

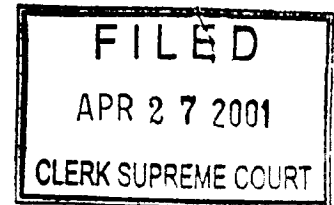
IN THE COURT OF APPEALS OF IOWA

No. 1-113 / 00-0725
Filed April 27, 2001

STATE OF IOWA,
Plaintiff-Appellee,

vs.

TIMOTHY R. NEADES,
Defendant-Appellant.



Appeal from the Iowa District Court for Polk County, Donna L. Paulsen,
Judge.

Timothy Neades appeals from his conviction and sentence following a jury trial for homicide by vehicle in violation of Iowa Code section 707.6A (1999). He contends there was insufficient evidence to support the conviction. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Robert P. Ranschau, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney General, John P. Sarcone, County Attorney, and Odell McGhee, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Zimmer and Miller, JJ.

000421

MILLER, J.

Timothy R. Neades appeals from his conviction and sentence following jury trial for homicide by vehicle in violation of Iowa Code section 707.6A(1) (1999). He contends there was insufficient evidence to support the conviction. We affirm.

I. BACKGROUND FACTS

On September 8, 1999 Timothy Neades and Patrick Hockett were attending a party at an apartment in Des Moines where they consumed alcohol. They left the party around 2:00 a.m. According to a witness Neades got into the driver's side of his vehicle and Hockett got into the passenger side. Sometime around 4:00 a.m. the vehicle was involved in a single-vehicle accident. Neades and a third party, Sharon Pickens, were both thrown from the vehicle. Pickens died from the injuries she sustained in the accident. Hockett left the scene to get assistance. Hockett testified he was lying in the back seat trying to sleep when the accident occurred and could not remember much before or after the accident. Blood testing pursuant to implied consent procedures showed Neades had a blood alcohol concentration of .195 at or shortly after the time of the accident.

Neades was subsequently charged with homicide by vehicle in violation of Iowa Code section 707.6A (1999). The one-count trial information charged him alternatively with homicide by vehicle by (1) operating in a reckless manner, and (2) operating while intoxicated. A jury found him guilty under the operating while intoxicated alternative and he was sentenced by the district court to an indeterminate twenty-five year term of incarceration. Neades filed timely notice of appeal contending there was insufficient evidence to show he was the driver of

the vehicle at the time of the accident or, if he was the driver, to show that his "purported intoxication" caused the accident.

II. SCOPE AND STANDARDS OF REVIEW

Our standard and scope of review of challenges to sufficiency of the evidence is well settled:

Our review of sufficiency-of-evidence challenges is for correction of errors at law. The jury's findings of guilt are binding on appeal if supported by substantial evidence. Substantial evidence is such evidence as could convince a rational fact finder that the defendant is guilty beyond a reasonable doubt.

In deciding whether there is such substantial evidence, we view the record evidence in the light most favorable to the State. Direct and circumstantial evidence are equally probative. A verdict can rest on circumstantial evidence alone. However, "[t]he evidence must at least raise a fair inference of guilt as to each essential element of the crime. Evidence which merely raises suspicion, speculation, or conjecture is insufficient."

State v. Kirchner, 600 N.W.2d 330, 333-34 (Iowa Ct. App. 1999) (internal citations omitted).

We give consideration to all the evidence, not just the evidence supporting the verdict. *State v. Schmidt*, 588 N.W.2d 416, 418 (Iowa 1998). "Inherent in our standard of review of jury verdicts in criminal cases is the recognition that the jury was free to reject certain evidence, and credit other evidence." *State v. Anderson*, 517 N.W.2d 208, 211 (Iowa 1994). The credibility of witnesses, in particular, is for the jury. "The jury is free to believe or disbelieve any testimony as it chooses and to give weight to the evidence as in its judgment such evidence should receive." *State v. Thornton*, 498 N.W.2d 670, 673 (Iowa 1993). It is the State's burden to prove beyond a reasonable doubt each and every element of the crime charged. *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 1073, 25 L. Ed. 2d 368, 375 (1970).

III. MERITS

In relevant part, the trial court's instructions to the jury provided that in order to prove Neades guilty of homicide by vehicle by operating while intoxicated the State had to prove (1) Neades operated a motor vehicle, (2) he operated the vehicle while under the influence of alcohol, or had an alcohol concentration of .10 or more, and (3) his operation of the vehicle unintentionally caused the death of Sharon Pickens.

Neades claims there was not sufficient evidence that he was the operator of the vehicle at the time of the accident. He told two investigating officers that he was not driving at the time of the accident. However, there was evidence he also told one of the officers he did not remember being in an accident and told another officer he did not know who was driving. Hockett and Jaime Guerrero, an acquaintance of Hockett's, testified Guerrero had been at the same party Neades and Hockett were at the night of the accident. Guerrero testified she saw Neades and Hockett leave about two o'clock in the morning in Neades' car¹ with Neades getting in the driver's side and Hockett getting in the passenger side just before they pulled out and left. Hockett testified he had met Neades only one time before the evening in question, he got in the passenger seat and Neades got in the driver's seat, he did not operate Neades' motor vehicle at any time on the night in question, there would be no reason for him to do so as his license was suspended, and he was in the back seat asleep when the accident

¹ Although the vehicle was registered to Neades' mother, Ruth Hodges, she testified she had sold the vehicle to him about eight days before the accident, after he had been using it to go to and from work for about one month.

happened. Other evidence indicated that at some time prior to the accident Neades had picked up a lady, apparently Sharon Pickens.

Physical evidence also tends to indicate Neades was driving and Hockett was in the back seat at the time of the accident. DNA analysis of tissue from a strand of hair recovered from a registration clip above the driver's seat excluded Hockett as the source of the hair, but was not able to exclude Neades as the source. Nine strands of hair were also recovered from the frame of the passenger side rear window of Neades' vehicle. A criminalist for the Iowa Division of Criminal Investigation (DCI) compared them to known samples of Hockett's hair and Neades' hair. He testified that eight of the nine strands were "microscopically similar" to Hockett's hair, they were not similar to Neades' hair, and the ninth strand lacked sufficient detail to draw a conclusion.

Finally, there was testimony from Polk County Medical Examiner Dr. Francis Garrity. He testified that certain injuries, such as a liver laceration sustained by Neades, were more consistent with a driver impacting the steering column than with another person in the same car lacking such injuries being the driver.

After considering all the evidence, not just the evidence supporting the verdict, but viewing it in the light most favorable to the verdict, we conclude there is substantial evidence supporting the jury's determination that Neades was driving his motor vehicle at the time of the accident.

Neades also claims that even assuming he was the driver there is insufficient evidence to show that his "purported intoxication was the cause of the

accident." We conclude the following evidence constitutes substantial evidence supporting a jury finding of proximate cause.

Calvin Rayburn, a DCI criminalist, testified about the effects of alcohol consumption on persons and their driving abilities. He testified that most people start showing measurable effects at an alcohol concentration of .04 to .05 and testing he had done indicated that by the time they had reached about .08 everybody was impaired to such an extent that it could affect their ability to operate a motor vehicle to a measurable extent. Evidence showed that Neades had an alcohol concentration of .195. Rayburn testified people lose reaction time, lose depth perception and lose peripheral vision. He testified that being under the influence would affect a person's ability to see an approaching turn in the road, when they did see the upcoming curve they would not be able to react as fast, and when they reacted their coordination would be impaired, affecting their ability to steer. He testified that when sober a person tends to automatically correct as a car moves from side to side, but when a person has been drinking they lose that sense of feel, do not react as fast, and then tend to over-compensate, weaving down the road. Many of Rayburn's descriptions of what happens when a driver becomes intoxicated are consistent with physical evidence and testimony concerning the accident involved in this case.

Hockett testified he recalled the car swerving off the road once sometime before the accident, he then went back to sleep, and subsequently he woke up to find the car upside down. Mark Kubik, a sergeant with the Ankeny police department and a certified accident reconstructionist, testified the road curved a little bit just before the location where the accident occurred, Neades' vehicle had

driven on the shoulder, re-entered the roadway overcorrecting the steering to the left, started sliding to the side as it continued towards the centerline, went into a full sideways skid, left the roadway and flipped and turned rolling over several times. He testified further that in his opinion the vehicle was traveling at a high rate of speed, faster than the forty miles per hour speed limit in the area.

We note that the fact the State's evidence against Neades was circumstantial is not determinative. A verdict of guilty may rest on circumstantial evidence alone. *State v. Moses*, 320 N.W.2d 581, 586 (Iowa 1982); *State v. Torres*, 506 N.W.2d 470, 472 (Iowa Ct. App. 1993). Direct and circumstantial evidence are equally probative. *Kirchner*, 600 N.W.2d at 334; Iowa R. App. P. 14(f)(16). "Inferences and presumptions are a staple of our adversary system of fact-finding." *Schmidt*, 588 N.W.2d at 418 (quoting *State v. Simpson*, 528 N.W.2d 627, 632 (Iowa 1995)).

IV. CONCLUSION

We conclude, based on our review of the entirety of the record and examining the evidence in the light most favorable to the State, there was sufficient evidence for a rational trier of fact to find Neades was the driver of the vehicle at the time of the accident and that his intoxication caused the accident which resulted in the death of Sharon Pickens.

AFFIRMED.