IN THE COURT OF APPEALS OF IOWA

FILED
JUN 15 1989
CLERK SUPREME COURT

233

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	
vs.	)	
DAVID LYNN EDGERLY,	)	9-130 88-1061
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Linn County (No. CRF 10542), Thomas M. Horan, Judge.

Defendant appeals from his conviction, following a jury trial, of third-offense OWI. **AFFIRMED.**

Michael L. Mollman of Mollman, Gruhn & Wertz, Cedar Rapids, for defendant-appellant.

Thomas J. Miller, Attorney General; Daniel W. Perkins, Assistant Attorney General; and Jerry Vander Sanden, Assistant County Attorney, for plaintiff-appellee.

Considered by Donielson, P.J., and Hayden and Habhab, JJ.

DONIELSON, P.J. 231

Defendant was convicted, following a jury trial, of operating while intoxicated, third offense, in violation of Iowa Code section 321J.2(1)(a) (1987). Defendant appeals, contending the trial court erred in denying his motion for a directed verdict of acquittal, made at the close of the State's case, after the State failed to make a prima facie case.

The trial court shall order the entry of a judgment of acquittal if the evidence is insufficient to sustain a conviction. Iowa R. Cr. P. 18(8)(a). In considering the propriety of a motion for judgment of acquittal in a criminal case, we view the evidence in the light most favorable to the State. Iowa R. App. P. 14(f)(2). We consider all legitimate inferences that may reasonably be deduced from the evidence. State v. Weaver, 405 N.W.2d 852, 853 (Iowa 1987). We will affirm the trial court's refusal to grant a motion for judgment of acquittal if there is any substantial evidence in the record to support the charge. Id. Substantial evidence is evidence which would convince a rational trier of fact that defendant is guilty of the crime charged beyond a reasonable doubt. Id. The State must put on substantial evidence the defendant is guilty of the crime charged beyond a reasonable doubt in order to sustain a conviction under Iowa Code section 321J.2(1)(a) (1987).

The State's evidence centered around the testimony of seventeen-year-old Christopher William Holst and his friend, Kerry Shoudy. Holst testified that in the early morning hours of August 27, 1987, he and Shoudy saw a pickup truck sitting in the middle of an intersection with the engine running and its lights on. Holst approached the pickup and noticed the driver apparently asleep with his head lying on the open window. Holst shook the driver awake and offered to drive him home after concluding he was drunk. Holst based that conclusion on the strong smell of alcohol in the pickup and the driver's slurred speech during their five-minute conversation. The driver declined assistance, and Holst convinced him to pull his vehicle to the side of the road. Holst and Shoudy observed the man drive the pickup out of the intersection down the road about 200 feet and then into a steep ditch. Shoudy drove his vehicle near the truck and noticed the driver "had the engine floored trying to get out of the ditch." Holst again approached the driver to offer assistance. After it was again rejected, Holst and Shoudy drove to Holst's home and reported the incident to the sheriff. The two men returned to the pickup to await the sheriff's arrival. Upon their arrival, they observed the driver stumble and lean into the passenger's side of another vehicle and drive away. They memorized the license plate number and reported it to the sheriff.

In the courtroom Holst and Shoudy identified the defendant as the driver of the pickup. Holst testified his opinion that the defendant was drunk was based upon the smell of alcohol, the defendant's slurred speech, the way the pickup was driven, and the defendant's manner of walking. Shoudy also testified that defendant's speech was slurred and defendant swayed. However, he did not have an opinion that defendant was drunk. We find the evidence was sufficient to submit the cause to the jury. See State v. Pardock, 215 N.W.2d 344, 346 (Iowa 1974). The trial court did not err in denying defendant's motion for acquittal.

AFFIRMED.