**IN THE COURT OF APPEALS OF IOWA**

No. 2-1026 / 12-0166
Filed January 9, 2013

**STATE OF IOWA,**
Plaintiff-Appellee,

**vs.**

**RICHARD EUGENE NOLL,**
Defendant-Appellant.

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Appeal from the Iowa District Court for Muscatine County, Gary P. Strausser, District Associate Judge.

The defendant appeals the judgment and sentence entered after a jury convicted him of operating while intoxicated, third or subsequent offense, as a habitual offender, and driving while revoked. **AFFIRMED.**

Murray W. Bell, Davenport, for appellant.

Thomas J. Miller, Attorney General, Teresa Baustian, Assistant Attorney General, Alan Ostergren, County Attorney, and Kevin McKeever, Assistant County Attorney, for appellee.

Considered by Doyle, P.J., and Mullins and Bower, JJ.

**MULLINS, J.**

Richard Eugene Noll appeals the judgment and sentence entered upon the jury's verdict finding him guilty of the charges of operating while intoxicated, third or subsequent offense, as a habitual offender, and driving while revoked. For the reasons stated below, we find there was sufficient evidence for a jury to conclude that Noll was operating the vehicle, and the district court did not abuse its discretion in denying Noll's combined motion in arrest of judgment or for a new trial. The judgment and sentence are affirmed.

## I. BACKGROUND AND PROCEEDINGS.

On or about October 27, 2011, Noll was convicted by a jury of operating while intoxicated, third or subsequent offense, as a habitual offender, driving while revoked, and failure to maintain control of a vehicle. The citation for failure to maintain control of a vehicle was dismissed by the court at sentencing with no objection by the State. Noll made a motion for verdict of acquittal at the close of the State's case-in-chief and at the close of all of the evidence, both of which were denied. Noll filed a combined motion in arrest of judgment and for a new trial, which was also denied.

On January 6, 2012, the court entered judgment, and Noll was sentenced to a term of fifteen years with a mandatory minimum sentence of three years for the conviction of operating while intoxicated and to a term of ninety days for the conviction for driving while revoked. This appeal followed.

In the late evening on April 13, 2011, Sam Bloomhuff was driving on Mulberry Street in Muscatine, observed an accident scene—a pickup truck in the

ditch—and pulled over to make sure whoever was in the vehicle was alright. Bloomhuff went to the truck and found Noll passed out, bloody and banged up, sitting in the driver's seat. Bloomhuff woke Noll and advised him to exit the vehicle because it was smoking. The driver's side door would not open so Bloomhuff helped Noll out of the driver's side window by grabbing under his arms and dragging him out. Shortly thereafter Noll fell over in the ditch and laid there for a little while.

At 10:56 p.m. Deputy Kopf was driving along Mulberry Street and arrived on the scene in time to see Noll exiting the vehicle through the driver's side window. Bloomhuff told Deputy Kopf what he knew of the accident. Deputy Kopf observed that the roof of the truck was caved in from a probable rollover, and the driver's side door was damaged. He also noticed that the driver's side seatbelt was extended out and locked as if it had been in use during the accident, but the passenger side belt was not. Deputy Kopf recognized that Noll exhibited multiple signs of intoxication, including his inability to stand, impaired fine motor skills, and a smell of alcoholic beverage coming from him.

Around 11:00 p.m. Deputy Brooks arrived on the scene. Both officers had noticed that the roadway where the accident occurred was littered with debris, such as beer cans, feed sacks, and a cooler. Deputy Brooks noticed that Noll's speech was slurred and that he smelled of alcoholic beverage. Deputy Brooks had a hard time waking Noll when Noll was lying on the ground. Noll also dropped his wallet multiple times while trying to present identification to the deputies. Deputy Brooks observed that the roof of the truck had caved in and

made a confined v-shaped space in the cab, which would have made it difficult to move from one side of the cab to the other.

At multiple times during the investigation, Noll told the officers that his girlfriend, Gina Haughney, had been driving the vehicle. Noll repeated this statement several times both at the scene of the accident and at the jail after he had been arrested and transported. The State does not dispute that Noll made these statements. At trial, however, both deputies testified that while the ambulance crew was checking Noll at the scene of the accident, one of the crew members asked him if he was the driver, to which Noll responded that he was. Shortly afterwards Noll corrected himself and stated that it was his girlfriend who was driving.

While at the jail, Noll received a call on his cell phone that he recognized as coming from Haughney. Noll asked the deputies to answer his phone and ask her if she was the driver, but the deputies declined to do so. In the months leading up to trial, no officer spoke to Haughney concerning Noll's arrest until approximately a week before the date of trial.

Noll is not challenging whether he was intoxicated. He admits that he was. His contention is that he was not the driver. Noll did not testify at trial, but some statements attributable to him were repeated during the testimony of others. Haughney testified that Noll was at a bar in Muscatine when she came and picked him up using his parent's truck to take him home to the residence the two of them shared on North Mulberry. While traveling on Mulberry, Haughney swerved to avoid hitting a deer, which caused the truck to flip and come to rest

right-side up in a ditch. Because of the damage to the truck, both Haughney and Noll had to exit out of the passenger side. A passing car stopped to ask if they were okay and offered a ride, which Haughney accepted. She got a ride out of town to Wilton, where her own car was at her sister's house, and left Noll at the scene of the accident.

If Haughney's testimony is correct, after she left the scene of the accident, Noll apparently got back into the truck, and positioned himself in the driver's seat where he then either passed out or fell asleep until Bloomhuff arrived and helped him out through the driver's side window.

Noll has appealed on two separate grounds. First, he claims that the court erred in denying his motion for verdicts of acquittal made both at the conclusion of the state's case in chief and at the conclusion of all the evidence. And second, he asserts that the court erred in denying his combined motion in arrest of judgment or for a new trial after the jury had returned verdicts of guilty.

**II. SCOPE AND STANDARD OF REVIEW.**

Our review of a motion for judgment of acquittal requires an examination of the sufficiency of the evidence supporting the jury's guilty verdict. *State v. Nitcher*, 720 N.W.2d 547, 556 (Iowa 2006). Challenges to the sufficiency of the evidence supporting a guilty verdict are reviewed for correction of errors at law. *Id.* A guilty verdict will not be disturbed if there is substantial evidence to support the finding. *State v. Torres*, 495 N.W.2d 678, 681 (Iowa 1993). Substantial evidence is evidence that could convince a rational trier-of-fact that the defendant is guilty beyond a reasonable doubt. *Id.* To determine whether there was

substantial evidence, the evidence is viewed in the light most favorable to the State. *State v. Robinson*, 288 N.W.2d 337, 338 (Iowa 1980). All evidence is considered, not just that of an inculpatory nature. *State v. Randle*, 555 N.W.2d 666, 671 (Iowa 1996). Evidence that merely raises suspicion, speculation, or conjecture is not substantial evidence. *Id*.

The trial court has broad discretion in ruling on a motion for a new trial, and thus, our review of a denial of that motion is for an abuse of discretion. *Nitcher*, 720 N.W.2d at 559. "A court may grant a new trial where a verdict rendered by a jury is contrary to law or evidence." *State v. Reeves*, 670 N.W.2d 199, 201 (Iowa 2003). The phrase "contrary to . . . evidence" means contrary to the weight of the evidence. *Id*. Unlike the sufficiency of the evidence analysis, the weight of the evidence analysis is much broader in that it involves questions of credibility and refers to a determination that more credible evidence supports one side than the other. *Nitcher*, 720 N.W.2d at 559.

**III. MOTIONS FOR JUDGMENT OF ACQUITTAL.**

Noll asserts there was not sufficient evidence to prove that he was operating the vehicle. A person has committed the offense of operating while intoxicated when he or she operates a motor vehicle while under the influence of an alcoholic beverage. Iowa Code § 321J.2(1) (2011). The offense only requires two elements: "intoxication of the operator and his [or her] act of operating the vehicle while so intoxicated." *State v. Hines*, 478 N.W.2d 888, 890 (Iowa Ct. App. 1991). Operating a motor vehicle is defined as "the immediate, actual physical control over a motor vehicle that is in motion and/or has its engine

running." *State v. Boleyn*, 547 N.W.2d 202, 205 (Iowa 1996). The operation of a motor vehicle may be established by circumstantial evidence as well as direct evidence, and the two are equally probative. *Id.*

The evidence included Bloomhuff's testimony that Noll was behind the wheel when he stopped to check on him, Deputy Kopf's testimony that he saw Noll falling out of the driver's side window of the truck, the caved in condition of the truck's cab, which would have made it difficult to move from the passenger's seat to the driver's seat, and both deputies' testimony that when asked by the ambulance crew if he was the driver, Noll responded that he was.

On appeal, Noll relies on *State v. DeRaad*, in which the Iowa Supreme Court wrote:

> where circumstantial evidence alone is relied on as to any one or more of essential elements the circumstance[] or circumstances must be entirely consistent with defendant's guilt and wholly inconsistent with any rational hypothesis of defendant's innocence and so convincing as to exclude a reasonable doubt that defendant was guilty of the offense charged.

164 N.W.2d 108, 110 (Iowa 1969). The key language here is that the circumstances must be inconsistent with any *rational* hypothesis of innocence. Noll asserts that his girlfriend was driving when she swerved to miss hitting a deer; that he exited the passenger side, followed by her crawling out under the caved in roof and then exiting the passenger side; that she then got a ride with a passersby to another town, leaving Noll bloody, banged up, and intoxicated at the scene of the accident; and that Noll then got back into the truck (presumably on the passenger side), crawled under the caved-in roof, and positioned himself in the driver's seat.

It is the jury's function to determine credibility and resolve discrepancies in the evidence. *State v. Forsyth*, 547 N.W.2d 833, 837 (Iowa Ct. App. 1996). After reviewing the record, we believe there was sufficient evidence to convict Noll of operating while intoxicated. By convicting Noll based on circumstantial evidence, the jury found Haughney's testimony to not be credible and Noll's explanation of the event to not be rational. We cannot say that the jury based its verdict on insufficient evidence. "It is only when evidence which the trier of the fact has relied upon is inherently or patently incredible that this court will substitute its judgment for that of the fact finder." *DeRaad*, 164 N.W.2d at 112.

Based on the evidence before us, we find sufficient evidence from which a rational fact-finder could conclude beyond a reasonable doubt that Noll was operating a motor vehicle while intoxicated.

**IV. MOTION IN ARREST OF JUDGMENT.**

Trial courts have wide discretion in deciding motions for a new trial. *State v. LaDouceur*, 366 N.W.2d 174, 178 (Iowa 1985). However,

> we caution trial courts to exercise this discretion carefully and sparingly when deciding motions for new trial based on the ground that the verdict of conviction is contrary to the weight of the evidence. We have confidence in our trial courts that they will heed this admonition; a failure to follow it would lessen the role of the jury as the principal trier of the facts and would enable the trial court to disregard at will the jury's verdict.

*State v. Ellis*, 578 N.W.2d 655, 659 (Iowa 1998). The weight-of-the-evidence analysis is not the equivalent of a sufficiency-of-the-evidence analysis. The weight-of-the-evidence analysis "is much broader in that it involves questions of

credibility and refers to a determination that more credible evidence supports one side than the other." *Nitcher*, 720 N.W.2d at 559.

The district court overruled Noll's combined motion in arrest of judgment or for a new trial stating:

> This case really boiled down to credibility in large part. There was obviously evidence that supported both sides. The defendant clearly denied driving or operating a motor vehicle on multiple occasions, and obviously Gina . . . testified favorably to the defendant. It's pretty clear that the only—not the only way, but in large part, the only way the jury could have returned a verdict in the manner in which they did is by finding Gina Haughney not credible, and finding that the more credible evidence is the defendant's admission on one occasion that he drove, and the fact that he was located in the driver's seat as corroborating that admission, as well as other circumstantial evidence, as he was the person that drove the motor vehicle that resulted in ending up in the ditch. The jury's—that's their duty to decide which of the versions presented is the more credible version, and they clearly found favorably to the State. I cannot find that that decision is contrary to the weight of the evidence or that there's a miscarriage of justice. This Court's unable to find there is a greater amount of evidence that would support a not guilty verdict, so the motion will be denied.
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> The only other thing I would add is in addition to, obviously, the jury not finding Ms. Haughney credible, there were other circumstance[s] that did support that finding. For example, obviously while the defendant never has any burden to present any evidence, he did present evidence. She did testify and there really was never a reasonable explanation as to why she went all the way to Wilton rather than to their residence, which was much closer. But nonetheless, that's not a large part of the Court's decision finding the motion should be denied.

The district court was well within its discretion to deny the combined motion in arrest of judgment or for a new trial. The court properly weighed the evidence and made an independent assessment of the testimony and its credibility. The jury's verdict was not contrary to the weight of the evidence.

## V. CONCLUSION.

There was sufficient evidence to convict Noll of operating a vehicle while intoxicated, and the district court did not abuse its discretion by denying Noll's combined motion in arrest of judgment or for a new trial.

**AFFIRMED.**