FILED
SEP 27 1983
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)
Plaintiff-Appellee,) Filed September 27, 1983
vs.)
JOHN JOSEPH HARTVIGSEN,) 3-242/69001
Defendant-Appellant.)

Appeal from Scott District Court - C. H. Pelton, Judge.

Defendant appeals his conviction under Iowa Code § 321.281 (1981) (OMVUI) alleging that there was insufficient evidence to find that he was operating a vehicle at the time he was intoxicated. AFFIRMED BY OPERATION OF LAW.

Donald E. Doyle, Davenport, Iowa, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Lona Hansen, Assistant Attorney General, for plaintiff-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Schlegel, Hayden, and Sackett, JJ.

HAYDEN, J.

Defendant appeals his conviction under Iowa Code section 321.281 (1981) (OMVUI) alleging that there was insufficient evidence to find that he was operating a vehicle at the time he was intoxicated. Three judges would affirm the order of the trial court and three would reverse. Pursuant to Iowa Code section 684.36(1), the order of the trial court is affirmed by operation of law.

AFFIRMED BY OPERATION OF LAW.