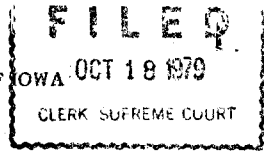


IN THE COURT OF APPEALS OF IOWA



101

STATE OF IOWA,

)

Plaintiff-Appellee,

)

Filed October 18, 1979

vs.

)

JAMES M. SCHILLER,

)

247

62551

Defendant-Appellant.

)

Appeal from Johnson District Court - Harold Swailes, Judge.

Defendant appeals from judgment and sentence imposed following jury verdict finding him guilty of operating a motor vehicle while under the influence of an intoxicating beverage (second offense). REVERSED.

L. Vern Robinson, Iowa City, Iowa, for defendant-appellant.

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

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendant appeals from judgment and sentence imposed following jury verdict finding him guilty of operating a motor vehicle while under the influence of an intoxicating beverage (second offense).¹ The only issue we consider is whether defendant's motion for directed verdict made at the conclusion of all of the evidence should have been granted. We answer this question in the affirmative and reverse the judgment and sentence.

The basis of the motion for directed verdict in the court below may be summarized as follows:

- (1) In order to convict defendant, the State was required to show that the alleged condition of being under the influence of alcohol coincided with defendant's operation of a motor vehicle;
- (2) That the evidence failed to show that any such condition on defendant's part existed while he was operating a motor vehicle; and
- (3) That in any event, the only evidence of vehicular operation by defendant came from his own confession and is not corroborated as required by Iowa R. Crim. P. 20(4).

As to the second ground of the motion, we are unable to sufficiently distinguish the record in this case from State v. Creighton, 201 N.W.2d 471 (Iowa 1972) so as to justify a different result. Here, as in Creighton, the defendant was not driving when he was arrested and his car was found parked along a roadway. Creighton held that such evidence was insufficient to show that defendant's condition of being under the influence of alcohol coincided with his driving. The evidence is similarly insufficient in the present case.

In addition, as defendant contends, the only evidence of operation of a motor vehicle on his part at any time comes from his own confession. This is not corroborated as required by Iowa R. Crim. P. 20(4). This constitutes an additional basis upon which the motion for directed verdict should have been granted.

The judgment from which appeal is taken is reversed and a judgment of acquittal shall be entered by the court.

REVERSED.

¹ Section 321.281, The Code 1977.