

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20060131-CA
v.)	
)	F I L E D
Brady Hamilton,)	(April 19, 2007)
)	
Defendant and Appellant.)	2007 UT App 130

Fourth District, Provo Department, 041402306
The Honorable Samuel McVey

Attorneys: Margaret P. Lindsay and Julia Thomas, Orem, for
Appellant
Mark L. Shurtleff and Christopher D. Ballard, Salt
Lake City, for Appellee

Before Judges Greenwood, Billings, and Thorne.

GREENWOOD, Associate Presiding Judge:

Defendant Brady Hamilton appeals the trial court's denial of his motion for a directed verdict, arguing that there was insufficient evidence to sustain his convictions for burglary, see Utah Code Ann. § 76-6-202(1)(b) (2003), and theft, see id. § 76-6-404 (2003). When reviewing the denial of a motion for a directed verdict, "[w]e will uphold the trial court's decision if, upon reviewing the evidence and all inferences that can be reasonably drawn from it, we conclude that some evidence exists from which a reasonable jury could find that the elements of the crime had been proven beyond a reasonable doubt." State v. Montoya, 2004 UT 5, ¶29, 84 P.3d 1183 (alteration in original) (quotations and citation omitted).

Specifically, Defendant argues that the trial court erred in denying his motion for a directed verdict because the only evidence linking Defendant to the crimes charged was co-defendant Justin Broderick's pre-trial statement, which he later repudiated

at trial. In State v. Ramsey, 782 P.2d 480 (Utah 1989),¹ the supreme court held that "a conviction that is based entirely on a single, uncorroborated hearsay out-of-court statement that is denied by the declarant in court under oath cannot stand." Id. at 484. Defendant contends that his case is analogous to Ramsey because the only evidence supporting his convictions is Broderick's unsworn, out-of-court hearsay statement, which Broderick repudiated at trial. The State asserts, inter alia, that Ramsey is inapplicable because there was sufficient corroborating evidence to support Defendant's convictions. We agree.

To demonstrate burglary, the State was required to prove, beyond a reasonable doubt, that Defendant entered or remained unlawfully "in a building or any portion of a building with intent to commit . . . theft." Utah Code Ann. § 76-6-202(1)(b). To establish theft, the State was required to prove, by the same standard, that Defendant "obtain[ed] or exercise[d] unauthorized control over the property of another with a purpose to deprive him thereof." See id. § 76-6-404. The evidence implicating Defendant in the crimes charged consists of (1) Ethan Gale's eyewitness testimony that he saw a car parked at his neighbor's house with two persons in the front seat. Gale also observed a person exit his neighbor's garage carrying large items and jump into the backseat of the car, which sped off while the backseat passenger's legs were still hanging out the back door; (2) Nick Bandy's testimony that Defendant was at the car used in the crime shortly after the incident occurred and was one of three individuals Bandy drove to Springville, Utah after the car would not start; (3) Officer Drew Hubbard's testimony that Defendant returned to the car that had the stolen items in it and that, upon questioning him, Broderick implicated Defendant in the crimes charged; and (4) Broderick's prior inconsistent statement, which implicated Defendant and was admissible not just for impeachment, but also for its substance. See Utah R. Evid. 801(d)(1)(A); see also Ramsey, 782 P.2d at 483-84.

¹Both parties discuss whether this case is analogous to State v. Ramsey, 782 P.2d 480 (Utah 1989); however, neither party mentions that Ramsey has limited precedential value. Justice Stewart authored the opinion and was joined by Justice Howe. See id. at 482, 487. Justice Zimmerman and Chief Justice Hall dissented as to Part I, the sufficiency of the evidence section upon which both parties rely. See id. at 487. And Justice Durham concurred in the result alone. See id. Because of this posture, the opinion has limited precedential value with regard to its reasoning.

Although Broderick accepted responsibility for the crimes for which Defendant was charged and contradicted his previous statement to Officer Hubbard at Defendant's trial, as the State points out, a jury could conclude that Broderick's attempt to accept responsibility lacked credibility. Broderick testified that he both drove the car used in the burglary and was the individual who ran into the garage to steal the tools. However, Gale testified that the person who had stolen the tools jumped into the backseat of the car and that the car sped off with that person's legs still hanging out the open rear door. Therefore, according to Gale's testimony, it would have been impossible for Broderick to have driven the car and also emerge from the garage, and the jury was entitled to choose one witness's version of the crime over the other's. See State v. Fedorowicz, 2002 UT 67, ¶40, 52 P.3d 1194 ("[I]n reviewing the sufficiency of the evidence, we refuse to re-evaluate the credibility of witnesses or second-guess the jury's conclusion." (quotations and citation omitted)).

In summary, we affirm the trial court's denial of Defendant's motion for a directed verdict because we conclude that there was sufficient corroborating evidence to support Defendant's convictions.

Pamela T. Greenwood,
Associate Presiding Judge

WE CONCUR:

Judith M. Billings, Judge

William A. Thorne Jr., Judge