IN THE COURT OF APPEALS OF IOWA

No. 1999-485 (9-742) / 99-0051
Filed February 9, 2000

STATE OF IOWA,
Plaintiff-Appellee,

vs.

KEITH JAMES,
Defendant-Appellant.

FILED
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CLERK SUPREME COURT

Appeal from the Iowa District Court for Black Hawk County, Joseph Moothart, District Associate Judge.

Defendant appeals from the judgment and sentence entered after a bench trial in which the district court found him guilty of operating a motor vehicle while intoxicated in violation of Iowa Code section 321J.2 (1997). **AFFIRMED.**

Michael Lanigan of the Law Office of Michael Lanigan, Waterloo, for appellant.

Thomas J. Miller, Attorney General, Linda J. Hines, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Anthony Janney and Steven Norby, Assistant County Attorneys, for appellee.

Considered by Sackett, C.J., and Vogel and Hecht, JJ.

HECHT, J.

Keith James ("James") appeals from the judgment and sentence entered after a bench trial in which the district court found him guilty of operating a motor vehicle while intoxicated in violation of Iowa Code section 321J.2 (1997). We affirm.

I. Factual Background and Proceedings. On the evening of December 13, 1997, James and two friends, Cornell McGinnis and Rodney Roberts, were drinking at a bar in Dunkerton, Iowa. While in Dunkerton, McGinnis had an altercation with his girlfriend. James, McGinnis, and Roberts left Dunkerton to go to a hotel in Waterloo, Iowa in James's vehicle. After reaching the hotel, the three men spent an hour drinking alcoholic beverages.

In the meantime, McGinnis's girlfriend reported the incident to the police. Upon arriving at the hotel, sheriff's deputies Gary Cole and William Herkelman asked the three men to step outside of the hotel room. Deputy Cole arrested McGinnis for the assault on his girlfriend. The evidence conflicts as to what occurred after this point. Deputy Herkelman testified he heard James and Roberts tell McGinnis they would come to the jail and bail him out. Herkelman testified James then got into his car on the driver's side and started the car. Roberts got in on the passenger side. Herkelman observed the car move in reverse approximately six to twelve inches. He then ordered James out of the car and conducted field sobriety tests. After James failed these tests, Herkelman arrested him. Later at the jail, a breath test indicated he had a .124 blood alcohol level.

James testified at trial. He testified the deputies told him to go outside when they arrested McGinnis. James indicated he got into his car because he was cold. He stated he did not have the key to the car, did not start the car, and the car did

not move backwards. James also admitted he was "pretty well gone" and "completely intoxicated" by the time he got to the jail. Herkelman stated James was intoxicated and quite "confused about the events that had happened before he'd been arrested."

A bench trial occurred in this matter on April 15, 1998. The district court found the credible evidence established James had operated the vehicle while intoxicated. James moved for a judgment of acquittal that was denied by the district court. The district court imposed a fine and a five-day jail term. James appeals.

II. Standard of Review. Our review of a challenge to the sufficiency of the evidence is on error. *State v. McPhillips,* 580 N.W.2d 748, 753 (Iowa 1998). In deciding whether there is such substantial evidence, we view the record evidence in the light most favorable to the State. *State v. Torres,* 495 N.W.2d 678, 681 (Iowa 1993). Substantial evidence is such evidence as could convince a rational fact finder the defendant is guilty beyond a reasonable doubt. *State v. Hopkins,* 576 N.W.2d 374, 377 (Iowa 1998).

III. OWI Conviction. To convict, the State must prove James operated his car and did so while he was intoxicated. *See* Iowa Code § 321J.2(1); *Hopkins,* 576 N.W.2d at 377. James contends the evidence was insufficient to prove he was operating his car while intoxicated. In support of his contention, James argues the State could not prove he operated the vehicle because it did not establish the location of the keys. The keys were not presented as evidence in the trial. There is some dispute as to the location of the keys at the time of his arrest. James maintains the keys were in the hotel room at the time of his arrest and therefore, he could not have been operating the vehicle.

The definition of "operate" is "the immediate, actual physical control over a motor vehicle that is in motion and/or has its engine running." *Munson v. Iowa Dep't of Transp.*, 513 N.W.2d 722, 724-25 (Iowa 1994). Although evidence conflicted as to what occurred that evening, we can accept any legitimate inferences that may reasonably be deduced from the evidence. *See State v. Weaver*, 405 N.W.2d 852, 853 (Iowa 1987). Deputy Herkelman testified he saw James get into the driver's seat of the car. The officer further testified James started the car and moved it six to twelve inches before the arrest. When asked where he was going, James told the officer he was going to the jail to bail McGinnis out. We conclude the testimony of the arresting officer constitutes substantial evidence from which a rational fact finder could find James guilty beyond a reasonable doubt. We can reasonably determine from the record James exercised immediate, actual physical control over his vehicle while it was running and in motion. Thus, we find there is credible evidence in the record establishing James operated his vehicle while he was intoxicated.

We uphold the denial of a motion for judgment of acquittal if there is any substantial evidence in the record supporting the charges. *State v. Boleyn*, 547 N.W.2d 202, 204 (Iowa 1996). Finding substantial evidence in this case, we affirm the ruling of the district court.

IV. Other Claims. We have considered James's remaining claims and consider them to be without merit.

AFFIRMED.