

IN THE COURT OF APPEALS OF IOWA

No. 6-435 / 05-1741
Filed July 12, 2006

STATE OF IOWA,
Plaintiff-Appellee,

vs.

PATRICK A. DIXON,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Mary E. Howes,
District Associate Judge.

A defendant appeals his conviction for operating while intoxicated (first offense). **AFFIRMED.**

Douglas C. Scovil of Ruud, Scovil & Marsh, Rock Island, Illinois, for appellant.

Thomas J. Miller, Attorney General, Mary E. Tabor, Assistant Attorney General, William E. Davis, County Attorney, Marc Gellerman, Assistant County Attorney, and Tanya Fawcett, Student Legal Intern, for appellee.

Considered by Vogel, P.J., and Zimmer and Vaitheswaran, JJ.

VOGEL, P.J.

Following a trial to the court, Patrick Dixon appeals his conviction of operating while intoxicated (OWI) (first offense), a serious misdemeanor in violation of Iowa Code section 321J.2(2)(a) (2003). Because we find sufficient evidence on the record supporting his conviction, we affirm.

Shortly before midnight on February 12, 2005, Dixon was discovered slumped over the steering column of his parked car on a street in Davenport. Joe Collins, a paramedic present in the area on another matter, noticed Dixon's vehicle and attempted to ascertain whether Dixon was alright. Dixon's car was not running but parked in a traffic lane next to the curb, without any hazard lights on. Collins stated that other cars would have to drive into other lanes of traffic to get around Dixon's car. According to Collins, Dixon was slumped over in the front seat and only awoke after Collins had pounded on the driver's side window several times and shined his flashlight into the vehicle. Collins noticed Dixon's breath smelled of alcohol, his speech was slightly slurred, and his pupils were slow to react to Collin's flashlight. Dixon told Collins he had come from a bar around the corner and was going to pick up a friend. Dixon refused medical care from Collins.

When the Davenport police arrived on the scene, Officer Joshua Stocking asked Dixon to exit his vehicle. Although Officer Stocking did not recall any difficulty with Dixon's balance, he did notice the smell of alcohol on Dixon and that his eyes were blood-shot and watery. When Officer Stocking attempted to administer a preliminary breath test and field sobriety tests, Dixon refused and was arrested for OWI. Dixon likewise refused a breath test at the police station

and refused to sign an implied consent advisory form. After waiving his right to a jury trial, Dixon was convicted of OWI (first offense) and now appeals the conviction claiming insufficient evidence to support the conviction.

We review a challenge to the sufficiency of the evidence for errors at law. *State v. Turner*, 630 N.W.2d 601, 610 (Iowa 2001). A verdict is upheld if supported by substantial evidence, which means evidence sufficient to convince a rational trier of fact, beyond a reasonable doubt, of the defendant's guilt. *Id.* See also *State v. Speicher*, 625 N.W.2d 738, 741 (Iowa 2001) (noting direct and circumstantial evidence is equally probative so long as it give rises to a fair inference of guilt). We view the totality of the record in the light most favorable to the State, drawing any and all legitimate inferences that can be reasonably deduced from the evidence. *State v. Williams*, 574 N.W.2d 293, 296 (Iowa 1998).

Dixon argues the State failed to prove beyond a reasonable doubt that he was (1) operating a vehicle or (2) under the influence of alcohol. As to the first assigned error, Dixon admitted to Collins that he had come from the bar around the corner. Dixon was in the driver's seat, apparently asleep or unconscious, with the vehicle's controls within his reach. Although Dixon claims he had just pulled over to make a cell phone call, the paramedic on the scene testified it took several minutes for him to rouse Dixon after shining a flashlight into the vehicle and pounding repeatedly on the window. Dixon also admitted that he had driven to that location where he parked his car on a busy street in a traffic lane. There is substantial evidence to support the district court's conclusion that Dixon had operated the vehicle in an intoxicated condition shortly before he was

approached by Collins and the police. See *State v. Hopkins*, 576 N.W.2d 374, 377-78 (Iowa 1998) (stating that evidence may fail to prove that an intoxicated defendant was in the process of operating a motor vehicle when authorities found him or her; nevertheless, circumstantial evidence may establish that defendant had operated while intoxicated when driving to the location where the vehicle was parked).

The record also supports the district court's finding that Dixon was under the influence according to Iowa Code section 321J.2(1)(a): A person is "under the influence" when the consumption of alcohol results in one or more of the following: (1) the person's reason or mental ability has been affected; (2) the person's judgment is impaired; (3) the person's emotions are visibly excited; or (4) the person has, to any extent, lost control of bodily actions or motions. *State v. Dominguez*, 482 N.W.2d 390, 392 (Iowa 1992). Several facts support one or more of the indicators for being "under the influence." Dixon was either unconscious or asleep and slumped over in the front seat of his car when Collins found him. Dixon had parked in a traffic lane, on a busy street, forcing traffic to drive into other lanes to avoid his car. Collins noted that Dixon's breath smelled of alcohol, his speech was slurred, and his pupils were slow to react. Officer Stocking also smelled alcohol on Dixon and noticed his eyes were blood-shot and watery. Dixon admitted to consuming three or four glasses of wine earlier in the evening, although he claims the effects were diminished as the wine was taken with his dinner. See *State v. Truesdell*, 679 N.W.2d 611, 616 (Iowa 2004) (holding that evidence was sufficient to show that defendant was "under the influence" of an intoxicant at the time he drove the vehicle, where defendant

admitted consuming alcohol prior to incident at store, and police observed numerous signs of intoxication after he was arrested). While Dixon minimized the effects of his admitted alcohol consumption, both Officer Stocking and paramedic Collins provided detailed testimony to the contrary. We conclude substantial evidence supports a finding that Dixon was “under the influence” and therefore affirm his conviction.

AFFIRMED.