



IN THE COURT OF APPEALS OF IOWA

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STATE OF IOWA,	)	
	)	Filed June 4, 1986
Plaintiff-Appellee,	)	
vs.	)	6-64
	)	85-393
MICHAEL CLINTON HUGHES,	)	
	)	
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Linn County (S.R. 14286),
Lynne E. Brady, Associate Judge.

Defendant appeals from his conviction of operating a motor vehicle while under the influence of an alcoholic beverage in violation of Iowa Code section 321.281. **AFFIRMED.**

Charles Harrington, Chief appellate Defender and Michael J. Laughlin, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General; Roxann M. Ryan, Assistant Attorney General; and Mona Knoll and James Sines, Assistant County Attorneys, for plaintiff-appellee.

Considered by Oxberger, C.J., Donielson, and Hayden, JJ.

OXBERGER, C.J.

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Defendant appeals from a trial court's decision overruling his motion for new trial. He was convicted of driving a motor vehicle while under the influence of alcoholic beverage in violation of section 321.281, The Code. We affirm.

The motion for new trial has three divisions with several subparagraphs. On appeal, defendant raises only one issue, did the trial court err in overruling his motion on the grounds of the misconduct of juror Emma Severide. Counsel now urges two bases for his request for new trial. First he says, "... it is more than reasonable to conclude that the fact that juror Severide's mother and father were killed in an automobile accident involving a drunk driver would consciously or subconsciously influence her verdict. Secondly, he says, "It is clearly reasonable to assume that had defense counsel known of the unfortunate demise of juror Severide's parents, he would not have permitted her to sit on the jury panel."

The motion for new trial said:

4. The Defendant further did not receive a fair and impartial trial for the reason that one of the jurors failed to inform Defendant's attorney on voir dire that her parents were previously killed by a drunk driver in an automobile accident. Defendant's counsel specifically asked this question of the jurors and this particular juror did not provide this information to the defendant on voir dire for the reason that she felt it occurred too long ago which resulted in prejudice to the defendant entitling him to a new trial.

In opening argument on the motion for new trial defense counsel did not mention juror Severide's affidavit. State's counsel did not file a written resistance to defendant's motion nor make any oral arguments regarding this issue. In rebuttal argument, defendant's counsel said:

Additionally, I'd just like to point out that the standard for misconduct for a jury is that it must be shown that it was calculated to and it is reasonably possible that it did influence the verdict, State v. Christianson, 337 N.W.2d 502 and that is merely to address the affidavit of Emma Severide, if the court decides to accept that as competent evidence. Her statement in that affidavit

states that she did not advise defense counsel of an accident which had resulted in the death of her parents by a drunk driver, and that in her affidavit she states, "I did not feel it would have any impact upon my decision." I just wish the Court to consider that if the Court decides to consider the affidavits as competent."

The trial court in its ruling on the motion for new trial did not mention the grounds for new trial covered by juror Severide's affidavit. Thereafter, defendant did not ask the court to rule on this issue.

We conclude that the defendant has not preserved the issue concerning his exercise of challenge to juror Severide sitting on the jury. The written motion states that juror Severide's misconduct was prejudicial and denied him a fair trial. A trial judge would not have been alerted that the defendant was claiming he was denied the right to challenge the juror.

In the oral argument counsel was more specific that he was talking about the impact her parent's death had on her state of mind in reaching her verdict.

We proceed to review the second issue raised on appeal. Whether juror Severide was influenced by her feelings about her parents having been killed by a drunken driver.

In her affidavit juror Severide said she did not answer the question because she did not feel the accident would "have any impact upon my decision." We do not consider her opinion on what influenced her verdict. In State v. Harrington, 349 N.W.2d 758, 762 (Iowa 1984), The court said:

A juror may not by affidavit, testimony or otherwise state what influenced the jury in reaching its decision or verdict as such showing inheres in the verdict. (authorities).

In evaluating the asserted misconduct we apply an objective test, determining whether a reasonable probability exists that it influenced the verdict. We do not reverse unless the trial court abused its broad discretion. Harrington, at 762.

Objectively, we do not think the affidavit amounted to proof of misconduct which was calculated to influence the verdict, or that it was reasonably probable that it did. We have only the bare assertion that the juror's parents were killed by a drunk driver many years ago.

The record falls short of showing the trial court abused its broad discretion in deciding whether the alleged jury misconduct warrants a new trial.

AFFIRMED.