FILED
MAR 31 1986
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)

Plaintiff-Appellee,) Filed March 31, 1986

vs.) 295

JAY BRETT HUTCHESON,) 5-655
85-462

Defendant-Appellant.)

Appeal from the Iowa District Court for Tama County (No. CR 1766) - William R. Eads, Judge.

Defendant appeals from judgment and sentence entered upon his conviction of operating a motor vehicle while intoxicated, second offense, in violation of Iowa Code section 321.281. **AFFIRMED.**

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

Thomas J. Miller, Attorney General; Elizabeth E. Ciebell, Assistant Attorney General; and Richard R. VanderMey, Assistant County Attorney, for plaintiff-appellee.

Considered by Donielson, P.J., and Snell and Schlegel, JJ.

Defendant, Jay Brett Hutcheson, appeals from judgment and sentence entered upon his conviction of operating a motor vehicle while intoxicated, second offense, in violation of Iowa Code section 321.281. Defendant contends there was insufficient evidence presented from which a rational trier of fact could find the defendant guilty, beyond a reasonable doubt, of operating a motor vehicle while under the influence of an intoxicating beverage.

On October 4, 1984, the Tama County Attorney filed a trial information charging defendant with operating while under the influence, second offense. Defendant pled not guilty. After trial, the jury returned a verdict of guilty as charged.

Defendant admits he was intoxicated on the evening in question, but was not operating a vehicle. Defendant claims he was only a passenger. Testimony showed a small blue motor vehicle drove over several front yards in a Traer neighborhood. One eyewitness observed that only one person was in the vehicle, whom she could not identify but whom she watched enter a neighbor's house. Her husband also testified that he immediately went to the neighbor's house after this incident and the defendant exited. He appeared to be intoxicated. The neighbor, Mrs. Temple, testified defendant rang her doorbell and appeared to be drunk. The sheriff, telephoned by the first eyewitness, testified he arrested defendant at Temple's house when he found defendant's speech was slurred, his balance poor, his breath smelling of alcohol, and his eyes bloodshot. Subsequently, a breath test showed a readout of .227.

Defendant testified he was driven to Temple's house by a friend because the defendant knew he was too drunk to drive. Defendant claimed he never drove his automobile in Traer on the evening in question.

Defendant's friend, Cummings, also testified in his behalf. Basically he corroborated defendant's story that Cummings drove defendant to Traer. Cummings did not recall driving over anyone's lawn that evening. Cummings testified he parked defendant's car in Temple's drive and watched while defendant went into the house. Cummings then testified he walked to a bar in downtown Traer where his brother was to pick him up.

To be convicted of operating a motor vehicle while under the influence of alcohol, Iowa Code § 321.281., the State must prove that the driver was intoxicated and the act of operating a motor vehicle while intoxicated. State v. Miller, 204 N.W.2d 834, 837 (Iowa 1973). Defendant does not dispute his intoxication, but claims he was not driving the motor vehicle in question. To prevail on a sufficiency of the evidence claim, defendant faces a heavy task because:

> When reviewing the sufficiency of evidence, we view the evidence in the light most favorable to the State, including all legitimate inferences and presumptions which may fairly and reasonably be deducted from the evidence and not just the evidence supporting the verdict. A jury verdict is binding upon this court and will be upheld unless the record lacks substantial evidence to support the change. Substantial evidence means evidence which would convince a rational trier of fact that the defendants are guilty of the crime charged beyond a reasonable doubt.

State v. Blair, 347 N.W.2d 416, 418-19 (Iowa 1984).

We have no difficulty upholding the conviction. The jury could have found that only one person was in the vehicle. The jury could also have found the defendant's friend was not present and did not drive defendant home. A person was seen entering a neighbor's house and no time existed for the friend to leave. When a witness who followed the motor vehicle to the door knocked on the door, only the defendant came to answer.

Thus, the jury could find that only the defendant was in the motor vehicle when it was driven over private property and that defendant's friend was not driving the car.

AFFIRMED.