

IN THE COURT OF APPEALS OF IOWA

FILED

FEB 26 1986

CLERK SUPREME COURT

STATE OF IOWA,

)

Plaintiff-Appellee,

)

vs.

)

RICKY ARTHUR BAXTER,

)

Defendant-Appellant.

)

Filed February 26, 1986

5-601
85-396

267

Appeal from the Iowa District Court for Polk County (No. 26717) - Theodore H. Miller, Judge.

Defendant appeals from his conviction of first-degree theft asserting insufficiency of the evidence. **AFFIRMED.**

Charles Harrington, Appellate Defender, and B. John Burns, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Christie J. Scase, Assistant Attorney General, and Richard Williams, Assistant County Attorney, for plaintiff-appellee.

Considered by Schlegel, P.J., and Hayden, and Sackett, JJ.

Defendant Ricky Baxter was charged with first-degree theft. He was accused of stealing a purse from a woman named Reva Cox outside a Des Moines tavern on the afternoon of October 4, 1984. At defendant's jury trial, Cox testified after she had several beers, she left the tavern with two people she had just met, the defendant and a young blond woman. Cox testified when the young blond woman returned to the tavern to retrieve something she had left there, defendant struggled with Cox, took her purse, and ran off. Cox chased defendant but lost him. She then had someone call the police.

Cox testified she wears reading glasses but the glasses do not make much difference in her vision. She stated she did not have her glasses on at the time of the incident. When she made her identification of defendant the next day from a photo array, she looked at the pictures first without, then with, her glasses "to make sure."

The police officer who responded to the call testified, over defendant's objection, that based on her observation of Cox's behavior, Cox was not intoxicated at the time of the incident.

A woman named Barbara McClish testified she was the blond woman who left the tavern with defendant on October 4, 1984. She also stated defendant had mentioned taking Cox's purse to her in the tavern. McClish admitted she had been drinking that day since early morning.

The jury found defendant guilty. Defendant has appealed asserting: (1) there was not sufficient evidence to support his conviction; (2) the trial court should not have allowed the police officer to testify that Cox was not intoxicated at the time of the incident; (3) Cox was not competent to identify defendant because her vision was impaired; and (4) McClish's testimony she and defendant left the tavern together was not entitled to much weight because McClish had been drinking.

In determining sufficiency of the evidence, we view the evidence in the light most favorable to the state. State v. Doss, 355 N.W.2d 874, 877 (Iowa 1984). All inferences that are fairly and reasonably deducted from the evidence are accepted and all the evidence, not just that supporting the verdict, is considered. State v. Blair, 347 N.W.2d 416, 418-19 (Iowa 1984). The jury verdict will be upheld if supported by substantial evidence, which is evidence that could convince a rational trier of fact the defendant is guilty beyond a reasonable doubt. Id. at 419.

We find there is sufficient evidence in the record to uphold defendant's conviction.

The trial court properly allowed the police officer to testify that Cox was not intoxicated.

[A] witness may state whether or not another was intoxicated at a particular time, without narrating the facts on which he bases his opinion; and it is also permissible for a nonexpert witness to state how far another was affected by intoxication.

State v. Davis, 196 N.W.2d 885, 893 (Iowa 1972). The police officer had reasonable opportunity to observe the defendant prior to forming her opinion. The officer testified at trial she talked with Reva Cox, walked with her, and observed her motor functions at the time of the incident. The trial court was within its discretion in permitting the police officer to express her opinion on intoxication.

Defendant's next contention is that Cox's vision was impaired and therefore she was not competent to testify as to the identity of the person who took her purse. Iowa Rule of Evidence 702 and State v. Harvey, 242 N.W.2d 330 (Iowa 1976) require that testimony be based on first-hand knowledge. The court in State v. Harvey stated that the requirements for establishing competency are:

- (1) it must be determined whether the witness has observed the incident about which he proposes to testify and has received some impressions which he seeks to relate to court,
- (2) whether the witness has a recollection of those impressions resulting from his observation which fairly corresponds with or reproduces the original knowledge or observation.
- (3) whether he is able to communicate this recollection to the tribunal.

State v. Harvey, 242 N.W.2d at 335. Cox had met all three requirements and was competent to testify. Although Cox's eyesight was not perfect without her reading glasses, this goes to the issue of credibility. The jury could reasonably have concluded Cox could positively identify the defendant.

Defendant's final argument is McClish's testimony she and defendant left the tavern together was not entitled to much weight because McClish had been drinking.

[T]he jury is at liberty to believe or disbelieve the testimony of witnesses as it chooses, and give such weight to the evidence as in its judgment the evidence was entitled to receive. The very function of the jury is to sort out the evidence presented and place credibility where it belongs.

State v. Blair, 347 N.W.2d 416, 420 (Iowa 1984). The jury determined the weight of McClish's testimony, and we shall not interfere.

The evidence when viewed as a whole is sufficient to uphold the jury's verdict. We affirm.

AFFIRMED.