IN THE COURT OF APPEALS OF IOWA

No. 0-955 / 10-0765
Filed January 20, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

RICKY LEON JONES,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Gregory D. Brandt, District Associate Judge.

Ricky Jones appeals following his conviction and sentence for operating while intoxicated, first offense. **AFFIRMED.**

Sean P. Spellman of Spellman Law, P.C., West Des Moines, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, John P. Sarcone, County Attorney, and David Porter, Assistant County Attorney, for appellee.

Considered by Eisenhauer, P.J., and Potterfield and Doyle, JJ. Tabor, J., takes no part.

DOYLE, J.

Following a jury trial, Ricky Jones was convicted of operating a motor vehicle while intoxicated, first offense, in violation of Iowa Code section 321J.2(1)(a) (2009). On appeal, Jones contends there was not substantial evidence to support a finding he was intoxicated. He also asserts the district court erred in excluding the date of a prosecution witness's forgery conviction. We affirm.

***I. Background Facts and Proceedings*.**

At approximately 12:30 a.m. on September 6, 2009, Gregory Haglund was driving his pickup truck northbound on Highway 141, a four-lane divided highway. Haglund was in the inside lane, and a Jeep was beside him in the outside lane when he observed the headlights of a vehicle approaching him in his lane of travel. Haglund hit the brakes and aimed for the ditch to avoid a head-on collision and the Jeep to his right. He then spun his truck around and began to chase the pickup truck that forced him off the road. Both trucks were now travelling southbound in the northbound lanes of the highway.

When he caught up with the truck, Haglund turned his four-way flashers on and flashed his high beams. The other truck did not respond, so Haglund pulled in front of it, slowed down and stopped. The other truck stopped. Both were blocking traffic. Haglund got out of his truck and approached the other truck. The other driver, Jones, rolled his window down. Thinking Jones was impaired, Haglund reached in Jones's truck, shut it off, and grabbed the keys. Jones slurred his words as he talked to Haglund. Haglund then went back to his truck to call 911.

Using a spare key, Jones started his truck and took off at a high rate of speed. Haglund chased him at over ninety-five miles per hour. Jones exited the highway and proceeded to a Grimes apartment complex. Haglund followed Jones into the complex and stopped. Haglund was on the phone with the 911 dispatcher and, as he sat in his truck and waited for law enforcement officials to arrive, Jones approached. Haglund observed Jones to be walking "kind of wobbly" and "kind of staggering" as he approached the truck. A sheriff's deputy arrived shortly thereafter.

When the deputy arrived, he observed Haglund and Jones standing by their respective trucks. He told Haglund to "hang tight" and told Jones to walk toward the patrol car. The deputy observed Jones to be unbalanced on his feet. Jones appeared to be confused and had slurred speech and a thick tongue when responding to the deputy's questions. The deputy smelled the odor of alcohol on Jones's person and observed Jones's eyes to be red and watery. Jones told the deputy he had had about three or four beers. Since he was the only deputy at the scene, Jones was placed in the patrol car so the deputy could interview Haglund. Upon returning to the car a few moments later, the deputy opened the door and could smell a strong order of alcohol coming from inside the car. The deputy had Jones step out of the patrol car and perform field sobriety tests. Believing Jones to be under the influence of alcohol, the deputy transported Jones to the Polk County Jail.

Jones was charged with operating a motor vehicle while under the influence of alcohol or a drug, first offense, in violation of section 321J.2. Upon Jones's motion, breath test results were suppressed. A jury trial followed with

the return of a guilty verdict. Jones was sentenced to one year in jail with all but seven days suspended and placed on probation for a year. He was also ordered to pay a fine of $1250, as well as court costs and a surcharge.

Jones appeals. He argues the district court erred in failing to grant his motion for judgment of acquittal because there was not substantial evidence to support a finding he was intoxicated. He also contends the district court erred in excluding the date of a prosecution witness's conviction for forgery.

***II. Discussion*.**

A. Sufficiency of Evidence.

At the close of evidence, Jones made a motion for judgment of acquittal. He argued "there is only a limited amount of circumstantial evidence as to reveal the theory of intoxication or being under the influence." The district court overruled the motion.

A motion for judgment of acquittal is a means of challenging the sufficiency of evidence, and we review such claims for correction of errors at law. *State v. Henderson*, 696 N.W.2d 5, 7 (Iowa 2005). A guilty verdict must be supported by substantial evidence. *Id*. Evidence is substantial if "a rational trier of fact could find the defendant guilty beyond a reasonable doubt." *State v. Hagedorn*, 679 N.W.2d 666, 668-69 (Iowa 2004) (quoting *State v. Pace*, 602 N.W.2d 764, 768 (Iowa 1999)). In reviewing the sufficiency of the evidence, "we consider all the evidence, that which detracts from the verdict, as well as that supporting the verdict." *Id*. at 669. "However, in making such determinations, we also view the 'evidence in the light most favorable to the State, including legitimate inferences and presumptions that may fairly and reasonably be

deduced from the record evidence.'" *State v. Quinn*, 691 N.W.2d 403, 407 (Iowa 2005) (quoting *State v. Biddle*, 652 N.W.2d 191, 197 (Iowa 2002)). A jury's verdict is binding on a reviewing court unless there is an absence of substantial evidence in the record to sustain it. *State v. Schrier*, 300 N.W.2d 305, 306 (Iowa 1981).

Jones was observed driving the wrong way on a four-lane divided highway. He slurred his words and appeared to be confused. After being stopped by Haglund, Jones took off at a high rate of speed. At the apartment complex, Jones was observed to be "kind of wobbly" and "kind of staggering." His tongue was thick and his speech was slurred. His eyes were red and watery. He appeared confused. He was unbalanced on his feet. He smelled of alcohol and admitted drinking beer. Defense counsel vigorously and fully argued to the jury what he perceived to be deficiencies in the prosecution's case. The jury was not persuaded. Upon our review, we find substantial evidence of Jones's intoxication in the record to support the jury's verdict.

***B. Evidentiary Ruling*.**

Prosecution witness Haglund was convicted of forgery on March 25, 2010, just four days before he testified at Jones's trial. The conviction arose from an offense reportedly committed in December 2007. During cross-examination, Haglund was asked: "Sir, have you been convicted of any criminal offenses which would implicate your honesty or truthfulness?" An in-chambers hearing was then held outside the presence of the jury.

Jones argued the conviction was an impeachable offense admissible under Iowa Rule of Evidence 5.609(*a*)(2), which provides, in relevant part:

> *General rule*. For the purpose of attacking the credibility of a witness:
>
> . . . .
>
> (2) Evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.

After some discussion, the court stated: "Well, you can bring up that a crime involving dishonesty and what that crime was and that's it." Jones then requested he be allowed to make a record as to when Haglund was sentenced. The court expressed its concern that the information would leave the unfair impression with the jury that the offense occurred in the very recent past, when the offense actually occurred in 2007, more than two years prior to the trial. Realizing he was not going to have his cake and eat it too, Jones conceded "[i]f one is going to come in, they both come in." The court again denied the request and limited Jones's scope of inquiry to the fact the crime involved dishonesty and that it was a forgery, "but that's it." When the trial resumed, Haglund admitted he had been convicted of a criminal offense implicating his honesty or truthfulness and that the offense was forgery. Haglund was not questioned about the date of his crime or the date of his conviction.

On appeal, Jones argues the district court erred in excluding the date of Haglund's forgery conviction. He contends that, had the jury known Haglund had just been convicted of forgery only four days before the trial, the jury may have and likely would have given less weight to his testimony, a key part of the State's case. Jones does not suggest the jury should have been told of when Haglund's act of forgery was committed, only that the jury should have been told of the date of conviction. The State does not argue that the date of a conviction

is inadmissible, but points out in its brief that Jones failed to explain how the fact that Haglund's forgery conviction was finalized a few days before his testimony (for conduct more than two years earlier) impacts the truthfulness of his testimony about his encounter with Jones almost seven months earlier.

We have not found, nor are we directed to, any Iowa appellate decision regarding the admissibility of the date of conviction under rule 5.609(*a*)(2).[1] Nevertheless, even assuming without deciding the exclusion of the date of conviction was error, we find that any such error was harmless under the facts of this case.

"A district court's decision to admit or exclude evidence is generally reviewed for an abuse of discretion." *State v. Paredes*, 775 N.W.2d 554, 560 (Iowa 2009) (citation omitted). However:

> Reversal of a ruling which admits or excludes evidence is not necessary unless a substantial right of a party is affected. Iowa R. Evid. 5.103(*a*). To determine whether a substantial right of a party has been affected when a nonconstitutional error occurs, we employ a harmless error analysis and ask: "'Does it sufficiently

[1]Jones cites two federal cases that provide the date of a conviction may admissible under Federal Rule of Evidence 609, our federal counterpart to rule 5.609: *Cummings v. Malone*, 995 F.2d 817, 826 (8th Cir. 1993) ("The ability to introduce the specific crime is not a license to flaunt its details, however; cross-examiners are limited to eliciting the name, date and disposition of the felony committed."), and *U.S. v. Estrada*, 430 F.3d 606, 616 (2nd Cir. 2005) ("[W]hile it may be proper to limit, under [Federal] Rule [of Evidence] 609(*a*)(1), evidence of the underlying facts or details of a crime of which a witness was convicted, inquiry into the 'essential facts' of the conviction including the nature or statutory name of each offense, its date, and the sentence imposed is presumptively required by the rule, subject to balancing under rule 403."). We note that other circuit courts of appeals have also held the date of conviction to be admissible under Federal Rule of Evidence 609. *See*, *e.g.*, *United States v. Gordon*, 780 F.2d 1165, 1176 (5th Cir. 1986) (noting examination of prior convictions was "limited to the number of convictions, the nature of the crimes and the dates and times of the convictions."); *United States v. Robinson*, 8 F.3d 398, 409 (7th Cir. 1993) (noting a defendant's examination of prior crimes "must be limited to whether the defendant had previously been convicted of a felony, to what that felony was and to when the conviction was obtained.").

> appear that the rights of the complaining party have been injuriously affected by the error or that he has suffered a miscarriage of justice?'" *State v. Sullivan*, 679 N.W.2d 19, 29 (Iowa 2004) (quoting *State v. Trudo*, 253 N.W.2d 101, 107 (Iowa 1977)). In considering harmless error, "'[W]e presume prejudice—that is, a substantial right of the defendant is affected—and *reverse* unless the record affirmatively establishes otherwise.'" [*State v. Newell*, 710 N.W.2d 6, 19 (Iowa 2006)] (quoting *Sullivan*, 679 N.W.2d at 30).

Id. (emphasis in original).

Here, Haglund's testimony was corroborated by the deputy, as Haglund's observations of Jones at the time of the incident were corroborated by the deputy's observations. The jury was informed Haglund had been convicted of forgery. The marginal impact of evidence relating to the date of Haglund's conviction would not have given a reasonable jury a significantly different impression of Haglund's credibility. Under the circumstances presented to us, we conclude Jones was not injuriously affected by exclusion of the date of Haglund's forgery conviction and suffered no miscarriage of justice therefrom. Error, if any, of exclusion of the date of Haglund's forgery conviction was therefore harmless and not reversible.

***III. Conclusion*.**

Because we find substantial evidence in the record of Jones's intoxication, we conclude the district court committed no reversible error in denying Jones's motion for judgment of acquittal. Further, the court committed no reversible error in excluding the date of prosecution witness Haglund's forgery conviction, as error, if any, was harmless and not reversible. We therefore affirm Jones's conviction and sentence.

AFFIRMED.