

**IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
OCTOBER SESSION, 1996**

STATE OF TENNESSEE,)
)
 Appellee)
)
 vs.)
)
 CHRISTOPHER LEE PRICE,)
)
 Appellant)

No. 02C01-9510-CC-00328

HENRY COUNTY

Hon. Julian P. Guinn, Judge

(Theft Over \$500; Burglary)

FILED

Dec. 17, 1997

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OPINION FILED: _____

REVERSED AND DISMISSED

David G. Hayes
Judge

OPINION

The appellant, Christopher Lee Price, was found guilty by a Henry County jury of theft of property over \$500 and burglary.¹ On appeal, the appellant contends that the evidence corroborating the testimony of his two accomplices is insufficient to sustain his convictions.

For the reasons stated below, we reverse and dismiss the appellant's convictions.

I. Facts

On May 5, 1994, Ron Eaker of the Henry County Sheriff's Department investigated a burglary at Grandma's Grocery in the Mansfield community in Henry County. Eaker's initial investigation revealed that "the front door was tore [sic] off. Also, [he noticed] several different empty boxes of weapons. [He] also found some more [boxes] out in the parking lot." With the assistance of Catherine Carter, the co-owner of the store, Eaker compiled a list of the stolen items. Carter and Eaker determined that the perpetrators had taken ten weapons. Eaker documented the serial numbers of the missing weapons. Larry Clayton, an investigator with the Henry County Sheriff's Department, testified that the serial numbers of the missing weapons were entered in the NCIC computer

¹The appellant was convicted of count one, theft over \$500, and count two, burglary. We are compelled to note that the appellant, during the trial proceedings and throughout the appeal, refers to his conviction for the offense under count two as a conviction for the offense of "criminal responsibility for the conduct of another." Additionally, we note that the State's indictment, while legally sufficient to charge the crime of burglary, concludes by stating, "thereby committing the offense of CRIMINAL RESPONSIBILITY FOR THE CONDUCT OF ANOTHER in violation of Tenn. Code Ann. § 39-11-402(a)(2), against the peace and dignity of the State of Tennessee." For instructive purposes, we note that there is no crime of criminal responsibility for the conduct of another. See *Groseclose v. State*, No. 02C01-9407-CR-00145 (Tenn. Crim. App. at Jackson, Aug. 23, 1995). With the adoption of the 1989 Criminal Code, our legislature abolished the common law distinction between principals, accessories before the fact, and aiders and abettors. In its place was enacted Tenn. Code Ann. § 39-11-402, criminal responsibility for the conduct of another. Tenn. Code Ann. § 39-11-402 is simply a restatement of the principles of criminal liability, i.e., one is liable for his own conduct, and applies these principles to situations in which the conduct involved may be that of another or a combination of the conduct of another with the conduct of oneself.

on May 5.

At 1:12 p.m. on May 6, Detective Raymond Simmons of the Humboldt Police Department received a report of gun shots in the Westhaven Trailer Park in Humboldt. When Simmons arrived at the trailer park, Officers Sherron and Barrett had the appellant, Andre Huspon, and Steven Russell in custody. Simmons recovered two guns, one from the person of Steven Russell and the other from a PVC drainpipe in an adjacent vacant lot.² Both weapons were identified as two of those stolen from Grandma's Grocery the previous day.³ Simmons notified the Henry County Sheriff's Department that he had recovered two of the weapons stolen from Grandma's Grocery.⁴ When questioned by the officers, the appellant denied any knowledge of the guns or the burglary of Grandma's Grocery. However, the appellant stated that, on May 6, the day following the burglary, he had picked up Huspon, Russell, Rodney Sorrell, and Kendrick Johnson in Paris, Tennessee, and had brought them to Humboldt for the Strawberry Festival. He gave as his address a residence in the Westhaven Trailer Park in Humboldt.

The appellant's father, Willie Price, testified at trial. He testified that he and Sheila Huspon, who is the mother of co-defendant Andre Huspon, lived together in a mobile home in the Westhaven Trailer Park. He also verified that the appellant lived with him "off and on," as did Andre Huspon, during May 1994. Willie Price stated that he recovered a weapon from a "side ditch across town," and that, on May 7, he turned the handgun over to the Humboldt police. This weapon was identified as one of the stolen guns from Grandma's Grocery.

²At trial, Steven Russell and Kendrick Johnson testified that Andre Huspon was in possession of the second gun. Additionally, Johnson testified, "Andre had a gun and he threw it."

³The serial numbers of the confiscated weapons were entered into the NCIC computer, which indicated that the guns were stolen.

⁴Another gun was subsequently discovered at the residence of Rodney Sorrell.

Sheila Huspon testified that she had discovered two guns under the steps of their trailer. She showed them to her brother, Harold Huspon, and "then the guns disappeared."

The only evidence introduced at trial which places the appellant at Grandma's Grocery is the testimony of the co-defendants Kendrick Johnson and Steven Russell. Both Johnson and Russell pled guilty to the crime on an earlier date. Their testimony revealed that, on the evening of May 4, 1994, the appellant, driving his gray Omni, picked up Johnson, Russell, Sorrell, and Huspon at the Calidonia Projects in Paris. In his statement, which was entered into evidence, Johnson recounted that "Michelle Pledge, Charles Allen and Ladon McCutchen saw us get in [Price's car] and go."⁵ Russell's and Johnson's testimony revealed that, sometime around midnight, the appellant drove to Mansfield and dropped the group off at Grandma's Grocery. The appellant then left in his vehicle, telling the others that he would return. The others broke into the store and removed approximately ten guns. When the appellant returned, the four youths, carrying the stolen weapons, got back into the appellant's vehicle. The appellant subsequently "dropped [Johnson] and Steven [Russell] on Depot Street." Johnson testified that, on the next day, May 5, the appellant traveled back to Paris to transport Russell, Sorrell and Johnson to the Strawberry Festival.

Rex Carter, owner of Grandma's Grocery, testified that, due to federal regulations requiring him to record the serial numbers of all weapons in his store, he was able to determine exactly which guns were missing following the theft.

⁵Johnson further testified that he was acquainted with the appellant, because the appellant and Andre Huspon had dated two of his sisters.

He further testified that the perpetrators had removed ten guns, worth \$900.00, from the store. Carter then identified weapons recovered by the Humboldt Police Department as those stolen from his store on May 4-5.

II. Analysis

In his only issue, the appellant challenges the sufficiency of the evidence necessary to sustain his conviction. Specifically, the appellant argues that the testimony of the accomplices, Russell and Johnson, connecting him to the crime, is not sufficiently corroborated to sustain a guilty verdict.⁶ We agree.

A conviction by the trier of fact removes the presumption of innocence and replaces it with one of guilt, so that on appeal a convicted defendant has the burden of proving that the evidence is insufficient. State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982). On appeal, the State is entitled to the strongest legitimate view of the evidence and all legitimate or reasonable inferences which may be drawn therefrom. State v. Harris, 839 S.W.2d 54, 75 (Tenn. 1992). It is the appellate court's duty to affirm the conviction if the evidence viewed under

⁶The State argues that the appellant has waived this issue for failure to cite to authority regarding the corroboration of accomplice testimony. We acknowledge that the appellant, on appeal, does not properly frame his issue as one involving corroboration of accomplice testimony. Nevertheless, the trial court identified the issue as such at the motion for new trial, during which the following colloquy occurred:

MR. FAGAN: The only people that placed Mr. Price in any relationship to the crime or in the possession of anything involving the fruits of the crime were two co-defendants who have either since been tried or pled guilty prior to that. . . . At no time was Mr. Price in possession of anything, did they see him. There were no fingerprints, nothing that placed him at the crime scene other than the co-defendant's testimony. And it's our contentions that that alone is not sufficient for the verdict in this case. . . .

TRIAL COURT: The uncorroborated testimony of an accomplice, is that what you are saying convicted him?

MR. FAGAN: Yes, sir.

Additionally, the appellant addresses the substance of this issue in his brief, "The defendant contends that there was no testimony outside the testimony of co-defendants that placed him at Grandma's Country Store on May 5, 1994." Therefore, we elect to address the issue on its merits.

these standards was sufficient for any rational trier of fact to have found the essential elements of the offense beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 317, 99 S.Ct. 2781, 2789 (1979); State v. Cazes, 875 S.W.2d 253, 259 (Tenn. 1994); Tenn. R. App. P. 13 (e). This rule is applicable to findings of guilt predicated upon direct evidence, circumstantial evidence, or a combination of both direct and circumstantial evidence. State v. Matthews, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990).

The appellant contends that the only evidence implicating him in the theft is the testimony of his accomplices.⁷ A felony conviction may not be based solely on the uncorroborated testimony of an accomplice. State v. Green, 915 S.W.2d 827, 830 (Tenn. Crim. App. 1995) (citing Monts v. State, 379 S.W.2d 34, 43 (1964)). Moreover, where there are multiple accomplices additional corroboration is necessary, because accomplices cannot corroborate each other. Green, 915 S.W.2d at 831 (citing Bethany v. State, 565 S.W.2d 900 (Tenn. Crim. App. 1978)).

On numerous occasions, the courts of this state have addressed "the question of the character and quality and quantum of evidence necessary to constitute legally sufficient corroboration of an accomplice." Henley v. State, 489 S.W.2d 53, 55 (Tenn. Crim. App. 1972). To corroborate the testimony of an accomplice, "there should be some fact testified to, entirely independent of the accomplice's evidence, which, taken by itself, leads to the inference, not only that a crime has been committed, but also that the defendant is implicated in it." State v. Billingsley, No. 01C01-9506-CC-00166 (Tenn. Crim. App. at Nashville, May 16, 1996) (citing Clapp v. State, 30 S.W. 214, 216 (Tenn. 1895)). "This corroboration must consist of some fact or circumstance which affects the

⁷The trial court properly instructed the jury that Russell and Johnson were accomplices as a matter of law. See, e.g., State v. Lawson, 794 S.W.2d 363, 369 (Tenn. 1990); State v. Dulsworth, 781 S.W.2d 277, 285 (Tenn. Crim. App.), perm. to appeal denied, (Tenn. 1989).

identity of the defendant." Id.⁸ In other words, to be sufficient the corroborative evidence must itself be inculpatory in nature, i.e. the corroborative evidence must be inconsistent with the innocence of the accused and do more than raise a mere suspicion of guilt. However, the corroboration need not be conclusive. Green, 915 S.W.2d at 831 (citations omitted). The corroboration is sufficient "if this evidence, standing alone, tends to connect the defendant with the commission of the offense, although the evidence be slight and entitled, when standing alone, to little consideration." Id. (citations omitted); see also State v. Henley, 774 S.W.2d 908, 913 (Tenn. 1989); McKinney v. State, 552 S.W.2d 787, 789 (Tenn. Crim. App. 1977). Furthermore, "the jury is to determine the degree of evidence necessary to corroborate the testimony of an accomplice." Billingsley, No. 01C01-9506-CC-00166 (citation omitted); see also Sherrill v. State, 321 S.W.2d 811, 815 (Tenn. 1959) (holding that corroborative evidence is a question of fact to be submitted to the jury).

In the present case, we conclude that the record is void of any evidence, other than the accomplices' testimony, implicating the appellant in the crime. Absent the accomplices' testimony, there is no proof placing the appellant at the scene of the crime, placing the appellant in possession of any of the stolen weapons, or, generally, implicating the appellant in the commission of a crime. The record does establish that the appellant was an acquaintance of the co-defendants, that he transported them from Paris to Humboldt on the day following the crime, and that he was present during the shooting incident at the trailer park. The mere association between the defendant and his accomplices is legally insufficient to corroborate the testimony of his accomplices. Gable v. State, 519 S.W.2d 83, 85 (Tenn. Crim. App. 1974); see also Boulton v. State,

⁸The term "identity" refers not to an identification of the accused, but rather, to the accused's association with the crime. "[T]he corroborative evidence must at least confirm the accomplice as to the *accused's actual participation* in the crime (or "connection with the offense"), or (thus it is sometimes put) as to the *accused's identity* with the participators . . ." F. T. Wigmore, Evidence in Trials at Common Law § 2059, at 423 (Rev. 1978).

377 S.W.2d 936, 938 (Tenn. 1964) (citing 2nd WHARTON'S CRIMINAL EVIDENCE (12th Ed.), § 468, pp. 257-258, "the corroboration of an accomplice . . . is not sufficient if it merely shows the commission of the offense, or the circumstances thereof, or that the accomplice and the defendant are acquainted or connected."); State v. Adkisson, 899 S.W.2d 626, 644 (Tenn. Crim. App. 1994). Cf. State v. Barnard, 899 S.W.2d 617, 626 (Tenn. Crim. App. 1994) (Independent testimony establishing the presence of the defendant in the company of the co-defendants at or near the place of the crime is sufficient corroborative evidence.). The State, both at trial and on appeal, contends that there is sufficient corroboration to implicate the appellant in the crimes. Specifically, the State argues that two weapons were found at the appellant's residence under the steps.⁹ Initially, we note that connecting the handguns to the various defendants in this case was made difficult by the failure of the prosecution and the witnesses to identify the weapons for the record. Moreover, none of the weapons were introduced as trial exhibits. At trial, the State displayed six handguns. Only four of those guns displayed were identified by Deputy Clayton as stolen. The victim did identify six guns as stolen, however, we are unable to determine from the record where they were recovered. Additionally, we note that the co-defendant, Andre Huspon, who admitted participation in the theft, also lived at the same residence.

⁹Regarding these two weapons, conflicting testimony at trial revealed the following:

Direct Examination of Detective Simmons:

SIMMONS: These two particular handguns right here, I received these from Officer Cindy Elliott. . . . These particular handguns, according to her statement to me, they were turned in by Harold Huspon. And I believe the lady [Sheila Huspon] is going to testify that she had given these two guns - - found them inside the house and turned them in to the police department. [We note that neither Officer Elliott nor Harold Huspon testified at trial.]

and

Direct Examination of Sheila Huspon:

GENERAL SNYDER: And is it your testimony that he did not take these guns to the Humboldt Police Department?

HUSPON: I don't know if he did or didn't.

SNYDER: Where did you see these guns, ma'am?

HUSPON: They was up under the steps [of our trailer.]

SNYDER: . . . [B]ut you had your brother, Harold Huspon, take them--

HUSPON: No, I didn't have my brother, Harold Huspon, do anything.

CONCLUSION

After a careful review of the evidence presented at trial, we conclude that there is not sufficient corroboration of the evidence of the two accomplices to support a conviction. A reversal due to insufficient evidence corroborating an accomplice's testimony is not a trial error, but relates to the sufficiency of the evidence and is a defect involving the guilt or innocence of the defendant. State v. Williford, 553 S.W.2d 553, 554 (Tenn. Crim. App. 1991). After viewing the evidence in a light most favorable to the State, we are of the opinion that a rational trier of fact could not have found the appellant guilty beyond a reasonable doubt of the offenses for which he was convicted. Accordingly, the appellant's convictions for theft of property over \$500 and burglary are reversed and dismissed.

DAVID G. HAYES, Judge

CONCUR:

JOHN H. PEAY, Judge

PAUL G. SUMMERS, Judge