IN THE SUPREME COURT OF THE
STATE OF OREGON

STATE OF OREGON,
Petitioner on Review,

v.

JEMAELL DIAMOND RILEY,
aka Jemaell Diamondomi Riley,
Respondent on Review.

(CC 140431549) (CA A160143) (SC S065640)

On review from the Court of Appeals.*

Argued and submitted November 5, 2018.

Jacob Brown, Assistant Attorney General, Salem, argued the cause and filed the briefs for petitioner on review. Also on the briefs were Ellen F. Rosenblum, Attorney General, and Benjamin Gutman, Solicitor General.

Andrew D. Robinson, Deputy Public Defender, Office of Public Defense Services, Salem, argued the cause and filed the brief for respondent on review. Also on the brief was Ernest G. Lannet, Chief Defender.

Before Walters, Chief Justice, and Balmer, Nakamoto, Flynn, Nelson, and Garrett, Justices, and Baldwin, Senior Justice pro tempore.**

BALDWIN, S. J.

The decision of the Court of Appeals is affirmed. The judgment of conviction of the circuit court is affirmed in part and reversed in part, and the case is remanded to the circuit court for further proceedings.

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* On appeal from Multnomah County Circuit Court, Jerry B. Hodson, Judge. 288 Or App 807, 407 P3d 946 (2017).

** Kistler, J., retired December 31, 2018, and did not participate in the decision of this case. Duncan, J., did not participate in the consideration or decision of this case.

BALDWIN, S. J.

Defendant was convicted of committing multiple crimes with two accomplices. His convictions for six of those counts depended almost entirely on the testimony of his accomplices, who had entered into a cooperation agreement with the state. Defendant contended that he was entitled to a judgment of acquittal on those counts, because the accomplice testimony had not been corroborated by "other evidence" as required by ORS 136.440(1). The Court of Appeals agreed with defendant and reversed his convictions on those counts. *State v. Riley*, 288 Or App 807, 407 P3d 946 (2017). On review, we affirm the Court of Appeals. We reverse the relevant portions of the circuit court's judgment of conviction and remand to that court for further proceedings.

I. BACKGROUND

The legal issue in this case turns on the proper interpretation of ORS 136.440(1). That statute provides:

> "A conviction cannot be had upon the testimony of an accomplice unless it is corroborated by other evidence that tends to connect the defendant with the commission of the offense. The corroboration is not sufficient if it merely shows the commission of the offense or the circumstances of the commission."

The issue for determination is whether the evidence was legally sufficient, as required by that statute, to support defendant's convictions for several of the charged crimes. Specifically, we must decide whether the accomplice testimony against defendant had been sufficiently corroborated by other evidence tending to connect defendant with those offenses.

On denial of a motion for judgment of acquittal, we construe all facts in favor of the state. *See, e.g.*, *State v. Garcia*, 361 Or 672, 674, 399 P3d 444 (2017). The following facts are supported by testimony of defendant's accomplices. However, under ORS 136.440(1), those facts are not legally sufficient to convict defendant unless we conclude that they were sufficiently corroborated by "other evidence."

Defendant was arrested on April 16, 2014. Defendant, Paul Ropp, and Steven Young had broken into a uniform

store and stolen ballistic vests and police uniforms. They left in an SUV and were pursued by police. After a chase, defendant and his accomplices crashed the SUV. Defendant and Young were pulled from the vehicle and arrested. Ropp fled on foot with an assault rifle; he shot a police officer and killed a police dog before being arrested. For purposes of our review, it is undisputed that, two days earlier, the group had been involved in another crime. Defendant, Ropp, and Young had scaled a fence and broken into two Comcast vans, stealing various items.

After their arrests, Ropp and Young negotiated cooperation agreements with the state. At defendant's trial, they offered testimony that the group—including defendant—had engaged in a much larger set of crimes. Two of those criminal plans are at issue here.

The first criminal plan involved an attempted kidnapping and robbery. According to the accomplices, the group had planned to rob a jewelry store chain. They intended to kidnap the manager of the chain and force him to open safes at various store locations. The group followed the manager on several occasions to learn his habits. Then they broke into an animal shelter hoping to find an injectable sedative to aid in the kidnapping. They did not locate a sedative, but they stole syringes and uniforms. They obtained a van and removed the middle seat, tying zip ties and rope to the seat anchors so they could secure the manager. They planned to wait in a parking deck near the manager's car and grab him after setting off smoke bombs. In the end, the plan fell apart at the last minute—and only after a smoke bomb had been detonated—because a family had entered the parking deck elevator with the manager.

The second criminal plan was an attempted robbery of a T-Mobile store. The armed group planned to enter the store at closing time and burn the safe open with thermite. The group waited outside the store in an SUV—the one that would be wrecked early the next morning. When a bicyclist arrived at a nearby business, however, the group abandoned the plan and drove away. The accomplices testified that they then went to the uniform store to carry out the burglary that ultimately led to their arrest.

Defendant was charged with 18 counts of various crimes. One count was later dismissed; defendant was convicted on the remaining 17 counts. Of those 17 counts, only six are at issue here. Four of those counts related to the attempted jewelry store robbery and kidnapping, and two counts related to the T-Mobile episode. At the end of the state's case, defendant moved for judgment of acquittal on those six counts. He argued that the only evidence connecting him to those crimes was the testimony of Ropp and Young and that there was insufficient evidence to corroborate their testimony as required by ORS 136.440(1). The trial court denied defendant's motion for judgment of acquittal and convicted him on all of the 17 remaining counts.

The state argues that the ruling below was correct because the accomplice testimony had been sufficiently corroborated under ORS 136.440(1). It itemizes the following evidence as corroborating the testimony of the accomplices and argues that this evidence supports the trial court's ruling: (1) the SUV itself in which defendant was arrested; (2) firearms (defendant had a pistol on his person, and other weapons had been found in the SUV); (3) walkie-talkies (when Young was arrested in the SUV, he had a walkie talkie on his person); (4) thermite (the SUV contained thermite and magnesium strips that could be used to ignite the thermite); and (5) an animal shelter jacket and syringes.

On defendant's appeal to the Court of Appeals, however, that court agreed with defendant. *Riley*, 288 Or App at 807. Explaining that the statute had been materially unchanged since it was originally enacted, (citing General Laws of Oregon, Crim Code, ch XXII, § 217, p 478 (Deady 1845-1864)), the court stated that the statute "reflects the long-standing policy that the testimony of one implicated in the crime is inherently untrustworthy." 288 Or App at 812. Corroboration requires only "slight or circumstantial evidence" that connects the defendant with the crime. *Id.* at 812 (internal quotation marks and citation omitted). The corroborative evidence must connect the defendant with the charged crime, however, and it must do so in a way that does not depend on reference to the accomplice's testimony. *Id.* at 813-14.

The Court of Appeals then turned to the evidence that the state contended was corroborative. The court noted that firearms, syringes, and thermite were lawful items that, in the absence of some reference to the accomplice testimony, did not connect defendant with the charged crimes. *Id.* at 816. The animal shelter jacket was proceeds of a crime, but not one of the crimes with which defendant was charged, and the court concluded that it did not *independently* corroborate the accomplices' testimony about the jewelry store attempted kidnapping (that is, an animal shelter jacket had no self-evident connection to an attempted kidnapping of a jewelry store manager; it had significance only in light of the accomplices' testimony). *Id.* at 816-18. As for the T-Mobile attempted robbery, the court concluded that there was no evidence to corroborate that any crime had occurred at all. *Id.* at 819-21. The court reversed the convictions on those counts, remanding for resentencing. *See id.* at 809 n 1 (noting that resentencing was necessary for two separate reasons: to address reversed convictions, and to correct conceded error in trial court's failure to merge several counts).

On review, the state challenges any interpretation of ORS 136.440(1) that requires that corroborating evidence be independent of accomplice testimony.[1] The state argues that any reference to such a strict requirement in this court's case law was not necessary to the decisions reached in those cases and, in the alternative, if this court has adopted the independent evidence rule, that we should nonetheless consider the wisdom of that rule and determine whether it should give way to an approach that permits reliance on accomplice testimony "to some extent" to show corroboration under the circumstances of this case. The state concedes that the corroboration requirements of ORS 136.440(1) are not met in this case if that statute does include an independent evidence rule.

After examining our case law, we conclude that the independent evidence rule is well-established as legal precedent in Oregon law and that the state has not met its burden

[1] For ease of reference, we refer to that requirement as the "independent evidence rule."

to demonstrate that the rule should not have been adopted by this court.

II. ANALYSIS

To aid us in our analysis, we begin with this court's recent decision in *State v. Washington*, 355 Or 612, 330 P3d 596, *cert den*, ___ US___, 135 S Ct 685, 190 L Ed 2d 397 (2014). In *Washington*, we rejected the defendant's argument that ORS 136.440(1) requires the state to prove a degree of corroborating evidence that would be inconsistent with innocence. Before reaching that conclusion, we summarized the requirements of ORS 136.440(1) as follows:

> "This court has long held that
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> > "'[t]he corroboration need not be of itself adequate to support a conviction *** "Any corroborative evidence legitimately tending to connect a defendant with the commission of the crime may be sufficient to warrant a conviction, although standing by itself it would be only slight proof of defendant's guilt and entitled to but little consideration, and even though it is not wholly inconsistent with the innocence of the defendant.["]'
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> "*State v. Reynolds*, 160 Or 445, 459, 86 P2d 413 (1939). Consistently with those principles, the court more recently summarized the requirements of ORS 136.440 as follows:
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> > "'By its terms, ORS 136.440(1) requires only that the corroborating evidence tend to connect the defendant with the commission of the offense, here, aggravated murder. That statute does not require corroboration of a particular *theory* of the commission of the offense.'
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> > "'It is not necessary that the corroborating evidence be direct and positive; it may be circumstantial. Nor is it necessary that there be independent corroborating evidence with respect to every material fact necessary to be established to sustain a conviction for the commission of a crime. Where there is any evidence apart from that of the accomplice tending to connect the defendant with the commission of the crime, the question of whether the accomplice's testimony is corroborated is one for the trier of fact.'
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> "*State v. Walton*, 311 Or 223, 242-43, 809 P2d 81 (1991) (citations omitted; emphasis in original). To be sure, evidence of a defendant's association with an accomplice at a

> particular location, *by itself*, is insufficient to satisfy the corroboration requirement of ORS 136.440. *State v. Carroll*, 251 Or 197, 200, 444 P2d 1006 (1968). But such evidence still may be considered in conjunction with other evidence that, taken as a whole, tends to connect the defendant with the commission of the offense. *See id*."

Washington, 355 Or at 620-21 (alterations and emphasis in original). With those principles in mind, we now proceed to the state's arguments in this case.

We first address the contention that the independent evidence rule is not established as Oregon precedent. Accordingly, we turn to our most relevant case law stating that other evidence tending to connect a defendant to an offense must be independent of accomplice testimony.[2] The first Oregon case expressly articulating a requirement that other evidence connecting a defendant to an offense be independent of accomplice testimony is *State v. Scott*, 28 Or 331, 42 P 1 (1895). In *Scott*, the defendant was convicted of adultery when the only evidence additional to accomplice testimony demonstrated merely an opportunity for the defendant to have committed the adulterous act. The court reversed the defendant's conviction, concluding that the state did not "corroborate the material issue, or present facts from which the commission of the crime can reasonably be inferred, and hence, under the statute, was insufficient to support the conviction." *Id.* at 339.

In reaching its conclusion, the court quoted with approval the independent evidence rule as set out in an authoritative treatise on criminal evidence:

> "'What appears to be required,' says Roscoe in his work on Criminal Evidence, *** 'is that there shall be some fact

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[2] At common law, the testimony of an accomplice—even if not corroborated—could be sufficient to support a criminal conviction if the evidence satisfied the standard of proof of guilt beyond a reasonable doubt. *State v. Brake*, 99 Or 310, 313, 195 P 583 (1921). The corroboration of accomplice testimony "was widely understood (except by a few courts) as amounting to no rule of evidence, but merely to a *counsel of caution* given by the judge to the jury." *See* John Henry Wigmore, 7 *Evidence in Trials at Common Law* § 2056, 408 (James H. Chadbourn rev 1978) (emphasis in original; footnotes omitted). However, over time, "in nearly half of the jurisdictions of the United States a statute has expressly turned this cautionary practice into a rule of law." *Id.* at 414 (footnote citing statutes and case law omitted).

> deposed to, independently altogether of the evidence of the accomplice, which, taken by itself, leads to the inference, not only that a crime has been committed, but that the prisoner is implicated in it.'"

Scott, 28 Or at 337. The court stated that the testimony of the accomplice regarding the alleged adulterous act was insufficient to support a conviction because the testimony was "not corroborated by any circumstance except that she and the defendant were seen on the same train at Eugene." *Id.* at 339.

In *State v. Brake*, 99 Or 310, 195 P 583 (1921), the court discussed the statutory requirements for the corroboration of accomplice testimony in some detail. At that time, the pertinent statute (Oregon Laws, title XVIII, ch IX, § 1540 (1920)) was nearly identical to ORS 136.440(1).[3] The court observed that Oregon's accomplice statute,

> "like the statutes in many other states, is in effect a legislative declaration that it is dangerous to permit convictions upon the uncorroborated testimony of the accomplice, and for that reason the statute in substance provides that juries shall not convict any accused person upon the uncorroborated testimony of an accomplice, even though they unqualifiedly believe the testimony of the accomplice."

Id. at 313 (emphases omitted).

As pertinent here, the *Brake* court stated that the "precise language" of the accomplice statute is "other evidence" and that "the corroborative evidence must be independent of the testimony of the accomplice." *Id.* Under the statute, "a conviction cannot be sustained if in the end it

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[3] The version of the statute then in effect provided:

> "'A conviction cannot be had upon the testimony of an accomplice, unless he be corroborated by such other evidence as tends to connect the defendant with the commission of the crime, and the corroboration is not sufficient if it merely show the commission of the crime, or the circumstances of the commission.'"

See 99 Or at 312-13 (quoting section 1540). As suggested by the Court of Appeals, ORS 136.440(1) has remained nearly the same since the statute was enacted in 1853. *See* Or Laws 1854, ch 36, § 7, p 252. The only substantive change that the legislature has made since its adoption was to add a definition of "accomplice" when the statute was amended as part of the Oregon Criminal Procedures Code Revision. Or Laws 1973, ch 836, § 239.

is in truth rested exclusively upon accomplice testimony." *Id.* at 314. Other evidence is required by the statute, "so that it can in truth be said that his conviction is not based entirely upon the evidence of the accomplice." *Id.*

We observe that the statutory text of the accomplice statute considered in *Brake* treats "other evidence" as being in opposition to "the testimony of an accomplice." Because the statute was originally passed in 1853, the relevant dictionary at that time was Noah Webster's original dictionary published in 1828. The relevant definition of "other" in that dictionary is: "Not the same; different; not this or these." Noah Webster, 2 *An American Dictionary of the English Language* (unpaginated) (1828) That definition supports the *Brake* court's conclusion that, because "[t]he language of the statute is 'other evidence,'" therefore "the corroborative evidence must be independent of the testimony of the accomplice." 99 Or at 313.

In *Reynolds*, the defendant was convicted of damaging the property of a business owner because the owner was not compliant with union demands. The defendant was implicated in the crime by Newland, Carson, and Moore, who had "been engaged in similar crimes of violence incident to labor controversies" and who were referred to by the court as "law violators for hire." 160 Or at 448-49. The court reversed defendant's conviction because there was no independent evidence additional to the detailed testimony of the accomplices connecting defendant to the crime. Defendant's complicity was "not shown by the mere fact that he was secretary of the Central Labor Council and secretary of the Teamster's Union at Eugene." *Id.* at 470.

The *Reynolds* court extensively reviewed prior case law discussing the requirements of the accomplice statute and concluded: "In these cases, and in every other Oregon case where a conviction was sustained upon the evidence of an accomplice, the corroboration disclosed facts and circumstances which, independently of the accomplices' testimony, were incriminating in their nature." *Id.* at 461. The court also cited to additional authority emphasizing that the connection of the defendant to the crime cannot be made by other evidence when the probative value of that evidence

depends on certain testimony of an accomplice. "Testimony which tends to make the connection *only when supplemented by certain testimony of the accomplice* does not satisfy the law." *Id.* at 458 (internal quotation marks and citation omitted; emphasis in original).

Based on *Scott*, *Brake*, and *Reynolds*, we readily conclude that the independent evidence rule is binding precedent.[4] We also reject the state's subsidiary argument that this court abandoned the independent evidence rule in *State v. Caldwell*, 241 Or 355, 405 P2d 847 (1965).

In *Caldwell*, the defendant was convicted of unarmed robbery at a motel based on the testimony of accomplices who met with the defendant at a restaurant immediately prior to the accomplices committing the actual robbery. The state acknowledges that the *Caldwell* court stated that corroborative evidence "must be independent of any of the testimony of the accomplices" and that such evidence is insufficient if it "must be supplemented by testimony of the accomplices in order to connect the defendant with the crime." *Id.* at 360. The state maintains, however, that the *Caldwell* court, in fact, had relied on the accomplice testimony to determine the significance of the corroborating evidence.

We disagree. The independent corroborating evidence against the defendant included (1) that the defendant's wife, who was known to the victim, had arranged with the victim for one of the robbers to be admitted into his motel room; (2) that a man identifying himself as the defendant had called police to report that a robbery was in the process of being planned at the restaurant, but that he did not want to participate; (3) that the defendant had been at that restaurant at that time with his wife and the actual robbers; and (4) that the robbery had been committed later that night, after the party had left the restaurant. *See id.* at 357-60. The court resolved the case on the ground that that evidence,

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[4] The state acknowledges that a reference to a requirement that corroborating evidence be independent of accomplice testimony appears in numerous other decisions of this court following *Scott*, *Brake*, and *Reynolds*. *See, e.g.*, *State v. Clipston*, 237 Or 634, 636, 392 P2d 772 (1964); *State v. Oster*, 232 Or 389, 391, 376 P2d 83 (1962); *State v. Brazell*, 126 Or 579, 580-81, 269 P 884 (1928); *State v. Brown*, 113 Or 149, 155, 231 P 926 (1925); *State v. Long et al.*, 113 Or 309, 311-12, 231 P 963 (1925).

though circumstantial, was enough to corroborate the accomplice testimony against the defendant. *See id.* at 361.

We now turn to the state's alternative argument that *Scott*, *Brake*, and *Reynolds* were wrongly decided. The state essentially argues that the independent evidence rule is not a correct interpretation of ORS 136.440(1) and that the rule was inadequately considered by this court when adopted. The state urges this court to reinterpret the statute using the methodology of *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-12, 859 P2d 1143 (1993), and *State v. Gaines*, 346 Or 160, 171-72, 206 P3d 1042 (2009), and to conclude that the statute requires that corroborating evidence need only "strengthen[] [accomplice] testimony by contributing to linking the defendant with the offense."

We decline the state's invitation to undergo a *PGE*-style examination of ORS 136.440(1). As we have stated in prior cases, this court's decisions interpreting a statute, even prior to *PGE*, remain good law. "The absence of a *PGE*-style examination of legislative intent does not deprive a prior statutory interpretation of its ordinary effect as a precedent. Consequently, a decision of this court interpreting a statute can be neither discounted nor disregarded merely because it predates *PGE*." *Mastriano v. Board of Parole*, 342 Or 684, 692, 159 P3d 1151 (2007) (footnote omitted).

Given the importance of *stare decisis* to our judicial decision-making process, this court presumes that its prior decisions have been properly decided. We have explained that *stare decisis* applies to our prior decisions interpreting statutes. *Farmers Ins. Co. v. Mowry*, 350 Or 686, 697, 261 P3d 1 (2011); *see also Halperin v. Pitts*, 352 Or 482, 492, 287 P3d 1069 (2012) (citing *Mowry* and stating that "[t]he court may consider itself bound to follow a prior construction [of a statute] as a matter of *stare decisis*"). Thus, the state carries a substantial burden to persuade us that the independent evidence rule should be abandoned. *See City of Seattle v. Dept. of Rev.*, 357 Or 718, 730, 357 P3d 979 (2015) (due to principle of *stare decisis*, "taxpayers shoulder a substantial burden in attempting to persuade us that *Power Resources* [*Cooperative v. Dept. of Rev.*, 330 Or 24, 996 P3d 969 (2000)] was incorrectly decided").

As previously noted, numerous jurisdictions have passed statutes similar to ORS 136.440(1) in abrogation of the common law.[5] According to Professor Wigmore, the independent evidence rule is "assumed in all the cases" interpreting the statutes in these jurisdictions. John Henry Wigmore, 7 *Evidence in Trials at Common Law* § 2059 n 1, 421 (James H. Chadbourn rev 1978). As to the nature of corroborative evidence required under such statutes, Wigmore has observed: "It is clear, as to the testimonial source of the corroboration, that it must be independent of the accomplice himself; it must rest on other than his credit." Wigmore, 7 *Evidence* § 2059 at 421 (emphasis and footnote omitted). Among the authorities cited by Wigmore in support of his view is this court's decision in *Reynolds*. *Id.* at 421 n 1.

Our review of case law from other jurisdictions confirms Wigmore's observation that nearly all jurisdictions interpreting their own accomplice statutes have adopted an independent evidence rule.[6] *See, e.g., People v. Perez*, 4 Cal 5th 421, 452, 229 Cal Rptr 3d 303, 332, 411 P3d 490, *cert den*, __ US ___, 139 S Ct 415, 202 L Ed 2d 321 (2018); *Crawford v. State*, 294 Ga 898, 900-01, 757 SE2d 102 (2014); *State v. Little*, 402 SW3d 202, 212 (Tenn 2013); *Peeler v. State*, 326 Ark 423, 428, 932 SW2d 312 (1996); *see also Brown v. State*, 281 Md 241, 245-46, 378 A2d 1104 (Ct App 1977) (noting that 17 states, including Oregon, have adopted statutes requiring accomplice corroboration and two states, Maryland and Tennessee, have adopted that requirement by judicial precedent; court required independent evidence); *State v. Fowler*, 213 Tenn 239, 245-46, 373 SW2d 460 (1963) (requiring independent evidence for corroboration); 23A CJS Criminal Procedure § 1424 (March 2019 update) ("the additional evidence needed to corroborate the testimony of an accomplice must be independent of the accomplice's testimony").

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[5] *See* Wigmore, 7 *Evidence* § 2056 at 414.

[6] The only exception we have found is New York, where the independent evidence rule was adopted in *People v. Hudson*, 51 NY2d 233, 238, 414 NE2d 385 (1980), but later abandoned in *People v. Reome*, 15 NY3d 188, 194, 933 NE2d 186 (2010) (rejecting *Hudson* and holding that "harmonizing evidence may provide a substantial basis for crediting accomplice testimony").

We also note that the California Supreme Court recently affirmed the vitality of the independent evidence rule based on that state's accomplice statute:

> "[A]n accomplice's testimony is not corroborated by the circumstance that the testimony is consistent with the victim's description of the crime or physical evidence from the crime scene. Such consistency and knowledge of the details of the crime simply proves the accomplice was at the crime scene, something the accomplice by definition *admits*. Rather, under section 1111, the corroboration must connect the defendant to the crime *independently* of the accomplice's testimony. * * * And corroborating evidence may not come from, or require aid or assistance from, the testimony of other accomplices or the accomplice himself."

People v. Garton, 4 Cal 5th 485, 518, 412 P3d 315, *cert den*, ___ US ___, 139 S Ct 417, 202 L Ed 2d 322 (2018) (emphasis in original; internal quotation marks and citations omitted). Other than New York (see 365 Or at 56 n 6), all other jurisdictions with accomplice statutes appear to have continued to apply the independent evidence rule.

In attempting to persuade us that this court was wrong in adopting the independent evidence rule, the state argues that, "most fundamentally, the 'independent' evidence principle is irreconcilable with the statutory text [of ORS 136.440(1)]." We disagree. As we have explained, the *Brake* court's interpretation of "other evidence" in ORS 136.440(1) was consistent with the dictionary meaning of "other" in use when the statute was first enacted in 1853. *Webster's Dictionary* (1828) ("Not the same; different; not this or these."). That construction is also consistent with the *Brake* court's recognition of the legislative policy behind the statute:

> "[L]ike the statutes in many other states, [Oregon's accomplice statute] is in effect a legislative declaration that it is dangerous to permit convictions upon the uncorroborated testimony of the accomplice * * *."

Brake, 99 Or at 313 (emphasis omitted). Accordingly, we conclude that the state has not met its substantial burden to persuade us that the independent evidence rule is an incorrect interpretation of ORS 136.440(1).

In this case, the state has conceded that the corroboration requirement of ORS 136.440(1) is not satisfied under an independent evidence rule. Since the accomplices already knew the details of the crimes, evidence confirming those details does not corroborate that the defendant participated in those crimes. *See* ORS 136.440(1) (requiring that evidence must "connect the defendant with the commission of the offense"; evidence does not sufficiently corroborate accomplice testimony if it "merely shows the commission of the offense or the circumstances of the commission"); *see also* Wigmore, 7 *Evidence* § 2059 at 423-24 (quoting authorities to same effect). Further, given that the items of personal property in question were all in the SUV, the presence of those items merely confirms that the accomplices had attempted the crimes. Ropp and Young admitted committing the T-Mobile attempted crimes and the jewelry store attempted kidnapping, so the presence of the items in the SUV—which Ropp was driving—does not tend to show that defendant also participated in those crimes. Without reference to the accomplice testimony, the available evidence does not "connect *the defendant* with the commission of" either the attempted jewelry store robbery and kidnapping or the attempted T-Mobile robbery. ORS 136.440(1) (emphasis added). The trial court accordingly erred in denying defendant's motion for judgment of acquittal on those counts.

The decision of the Court of Appeals is affirmed. The judgment of conviction of the circuit court is affirmed in part and reversed in part, and the case is remanded to the circuit court for further proceedings.