



IN THE IOWA COURT OF APPEALS

STATE OF IOWA,	)	Filed May 26, 1981
Plaintiff-Appellee,	)	1-101
vs.	)	64246
	)	
TODD ARTHUR BAEHNK,	)	
Defendant-Appellant.	)	

Appeal from Scott District Court. James Havercamp, Judge.

Defendant appeals from his conviction for second offense OMVUI in violation of section 321.281, The Code 1979. AFFIRMED.

Jorge Gomez, Jr., of Gomez, Feuerbach, May & Pries, Davenport, Ia., for defendant-appellant.

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

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

PER CURIAM

Defendant, Todd Baehnk, appeals from his conviction of second offense OMVUI in violation of section 321.281, The Code 1979. We affirm. Our review is on error assigned. Iowa R. App. P. 4.

Defendant alleges the evidence was insufficient to support the jury verdict and that trial court erred in overruling his motion for acquittal. He primarily bases his claim on the fact that there was conflicting evidence concerning his being under the influence of an alcoholic beverage.

We will not disturb a jury verdict if it appears that the verdict is supported by substantial evidence such as would convince a rational trier of fact that the defendant is guilty beyond a reasonable doubt. State v. Robinson, 288 N.W.2d 337, 339 (Iowa 1980). Evidence is not insufficient merely because it is conflicting. Rather, it is the fact-finder's function to determine the weight and credibility of the testimony. Id. at 341.

Defendant was found asleep behind the wheel of a running automobile by policemen. They asked him to step out of the car and to perform field sobriety tests. They observed him to have slurred speech and an unsteady walk. They detected an odor of alcohol upon his breath. After arrest, a breath test was administered showing a blood alcohol level of .13.

Defendant notes conflicting evidence, in that; 1) he was cooperative and polite during the arrest and testing procedures, 2) breath tests are susceptible of 1 per cent chance of error, 3) test results contradict defendants testimony of his consumption of alcohol, 4) defendant had little sleep or food prior to his arrest which caused his observed behavior. .

As mentioned above, the resolution of conflicting evidence lies in the province of the jury. We find the evidence sufficient to support a jury question and the guilty verdict.

AFFIRMED.