FILED
JUN 04 1986
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

360

STATE OF IOWA,	)	
Plaintiff-Appellant,	)	Filed June 4, 1986
vs.	)	6-72 85-650
MARVIN KLEIN, JOHN F. KLEIN, PAUL LEONARD KLEIN, GENE, KLEIN and MARK McALLISTER,	)	
Defendants-Appellees.	)	

Appeal from the Iowa District Court for Shelby County (Nos. 7742 and 7747), Keith E. Burgett, Judge.

Appellant, State, comes before us on discretionary review of a district court decision overturning a magistrate's conviction of defendants. **AFFIRMED.**

Thomas J. Miller, Attorney General; Christie J. Scase, Assistant Attorney General; and Daniel T. Murtaugh, Shelby County Attorney, for plaintiff-appellant.

J. C. Salvo and Richard C. Schenck of Salvo, Deren, Schenck & Lauterbach, P.C., Harlan, for the defendants-appellees.

Considered by Oxberger, C.J., and Donielson, and Hayden, JJ.

OXBERGER, C.J.

The State of Iowa appeals by discretionary review of a district court's decision overturning a magistrate's conviction of defendants'. Defendants were convicted in magistrate's court of hunting with artifical lights, and defendant McAllister of hunting without a license. We affirm.

The reviewing trial court did not make any findings of fact. Its only statement was:

> The Court now having reviewed the pleadings and briefs on file finds that the State has failed to establish its burden of proving beyond a reasonable doubt both the identity of the alleged perpetrators, if any, and that any crime was committed in violation of Chapter 109.93 or Chapter 110.1 of the Iowa Code.

The State argues:

> It was plainly error for the district court to assess directly whether or not the State had met its burden of proof.... Judge Burgett should have applied the usual rules of reviewing sufficiency of the evidence.

The usual rule for reviewing sufficiency of evidence to support the verdict was expressed by this court in State v. Price, 365 N.W.2d 632, 633 (Iowa Ct. App. 1985) as: "The evidence is viewed in the light most favorable to the verdict and we accept as established all reasonable inference tending to support it."

Rule 54 of the Iowa Rules of Criminal Procedure controls the review by the district court of cases involving simple misdemeanors. The appellee suggests that the rule creates a hybrid standard of review in that the findings of fact bind the district court but the court is free to decide the case without limitation. Since we decide that under either standard the decision of the district court should be affirmed we do not decide appellees' issue.

The pilot of the spotting airplane testified he observed two vehicles shining a light from their vehicles into adjacent fields. He did not further describe

the vehicles and did not identify the defendants or their vehicles. The pilot radioed another conservation officer that the two vehicles had entered a certain farm field. The officer on the ground did not see the vehicles enter the farm field. He did see two pickups occupied by the defendants leave the same farm field some 20-25 minutes later.

We have reviewed the evidence and agree with the trial court the evidence is insufficient to establish an issue for the fact finder as to the identity of the alleged perpetrators. The first officer observing the vehicles did not describe the vehicle he observed in any manner that would lead to a reasonable conclusion that the vehicles observed some 20-25 minutes later were the same vehicles.

AFFIRMED.