as M.M. described and no one admitted to owning or knowing who owned the skateboard. Lepley's description of the garden tool found at the scene corroborated M.M.'s and A.R.'s testimony that the group looked around the yards of the residences surrounding the park to find something to get the doors open. Both M.M. and A.R. described that a shovel was found that ultimately opened the window, but no shovel was found at the scene. D.M. described that he saw multiple tools when he awoke.

We find this evidence sufficient to corroborate the testimony of the accomplices. The corroboration does not have to support every element of the offense, but must be fairly said that it connects the accused with the commission of the crime and supports the credibility of the accomplice. *Barnes*, 791 N.W.2d at 817. This evidence does that.

D.F. asserts his case is like *State v. Vesey*, 241 N.W.2d 888 (Iowa 1976), where the defendant was convicted of breaking and entering. In *Vesey*, the accomplice testified the defendant had been drinking with him during the day, and after the bars closed, the accomplice told the defendant he was going to break into someplace. *Vesey*, 241 N.W.2d at 889. The accomplice testified the defendant told him "no" and returned to the car where the defendant remained while the accomplice broke into two gas stations. *Id.* at 889–90. This testimony was corroborated by the defendant's testimony that he fell asleep in the car while

the accomplice committed the offenses and corroborated by another witness. *Id.* at 890–91. However, sufficient corroboration was not found because this evidence was not inculpatory of the defendant. *Id.* at 891. The accomplice testimony was entirely consistent with the defendant’s innocence. *Id.* “Corroboration of testimony which is not inculpatory is not corroboration of a material fact tending to connect the accused with the crime.” *Id.*

In this case, the accomplice testimony was not consistent with D.F.’s claim of innocence but directly implicated D.F.’s participation in the crime. The corroborating evidence placed D.F. in the company of the accomplices before and after the offense, put D.F. in proximity to the crime scene by his own admission of being in the concession stand, and suggested his participation in the offense. See *State v. Horstman*, 222 N.W.2d 427, 432 (Iowa 1974).

This case is also unlike *In re R.M.O.*, 433 N.W.2d 44, 45-46 (Iowa Ct. App. 1988), where the juvenile was adjudicated as delinquent based on the testimony of an accomplice. The corroborating evidence was only sufficient to prove the juvenile was outside the home burglarized, he had previously been in the home of the victims, objects had been stolen from the home, and the juvenile did not report the burglary. *R.M.O.*, 433 N.W.2d at 46. In this case, the corroborating evidence placed the juvenile in the concession stand that was burglarized, not merely outside of it. We find sufficient corroboration for the accomplices’ testimony in this case.

**IV. SUFFICIENCY OF THE EVIDENCE.**

D.F. also alleges there was insufficient evidence to prove he committed the offenses at issue. Having found the accomplices' testimony sufficiently corroborated, we are free to use that testimony to provide a sufficient basis to support the conviction. *State v. Bugely*, 562 N.W.2d 173, 176 (Iowa 1997) ("Once the legal adequacy of the corroborating evidence is established, the sufficiency of the evidence is for the jury."). We view all the evidence in the light most favorable to the State, including any reasonable inference. *Id.* The juvenile court stated that it found the State's witnesses, A.R. and M.M., credible "as their testimony had only minor insignificant inconsistencies." Their testimony was inculpatory and did not minimize their participation in the offenses. In addition, the court found their testimony was corroborated by Officer Lepley's testimony and the damage observed on the building.

Upon our de novo review of the record, we find sufficient evidence from which the juvenile court could conclude D.F. committed the crimes in this case, and therefore, we affirm the court's orders of adjudication and disposition.

**AFFIRMED.**