IN THE COURT OF APPEALS OF IOWA

No. 0-149 / 99-195
Filed April 12, 2000

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CLERK SUPREME COURT

STATE OF IOWA,

Plaintiff-Appellee,

vs.

LIONEL JOSEPH FOSTER, JR.,

Defendant-Appellant.

Appeal from the Iowa District Court for Cerro Gordo County, Carlynn D. Grupp, District Associate Judge.

Defendant appeals from the judgment and sentence entered following his conviction of third-offense operating while intoxicated. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Stephan J. Japuntich, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Denise A. Timmins, Assistant Attorney General, Paul L. Martin, County Attorney, and William Hoekstra, Assistant County Attorney, for appellee.

Considered by Streit, P.J., and Zimmer and Hecht, JJ.

STREIT, P.J.

Lionel Foster appeals his conviction for operating a motor vehicle while intoxicated, third offense. He claims the trial court erred in denying his motions for acquittal and new trial. Findings no merit to his claims, we affirm the conviction.

I. Background Facts & Proceedings.

In late September of 1998 a Mason City police officer stopped Lionel Foster's vehicle after it crossed the centerline of traffic. As the officer approached the vehicle, he smelled alcohol emanating from the vehicle. Foster was in a disheveled state with slurred speech and watery, bloodshot eyes. Foster failed the field sobriety tests. After Foster was arrested, he became extremely agitated and began banging his head against the cage dividing the seats of the patrol car. At the police station Foster refused to take a breath test.

Foster was charged and convicted of operating a motor vehicle while intoxicated, third offense, in violation of Iowa Code section 321J.2 (1997). He appeals, claiming the trial court erred in denying his motion for acquittal and in refusing to grant him a new trial. He alleges the arresting officer had a personal vendetta against him, improperly conducted the field sobriety tests, and intentionally administered the tests outside the watchful eye of the patrol car's video camera.

II. Motion for Acquittal.

Foster first claims the trial court erred in denying his motion for acquittal. He alleges the officer's supposed bias and professional failing in administering the field sobriety tests were sufficient grounds for acquittal.

A. Standard of Review. We review claims of insufficient evidence for errors at law. Iowa R. App. P. 4. A jury's guilty verdict is binding upon us unless we conclude the record lacks substantial evidence to support such a finding. *State v. Bush*, 518 N.W.2d 778, 779 (Iowa 1994). Substantial evidence means such evidence as could convince a rational trier of fact the defendant is guilty of the crime charged beyond a reasonable doubt. *State v. Taft*, 506 N.W.2d 757, 762 (Iowa 1993). Substantial evidence does not, however, denote some elevated quantity of proof. *State v. Anderson*, 517 N.W.2d 208, 211 (Iowa 1994). Rather, the relevant question in our review of the case "is whether, after viewing all the evidence in the light most favorable to the prosecution, any rational trier of facts could have found the essential elements of the crime beyond a reasonable doubt." *Id.*

B. The Merits. There was ample evidence to support Foster's conviction for operating a motor vehicle while intoxicated. Foster smelled of alcohol, had slurred speech and watery bloodshot eyes, his driving was erratic, and his behavior was agitated. Whether the field sobriety tests were properly administered or the officer had improper motivations goes strictly to the weight of the evidence, an area reserved for the jury. *State v. Thornton*, 498 N.W.2d 670, 673 (Iowa 1993). The jury was free to find the officer's motivations improper or the administration of the field sobriety tests so poorly conducted as to raise a reasonable doubt. The jury, however, rejected such contentions and found Foster guilty. When considering, in the light most favorable to the State, all the circumstances surrounding the arrest, we find a rational trier of facts could readily find Foster guilty beyond a reasonable doubt. The conviction is affirmed.

III. Motion for New Trial.

Foster also claims the trial court erred in denying his motion for new trial as the conviction was against the weight of the evidence.

A. Standard of Review. Iowa Rule of Criminal Procedure 23(2)(b)(6) gives a trial court the discretionary ability to grant a new trial if the verdict is contrary to the evidence. The phrase "contrary to the evidence" calls upon the trial court to weigh the credibility of the evidence presented by each party and determine which side garners greater support. *State v. Ellis*, 578 N.W.2d 655, 657-58 (Iowa 1998). This is in stark contrast to the sufficiency-of-the-evidence standard utilized in a motion for acquittal where the court is only to view the evidence in the light most favorable to the State. *Id.* at 658. Therefore, in a motion for new trial the trial court is armed with far more expansive powers. *Id.* at 658-59. It is not hobbled by a narrowed view of the evidence, but is permitted to weigh the evidence and assess the credibility of the witnesses. *Id.* at 659. Despite the trial court's wide discretion in granting such motions, the court is to employ this broad sword sparingly and only after careful contemplation. *Id.*

B. The Merits. The trial court did not abuse its discretion in denying Foster's motion for new trial. The record is saturated with evidence of intoxication. The trial court correctly concluded the weight of credible evidenced tipped in favor of upholding the jury's verdict. The conviction is affirmed.

AFFIRMED.