

FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	Filed August 25, 1981
Plaintiff-Appellee,	)	1-205
vs.	)	65550
SIBYL CAPEN FOSTER,	)	
Defendant-Appellant.	)	

Appeal from Scott District Court. Margaret S. Briles, Judge.

Defendant was convicted of operating a motor vehicle while under the influence of an alcoholic beverage, second offense, in violation of section 321.281, The Code 1979. She challenges the jury instruction which defines "under the influence" on the ground that the instruction does not require a finding that her driving was impaired.

AFFIRMED.

Michael W. Liebke, of Raben, Liebke, Shinkle & Bremer, Davenport, Ia., for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa and Roxann Ryan, Assistant Attorney General, for plaintiff-appellee.

Submitted to Oxberger, C. J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendant was convicted of operating a motor vehicle while under the influence of an alcoholic beverage, second offense, in violation of section 321.281, The Code 1979. She challenges the jury instruction which defines "under the influence" on the ground that the instruction does not require a finding that her driving was impaired. We affirm the court's use of the instruction.

The facts surrounding defendant's arrest are not at issue in this appeal. Defendant limits her challenge to one assignment of error.

I Over defendant's objection the trial court, relying on Iowa Uniform Jury Instruction # 520.3, instructed the jury as follows:

Instruction No. 6

The law provides that a person is under the influence of an alcoholic beverage whenever, by reason of the use of such substances, including beer, his or her reason or faculties have become affected, or his or her judgment impaired, or his or her passions are visibly excited, or whenever the use thereof has caused him or her to lose control in any manner, or to any extent, of the actions or motions of his or her person or body.

The instruction is challenged because it does not require the jury to find that the influence of the alcohol impaired defendant's operation of her motor vehicle.

Section 321.281, The Code 1979, requires only that one be under the influence while operating a motor vehicle. Although evidence of impaired driving is relevant in court, the statute does not require that a driver actually be driving in an impaired fashion. Considering the strong state interest in keeping intoxicated drivers off our streets, State v. Hitchens, 294 N.W.2d 686, 687 (Iowa 1980), the legislature has determined that the coincidence of intoxication and operation of a motor vehicle is sufficient to warrant a violation of the statute.

Once the State has proven the two elements, its task is complete. Proving actual impairment of driving abilities is not required, only that the driver is under the influence of an alcoholic beverage.

The statute and instruction defining "under the influence" have been scrutinized, but have withstood inspection. State v. Finnegan, 237 N.W.2d 459, 460 (Iowa 1976); State v. Berch, 222 N.W.2d 741, 747 (Iowa 1974); State v. Tiernan, 206 N.W.2d 898, 901 (Iowa 1973); State v. Davis, 196 N.W.2d 885, 890 (Iowa 1972); State v. Stout, 247 Iowa 453, 456-458, 74 N.W.2d 208, 210 (1956).

We are reluctant to overturn the uniform instructions, State v. Whiteside, 272 N.W.2d 468, 471 (Iowa 1978), and in this case we reject defendant's challenge to the "under the influence" instruction.

AFFIRMED.