FILED
MAR 31 1980
CLERK SUPREME COURT



IN THE COURT OF APPEALS OF IOWA

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| STATE OF IOWA, | ) | |
| Plaintiff-Appellee, | ) | Filed March 31, 1980 |
| vs. | ) | |
| DENNIS M. SCALF, | ) | 0-14 / 63563 |
| Defendant-Appellant. | ) | |

Appeal from Linn District Court - August F. Honsell, Jr, Judge.

Defendant appeals conviction of operating a motor vehicle while under the influence of an intoxicant, in violation of section 321.281, The Code 1979, asserting State failed to establish jurisdiction of trial court. Affirmed.

Thomas B. Read of Crawford, Sullivan & Read, Cedar Rapids, for plaintiff-appellant.

Thomas J. Miller, Attorney General of Iowa, Shirley Ann Steffe, Assistant Attorney General, and Eugene J. Kopecky, Linn County Attorney, for defendant-appellee.

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

DONIELSON, J.

Defendant, Dennis M. Scalf, appeals conviction for operating a motor vehicle while under the influence of an intoxicant (OMVUI), in violation of section 321.281, The Code 1979, asserting State failed to establish jurisdiction of trial court because no direct evidence that offense occurred in Iowa was presented. We affirm.

I.

Defendant was charged by information with OMVUI (third offense) and on April 2, 1979, was brought to trial. The arresting officer testified that at about 1 a.m. on December 23, 1978, he encountered defendant about 150 feet west of the intersection of Highway 149 and road E-70, near the town of Walford and the highway to Amana; defendant was seated in his van, which had left the road and came to rest in a field. The officer testified defendant appeared intoxicated. State did not present any direct evidence any of the locations described were in Iowa. At the close of State's evidence, defendant moved for a directed verdict of acquittal, alleging, among other contentions, State failed to prove jurisdiction of the trial court to hear and decide the case. The trial court overruled both this motion and a similar motion at the conclusion of all the evidence. The jury returned a verdict of guilty and defendant was sentenced to a prison term not to exceed five years.

II.

Defendant's appeal challenges the trial court's jurisdiction to hear and decide this case. He argues no direct evidence was introduced that proved his conduct occurred within Iowa and the circumstantial evidence regarding the location of his conduct is not sufficient to support such a finding. The issue presented is whether the trial court correctly ruled it had jurisdiction to hear and decide this case.

Jurisdiction pertains to the power of a court to hear and decide an issue on the merits. Lueders v. Brewer, 218 N.W.2d 638, 640 (Iowa 1974); State v. Wardenburg, 261 Iowa 1395, 1400, 158 N.W.2d 147, 150 (1968). The district courts of Iowa are courts of general jurisdiction, State v. Radcliffe, 242 Iowa 572, 581, 47 N.W.2d 175, 176 (1951), and are empowered to hear criminal actions. SS 602.1, 803.1, .2, The Code 1979. However, criminal actions are to be tried in the county in which the crime was committed, unless

provided otherwise by law. Id. But all objections to the place of trial are waived by defendant unless the defendant objects accordingly prior to trial. Id.

Defendant contends State must prove the existence of jurisdiction beyond a reasonable doubt as an element of its case. Until 1973 venue was a jurisdictional matter that had to be proven by the State at trial. State v. Donnelly, 242 N.W.2d 295, 297 (Iowa 1976); State v. Hackett, 197 N.W.2d 569, 570 (Iowa 1972); § 753.2, The Code 1971. This section was repealed, however, in 1973 and replaced by the predecessor to section 803.2, The Code 1979. § 753.2, The Code 1973. Under current law, objections to venue are automatically waived unless raised prior to trial. Donnelly, 242 N.W.2d at 298; § 803.2, The Code 1979. Although defendant concedes State is no longer required to prove venue as an element of its case, he asserts State still must prove jurisdiction as an element of its case.

While we agree jurisdiction to hear and decide an action must be established in every case, O'Kelley v. Lochner, 259 Iowa 710, 715, 145 N.W.2d 626, 629 (1966), we do not hold it must be proven by State as an element of its case. See generally State v. Youngbear, 229 N.W.2d 728, 732-33 (Iowa 1975). Since the question of jurisdiction is one of law, State v. Clough, 117 Iowa 714, 717, 83 N.W. 727, 728 (1900), the court, not the jury, decides the issue under the evidence and record before it. Id. As a result, jurisdiction must be proven in every case, but we do not view it as part of State's case.

Jurisdiction may be inferred from either direct or circumstantial evidence. See State v. Dahlstrom, 224 N.W.2d 443, 447 (Iowa 1974); Hackett, 197 N.W.2d at 571. Absent direct proof, jurisdiction may be found upon sufficient proof from which the only rational conclusion to be drawn is that the crime was committed in the state and county alleged in the information. Hackett, 197 N.W.2d at 571. The evidence presented in this case, along with the trial court's power to take judicial notice of various geographical facts, such as location of cities and certain designated places when shown to be within a certain distance of an established point, State v. Creighton, 201 N.W.2d 471, 472 (Iowa 1972); State v. Conley, 176 N.W.2d 213, 215 (Iowa 1970); State v. Ladd, 252 Iowa 487, 489, 106 N.W.2d 100, 101 (1961), leads us to conclude the trial court correctly determined it possessed as a matter of law jurisdiction to hear and decide this case.

The arresting officer testified he was employed as a Deputy Sheriff of the Linn County Sheriff's Department and began general patrol in an official patrol car at 6:30 p.m., on the evening prior to the early morning arrest of defendant. He testified further: That he initially encountered and talked to defendant about 150 feet west of the intersection of Highway 149 and road E-70; the town of Walford is near the intersection; his patrol car faced toward Walford; and a person can reach Amana by way of Highway 149. Defendant testified: His address was Rural Route 1, Amana; he went to the Paradise Bar and Aquarium Bar on the evening of December 22, 1978; and he was going to his house near the Amanas. During cross-examination, defendant testified he was staying at the Five Seasons Trailer Court in Cedar Rapids, and he was going to his "ex-wife's . . . a mile and a quarter north of the Main Amana Colony on Highway 149." Joseph Reyhons, manager of the Aquarium Lounge, stated his address was Solon, Iowa, and Solon was thirty miles from the Aquarium, where defendant was on the evening of December 22, 1978. We hold the only rational conclusion to be drawn from this evidence is that defendant's conduct occurred in Iowa.

We are unpersuaded by defendant's argument his motion for acquittal, Iowa R. Crim. P. 18(8)(a), at the end of State's evidence precludes the trial court from relying on the entire record, including defendant's evidence, in determining whether to sustain his same motion at the close of all the evidence. The cause in a criminal action should be submitted to the jury and trial court should not direct verdict of acquittal if there is any substantial evidence reasonably tending to support the charge. See State v. Overstreet, 243 N.W.2d 880, 883-84 (Iowa 1976); State v. Willer, 218 N.W.2d 605, 607 (Iowa 1974). Moreover, the language of the rule does not support defendant's suggested meaning, giving defendant a right to rely on a motion for judgment of acquittal at close of State's evidence to preclude consideration of any evidence defendant may introduce. Iowa R. Crim. P. 18(8)(a). Trial court can properly consider the entire record, even when a defendant introduces evidence after denial of his or her motion for acquittal at the close of the government's case. State v. Rinehart, 283 N.W.2d 319, 323 (Iowa 1979) (criminal prosecution initiated and tried after effective date of Iowa R. Crim. P. 18(8)(a)); State v. Jurgenson, 225 N.W.2d 310, 312-13 (Iowa 1975); State v. Niccum, 190 N.W.2d 815, 823 (Iowa 1971); see United States v. Ponder, 444 F.2d 816, 822 (5th Cir.

1971). Holding otherwise would render the motion for a directed verdict at the close of all the evidence a meaningless gesture since there would be nothing new to consider. Even if we were to accept defendant's strained reading of the rule, we find sufficient evidence in State's case to uphold trial court's overruling of defendant's motion for directed verdict of acquittal.

We also find meritless defendant's argument trial court had to state explicitly in its ruling the taking of judicial notice of the location of the events.

We affirm trial court's judgment.

AFFIRMED.