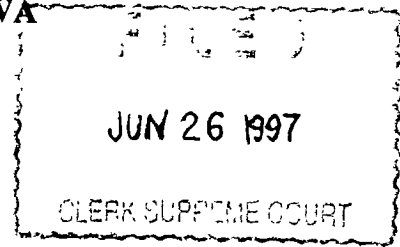


IN THE COURT OF APPEALS OF IOWA

No. 7-180 / 96-1494



STATE OF IOWA,

Appellee,

000745

vs.

DALE LEVERN VAN HEIDEN, JR.,

Appellant.

Appeal from the Iowa District Court for Buchanan County, Jon Fister, Judge.

Dale Van Heiden appeals the judgment and sentence entered upon his conviction of second-degree criminal mischief. **AFFIRMED.**

Brad V. Driscoll, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Robert P. Ewald, Assistant Attorney General, and Allan W. Vander Hart, County Attorney, for appellee.

Considered by Sackett, P.J., and Huitink and Streit, JJ.

STREIT, J.

Defendant challenges his conviction for criminal mischief in the second degree, in violation of Iowa Code sections 716.1 and 716.4 (1995). We affirm on appeal.

On the morning of June 25, 1995, Michael Smith was driving his Pontiac Grand Am and Richard McCardle was his passenger. Smith is a police officer and was off-duty at the time. Near Otterville, Iowa, Smith came up behind a slow-moving Lincoln Continental, and pulled into the left lane to pass. As he did so, the Lincoln started to make a left turn, and both vehicles stopped. Smith recognized the driver of the Lincoln as Dale Van Heiden. Smith knew Van Heiden from Smith's work as a Buchanan County jailer.

Van Heiden continued to turn left. Before Smith started to move forward, Van Heiden reversed his car and hit Smith's car causing damage. Van Heiden drove away. Smith and McCardle noted the Lincoln's license plate number, TSN 634. When Smith reported the incident, the dispatcher told him that license plate number was registered to Van Heiden.

At the criminal trial Van Heiden presented an alibi defense. His mother, Dorothy Knavel, and step-father, Robert Knavel, testified Van Heiden was with them at their cabin at the time of the incident. A jury found defendant guilty of second-

degree criminal mischief. He was sentenced to a term of imprisonment not to exceed five years and ordered to pay restitution. Van Heiden now appeals.

I. Van Heiden claims there was insufficient evidence in the record to support his conviction. He points out that there were many inconsistencies between the testimony of different witnesses. He contends the court should have accepted the testimony of the Knavels that he was at their cabin.

When a criminal defendant challenges the sufficiency of evidence to support a conviction, we review all of the evidence in the record in a light most favorable to the State. *State v. Garr*, 461 N.W.2d 171, 173 (Iowa 1990). We must uphold the conviction if there is substantial evidence in the record to support it. *State v. Frake*, 450 N.W.2d 817, 819 (Iowa 1990). Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion. *State v. Robinson*, 288 N.W.2d 337, 339 (Iowa 1980).

We find there was sufficient evidence in the record to support Van Heiden's conviction. The jury was not required to accept defendant's version of the facts. *State v. Trammell*, 458 N.W.2d 862, 863 (Iowa App. 1990). The very function of the fact-finder is to sort out the evidence presented and place credibility where it belongs. *Id.* Here, the jury must have found Van Heiden's witnesses were not credible on the issue of the alibi. We also find there was sufficient evidence it was Van Heiden who committed the crime. Smith recognized Van Heiden. Although there were some

discrepancies in witnesses' testimony concerning the color of the attack vehicle, all witnesses agreed it was an older model Lincoln, which is the same type of car owned by Van Heiden.

II. Van Heiden contends there was insufficient evidence presented to show that, even if he hit Smith's car, his actions were intentional. He states the driver of the Lincoln Continental could have been looking for an address, and decided to back up and turn around.

There was sufficient evidence in the record to allow the jury to find the collision was not accidental. There was evidence Van Heiden knew of Smith's vehicle because he looked at Smith. Van Heiden backed up quickly enough to spray gravel. After the collision Van Heiden took off at a high rate of speed.

We affirm Van Heiden's conviction for criminal mischief in the second degree. Costs of this appeal are assessed to Van Heiden.

AFFIRMED.