

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 11, 2005

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2005AP1246-CR

Cir. Ct. No. 2003CM9530

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DAVON D. MCVICKER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: MARSHALL B. MURRAY, Judge. *Affirmed.*

¶1 CURLEY, J.¹ Davon D. McVicker appeals from a judgment of conviction entered after he was found guilty of one count of criminal damage to

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2003-04).

property, contrary to WIS. STAT. §§ 943.01(1) and 939.05 (2003-04).² McVicker asserts that the evidence against him was insufficient to support the trial court's conclusion that he was guilty of the crime, and therefore, maintains that the conviction should be overturned. Because the evidence presented was sufficient to convict McVicker, the judgment is affirmed.

I. BACKGROUND.

¶2 On November 17, 2003, at approximately 6:15 p.m., apparently for a reason unrelated to this case, Officer Scott Schmitz was dispatched to the home of Jerry Harris and his wife, Lisa Cox-Harris, at 5946 North 75th Street. According to the complaint, after leaving the home, Officer Schmitz spoke with Cox-Harris who told him that the officers had to return to the residence because, after first making threats, her sons, Davon and Davale McVicker, had damaged her husband's motorcycle. At approximately 9:00 p.m., Officer Schmitz returned and spoke with Harris, who stated that he had just returned and found his motorcycle damaged and lying on its side in the garage, that he had not given anyone permission to damage his motorcycle, and that at approximately 6:00 p.m. his stepsons had stated to him that they were going to damage the motorcycle.

¶3 On November 21, 2003, the State of Wisconsin filed a criminal complaint against McVicker, charging him with one count of criminal damage to property, as party to a crime, in violation of WIS. STAT. §§ 943.01(1) and 939.05.³

² All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

³ WISCONSIN STAT. § 943.01, provides: "(1) Whoever intentionally causes damage to any physical property of another without the person's consent is guilty of a Class A misdemeanor."

McVicker pled not guilty, and after numerous delays, on August 24, 2004, he waived his right to a jury trial and the case proceeded to a court trial.

¶4 The State produced two witnesses: Harris and Cathrin McBride, the mother of three of Harris's children. Harris testified that on the date in question, McVicker had been at his home and that McVicker had been angry and had threatened to beat up Harris. He told the court that he stored his motorcycle in the garage, and that his wife had called him and informed him that his motorcycle had been damaged. He then testified that upon returning home, he observed that many parts of the motorcycle, including the lights, trunk, windshield, and wheels, were broken, that he did not cause the damage himself, and that he had not given anyone permission to damage his motorcycle.

¶5 McBride testified that some months after the damage to the motorcycle was discovered, McVicker stopped by her house and she and McVicker had had a conversation. According to McBride, McVicker mentioned Harris's motorcycle and told McBride that "he tore it up," and that his reason for doing so was that "he was angry at [Harris]" because "[Harris] was the reason that [McVicker's] mom was depressed." McBride was unable to recall the exact date on which McVicker came to her house, but on re-direct she stated she believed it was around June or July of 2004.

¶6 Following the testimonies of Harris and McBride, the State rested. The defense did not produce any witnesses and instead moved to dismiss, arguing that the State had failed to meet its burden of proving its case beyond a reasonable doubt and had presented only a confession that was not corroborated by sufficient evidence. The court told the parties that it was leaning toward the State's point of view, but nonetheless gave the defense an opportunity to brief the issue.

¶7 When the parties returned to court, the defense stated that it had made an oversight and wished to have its case reopened to be able present evidence of the dates on which McVicker was in custody to try to show that he was in custody on the date of the conversation with McBride. Instead, the parties stipulated to the fact that McVicker had been in custody since May 29, 2004 up until the date of trial, the court accepted the stipulation and the defense rested. The trial court found McVicker guilty of criminal damage to property and sentenced him to four months' imprisonment and eighteen months of probation. This appeal follows.

II. ANALYSIS.

¶8 In reviewing the sufficiency of evidence to support a conviction, this court “may not substitute [its] judgment for that of the trier of fact unless the evidence, viewed most favorably to the state and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt.” *State v. Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990). Therefore,

[i]f any possibility exists that the trier of fact could have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt, an appellate court may not overturn a verdict even if it believes that the trier of fact should not have found guilt based on the evidence before it.

Id.

¶9 A “conviction of a crime may not be grounded on the admission or confession of the accused alone.” *State v. Verhasselt*, 83 Wis. 2d 647, 661, 266 N.W.2d 342 (1978); see *Jackson v. State*, 29 Wis. 2d 225, 231, 138 N.W.2d 260 (1965). Rather, the admission or confession must be corroborated by other

evidence that supports the conviction. See *Verhasselt*, 83 Wis. 2d at 661. The well-settled standard for corroboration in Wisconsin is the following:

All the elements of the crime do not have to be proved independent of an accused's confession; however, there must be some corroboration of the confession in order to support a conviction. Such corroboration is required in order to produce a confidence in the truth of the confession. The corroboration, however, can be far less than is necessary to establish the crime independent of the confession. If there is corroboration of any significant fact, that is sufficient under the Wisconsin test.

State v. Holt, 17 Wis. 2d 468, 480, 117 N.W.2d 626 (1962); see also *Verhasselt*, 83 Wis. 2d at 661; *Triplett v. State*, 65 Wis. 2d 365, 372, 222 N.W.2d 689 (1974). It is thus evident that the “primary rationale for the corroboration rule is that it helps to insure the reliability of the confession.” *State v. Hawk*, 2002 WI App 226, ¶24, 257 Wis. 2d 579, 652 N.W.2d 393 (citing *Holt*, 17 Wis. 2d at 480).

¶10 McVicker contends that the State failed to present facts, other than his alleged admission, which linked him to the crime, and that the State therefore “failed to corroborate any significant fact concerning who, what, when, where, why or how [he] is supposed to have been involved in this allegation.” This court disagrees.

¶11 Case law explains what is needed to satisfy the corroboration requirement. In *Holt*, the defendant admitted that she had delivered a baby and placed the baby in a furnace. 17 Wis. 2d at 471. The finding of a charred torso of an infant in the furnace, subsequent to the defendant's admission, was sufficient corroboration. *Id.* at 481. In *Triplett*, the defendant confessed to his involvement in a killing. 65 Wis. 2d at 366. “More than adequate corroborative evidence” was found in testimony by a fellow inmate that the defendant had told the inmate about the killing, the discovery of the murder weapon in the car in which the defendant

had been riding, and testimony that the defendant had left with a gun and returned stating that he had “killed a pig.” *Id.* at 372-73. Lastly, in *Verhasselt*, the defendant made a statement admitting that he fired a rifle toward what he believed to be a police squad car. 83 Wis. 2d at 652. The court found there to be “considerable corroborative evidence,” because the defendant was seen in the vicinity immediately after the shooting, was carrying a loaded rifle, tried to escape, and fit the description given by several witnesses, and because the defendant’s father’s gun was found on the scene. *Id.* at 662.

¶12 The parties do not dispute the fact that Harris’s motorcycle was damaged and that the individual who damaged it did so without Harris’s consent. The trial court found this to be adequate evidence to corroborate McVicker’s confession: “I find that ... the victim’s bike was damaged without consent. This is sufficient to corroborate the charge of criminal damage to property based on the alleged confession of Mr. McVicker.” To further clarify, the trial court also noted:

If the State walked him in and said we’re charging you with criminal damage to property, we don’t have the property, we don’t know if it was damaged, but we got a confession he says he damaged the bike, I think then that the state would not be successful because there’s nothing corroborating that he actually did it.

¶13 McVicker, however, asserts that Harris’s testimony “merely confirms that the damage occurred” and that “[t]he State should not get to corroborate merely the fact that the event occurred,” and feels that “[t]here has to be something that corroborates Mr. McVicker’s participation in the damage of the vehicle beyond his simple, and alleged, statement.”

¶14 The trial court correctly concluded that the fact that Harris’s motorcycle actually was damaged sufficiently corroborates the confession. *See*

Holt, 17 Wis. 2d at 480. McVicker’s statement to McBride that he “tore ... up” Harris’s motorcycle is the requisite “significant fact” of the confession, that is corroborated by the Harris’s testimony that his motorcycle indeed was damaged. *See id.* Even though the damaged motorcycle does not prove the crime, and is thus “less than is necessary to establish the crime independent of the confession,” it is certainly sufficient for purposes of corroboration. *Id.* Like the charred human remains discovered in the defendant’s furnace in *Holt*, the stepfather’s damaged motorcycle likewise constitutes ample independent corroboration to produce confidence in the truth of the confession. *See id.* at 481.

¶15 McVicker also tries to attack McBride’s testimony and asserts that because the statement “would have occurred at a time when [he] was in custody” and “was made to a non-law enforcement individual approximately eight months after the incident occurred,” it “should not be enough to sustain a conviction.”

¶16 The question is essentially one of credibility. The trial court addressed the credibility of McBride’s testimony, and finding that McBride was unbiased and had no reason to fabricate the story, it concluded that McBride’s testimony was credible. The trial court also noted that because McBride used to be romantically involved with Harris, it is realistic to think that someone in McBride’s position might be reluctant to give testimony that favors Harris, and because she did, her testimony was particularly credible. This conclusion is reasonable.

¶17 The trial court’s conclusions are not so lacking in probative value and force that no reasonable trier of fact could have found McVicker guilty beyond a reasonable doubt. *See Poellinger*, 153 Wis. 2d at 507. In fact, McVicker falls desperately short of satisfying this standard. As a result, this court

declines to substitute its judgment for that of the trial court. *See id.* Therefore, the judgment is affirmed.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

