IN THE COURT OF APPEALS OF IOWA

No. 7-620 / 97-0042 000415

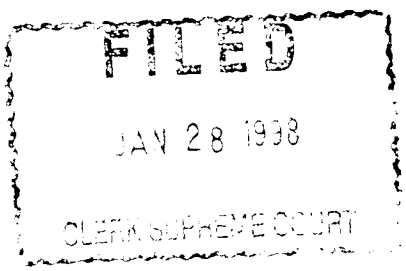
STATE OF IOWA,

Plaintiff-Appellee,

vs.

JONATHAN HOPPE,

Defendant-Appellant.



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

Defendant appeals the judgment and sentence entered upon his conviction of operating while intoxicated, third offense. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Shellie L. Knipfer, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Susan Crawford, Assistant Attorney General, William E. Davis, County Attorney, and Marc Gellerman, Assistant County Attorney, for appellee.

Considered by Cady, C.J., and Sackett and Huitink, JJ.

PER CURIAM.

Defendant-appellant Jonathan Hoppe appeals his conviction for the crime of operating while intoxicated, third offense, in violation of Iowa Code section 321J.2(1). He claims his conviction was based on inadmissible hearsay evidence. We affirm.

On June 27, 1996, defendant was in a park in Scott County. A park employee saw defendant driving toward the park exit. The employee, Kenneth McCool, believed defendant was speeding and stopped defendant. McCool noticed defendant's speech was slurred and he smelled of alcohol.

McCool called for backup. A Scott County deputy sheriff arrived ten minutes later. McCool testified defendant did not get out of his vehicle during this time. Defendant testified it took forty minutes for the deputy to arrive and during this time he got out of his pickup, took two beers out of a cooler in the back, and drank them.

After the deputy arrived, defendant was given field sobriety tests. Defendant failed the tests and was placed under arrest and taken to jail. There, defendant was given a breathalyser test. It showed his blood alcohol level to be .111.

A jury found defendant guilty of operating while intoxicated. He appeals contending the court erred in admitting certain hearsay evidence.

The trial court has broad discretion in ruling upon an evidentiary issue, including the admission of evidence under Iowa Rules of Evidence 802 and 803.

State v. Kone, 562 N.W.2d 637, 637 (Iowa App. 1997). Our standard of review is for an abuse of discretion. *Id.*

Upon review of the record and the findings of the trial court, we find the court did not abuse its discretion in concluding the evidence was admissible.

We affirm defendant's conviction for operating while intoxicated, third offense. Costs of this appeal are assessed to defendant.

AFFIRMED.