

**IN THE COURT OF APPEALS OF IOWA**

No. 0-956 / 10-0768  
Filed February 9, 2011

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**SENAHID MUJKANOVIC,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Polk County, Gregory D. Brandt,  
District Associate Judge.

Senahid Mujkanovic appeals his conviction, following a bench trial, for  
operating while intoxicated, first offense. **AFFIRMED.**

Christopher B. Coppola of Coppola, McConville, Coppola, Hockenberger, &  
Scalise, P.C., West Des Moines, for appellant.

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney  
General, John P. Sarcone, County Attorney, and Olubunmi Salami, Assistant  
County Attorney, for appellee.

Considered by Mansfield, P.J., Danilson, J., and Huitink, S.J.\* Tabor, J.,  
takes no part.

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

**MANSFIELD, P.J.**

Senahid Mujkanovic appeals the judgment and sentence entered following his bench trial for operating while intoxicated, first offense, under Iowa Code section 321J.2 (2009). Senahid contends the evidence was insufficient to support a finding he was the actual operator of the motor vehicle. Alternatively, he argues the district court should have granted a motion for new trial because the verdict was contrary to the weight of the evidence. We believe the evidence supports the district court's verdict, and therefore affirm.

**I. Background Facts and Proceedings**

Around 2:30 a.m. on August 31, 2009, Chris Wersinger was hauling fuel in his tanker truck traveling north on Merle Hay Road in Johnston. Given the hour, the street was largely deserted. A bright yellow convertible sports car with the top down appeared next to Wersinger's truck. It pulled in front of Wersinger's truck and slowed abruptly, thus forcing Wersinger to slam on his brakes to avoid a collision. The convertible then proceeded slowly at about five to ten miles per hour.

Wersinger followed the convertible for a short distance until moving into the other northbound lane and passing it. The convertible then sped up and pulled in front of Wersinger's truck again, and once again slowed abruptly, forcing Wersinger to slam on his brakes. As before, the convertible then proceeded forward slowly at five to ten miles per hour until Wersinger passed it. This roadway version of leap-frog continued four or five more times. Wersinger got a good look at the driver, who at one point glared at him, and saw that he was wearing a reddish colored shirt.

After he had been forced to slam on his brakes at least twice, Wersinger called 911.<sup>1</sup> He provided the dispatcher with the convertible's license plate number. The convertible eventually sped away at a high rate of speed.

Officer Jessica Jensen of the Johnston Police Department responded to the call. After briefly meeting with Wersinger, she ran the license plate number and proceeded to the Johnston address of the registered owners, Senahid Mujkanovic and his mother. When Officer Jensen arrived at the listed address, she observed a yellow convertible in the driveway with steam rising from its hood and two males standing next to the car. As she approached the two men, they began to walk toward the house. Officer Jensen asked them to stop, but both men continued into the house. Officer Jensen then stepped up to the front door, which was left open, and requested both men to step back outside. The two males complied with this request.

The two men were Senahid and his uncle. Senahid was wearing a red polo shirt, blue jeans, and tennis shoes, while the uncle was wearing a white t-shirt, pajama pants, and socks. Officer Jensen observed Senahid to be stumbling and unsteady on his feet, as well as having bloodshot watery eyes, slurred speech, and a strong alcoholic beverage odor. Senahid was also repetitive in conversation.

Officer Jensen asked Senahid where he had come from, and he replied that he had been at home. Both men were then asked who had been driving the convertible. Both shook their heads, shrugged their shoulders, and did not

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<sup>1</sup> The 911 call was recorded and played for the court; however, it was not offered into evidence or transcribed, and thus is not available for our review.

provide an answer. Senahid's mother was awakened and joined the group outside.<sup>2</sup> At this time, Officer Jensen again asked who had been driving the convertible. All three shook their heads, shrugged their shoulders, and did not provide a response. During her questioning, Officer Jensen did not observe anyone else or notice any other vehicles in the driveway.

Officer Jensen then contacted dispatch to have another officer transport Wersinger to the house to see if he could identify the driver.<sup>3</sup> When Wersinger arrived, Senahid had his back to him, but Wersinger believed he was the driver because of his red shirt. When Senahid turned around, Wersinger positively identified him as the driver. This identification occurred approximately twenty minutes after the driving incident.

After the identification, Officer Jensen had Senahid perform three standardized field sobriety tests. Senahid failed all three tests and was placed under arrest at 3:05 a.m. While being transported to jail, Senahid repeatedly asked why he had been arrested. Senahid claimed he had been asleep and inquired how he could be arrested for "drunk sleeping."

At jail, Senahid was read the implied consent advisory and consented to the requested breath specimen. The Datamaster test showed an alcohol concentration of .199.

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<sup>2</sup> Senahid asked if his uncle could go inside to awaken his mother, who had been sleeping, and the officers agreed he could.

<sup>3</sup> Wersinger had arrived at the gas station in Johnston where he was in the process of unloading the fuel he had been transporting.

Senahid was subsequently charged with operating while intoxicated in violation of Iowa Code section 321J.2. Senahid waived his right to a jury trial and agreed to the submission of his case to the court.

Wersinger was the State's first witness. While cross-examining Wersinger, Senahid's counsel showed him a photo of a young man standing next to a yellow convertible wearing a reddish-colored shirt. The following exchange took place:

Q. Do you have any reason to believe that's not the vehicle?

A. Not off hand. It appears to more or less be the type of car and color that he was driving, the same basic style, a little convertible, bright yellow, it's obviously the Defendant standing in front of it.

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Q. Sitting here today is it possible that you identified the wrong person? A. No.

Q. Sitting here today the person that you have pointed out in the courtroom and testified to is the same person in Exhibit B as the person who was involved in this incident on Merle Hay Road in August of '09? A. Exhibit B aside, he is the person I'm testifying against, and yes, it was him.

Q. What do you mean by Exhibit B aside? A. Well, you show me—unless you're trying to show a different car that look[s] the same and got something of a halfway twin brother—can I see the exhibit again? It looks pretty close. I guess I would say that, yes, it is possibly him.

It turned out the photograph was of Senahid's younger brother, Sehid, posing next to the yellow convertible. During his defense case, Senahid called Sehid as a witness, as well as a female friend, Sasha Hawbaker.

Hawbaker testified that she was dropped off at Senahid's house at approximately 10:00 p.m. on August 30. According to Hawbaker, Senahid and Sehid were having a gathering at their house. Hawbaker testified that she was with Senahid in the basement the entire night, and Senahid only left the basement for intervals of five to ten minutes when he would go upstairs to use

the bathroom or grab a drink. Hawbaker also testified that she was downstairs while the police were at the house, but didn't realize the police were there or that Senahid had been arrested until Senahid's mother came downstairs and told her. Hawbaker also stated that Senahid's keys were constantly left out and anyone at the gathering would have had access to them. Hawbaker also testified, however, that her mother picked her up "after 2:00 a.m." on August 31, and when she left fifteen to twenty people were still at the house. Additionally, Hawbaker admitted she maintains a friendship with Senahid, her former boyfriend, and cares about him.

Sehid testified that between 2:00 and 3:00 a.m. on August 31, he took his brother's car to the Hy-Vee grocery store located on Merle Hay Road to buy some chips and pop. However, Sehid denied driving in a reckless manner or seeing a fuel tanker truck on the roadway. Sehid also claimed that any of Senahid's friends would have had access to his brother's keys. Sehid also testified he had no idea the police were at the house or that his brother had been arrested until 4:00 or 5:00 a.m.

On April 7, 2010, the district court entered findings of fact and conclusions of law determining Senahid was guilty of operating while intoxicated as charged. The court concluded:

In any criminal matter the outcome of the case is based upon an assessment of the credibility of the witnesses. In this case the Court makes the following findings based upon the credibility of the witnesses.

The Court finds the testimony of Mr. Wersinger to be credible. Specifically, as it relates to the manner in which Senahid Mujkanovic was driving. The Defendant contends that reasonable doubt was created since Mr. Wersinger testified that the staged photograph with Mr. Mujkanovic's brother wearing similar clothing

leaning in front of the vehicle appeared to be the person he observed driving. The facts do not support such a finding. The contention that Mr. Mujkanovic's brother was driving the vehicle in question is simply not consistent with the facts and circumstances of that evening. After Mr. Wersinger contacted 911 and gave the dispatcher the license number Officer Jensen was at the Defendant's address within a very short period of time. When she arrives she observes Senahid Mujkanovic in a red shirt as described by Mr. Wersinger, standing next to the yellow convertible with the hood of the vehicle still stemming from being driven. When asked who was driving no one made any response.

Sehid Mujkanovic testified that he was driving the yellow convertible at the time in question and never encountered a semi truck when he was driving to the grocery store. Since the Court found the testimony of Mr. Wersinger credible, when he described the manner in which the convertible was being driven. The testimony of Sehid Mujkanovic is not credible.

It is therefore the conclusion of this Court that Senahid Mujkanovic was operating a motor vehicle as described by Mr. Wersinger on August 31, 2009, beyond a reasonable doubt.

Senahid subsequently filed a motion for new trial and a motion in arrest of judgment arguing the court's findings were against the weight of the evidence. The district court denied the motions. Senahid appeals.

## **II. Analysis**

Senahid challenges whether the State presented sufficient evidence to support the finding that he was in fact the operator of the motor vehicle in question during the early morning hours of August 31, 2009.

We review challenges to the sufficiency of the evidence for the correction of errors at law. *State v. Kemp*, 688 N.W.2d 785, 788 (Iowa 2004). In jury-waived cases, the trial court's findings of fact have the effect of a special verdict and are binding on appeal if supported by substantial evidence. Iowa R. App. P. 6.907; *State v. Hall*, 287 N.W.2d 564, 565 (Iowa 1980). Substantial evidence is evidence that would "convince a rational fact finder that the defendant is guilty

beyond a reasonable doubt.” *Kemp*, 688 N.W.2d at 789. In making this determination, we view the record in the light most favorable to the State, including all legitimate inferences and presumptions that may be fairly and reasonably deduced from the evidence. *State v. Bass*, 349 N.W.2d 498, 500 (Iowa 1984). The State has the burden to prove every fact necessary to constitute the crime with which the defendant is charged, and the evidence presented must raise a fair inference of guilt and do more than create speculation, suspicion, or conjecture. *Kemp*, 688 N.W.2d at 789.

Upon our review of the record, we find substantial evidence supports the finding that Senahid was the operator of the convertible early on the morning of August 31. Wersinger identified Senahid as the driver shortly after the incident. This identification was based on Wersinger recognizing both Senahid’s face and his red shirt. This identification is further supported circumstantially by Officer Jensen, who testified that she saw Senahid, apparently intoxicated, fully dressed, and standing next to the vehicle while steam was still rising from its hood. The only other male present when Officer Jensen arrived, Senahid’s uncle, was wearing sleepwear.

Further, Senahid’s story did not add up. He said he had been sleeping at home and could not be arrested for “drunk sleeping.” But he was fully dressed when the police arrived, and the only other male present (Senahid’s uncle) was in pajamas. Moreover, Senahid’s story was contradicted by Hawbaker and Sehid, his own witnesses, who both claimed Senahid was hanging out with a group of friends prior to being arrested. *State v. Cox*, 500 N.W.2d 23, 25 (Iowa 1993) (“A false story told by a defendant to explain or deny a material fact



against him is by itself an indication of guilt and the false story is relevant to show that the defendant fabricated evidence to aid his defense.”). Moreover, Hawbaker’s and Sehid’s testimony that a large group of people were in the basement was inconsistent with Officer Jensen’s testimony that no one besides Senahid, his uncle, and his mother appeared to be at the home when the police arrived, and no other vehicles were present.

Senahid argues that this is a case of mistaken identity and his brother, not he, was the driver of the yellow convertible that night. Senahid places great emphasis on the fact that Wersinger initially misidentified Senahid’s brother as him when defense counsel showed him a posed photograph of Sehid next to the vehicle. However, this misidentification went to the weight of Wersinger’s testimony. *State v. Burns*, 304 N.W.2d 217, 219 (Iowa 1981) (“The weight of the identification evidence is for the trier of fact.”). Wersinger retreated from his misidentification in later testimony and testified he had absolutely no doubt whatsoever Senahid was the driver of the vehicle.

Moreover, Sehid’s testimony did not square with other evidence in the case. Sehid testified he drove the convertible to pick up chips and soda, but claimed he did not encounter a fuel tanker or drive in a reckless manner. This is in direct conflict with Wersinger’s testimony, as well as Officer Jensen’s testimony as to who was present when she arrived at the house. When evidence is in conflict, the trier of fact is “empowered to resolve those conflicts in accordance with its own views as to the credibility of the witnesses.” *State v. Allen*, 348 N.W.2d 243, 247 (Iowa 1984). Here, the district court determined Wersinger was credible and Sehid was not.

Finally, we note the existence of evidence that might support a different verdict does not negate the existence of substantial evidence sufficient to support the verdict in the case. *State v. Frake*, 450 N.W.2d 817, 818-19 (Iowa 1990). Based upon all the evidence in the record, we find sufficient evidence to support Senahid's conviction for operating while intoxicated.

Senahid also challenges the district court's denial of his motion for a new trial because the verdict was contrary to the weight of the evidence. See Iowa R. Crim. P. 2.24(2)(c). Based on the evidence in the record already discussed, we find the district court did not abuse its broad discretion in denying the motion for new trial. See *State v. Reeves*, 670 N.W.2d 199, 203 (Iowa 2003) (reviewing for an abuse of discretion). The evidence in this case does not preponderate heavily against the verdict. *State v. Ellis*, 578 N.W.2d 655, 659 (Iowa 1998).

For the foregoing reasons, we conclude Senahid Mujkanovic's conviction withstands scrutiny under both the sufficiency of the evidence standard and the weight of the evidence standard. Accordingly, we affirm his conviction and the denial of his motion for new trial.

**AFFIRMED.**