



IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	464
v.	)	Filed October 22, 1986
DAVID DEAN LIGHT,	)	<u>6-364</u>
Defendant-Appellant.	)	85-1361

Appeal from the Iowa District Court for Marion County (No. 7531) - Thomas W. Mott, District Associate Judge.

Defendant appeals from his conviction for driving while license denied or revoked in violation of Iowa Code section 321B.38. **AFFIRMED.**

Bert A. Bandstra, Knoxville, Iowa, for defendant-appellant.

Thomas J. Miller, Attorney General, and Pamela Greenman Dahl, Assistant Attorney General, for plaintiff-appellee.

Considered by Oxberger, C.J., Snell, and Schlegel, JJ.

PER CURIAM

465

The defendant in this appeal challenges his conviction for driving while his license was revoked in violation of Iowa Code section 321B.38 (1985). He contends that the trial court erred in refusing to submit a requested jury instruction. We affirm.

The defendant was arrested after a police officer observed him riding a motorcycle. The officer testified that he heard the motor running, and that as he stopped the defendant, the defendant reached down, turned the key, and handed it to a passenger. The defendant claims that he and the passenger were pushing the motorcycle and had jumped on to coast down an incline when they were stopped by the officer. As such, the defendant argues that the motorcycle was operated solely by manpower, thereby falling within Iowa Code section 321.1(1) which excludes inter alia "any device moved by human power" from the definition of a vehicle. The defendant asserts that the trial court erred in failing to instruct the jury of the section 321.1(1) exclusion.

We have repeatedly recognized that although a trial court must instruct the jury on all issues material to the case, it is not required to give instructions on any issue finding no evidentiary support in the record. State v. Lucas, 368 N.W.2d 124, 127 (Iowa 1985). We find this principle governing in the case at bar. Irrespective of whether the jury believed the defendant's version of the facts or the police officer's, no evidence was presented supporting the defendant's contention that the motorcycle was not a motor vehicle within the meaning of the statute. We agree with the trial court's conclusion that the section 321.1(1) exclusion refers to recreational vehicles such as bicycles, rickshaws and pushcarts; in the instant case, by contrast, the defendant was seated upon an operable motorized vehicle moving in the flow of traffic. In such circumstances, the trial court did not err in refusing the requested instruction.

AFFIRMED.