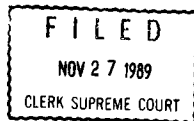


IN THE COURT OF APPEALS OF IOWA

No. 9-498 / 89-543



295

JAMES MORRIS,

Petitioner-Appellant,

vs.

IOWA DEPARTMENT OF TRANSPORTATION, MOTOR VEHICLE DIVISION,

Respondent-Appellee.

Appeal from the Iowa District Court for Story County,
Gary L. McMinimee, Judge.

Petitioner appeals a district court decision affirming
an agency decision revoking his driver's license.

AFFIRMED.

Lad Grove, Ames, for the appellant.

Thomas J. Miller, Attorney General, Charles J.
Krogmeier, Special Assistant Attorney General, and Daniel
W. Perkins, Assistant Attorney General, for the appellee.

Heard by Schlegel, P.J., and Hayden and Sackett, JJ.

SACKETT, J.

The district court affirmed the decision of an Iowa Department of Transportation hearing officer revoking the driver's license of petitioner-appellant James Morris. The department had revoked Morris's license by virtue of his failure to take a breath test. Morris appeals. We affirm.

I.

Morris's first contention is he was not operating a motor vehicle under the definition of Iowa Code section 321J.2 when a chemical test was requested. Morris was a passenger in a vehicle that was backed into a ditch and became stuck. With the left rear quarter in the ditch and the rest of the vehicle on the roadway, the driver left the vehicle and went for help. When the arresting officer appeared at the scene, the driver was gone. The officer testified he found the vehicle running with the lights on and Morris in the driver's seat. Morris contends he was not driving the vehicle because he was only car-sitting and the vehicle was not capable of being operated because it was stuck.

We reject Morris's argument. The fact the vehicle was stuck does not mean the vehicle was not capable of being operated or preclude a finding Morris was operating the vehicle. See State v. Weaver, 405 N.W.2d 852, 854 (Iowa 1987); State v. Fox, 248 Iowa 1394, 1399, 85 N.W.2d 608, 611 (1957); State v. Webb, 202 Iowa 633, 637, 210 N.W. 751,

752 (1926); State v. Overbay, 201 Iowa 758, 759, 206 N.W. 634, 634 (1925).

II.

Morris's second argument is the officer did not have reasonable grounds to believe he had operated a motor vehicle in violation of Iowa Code section 321J.2 so as to allow the officer to invoke implied consent pursuant to Iowa Code section 321J.6.

The facts support a finding the officer had reasonable grounds to believe Morris was operating a motor vehicle in violation of Iowa Code section 321J.2. When the officer arrived on the scene Morris got out of the van. The officer noticed he could not walk without staggering and his clothing was soiled with urine. Morris smelled of alcohol, his eyes were bloodshot, and his speech was slurred. These facts are sufficient to meet the reasonable grounds test. See Saunders v. Commissioner of Public Safety, 226 N.W.2d 19, 22 (Iowa 1975).

AFFIRMED.