FILED
FEB 26 1980
CLERK SUPREME COURT

277

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)

Plaintiff-Appellee,) Filed February 26, 1980

vs.)

HARRY K. JORGENSEN, JR.,) 370
63482

Defendant-Appellant.)

Appeal from Emmet District Court - Charles H. Barlow, Judge.

Defendant appeals conviction of operating a motor vehicle while under the influence of an intoxicant (OMVUI), in violation of section 321.281, The Code 1979. - Affirmed.

Lamar Thomas Piper, of Piper, Sunde & Olson, St. James, Minnesota, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Lona Hansen, Assistant Attorney General, for plaintiff-appellee.

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

PER CURIAM

Defendant, Harry K. Jorgensen, Jr., appeals conviction of operating a motor vehicle while under the influence of an intoxicant (OMVUI), in violation of section 321.281, The Code 1979. We affirm.

Jorgensen first asserts the trial court improperly allowed the jury to view a videotape made during booking. He claims since the element of intoxication was admitted, the probative value of the videotape was outweighed by its prejudicial effect on the jury and should have been excluded. Jorgensen's brief, however, failed to cite authority supporting this contention and we deem the issue waived. Iowa R. App. P. 14(a)(3). Even if we were to reach the issue, it would fail since the admission of the challenged evidence was within the discretion of the trial court. See State v. Nowlin, 244 N.W.2d 596, 600 (Iowa 1976).

Jorgensen also asserts the evidence at trial was insufficient to show he was "operating" a motor vehicle as contemplated in section 321.281 and therefore the lower court erred by denying his motion in arrest of judgment and motion for new trial. On an appeal challenging the sufficiency of the evidence, we view the evidence in a light most favorable to the State. State v. Rinehart, 283 N.W.2d 319, 323 (Iowa 1979). The evidence at trial showed Jorgensen was asleep in the driver's seat of his car. The engine of the car was running and the vehicle was parked partially on the traveled portion of the highway. Based on these facts, we must determine whether Jorgensen crossed the line separating an "occupant" of a motor vehicle from an "operator" of one. We hold he did.

Section 321.281 proscribes operation of a motor vehicle while intoxicated, and as Jorgensen concedes, operation need not include movement of the vehicle itself. In State v. Webb, 202 Iowa 633, 637, 210 N.W. 751, 752 (1926), the court held Webb, who had started his automobile and sat with the engine running, was operating the vehicle for purposes of the O.M.V.U.I. statute. The court said "[H]e could not have put his car in motion without first having started the engine, and the starting of the engine, therefore, is the first step in operation of the car." Id. Jorgensen attempts to distinguish Webb on the ground "In the present case, the undisputed testimony, in an affirmative sense, is that the motor was started at the time defendant removed himself

from the passenger side of the vehicle and entered on the driver's side of the vehicle." However, Jorgensen misses the point of Webb, and we find it controlling. The issue is not who started the car, it is whether the car was operational and whether defendant was in control of the car's mechanism. Webb holds the first step in making a vehicle operational is the starting of its engine. Here, the engine was running; thus, the vehicle was operational. Jorgensen was in the driver's seat and had control of the vehicle's mechanisms. He had passed from occupant to operator. The evidence below supported the finding of the jury and the trial court did not err by overruling Jorgensen's post-trial motions.

AFFIRMED.