

IN THE COURT OF APPEALS OF IOWA

No. 0-05 / 88-1624

FILED

FEB 22 1990

CLERK SUPREME COURT

STATE OF IOWA,

Plaintiff-Appellee,

vs.

GAYLORD MELVIN AUGUSTINE,

Defendant-Appellant.

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Appeal from the Iowa District Court for Johnson County,
John R. Sladek, District Associate Judge.

Defendant appeals his conviction of OWI and
fourth-degree criminal mischief. **AFFIRMED.**

Raymond E. Rogers, State Appellate Defender, and
James F. Whalen, Assistant State Appellate Defender, for
appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes,
Assistant Attorney General, J. Patrick White, County
Attorney, Timothy Ross-Boon, Assistant County Attorney, for
appellee.

Considered by Donielson, P.J., and Sackett and Habhab,
JJ.

SACKETT, J.

Defendant-appellant Gaylord Melvin Augustine appeals his convictions of operating while intoxicated and fourth-degree criminal mischief. He contends the trial court erred in admitting evidence concerning the horizontal gaze nystagmus test and in admitting testimony relating to the cost of repairing damages caused by him. Our scope of review is for the correction of errors at law. Iowa R. App. P. 4. We affirm the trial court's decision.

The charges against the defendant arose as a result of events that took place on June 25, 1988. The defendant was leaving an Iowa City bar called My Sister's Place, which is located next to Goldie's Rentals. As the defendant was leaving, he found the alley between the two businesses was blocked by a van owned by Goldie's. He asked the driver of the van to move it, but the driver refused. The defendant then rammed his car into the rear of the van. The driver of the van, who was the maintenance supervisor for Goldie's, telephoned the Iowa City police, who arrested the defendant a short time later.

When confronted by the police officers, the defendant appeared intoxicated and failed field sobriety tests. He refused to submit to a breath test. At trial, the defendant contended he was not intoxicated at the time of the incident, but rather was suffering from heat exhaustion, or thermal injury. The jury found him guilty

of operating while under the influence of alcohol and fourth-degree criminal mischief.

Defendant first contends the trial court improperly allowed testimony concerning the damages caused to the van. Two witnesses gave their estimates of the cost of repairing the van: the driver of the van, who estimated the damages at \$200, and one of the investigating officers, who estimated it at \$100. Defendant contends neither was qualified to make such an estimate. The State contends any questions about the accuracy of the witnesses' estimates could have been dealt with sufficiently on cross-examination.

Rules regarding the competency of witnesses on questions of value are to be liberally construed. State v. Houston, 439 N.W.2d 173, 176 (Iowa 1989); State v. Savage, 288 N.W.2d 502, 504 (Iowa 1980). The weight of value testimony is to be determined by the jury. McCormick, Opinion Evidence in Iowa, 19 Drake L. Rev. 245, 255 (1970). Nonexpert opinion testimony must be based on the witness's perception and helpful to a clear understanding of the testimony or the determination of a fact in issue. Iowa R. Evid. 701.

We find the testimony of both witnesses here was properly admissible under Rule 701. While neither of these witnesses was an expert at repairing automobiles, both had a reasonable basis from which they made their estimate.

The maintenance supervisor for Goldie's had done body repair work on his own vehicles and was aware of the associated expenses. The police officer had been trained to fill out accident reports involving estimates of damages. The jury was fully informed of these facts. The maintenance supervisor admitted his estimate was probably a little high, and the officer thought his estimate was somewhat conservative. Defendant had the opportunity to question the abilities of both witnesses during cross-examination, and the jury was allowed to weigh the testimony accordingly. We find no error on the part of the trial court in admitting the testimony of these two witnesses.

The defendant next contends one of the sobriety tests administered to him is unreliable, and that evidence of the test should not be admissible. The test in question is the horizontal gaze nystagmus test. The Iowa Supreme Court recently considered the merits of this test in State v. Murphy, No. 89-563 (Iowa Jan. 24, 1990). In that case, the court concluded that "testimony by a properly trained police officer with respect to the administration and results of the horizontal gaze nystagmus test is admissible without need for further scientific evidence." Murphy, slip op. at 11-12.

The defendant specifically states that he does not challenge the qualifications of the officers involved to

administer the test. The record reflects no reason for us to question the officers' abilities to testify about the administration and results of the test. We find the trial court did not err in admitting evidence concerning the horizontal gaze nystagmus test.

The decision of the trial court is affirmed.

AFFIRMED.