

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

MICHAEL JOSEPH SAUTER,)

Appellant,)

v.)

THE STATE OF OKLAHOMA,)

Appellee.)

NOT FOR PUBLICATION

Case No. F-2015-155

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

MAR 31 2016

MICHAEL S. RICHIE
CLERK

SUMMARY OPINION

JOHNSON, JUDGE:

Appellant Michael Joseph Sauter was tried by jury and convicted in the District Court of Nowata County, Case No. CF-2014-18, of Robbery with a Firearm (Count 1), in violation of 21 O.S.2011, § 801, and Burglary in the First Degree (Count 2), in violation of 21 O.S.2011, § 1431, each After Former Conviction of a Felony. The jury assessed punishment at twenty-seven years imprisonment and a \$2,000.00 fine on Count 1, and twenty years imprisonment and a \$1,000.00 fine on Count 2. The Honorable Curtis L. DeLapp, District Judge, sentenced Sauter accordingly and ordered the sentences to be served consecutively with each other.¹

Sauter appeals raising seven issues for review. His first claim—that the trial evidence was insufficient to support his convictions—merits brief

¹ Under 21 O.S.2011, § 13.1, Sauter must serve 85% of the sentence imposed before he is eligible for parole.

discussion and relief. Because reversal is required on that claim, we do not address his remaining claims.

Sauter correctly claims the only evidence implicating him in the burglary and robbery came from the uncorroborated testimony of two accomplices, namely Kaitlyn Welsh and Sedric Fulcher, II. Without corroboration, he argues the evidence was insufficient to support his convictions.

“This Court will uphold a verdict of guilt if, after reviewing the evidence in the light most favorable to the State, any rational trier of fact could have found the elements of the charged crime beyond a reasonable doubt.” *Postelle v. State*, 2011 OK CR 30, ¶ 12, 267 P.3d 114, 126; *see also Spuehler v. State*, 1985 OK CR 132, ¶ 7, 709 P.2d 202, 203–04. When evaluating the evidence presented at trial, this Court accepts all reasons, inferences and credibility choices that tend to support the verdict. *Id.*

The Court in *Postelle* explained the rules governing the corroboration of accomplice testimony:

Under Oklahoma law, a conviction cannot rest upon the testimony of an accomplice unless the accomplice’s testimony is corroborated by other evidence that tends to connect the defendant with the commission of the offense. 22 O.S.2001, § 742. Accomplice testimony must be corroborated with evidence that, standing alone, tends to link the defendant to the commission of the crime charged. *Pink v. State*, 2004 OK CR 37, ¶ 15, 104 P.3d 584, 590. An accomplice’s testimony need not be corroborated in all material respects, but requires “at least one material fact of independent evidence which tends to connect the defendant with the commission of the crime.” *Cummings v. State*, 1998 OK CR 45, ¶ 20, 968 P.2d 821, 830. Corroborative evidence is not sufficient if it requires any of the accomplice’s testimony to form the link between the defendant and the crime, or if it tends to connect the defendant

only with the perpetrators and not the crime itself. *Glossip v. State*, 2007 OK CR 12, ¶ 42, 157 P.3d 143, 152. The purpose of the accomplice corroboration rule is to ensure that an accused is not falsely implicated by someone equally culpable in order to seek clemency, or for motives of revenge or any other reason. *Collier v. State*, 1974 OK CR 49, ¶ 7, 520 P.2d 681, 683.

Postelle, 2011 OK CR 30, ¶ 13, 267 P.3d at 126.

There was ample evidence corroborating the accomplices' testimony regarding the circumstances of the offenses. There was, however, no independent evidence corroborating Welsh's and Fulcher's testimony connecting Sauter to the commission of the crimes. While the State's evidence connected Sauter's car to the crimes, it did not connect Sauter himself. The only evidence implicating Sauter as one of the perpetrators came from Welsh and Fulcher. No one else placed him at the scene. And, the prosecution had no physical evidence showing Sauter was present or perpetrated the burglary and robbery. Without the necessary corroboration of the accomplices' testimony, we must find that Sauter's convictions cannot stand.

DECISION

The Judgment and Sentence of the district court is **REVERSED** and the matter **REMANDED** to the district court with instructions to **DISMISS**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2016), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF NOWATA COUNTY
THE HONORABLE CURTIS L. DELAPP, DISTRICT JUDGE

APPEARANCES AT TRIAL

DANIEL T. GIRALDI
ATTORNEY AT LAW
HARTLEY LAW FIRM
177 W. DELAWARE
VINITA, OK 74103
ATTORNEY FOR DEFENDANT

KEVIN D. BUCHANAN
DISTRICT ATTORNEY
AARON PEMBLETON
ASSISTANT DISTRICT ATTORNEY
NOWATA COUNTY COURTHOUSE
229 N. MAPLE STREET
NOWATA, OK 74048
ATTORNEYS FOR STATE

OPINION BY: JOHNSON, J.
SMITH, P.J.: Concur
LUMPKIN, V.P.J.: Dissent
LEWIS, J.: Concur
HUDSON, J.: Dissent

RB

APPEARANCES ON APPEAL

THOMAS PURCELL
P. O. BOX 926
NORMAN, OK 73070
ATTORNEY FOR APPELLANT

E. SCOTT PRUITT
OKLAHOMA ATTORNEY GENERAL
WILLIAM R. HOLMES
ASSISTANT ATTORNEY GENERAL
313 N.E. 21ST STREET
OKLAHOMA CITY, OK 73105
ATTORNEYS FOR APPELLEE

HUDSON, J., DISSENTING

I find sufficient independent evidence corroborated the accomplice testimony in this case and dissent to the reversal and dismissal of Appellant's convictions in light of our prior case law. *Glaze v. State*, 1977 OK CR 206, ¶¶ 2-17, 565 P.2d 710, 711-13 (finding sufficient independent accomplice corroboration where the evidence showed that the defendant's automobile was used in the commission of the offense and that the offense was committed by two or more persons).

It is undisputed that Appellant's black Chevy Tahoe was used by the perpetrators of the home invasion in this case. It is also undisputed that this same black Chevy Tahoe was recently purchased by, and belonged to, Appellant. The State presented evidence from a car dealer showing Appellant purchased the black Chevy Tahoe a mere ten (10) days before the home invasion (Tr. II 44-45). The State also presented evidence showing Appellant was known by law enforcement to personally drive the vehicle. Indeed, Appellant was stopped by a Nowata County Sheriff's Deputy a mere seven (7) days before the home invasion while driving the black Chevy Tahoe. In this regard, it is notable that the same sheriff's deputy who executed the traffic stop of Appellant in the black Chevy Tahoe was the same deputy who responded to the report of the home invasion made by the victim (Tr. II 99-100).

The non-accomplice testimony therefore shows that 1) the black Chevy Tahoe owned and driven by Appellant was used by the perpetrators of the home invasion charged in the present case; 2) Kaitlyn Welsh was not driving it

after she approached the victim's residence immediately before the home invasion, thus 3) one of her male accomplices was driving it during the staging of the home invasion—i.e., after Welsh made contact with the victim at the front door, then returned to the black Chevy Tahoe and entered the passenger side of the SUV. The jury could reasonably conclude Appellant would not allow Welsh (with whom he had been living for only a week (Tr. II 48, 63)), or anyone else to use a vehicle associated by local law enforcement with him, to stage a home invasion unless he was part of the crime. That is particularly so considering there is no evidence whatsoever that Welsh or Appellant's other accomplices had ever used the black Chevy Tahoe except as part of the plan to carry out the home invasion on January 27, 2014.

I am authorized to state that Judge Lumpkin joins in this writing.