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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)
Plaintiff-Appellee,)
vs.)
MARK WAYNE JONES,)
Defendant-Appellant.)

Filed March 31, 1987

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6-509
86-732

Appeal from the Iowa District Court for Mills County (No. C 2185) - Leo F. Connolly, Judge.

The defendant appeals from his conviction, following a jury trial, of criminal mischief in the third degree. **AFFIRMED.**

H. Walter Green, Glenwood, for defendant-appellant.

Thomas J. Miller, Attorney General; Lona Hansen, Assistant Attorney General; and James C. Webering, Mills County Attorney; and C. Kenneth Whitacre, Assistant Mills County Attorney, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson and Snell, JJ.

DONIELSON, J.

The defendant appeals from his conviction, following a jury trial, of criminal mischief in the third degree. The defendant contends that the trial court erred in: (1) admitting irrelevant and prejudicial testimony concerning a department of criminal investigation laboratory report; and (2) overruling his motions for directed verdict and judgment of acquittal where the State failed to present evidence as to whether the defendant had any right to damage the cars involved, an essential element of the crime charged. We affirm.

The defendant, Mark Wayne Jones, was accused of third-degree mischief for allegedly slashing the interior and tires of one car owned by Lisa Speed and the tires of another owned by Sandra Blackwell in the garage of the Speed residence. At trial, the trial court permitted the State to introduce testimony, over the defendant's objection, concerning a laboratory report compiled by the Iowa Division of Criminal Investigation (DCI). This report concerns tests conducted by criminalist Robert Harvey comparing the slash marks found on the car's tires and the knives discovered in the defendant's possession shortly after his arrest. The report, in relevant part, stated that the cuts in the tires demonstrated the same class characteristics as the cuts produced by defendant's pocket knife, but that sufficient individual characteristics were not present for positive identification. The report further stated that the cuts on the side-walls of the tires were similar to known cuts produced by another of defendant's knives, but they were insufficient for a positive identification. The report also stated that the pocket knife contained several black smears, but that the quantity of the substance was insufficient for analysis. Harvey testified that while he could not eliminate the defendant's knives as the ones making the tire cuts, he could not positively identify either knife as having done so.

The defendant contends that the trial court erred in allowing Harvey's testimony since it was irrelevant and its prejudicial effect outweighed its probative value. The defendant further argues that the State failed to present sufficient evidence that the defendant had no right to damage the vehicles and that the trial court should therefore have granted defendant's motion for directed verdict and judgment of acquittal.

Our scope of review is for the correction of errors at law. Iowa R. App. P. 4. We are bound by the trial court's findings of fact if they are supported by substantial evidence. Iowa R. App. P. 14(f)(1). We are not, however, bound by the trial court's determinations of law.

We first address the defendant's claim that the trial court erred in permitting the introduction of the DCI's laboratory report. A trial court has considerable discretion in making a determination on the admissibility of expert testimony. State v. Klindt, 389 N.W.2d 670, 672 (Iowa 1986). The trial court's admission of expert testimony will not be disturbed on appeal unless a manifest abuse of that discretion causes prejudice to the complaining party. Wadle v. Jones, 312 N.W.2d 510, 515 (Iowa 1981). Expert testimony concerning scientific, technical, or other knowledge which will assist the trier of fact to understand the evidence or to determine a fact in issue is admissible. Klindt, 389 N.W.2d at 672.

However, evidence must also be relevant to be admissible. Iowa R. Evid. 401. Evidence is relevant if it renders the existence of a fact more or less probable with it than without it. Carter v. MacMillan Oil Co., Inc., 355 N.W.2d 52, 55 (Iowa 1984). A determination of relevancy is a matter within the trial court's discretion. Id. In determining whether relevant evidence is properly admissible, the trial court must balance the probative value of the evidence against any unfair prejudicial effect. State v. Cott, 283 N.W.2d 324, 329 (Iowa

1979). This determination is made in light of all the evidence before the trial court so that a lack of other relevant evidence may increase the probative value of any available evidence. State v. Coen, 382 N.W.2d 703, 707-08 (Iowa Ct. App. 1986); Cott, 283 N.W.2d at 329. We will not reverse the trial court ruling absent an abuse of discretion. Cott, 283 N.W.2d at 329.

In the present case, Harvey's report stated that the cuts in two of the tires submitted into evidence demonstrated the same characteristics as cuts produced by the pocket knife in rubber samples in the laboratory. The report also stated that a third cut was similar to the cuts made by the roofing knife on rubber samples in the laboratory, but were insufficient to prove a positive identification of the roofing knife as the instrument that made the slashes in the tire. The report also stated that the vinyl fabric samples from the interior of the cars did not exhibit sufficient individual or class characteristics for Harvey to render an opinion as to whether the defendant's knives produced the cuts on the tires. Harvey also examined the black smears on the blade of the pocket knife and concluded that they appeared to be very similar to rubber smears, but that there was insufficient material for a chemical analysis.

We find that the DCI laboratory report was relevant to the issue of defendant's identity as the person who had damaged the cars and was therefore admissible. The defendant was linked to the damage to cars by the testimony of Deleese Speed, who testified that she saw the defendant fleeing from the garage immediately before the damage was discovered. Deleese testified that she recognized the defendant's voice as he called out to her, and Deleese identified the defendant at trial. A hat that the defendant had been seen wearing on the night in question was found in the Speeds' yard near the garage. The defendant was arrested only several blocks away from the Speeds' garage several minutes after Deleese had seen the defendant run from the garage. Upon the defendant's

arrest, two knives were found in his jacket pockets, the knives that were used to prepare the laboratory report. The conclusions of the laboratory report that the knives were consistent with the slashes on several of the tires provided a link between the knives found on the defendant and the damaged tires, and such evidence therefore made it more probable that the defendant had committed the alleged offense. Since the defendant was not actually seen as having slashed the tires and interiors of the cars, the laboratory report was relevant to the issue of defendant's identity as the person who damaged the cars.

Moreover, the jury, as the trier of fact, was not bound to accept the laboratory report or Harvey's testimony as conclusive, but was free to accept or reject such evidence in whole or in part, or not at all. State v. Nunn, 356 N.W.2d 601, 604 (Iowa Ct. App. 1984). When viewed in the light of all the evidence introduced at trial, we do not believe the probative value of the laboratory report was outweighed by its prejudicial effect, and we therefore hold that the trial court did not err in admitting Harvey's testimony.

The defendant also contends that the trial court erred in overruling the defendant's motion to dismiss, motion for directed verdict and judgment of acquittal, on the ground that the State had failed to show that the defendant had no right to inflict damage on the cars. We find no merit in such contention.

Iowa Code section 716.1 (1985), in defining the offense of criminal mischief, states that any damage, defacing, alteration, or destruction of tangible property constitutes criminal mischief when such acts are committed intentionally by one who has no authority to so act. While the defendant is correct in stating that there was no direct testimony at trial stating that he did not have a right to commit the damage to the cars, our courts have long recognized that circumstantial evidence is equally as probative as direct evidence. Thacker v. Eldred, 388 N.W.2d 665, 670 (Iowa Ct. App. 1986).

In considering a motion for acquittal or directed verdict, we view the evidence in a light most favorable to the State, regardless of whether such evidence is contradicted, to determine if reasonable minds could differ on the issue. State v. Robinson, 288 N.W.2d 337, 338 (Iowa 1980). We must afford the State every legitimate inference which may be deduced from the evidence. State v. Duncan, 312 N.W.2d 519, 522 (Iowa 1981); Thacker, 388 N.W.2d at 671. If we find that reasonable minds could differ on the issues presented, then a jury question is generated and it is appropriate to submit the issue to the jury and the verdict should be upheld. Thacker, 388 N.W.2d at 671.

Applying this analysis to the present case, we believe there was sufficient evidence from which a rational fact finder could reasonably infer that the defendant did not have the right to damage Lisa Speed's and Sandra Blackwell's cars on February 20, 1986. The record reveals that while Lisa Speed had dated the defendant for approximately six months in 1985, that relationship had ended by November 1985. Lisa testified that she had told the defendant that she did not think they should see each other and that she only saw the defendant at his father's home. The record is devoid of any evidence that the defendant had any right to ownership in the cars. Lisa's car was owned by a leasing company, and Lisa was leasing the car at the time of the alleged incident. Additionally, immediately after defendant was seen running from the garage, Lisa's mother telephoned the police before anyone in the house knew there had been any damage to the cars. The damage to the cars was subsequently reported to the police. From these facts, the jury could reasonably infer that the defendant did not have any right to damage the cars. Because there was substantial evidence in the record which could lead a rational trier of fact to conclude beyond a reasonable doubt that the defendant was guilty of criminal mischief,

the trial court did not err in overruling defendant's motion for directed verdict and judgment of acquittal.

AFFIRMED.