

IN THE COURT OF APPEALS OF IOWA

No. 7-550 / 96-1456

000417

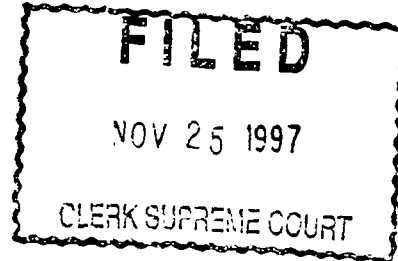
STATE OF IOWA,

Appellee,

vs.

LANTZ MICHAEL RUGG,

Appellant.



Appeal from the Iowa District Court for Story County, Steven P. Van Marel,
Judge.

Lantz Rugg appeals the denial of his motion for new trial after his conviction
for operating while intoxicated, second offense. **AFFIRMED.**

James A. Sinclair of Sinclair & Associates, West Des Moines, for appellant.

Thomas J. Miller, Attorney General, Robert P. Ewald, Assistant Attorney
General, Mary E. Richards, County Attorney, and Ronald Sotak and Daniel J.
Gonnerman, Assistant County Attorneys, for appellee.

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

CADY, C.J.

This is an appeal by a defendant claiming the district court should have granted his motion for new trial on the ground the State withheld exculpatory evidence. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Lantz Rugg was charged with operating while intoxicated, second offense, in violation of Iowa Code section 321J.2 (1995). Rugg was stopped by Trooper Dan Halverson of the Iowa State Patrol on April 1, 1996. Rugg failed field sobriety tests, and was arrested. At the Story County jail, Rugg performed field sobriety tests again, and this time he passed. A breathalyser test showed a blood alcohol level of .110, which is above the legal limit. Rugg told the trooper he drank a twelve-pack of beer that day. A jury found Rugg guilty of operating while intoxicated.

After the trial, Rugg filed a motion for new trial, alleging the State had not produced all exculpatory evidence. Rugg produced an audio tape of his license revocation proceedings before the Iowa Department of Transportation, where Trooper Halverson stated a videotape had been made of the field sobriety tests given at the jail. Assistant County Attorney Ronald Sotak testified he had investigated, and could find no evidence a videotape had been made. The district court concluded there was no videotape, and thus, the State had not withheld exculpatory evidence. Rugg has appealed.

Rugg asserts the district court should have granted his motion for new trial. He points out Halverson was under oath when he testified there was a videotape.

Rugg believes this is overwhelming evidence there was a videotape, and the State failed to produce it. Rugg asserts the videotape would be exculpatory because he passed the field sobriety tests which were given at the jail. He claims he would have been acquitted if the jury had been able to see this videotape.

We find there is substantial evidence in the record to support the district court's conclusion the videotape did not exist. Sotak testified there was no record at the jail to show a videotape had been made. Also, Halverson later told Sotak he had been mistaken in his earlier testimony. We conclude the State did not withhold exculpatory evidence. The district court properly denied Rugg's motion for new trial.

We affirm Rugg's conviction for operating while intoxicated, second offense. Costs of this appeal are assessed to defendant.

AFFIRMED.