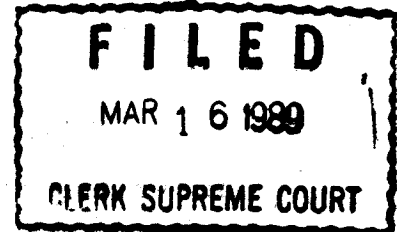


IN THE COURT OF APPEALS OF IOWA



STATE OF IOWA,)
Plaintiff-Appellee,)
vs.)
DAVID LEE SKINNER,)
Defendant-Appellant.)

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9-67
88-496

Appeal from the Iowa District Court for Jefferson County (No. CR 949-1087), Dan F. Morrison and Robert Bates, Judges.

Defendant appeals his conviction, following a bench trial, of first-offense OWI. **AFFIRMED.**

William L. Wegman, State Public Defender, and James F. Whalen, Assistant Public Defender, for defendant-appellant.

Thomas J. Miller, Attorney General; Carolyn J. Olson, Assistant Attorney General; and Ann Taylor, Assistant Jefferson County Attorney, for plaintiff-appellee.

Heard by Donielson, P.J., and Sackett and Habhab, JJ.

PER CURIAM**331**

After a bench trial, the defendant was found guilty of first-offense OWI in violation of Iowa Code section 321J.2 (1987). On appeal, he asserts the trial court erred in admitting evidence of his breath test results. As the foundation for this assertion, he alleges that the intoxilyzer machine was not functioning properly in that the post-test air blank reading of .22 was identical to the test result of .22.

We need not reach the question of whether the results of the breath test should have been received into evidence. The trial court in its verdict found, "The record supports a finding of guilty of the offense charged without even considering the breath test results."

Under the circumstances here, we believe this statement to be a finding of fact by the trial court, and, as such, it should be given the same effect as a special jury verdict, State v. Hall, 287 N.W.2d 564, 565 (Iowa 1982). Thus, we find the defendant was not prejudiced, assuming arguendo, that the court erroneously admitted into the evidence the results of the blood test. We find substantial evidence to support the trial court's finding of guilt of OWI beyond a reasonable doubt.

AFFIRMED.