IN THE COURT OF APPEALS OF IOWA

No. 1999-188 (9-412) / 98-1509
Filed September 29, 1999



STATE OF IOWA,
Plaintiff-Appellee,

vs.

ROBIN M. OROSZ,
Defendant-Appellant.

Appeal from the Iowa District Court for Johnson County, Sylvia A. Lewis, District Associate Judge.

On appeal from the judgment and sentence entered following his convictions for operating while intoxicated and interference with official acts, see Iowa Code sections 321J.2 and 719.1 (1997), defendant contends the evidence was insufficient to support his convictions. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and James G. Tomka, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Roxann M. Ryan, Assistant Attorney General, J. Patrick White, County Attorney, and Karen Egerton, Assistant County Attorney, for appellee.

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

SACKETT, C.J.

Defendant-Appellant Robin M. Orosz was convicted after a jury trial of operating a motor vehicle while intoxicated in violation of Iowa Code section 321J.2 and interfering with official acts in violation of Iowa code 917.1 (1997). Defendant appeals contending there was not substantial evidence supporting his convictions. We affirm.

We first address defendant's claim the evidence was not sufficient to support the conviction of operating a motor vehicle while intoxicated in violation of Iowa Code 321J.2(1997).[1]

The jury's finding of guilt is binding on us unless we conclude there was not substantial evidence in the record to support such a finding. In determining whether there was substantial evidence, we review the record in the light most favorable to the State. Substantial evidence means such evidence as could convince a rational trier of

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[1]321J.2. Operating while under the influence of alcohol or a drug or while having an alcohol concentration of .10 or more (OWI)

1. A person commits the offense of operating while intoxicated if the person operates a motor vehicle in this state in any of the following conditions:

a. While under the influence of an alcoholic beverage or other drug or a combination of such substances.

b. While having an alcohol concentration of.10 or more.

c. While any amount of a controlled substance is present in the person, as measured in the person's blood or urine.

2. A person who violates subsection 1 commits:

a. A serious misdemeanor for the first offense, punishable by all of the following:

(1) Imprisonment in the county jail for not less than forty-eight hours, to be served as ordered by the court, less credit for any time the person was confined in a jail or detention facility following arrest. However, the court, in ordering service of the sentence and in its discretion, may accommodate the defendant's work schedule.

fact that the defendant is guilty beyond a reasonable doubt. *State v. Torres*, 495 N.W.2d 678, 681 (Iowa 1993). Substantial evidence is evidence which would convince a rational trier of fact the defendant is guilty of the crime charged beyond a reasonable doubt. *State v. Thornton*, 498 N.W.2d 670, 673 (Iowa 1993). The jury is free to believe or disbelieve any testimony as it chooses and to give weight to the evidence as in its judgment such evidence should receive. *Id.*

In reviewing the sufficiency of the evidence for a guilty verdict, we view the evidence in the light most favorable to the State, including all legitimate inferences and presumptions which may be fairly and reasonably deduced from the evidence in the record. We consider all of the evidence and not just the evidence supporting the verdict. *State v. Liggins*, 524 N.W.2d 181 (Iowa 1994). Both direct and circumstantial evidence are equally probative. Iowa R. App. P. 14(f)(16).

The testimony was that a state trooper was called to help a disabled car. The trooper found defendant in the driver's seat of the car. A second person was asleep in the passenger's seat. The defendant told the trooper he was driving a friend home. The trooper assisted defendant. The trooper testified defendant staggered, had bloodshot and watery eyes, smelled of alcohol; had slurred speech and he was belligerent. A second trooper corroborated the first trooper's observations. Defendant testified he only had consumed two twelve-ounce beers and could not have been intoxicated.

It is the jury's job to weigh the credibility of the evidence. *State v. Schertz*, 328 N.W.2d 320, 322 (Iowa 1982). We will uphold the jury verdict unless it is against the weight of the evidence. *See State v. Schrier*, 300 N.W.2d 305, 306 (Iowa 1981). The troopers' evidence if believed is sufficient to support the charge. We affirm on this issue.

Defendant next contends there was not sufficient evidence to convict him of interference with Official Acts in violation of Iowa Code 719.1(1997).[2] The jury was

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[2]719.1. Interference with official acts

1. A person who knowingly resists or obstructs anyone known by the person to be a peace officer, emergency medical care provider under chapter 147A, or fire fighter, whether paid or volunteer, in the performance of any act which is within the scope of the lawful duty or authority of that officer, emergency medical care provider under chapter 147A, or fire fighter, whether paid or volunteer, or who knowingly resists or obstructs the service or execution by any authorized person of any civil or criminal process or order of any court, commits a serious misdemeanor. However, if a person commits an interference with official acts, as defined in this subsection, and in so doing inflicts bodily injury other than serious injury, that person commits an aggravated misdemeanor. If a person commits an interference with official acts, as defined in this subsection, and in so doing inflicts or attempts to inflict serious injury, or displays a dangerous weapon, as defined in section 702.7, or is armed with a firearm, that person commits a class "D" felony.

2. A person under the custody, control, or supervision of the department of corrections who knowingly resists, obstructs, or interferes with a correctional officer, agent, employee, or contractor, whether paid or volunteer, in the performance of the person's official duties, commits a serious misdemeanor. If a person violates this subsection and in so doing commits an assault, as defined in section 708.1, the person commits an aggravated misdemeanor. If a person violates this subsection and in so doing inflicts or attempts to inflict bodily injury other than serious injury to another, displays a dangerous weapon, as defined in section 702.7, or is armed with a firearm, the person commits a class "D" felony. If a person violates this subsection and uses or attempts to use a dangerous weapon, as defined in section 702.7, or inflicts serious injury to another, the person commits a class "C" felony.

3. The terms "resist" and "obstruct", as used in this section, do not include verbal harassment unless the verbal harassment is accompanied by a present ability and apparent intention to execute a verbal threat physically.

instructed that in order to convict defendant of Interference with Official Acts the State was required to show:

> 1. That on or about the 8th day of July, 1997, the defendant knew Trooper Christopher Richer was a peace office who was performing an act which is within the scope of his lawful duty or authority.
> 2. The defendant knowingly resisted or obstructed the officer in his lawful authority to arrest and transport the defendant to jail.

The State contends the crime occurred after defendant was handcuffed and put in the trooper's car. The trooper in uniform was driving a marked car. He testified while he and defendant were driving about fifty-five miles an hour on the interstate defendant began screaming and then began kicking the radio system in the car. The trooper related defendant then swayed his upper body back and forth and slammed his body on the trooper's shoulder. The trooper further testified after that occurred that he lost control to the car and it went to the south shoulder and then back across the traveled portion of the road before he gained control and pulled the car to the shoulder and stopped.

This evidence is sufficient to support the conviction. We affirm.

AFFIRMED.
