IN THE COURT OF APPEALS OF IOWA

No. 1-500 / 10-1750
Filed July 13, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

STEVEN LANDIS,
Defendant-Appellant.

Appeal from the Iowa District Court for Lee (South) County, Mary Ann Brown, Judge.

Steven Landis appeals from his judgment and sentence following a jury verdict finding him guilty of the offense of assault on a correctional officer with a bodily fluid (feces) in violation of Iowa Code section 708.3B (2009). **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Stephan J. Japuntich, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Elisabeth S. Reynoldson, Assistant Attorney General, Michael P. Short, County Attorney, and Scott D. Brown, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Doyle and Danilson, JJ.

DOYLE, J.

On April 7, 2010, Steven Landis was an inmate at the Iowa State Penitentiary housed in the Clinical Care Unit (CCU) which serves inmates with mental health needs. As correctional officer Raleigh Helmick reached down to retrieve a breakfast tray from the food portal of Landis's solitary confinement cell, Landis reached out his hand and squirted Helmick with a stream of brown liquid that smelled like human feces. Helmick was hit in the face and chest with the liquid. Helmick immediately dropped the food tray and Landis dropped a toothpaste tube containing a brown substance. Landis started yelling, "I got you with shit." The brown substance soaked through Helmick's uniform shirt onto his t-shirt. He went downstairs to the kitchen area to clean up, and his soiled clothing was given to a supervisor. Throughout the rest of the day Landis told Helmick several times that it was "shit" in the toothpaste tube.

By trial information, Landis was charged with assaulting Helmick with feces in violation of Iowa Code section 708.3B (2009) (inmate assault—bodily fluids or secretions). The matter proceeded to jury trial and concluded with a guilty verdict. Landis was convicted and sentenced to a term not to exceed five-years to run consecutively to the sentence he was already serving. He was also fined.

Landis appeals. He contends the district court erred in overruling his motion for judgment of acquittal because the State failed to prove the substance he sprayed on Helmick was feces.

We review challenges to the sufficiency of the evidence for the correction of errors at law. Iowa R. App. P. 6.907; *State v. Hennings*, 791 N.W.2d 828, 832

(Iowa 2010). "We will uphold a trial court's denial of a motion for judgment of acquittal if the record contains substantial evidence supporting the defendant's conviction." *State v. McCullah*, 787 N.W.2d 90, 93 (Iowa 2010). "Evidence is substantial if it would convince a rational trier of fact the defendant is guilty beyond a reasonable doubt." *State v. Jorgensen*, 758 N.W.2d 830, 834 (Iowa 2008). In making this determination, we view the evidence in the light most favorable to the State, including all legitimate inferences and presumptions that may be fairly and reasonably deduced from the evidence. *State v. Leckington*, 713 N.W.2d 208, 213 (Iowa 2006). "Direct and circumstantial evidence are equally probative." Iowa R. App. P. 6.904(3)(*p*). We give consideration to all evidence, not just the evidence that supports the verdict. *State v. Schmidt*, 588 N.W.2d 416, 418 (Iowa 1998). "The State has the burden to 'prove every fact necessary to constitute the crime with which the defendant is charged.'" *State v. Cashen*, 666 N.W.2d 566, 569 (Iowa 2003) (internal citation omitted).

Here Landis claims the State failed to prove the substance he sprayed on Helmick was feces. He contends the lay opinions regarding the brown substance were insufficient to sustain a conviction and expert testimony was required. He also argues his own characterization of the brown substance as "shit" cannot be construed as an admission the substance was feces.

Iowa Code section 708.3B provides, in relevant part:

> A person who, while confined in a jail or in an institution or facility under the control of the department of corrections, commits any of the following acts commits a class "D" felony:
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> 1. An assault, as defined under section 708.1, upon an employee of the jail or institution or facility under the control of the department of corrections, which results in the employee's contact with blood, seminal fluid, urine, or feces.

The jury was instructed the State must prove "[t]he assault resulted in Mr. Helmick having contact with feces." The term "feces" was defined as "waste matter expelled from the bowels."

At trial, Helmick testified the substance Landis sprayed him with "had a terrible odor, smelled like feces, was liquid and brown." Asked how he knew the substance was feces, Landis testified over objection that "[t]he odor, the texture, the color all led me to believe the fact that it was feces, the fact that in the past I have been around other staff who have been hit." He further testified the substance "was mostly liquid, but there were solid pieces in it." He said he did not smell any coffee. Correctional Officer Kevin Koechle witnessed the assault by Landis. He testified: "Officer Helmick opened the flap, the food flap, the tray came flying out, and right after that Officer Helmick was covered in feces." Asked how he knew it was feces, Koechle responded: "It was a brown substance with a very strong smell of feces." He further testified he heard Landis say "I got you, Helmick. I threw shit on you." Randy VanWye, an investigator at the penitentiary, went to the scene of the assault and took possession of the toothpaste tube. There was still some liquid, semi-solid substance in it. He placed the tube in a paper bag. The tube drained itself into the bag in the evidence locker. VanWye said the contents of the tube had a "very, very disagreeable, very foul odor that was very noticeable of feces." VanWye observed that Helmick's soiled clothing had a "very, very disagreeable odor of feces." Photographs of the toothpaste tube, which is made of clear plastic, depict

the tube containing a brown substance. The photograph of Helmick's white t-shirt shows it covered in a brown substance.

At the hearing on his motion for judgment of acquittal, Landis argued that with no testing and no expert testimony to establish the brown substance was feces, the jury would be left to speculation and conjecture with regard to an element of the crime, that is, whether the substance was in fact feces. The State resisted by contending the lay opinion testimony was sufficient to establish the substance was feces. In denying the motion, the court stated:

> I believe that every human being has personal experience and observations of fecal material and I think that, as a result, every human being who is of competent mind can offer a lay opinion as to whether a substance is feces or not and I conclude these three individuals who observed this substance were of competent minds to make that lay observation and that there's no necessity of an expert witness and as to that particular element, in fact, think that the State has produced sufficient evidence to get the case to a jury.

We agree.

Lay opinions based on personal observation are permissible. Iowa R. Evid. 5.701; *State v. Kinsel*, 545 N.W.2d 885, 889 (Iowa Ct. App. 1996) (noting lay opinion is permissible where it is "(a) rationally based on the perception of the witness; and (b) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue."). Opinion testimony is admitted as a matter of necessity. *Grismore v. Consol. Prods. Co.*, 232 Iowa 328, 344, 5 N.W.2d 646, 655 (1942).

> [A] lay or non-expert opinion is received because and whenever the facts cannot be told so as to give the court or jury the information which the witness' observation has given to him, or when it is impracticable for a witness to state all of the many details which go to make up the mental and optical picture which he observed, so as to enable the jury to see what he saw. The lay witness has been

> permitted to supplement and characterize that picture by his opinion, which has been denominated as but a shorthand rendering of the facts.

Id.

Although there is no dispute as to the admissibility of the officers' opinions that the brown substance sprayed on Helmick was feces, Landis argues the lay opinions are insufficient to sustain a conviction. He asserts expert testimony or scientific testing is required to establish the brown substance was feces.

Expert testimony is generally unnecessary

> if all the primary facts can be accurately and intelligibly described to the jury, and if they, as men of common understanding, are as capable of comprehending the primary facts and of drawing correct conclusions from them as are witnesses possessed of special particular training, experience, or observation in respect of the subject under investigation.

Schlader v. Interstate Power Co., 591 N.W.2d 10, 14 (Iowa 1999) (quoting *Salem v. United State Lines Co.*, 370 U.S. 31, 35, 82 S. Ct. 1119, 1122, 8 L. Ed. 2d 313, 317 (1962)). The jurors certainly were capable of comprehending the primary facts and of drawing correct conclusions from them. Indeed, it would be a rare person who had no personal experience with feces. We do not believe the identification of feces falls solely within the domain of expert testimony. Upon submission of the evidence, the jury was to decide whether the State had proved the elements of the crime charged and could use their common sense and daily experiences in determining whether the brown substance was feces. *See State v. Stevens*, 719 N.W.2d 547, 552 (Iowa 2006) ("Jurors are not expected to lay aside matters of common knowledge or their own observation and experience of the affairs of life, but may give effect to such inferences as common knowledge

or their personal observation and experience may reasonably draw from the facts directly proved."). Paraphrase of an old adage seems apropos under the circumstances: If it looks like feces, if it smells like feces, if it has the color and texture of feces, then it must be feces. No witness with a degree in scatology was required, nor was scientific testing required to establish the fact the substance was feces. Thus, Landis's conviction for assault on a correctional officer with a bodily fluid was supported by sufficient evidence.

Landis argues his use of the word "shit" in reference to the streamer that hit Helmick was not an admission the brown substance was in fact feces and could not therefore support his conviction. Although a reasonable juror could infer Landis's use of the word referred to feces, we agree Landis's statements, standing alone, would not constitute an admission sufficient to support his conviction.[1] While Landis's use of the word "shit" is certainly not dispositive of

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[1] "Shit" is defined as excrement. Webster's Third New Int'l Dictionary 2098 (1993). But, the word has also been defined as nonsense, foolishness, something of little value, trivial and usually boastful or inaccurate talk, and a contemptible person. *Id.* This now ubiquitous word has acquired numerous popular usages apart from its literal meaning. It has been used to describe people, places, and things and to express a wide variety of emotions such as disappointment, disgust, despair, resignation, amazement, awe, shock, anger, and surprise. For examples, see *State v. Vance*, 790 N.W.2d 775, 784 (Iowa 2010) ("He is going to find the shit . . . ."); *Estate of Harris v. Papa John's Pizza*, 679 N.W.2d 673, 676 (Iowa 2004) ("[S]hould be on his 'shit list' . . . ."); *Civil Service Commission of Coralville v. Johnson*, 653 N.W.2d 533, 541 (Iowa 2002) ("You ain't going to be shit."); *Wilson v. IBP, Inc.*, 558 N.W.2d 132, 143 (Iowa 1996) ("[T]his guy's full of shit."); *Marks v. Estate of Hartgerink*, 528 N.W.2d 539, 542 (Iowa 1995) ("It takes a lot of guts and shit . . . ."); *State v. Anderson*, 448 N.W.2d 32, 34 (Iowa 1989) ("[W]hat's this not guilty shit."); *Knox v. Municipal Court of City of Des Moines*, 185 N.W.2d 705, 709 (Iowa 1971) ("You are still a Fascist and your swastika (indicating) Heil Harrison, Heil Harrison and all that shit."); *Graves v. O'Hara*, 576 N.W.2d 625, 627 (Iowa Ct. App. 1998) ("We have f**king shit to haul . . . ."); *State v. Shortridge*, 555 N.W.2d 843, 845 (Iowa Ct. App. 1996) ("Holy shit, let's get out of here . . . ."); *Peck v. Employment Appeal Board*, 492 N.W.2d 438, 439 (Iowa Ct. App. 1992) ("[A]sking what 'shit jobs' were available."); *State v. Findling*, 456 N.W.2d 3, 7 (Iowa Ct. App. 1990) ("I mean this is really big shit here."); *Wiysel v. William Penn College*, 448 N.W.2d 712, 713 (Iowa Ct. App. 1989) ("[H]is words were so much 'sanctimonious shit.'"); and *Blong v.*

the issue of the composition of the brown substance he squirted on Helmick, the officers' description of the brown substance, along with their lay opinions the substance was feces, supplied substantial evidence to support Landis's conviction. We uphold the district court's denial of the motion for judgment of acquittal.

The jury's finding that Landis was guilty of the crime of inmate assault—bodily fluids or secretions was supported by substantial evidence, and we therefore affirm his conviction and sentence.

AFFIRMED.

Snyder, 361 N.W.2d 312, 314 (Iowa Ct. App. 1984) ("[They] told him the pieces he had run were all 'shit.'"). The remarkable versatility of the word "shit" is also demonstrated in George Carlin's "Filthy Words," a verbatim transcript of which is set forth in full in the appendix to the United States Supreme Court's opinion *F.C.C. v. Pacifica Foundation,* 438 U.S. 726, 752-53, 98 S. Ct. 3026, 3042, 57 L. Ed. 2d 1073, 1094 (1978).