FILED
AUG 24 1988
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

314

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	
vs.	)	
STEVE L. STROHBEHN,	)	8-290 87-1264
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Scott County (No. 129076-01), Phillip T. Steffen, Judge.

Defendant appeals his jury trial conviction of OWI on grounds of insufficient evidence. **AFFIRMED.**

Harold J. DeLange II, Sioux City, for defendant-appellant.

Thomas J. Miller, Attorney General; Sheryl A. Soich, Assistant Attorney General; and Marc Gellerman, Assistant Scott County Attorney, for plaintiff-appellee.

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

DONIELSON, P.J. 315

The defendant appeals after his conviction in a jury trial for driving while intoxicated (OWI). He contends that the State presented insufficient evidence at trial because there were no results from field sobriety or breath tests presented. We affirm the conviction.

The defendant was the driver of a vehicle involved in a minor rear-end collision. His friend was a passenger in the truck. When a police officer arrived, the friend told the officer that he was the driver. Defendant did not tell the officer otherwise. The officer then administered field sobriety tests to the friend and later had him submit to a breath test which he failed. Defendant was not given any tests. Four days later, the defendant and his friend told the officer of the mistake. A jury found the defendant guilty of the OWI charge that followed.

Our review is limited to the correction of errors at law. Iowa R. App. P. 4. The defendant contends that the State presented insufficient evidence to support a verdict of guilty beyond a reasonable doubt. The State responds that even without the corroboration of field sobriety and breath tests, the officer's personal observations of the defendant's intoxicated appearance at the scene of the accident suffice to support the jury's verdict.

The principles which guide our review of the sufficiency of the evidence have been firmly established. The

evidence is to be viewed in the light most favorable to the State, including all legitimate inferences and presumptions which may fairly and reasonably be deduced from the evidence contained in the record. State v. Blair, 347 N.W.2d 416, 418-19 (Iowa 1984). All evidence must be considered, not just evidence supporting the verdict. Id. at 419. A jury verdict is binding and will be upheld unless the record lacks substantial evidence to support the charge. Substantial evidence is evidence which would convince a rational trier of fact that the defendant is guilty beyond a reasonable doubt. Id.

From the evidence at trial, the jury could have found the following facts:

On March 22, 1987, defendant Steven Strohbehn and his friend, Timothy Janney, were involved in a property damage accident. At the scene, Janney identified himself as the driver. Strohbehn admitted owning the vehicle.

Janney was arrested for operating a motor vehicle while intoxicated (OWI). An occupant of the other vehicle insisted both men in the Strohbehn vehicle were drunk. This, plus Janney's appearance and behavior, led the officer to believe that Janney was intoxicated. The field sobriety and subsequent breath test confirmed this. Janney's breath was one and one-half times over the legal limit. The officer also observed Strohbehn and testified that Strohbehn was "clearly more intoxicated" than Janney.

Strohbehn was not tested because he was not suspected of driving. However, the officer instructed him not to drive home. Strohbehn waited for his ride for some time, but eventually drove home.

A few days after the accident, Janney and Strohbehn went to the police station. Strohbehn admitted being the driver at the time of the accident and gave a written statement to the police. In the statement he said he had been at a tap prior to the accident and had consumed approximately three glasses of beer. Strohbehn denied that either he or Janney were intoxicated at the time of the accident.

Even though there is conflicting evidence, it is the function of the jury to sort this out. It is up to the jury to decide which witnesses are credible and which are not. Id. at 420. Furthermore, it is not crucial that the State lacks direct evidence such as a breath test for Strohbehn. Direct and circumstantial evidence are equally probative as long as the evidence raises a fair inference of guilt. Id. at 421.

To be found guilty of OWI, the State is required to prove beyond a reasonable doubt that Strohbehn violated this statute:

> A person commits the offense of operating while intoxicated if the person operates a motor vehicle in this state in either of the following conditions:
>
> a. While under the influence of an alcoholic beverage or other drug or a combination of such substances.

b. While having an alcohol concentration as defined in section 321J.1 of .10 or more.

Iowa Code § 321J.1 (1987) (emphasis added).

We hold there is substantial evidence to find that Strohbehn was operating a motor vehicle while under the influence of an alcoholic beverage in violation of Iowa Code section 321J.1(a). Therefore, we affirm defendant's conviction.

AFFIRMED.