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IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)
Plaintiff-Appellee,) Filed October 7, 1977
vs.) 244
JOHN CHARLES DILGER,) 59991
Defendant-Appellant.)

Appeal from Butler District Court - C. H. Wild, Judge.

Defendant appeals conviction of violating section 321.288, The Code, by not having his vehicle under control. - Affirmed.

Richard C. Turner, Attorney General of Iowa and Gene W. Shepart, Butler County Attorney, for Plaintiff-Appellee.

Engelbrecht, Ackerman & Hassman, of Waverly, for Defendant-Appellant.

Submitted to Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

Defendant, John Charles Dilger, appeals his conviction for failure to have his vehicle under control in violation of § 321.288, The Code. Section 321.288(3) requires the person operating a motor vehicle to have the same under control and to reduce its speed to a reasonable and proper rate when approaching or traversing a bridge. Dilger entered a plea of not guilty and trial was held in magistrate's court. From a verdict of guilty, defendant appealed to district court. Hearing was held in district court and defendant was again found guilty of violating § 321.288. This appeal followed.

Defendant's first contention is that the trial court erred in finding that the evidence established beyond a reasonable doubt that defendant failed to have his vehicle under control in violation of § 321.288 given the narrowness of the specific highway and bridge. On appeal from a criminal conviction challenging sufficiency of the evidence to sustain the verdict, this court views the evidence in the light most favorable to the State and accepts as established all reasonable inferences tending to support the conviction. See State v. Nelson, 207 N.W.2d 751, 752 (Iowa 1973). It is necessary to consider only the supporting evidence whether contradicted or not. A finding of guilt by the trier of fact is binding on this court unless we find it is without substantial support in the record or clearly against the weight thereof. State v. Overstreet, 243 N.W.2d 880, 884 (Iowa 1976); State v. Dahlstrom, 224 N.W.2d 443, 447-48 (Iowa 1974).

Defendant was driving his vehicle in a southerly direction on a highway at 2:00 a.m. when his vehicle pulled up on the curb of the highway as he approached the bridge. Dilger attempted to bring the vehicle back on the traveled portion of the highway when the vehicle hit another, larger protective curb in front of the bridge causing a tire to go flat which resulted in the vehicle hitting the bridge and veering into the oncoming lane of traffic where it collided with a vehicle driven by Dwayne Sessler.

Defendant was traveling between 50 and 55 miles per hour. This was considered to be a reasonable speed. However, the defendant testified the road narrowed at the bridge and he had crossed the same bridge once a week for many years. In fact, he had crossed the same bridge earlier that evening traveling in the

opposite direction.

Control of an automobile connotes the ability to maneuver it with reasonable promptness so as to guide it in the manner willed by the operator acting as an ordinarily careful and prudent person would under the circumstances, including such control as will enable the operator to bring it to a stop with a reasonable degree of celerity. Schaben v. Kohles, 186 N.W.2d 598, 600 (Iowa 1971). Section 321.288 is said to be essentially a speed statute. A speed which is reasonable and proper under some circumstances may be excessive under others. State v. Nelson, 207 N.W.2d 751, 753 (Iowa 1973). There is no evidence that under normal conditions, defendant's speed was considered to be excessive. However, our focal point on review is whether defendant's speed was excessive and whether he lacked control under the circumstances.

It was 2:00 a.m. in the morning when defendant attempted to cross the bridge. He knew the narrowness of the bridge through past crossings and had in fact crossed the bridge earlier in the evening. Although there was no conclusive evidence of intoxication, defendant admitted having five beers between 7:30 p.m. and 2:00 a.m. Finally, defendant did in fact run into the bridge and into an oncoming vehicle. Under the record, whether defendant was guilty of violating § 321.288 was a fact question. There was substantial evidence to support the trial court's conclusion, and it is therefore binding on us. **Nelson,** supra.

Defendant's final assignment of error is that the trial court erred in not finding defendant's conduct was legally excused given the emergency situation created by the unsafe roadway. Legal excuse means (1) anything that would make it impossible to comply with the statute or (2) when the driver is confronted by an emergency not of his own making and by reason thereof he fails to obey the statute. McCoy v. Miller, 257 Iowa 1151, 1156, 136 N.W.2d 332 (1965).

In the instant case, there is no evidence of anything that would make it impossible for Dilger to comply with the statute. Neither the narrowness of the road or bridge made it impossible for Dilger to control his vehicle. The emergency situation was created by Dilger's driving on the curb and hence was of his own making. Erickson v. Thompson, 257 Iowa 781, 789, 135 N.W.2d 107, 112 (1965). The defense is not available. Additionally we have serious doubts whether this issue was raised in the trial court and whether it is properly before this court. See e.g. State v. Green, 226 N.W.2d 829, 832 (Iowa 1975).

Affirmed.