FILED
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CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed February 25, 1987
vs.	)	
MARK A. ANNIS,	)	6-501 86-593
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Linn County (CRF 9460) - L. Vern Robinson, Judge.

Defendant appeals his conviction, following a jury trial, of two counts of involuntary manslaughter and one count of operating while under the influence of alcohol. **AFFIRMED.**

Charles Harrington, Chief Appellate Defender, and B. John Burns, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa; Ted Metier, Assistant Attorney General; and Jerry VanderSanden, Assistant Linn County Attorney; for plaintiff-appellee.

Considered by Schlegel, P.J., Hayden, and Sackett, JJ.

SCHLEGEL, P.J.

The defendant appeals his conviction, following a jury trial, of two counts of involuntary manslaughter and one count of operating while under the influence of alcohol. We affirm.

At 6:30 p.m. on July 31, 1985, the defendant's car collided with the car of David and Phyllis Emde near Coggun, Iowa. Both of the Emdes were pronounced dead at the scene of the accident. At the hospital, a medical technician removed a blood sample from the defendant pursuant to a search warrant. Another technician, using an Abbott TBX blood tester, determined that the defendant's blood alcohol concentration was .142 at 8:56 p.m. Pathologist Richard E. Weland speculated at trial that the defendant's blood alcohol concentration at the time of the accident would have been .187. He also testified that the defendant would have had to drink sixteen twelve-ounce glasses or nineteen ten-ounce glasses of beer to attain that level. According to the defendant and a number of other witnesses, he drank seven ten-ounce glasses of beer at the utmost on the day of the accident. An expert witness for the defense stated that seven ten-ounce glasses would yield a blood alcohol concentration of between .015 and .020 over that time span.

At trial, a deputy sheriff attempted to reconstruct the accident from skid marks, photographs, and the post-accident positions of the vehicles involved. He concluded that the collision occurred when the Emdes lost control of their automobile while trying to avoid the defendant's car, which had encroached on their lane. An expert witness for the defendant found the sheriff's account of the accident unlikely, and testified that there was insufficient evidence from which to reconstruct the accident.

The trial court overruled the defendant's motions for directed verdict, in arrest of judgment, and for a new trial based upon the sufficiency of the

evidence against him. After the jury found the defendant guilty on all three counts, the trial court sentenced him to concurrent prison terms of up to five years each on the involuntary manslaughter charges and to a consecutive term of 48 hours on the operating while under the influence charge.

The defendant contends that the trial court erred in overruling his motions based on the sufficiency of the evidence where the State failed to produce sufficient evidence that he was operating under the influence of alcohol on the evening of the accident. He argues that abundant testimony that he consumed an insufficient quantity of alcohol to produce the blood alcohol concentration revealed by the Abbott TBX test result indicates that the test was unreliable. He maintains that the test result's unreliability is further evidenced by the test machine's use of a control with a range of acceptable readouts of 40 milligrams per deciliter. The defendant also argues that the State's inability to present any testimony that he showed any outward signs of intoxication on the evening of the accident demonstrates that he was not under the influence of alcohol. The defendant contends that the trial court erred in overruling his various motions where the State failed to produce sufficient evidence that he caused the Emdes' deaths. He argues that conflicting testimony as to the cause of the accident and as to whether the accident could be reconstructed at all indicates the State's failure to present sufficient evidence that he drove recklessly on the evening in question and that his recklessness caused the victim's deaths.

The principles governing our review of an attack levied against the sufficiency of evidence are well established. We view the evidence in the light most favorable to the State. State v. Mulder, 313 N.W.2d 885, 888 (Iowa 1981), cert. denied Mulder v. Iowa, 459 U.S. 841, 74 L.Ed.2d 83, 103 S. Ct. 90 (1982). We must consider all of the evidence, and we may indulge all legitimate influences arising reasonably and fairly therefrom in support of the jury's verdict. Id.

The verdict is binding if it is supported by substantial evidence. State v. Robinson, 288 N.W.2d 337, 339 (Iowa 1980).

Iowa Code section 707.5(1) (1985), provides that a person commits involuntary manslaughter when that person unintentionally causes the death of another person by the commission of a public offense other than a forcible felony or escape. Iowa Code section 321.281(1) (1985) provides that a person shall not operate a motor vehicle under the influence of alcohol or while having an alcohol concentration of thirteen hundredths or more.

We find that there is substantial evidence in the record that the defendant was driving while under the influence of alcohol. A reliable and verified blood test revealed a blood alcohol content of .142 percent approximately two and one-half hours after the accident. A board certified pathologist estimated that the defendant's blood alcohol level at the time of the accident was .187 percent. The defendant was observed drinking prior to the accident, and differing testimony was offered as the actual amount he consumed during that period. A rational jury, given this evidence, could have found that the defendant was operating a motor vehicle in violation of section 321.281.

We also find there is substantial evidence in the record that the defendant caused the deaths of David and Phyllis Emde. A specialist concluded that defendant's vehicle caused the accident by crossing the center line and forcing the Emde vehicle to take evasive action. The defendant testified he had no recollection of the events leading up to the collision or the collision itself. A rational jury could have concluded that the defendant was the cause of the collision and therefore defendant was guilty of involuntary manslaughter.

AFFIRMED.