FILED
DEC 27 1990
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-575 / 90-07

270

STATE OF IOWA,

Appellee,

vs.

DAVID E. EDMISTON,

Appellant.

Appeal from the Iowa District Court for Wapello County, Robert Bates, Judge.

The defendant appeals his convictions, following a jury trial, for criminal mischief in the second degree and assault while participating in a felony. **AFFIRMED.**

Linda Del Gallo, Acting State Appellate Defender, and Andi S. Lipman, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Roxann M. Ryan, Assistant Attorney General, William H. Appel, County Attorney, and Ronald Kelley, Assistant County Attorney, for appellee.

Heard by Donielson, P.J., and Hayden and Habhab, JJ.

HAYDEN, J.

Ottumwa Police Officer Dave Talbert was sitting in his parked squad car writing a report when his squad car was rammed by a semi-truck tractor. The ramming appeared to be deliberate. The officer was unable to see the driver because of a glare from the truck's headlights.

After ramming the squad car, the truck drove away. It was later found abandoned in a ditch. Inside the truck the police found documents belonging to David Edmiston. They also found blood indicating someone had recently been cut inside the truck cab.

A short time later Edmiston called police to report his truck tractor stolen. The officers who responded to Edmiston's call thought he seemed intoxicated. They noted his clothes were too neat and clean to have waded through the wet weedy ditch where the truck had been found. However, they also noted his boots were wet, and he had a small cut on his finger. No wet, dirty, or bloody clothing was noticed in Edmiston's motel room. However, the owner of the motel later found a pair of jeans with grass and blood stains on the roof of the motel.

Police officers formed the belief Edmiston had been driving the truck when it struck the squad car. Edmiston was charged with criminal mischief in the second degree and assault while participating in a felony. A jury found him guilty of both of those charges. He has appealed the resulting convictions.

Edmiston challenges the sufficiency of the evidence to prove he was the person driving the truck when it hit the squad car.

Edmiston also challenges the admission into evidence of the grass-stained and blood-stained jeans found on the roof of the motel where he was staying. He contends there was no showing that the jeans were connected to him or to the incident which gave rise to the charges.

Our scope of review is on assigned error only. Iowa R. App. P. 4. The standard of review in challenging the sufficiency of the evidence is well established. State v. Lampman, 342 N.W.2d 77, 81 (Iowa App. 1982). We will uphold a verdict where there is substantial evidence in the record tending to support the charge. State v. Aldape, 307 N.W.2d 32, 39 (Iowa 1981).

When reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the State, including legitimate inferences and presumptions that fairly and reasonably may be deduced from the evidence in the record. State v. Hall, 371 N.W.2d 187, 188 (Iowa App. 1985); State v. Bass, 349 N.W.2d 498, 500 (Iowa 1984). Direct and circumstantial evidence are equally probative so long as the evidence raises "a fair inference of guilt and [does] more than create speculation, suspicion, or conjecture." State v. Hamilton, 309 N.W.2d 471, 479 (Iowa 1981). It is necessary to consider all the evidence in the record, and not just the evidence

supporting the verdict, to determine whether there is substantial evidence to support the charge. Hall, 371 N.W.2d at 188; Bass, 349 N.W.2d at 500. Substantial evidence means evidence which would convince a rational fact finder that the defendant is guilty beyond a reasonable doubt. Hall, 371 N.W.2d at 188; State v. LeGear, 346 N.W.2d 21, 23 (Iowa 1984).

We determine there is sufficient evidence to support the jury's verdict in this case. We affirm on this issue.

Edmiston objects to the admission of the grass and blood stained jeans found on the roof of the motel where he stayed. He claims this evidence was irrelevant and unduly prejudicial. We find this argument to be without merit.

The truck was found in a wet, grassy area. Edmiston's clothes were neat and well-pressed when the police located him. However, his boots were wet, as if he had walked through a marshy area. Additionally, he had a cut on his hand. Blood-stained items were found both in his hotel room and truck. There was plenty of circumstantial evidence to connect Edmiston with the jeans found on the motel roof. It would not be unreasonable for the jury to believe these were Edmiston's jeans, which he had thrown up on the motel in an attempt to get rid of some evidence of his activities.

> It is not required that a weapon or other instrument be identified positively before its admission can be had. It is only necessary that it be found under circumstances affording a basis for a reasonable inference on a point in issue.

State v. Johnson, 162 N.W.2d 453, 456 (Iowa 1968).

We affirm the trial court on the admission of the jeans into evidence.

AFFIRMED.