IN THE COURT OF APPEALS OF IOWA

No. 2-1029 / 12-0375
Filed December 12, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

SHAYNE MICHAEL ENGLUND,
Defendant-Appellant.

Appeal from the Iowa District Court for Jackson County, Gary D. McKenrick, Judge.

Shayne Englund appeals his conviction for driving while revoked, claiming the district court erred in denying his motions for judgment of acquittal. **AFFIRMED.**

John L. Kies of Kies Law Firm, Bellevue, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney General, Chris Raker, County Attorney, and Sara Davenport, Assistant County Attorney, for appellee.

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

DOYLE, P.J.

Shayne Englund appeals from his conviction for driving while revoked in violation of Iowa Code section 321J.21 (2011). He contends the district court erred in denying his motions for judgment of acquittal. We affirm.

On the afternoon of April 22, 2011, Englund went to the Maquoketa police station seeking assistance with a dispute he was having with his employer. He told Officer Mike Owen he wanted to get his belongings out of his desk at work, and he wanted a copy of his employee handbook. Officer Owen knew Englund's employer and said he would see what he could do.

It was usual practice, when someone came to the police station, for officers to have dispatch "run" the person's driver's license to "make sure there's not a warrant or anything out for them." When Englund left the station, dispatch told Officer Owen that Englund's license was revoked. Officer Owen then looked out the window to see if Englund was walking or driving. Officer Owen observed Englund get in the driver's seat of a car and drive off. Later in the day, Officer Owen obtained the employee handbook. He called Englund, telling him the handbook could be picked up at the station. Officer Owen observed Englund arrive at the station driving a car. He cited Englund for driving while revoked.

At trial, Englund testified he walked to the station on the first visit. He admitted driving to the station on the second visit but claimed he believed Officer Owen had given him permission to drive to the station. He admitted his license was revoked at the time.

Englund moved for judgment of acquittal arguing "that no reasonable finder of fact could find [him] guilty based on the evidence presented."

Nevertheless, the jury found Englund guilty of driving while revoked. He was sentenced to sixty days in jail with all sixty days suspended and was fined $1,000.

On appeal, Englund contends the district court erred in denying his motions for judgment of acquittal. The State argues Englund failed to preserve error on this claim because he failed to state specific grounds for his motion. "To preserve error on a claim of insufficient evidence for appellate review in a criminal case, the defendant must make a motion for judgment of acquittal at trial that identifies the specific grounds raised on appeal." *State v*. *Truesdell*, 679 N.W.2d 611, 615 (Iowa 2004); *see also State v*. *Brubaker*, 805 N.W.2d 164, 170 (Iowa 2011) (finding error not preserved when a motion for directed verdict of acquittal lacked specific grounds). We elect to bypass this error preservation concern and proceed to the merits. *See State v*. *Taylor*, 596 N.W.2d 55, 56 (Iowa 1999).

Our review of Englund's motion for judgment of acquittal "requires us to examine the sufficiency of the evidence supporting the jury's guilty verdict." *State v*. *Nitcher*, 720 N.W.2d 547, 556 (Iowa 2006). We review Englund's challenge to the sufficiency of the evidence for correction of errors at law, and we will uphold the jury's verdict if it is supported by substantial evidence. *See id.* Evidence is considered substantial if a reasonable trier of fact could find Englund guilty beyond a reasonable doubt. *State v*. *Casady*, 597 N.W.2d 801, 804 (Iowa 1999). We consider all the evidence in the light most favorable to the State, drawing all reasonable inferences. *State v*. *Milom*, 744 N.W.2d 117, 120 (Iowa Ct. App. 2007). The evidence "must raise a fair inference of guilt as to each

essential element of the crime" and must not raise only suspicion, speculation, or conjecture. *See State v*. *Speicher*, 625 N.W.2d 738, 741 (Iowa 2001).

To convict one of driving while revoked, the State has the burden to prove beyond a reasonable doubt that (1) the defendant's license was revoked, and (2) the defendant operated a motor vehicle during the period of revocation. *See State v*. *Thompson*, 357 N.W.2d 591, 594 (Iowa 1984). Englund admitted his license was revoked. He admitted he operated a motor vehicle during the period of revocation, but he argues he was granted "permission" to drive to the station by Officer Owen.

Englund only presents an excuse for his conduct, not a defense to the charge, for he admits on appeal that the officer had no authority to temporarily lift the revocation. He cites no law to us, nor did he to the district court, that would allow a jury to excuse his conduct on the grounds that the officer gave him permission to drive while his driver's license was revoked. But, even if his act of driving to the police station on the second visit was somehow excused, substantial evidence supports a finding he drove to the police station on the first visit.

Officer Owen testified he observed Englund drive away in a car after Englund's initial visit to the station. Englund claims he walked to the station. "Inherent in our standard of review of jury verdicts in criminal cases is the recognition that the jury was free to reject certain evidence, and credit other evidence." *Nitcher*, 720 N.W.2d at 556. "A jury is free to believe or disbelieve any testimony as it chooses and to give as much weight to the evidence as, in its judgment, such evidence should receive." *State v*. *Liggins*, 557 N.W.2d 263, 269

(Iowa 1996). "[T]he very function of the jury is to sort out the evidence and 'place credibility where it belongs.'" *State v. Thornton*, 498 N.W.2d 670, 673 (Iowa 1993) (citation omitted). The "credibility of witnesses is for the factfinder to decide except those rare circumstances where the testimony is absurd, impossible, or self-contradictory." *State v. Neitzel*, 801 N.W.2d 612, 624 (Iowa Ct. App. 2011). The jury was free to believe the police officer and disbelieve Englund.

Considering all of the evidence in the record in the light most favorable to the State and making all reasonable inferences that may fairly be drawn, we find the jury's guilty verdict is supported by substantial evidence. Finding no error in the district court's denial of the motions for judgment of acquittal, we affirm Englund's conviction and sentence.

AFFIRMED.