

IN THE COURT OF APPEALS OF IOWA

No. 3-760 / 12-2125
Filed October 23, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

BRIAN HINTZE,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, William A. Price,
Judge.

Appeal from a conviction for operating while intoxicated, third offense.

AFFIRMED.

Jeremy B.A. Feitelson of Feitelson Law, L.L.C., West Des Moines, for
appellant.

Thomas J. Miller, Attorney General, Jean Pettinger, Assistant Attorney
General, John Sarcone, County Attorney, and James Hathaway, Assistant
County Attorney, for appellee.

Considered by Potterfield, P.J., and Mullins and Bower, JJ.

BOWER, J.

Brian Hintze appeals from his conviction for operating while intoxicated, third offense, following a bench trial. He contends there was insufficient evidence he was “under the influence” of alcohol to convict him. We affirm.

Hintze’s vehicle was stopped for an expired license plate. When the officer requested Hintze’s license, registration, and proof of insurance, Hintze could not produce them, giving the officer an identification card instead. The officer smelled alcohol and saw Hintze had red, bloodshot eyes. He called a second officer to assist. A check revealed Hintze was driving while barred. While the officers talked, Hintze, who is six-feet, four-inches tall and weighs two-hundred-fifty pounds, got out of his vehicle and ran toward the nearby woods. Both officers chased him. One took Hintze to the ground, but it took both to handcuff him because he was resisting. The first officer took Hintze to the police station. The second officer inventoried Hintze’s vehicle and found an empty and partially empty beer can on the floor behind the passenger seat.

Hintze was charged with operating a motor vehicle while under the influence of alcohol or a drug, in violation of Iowa Code section 321J.2 (2011). He filed a motion to suppress “the implied breath test request and alleged test refusal, as well as all statements by and observations of [him] and all other evidence obtained subsequent to” the invocation of implied consent. The court granted the motion.

Hintze waived a jury trial and the case was tried to the court. The court heard the testimony of both police officers, watched the video recordings from

the police car and the police station, reviewed all the exhibits, and heard closing arguments. The court noted the officers smelled alcohol on Hintze and found beer cans in his car, Hintze had watery bloodshot eyes and was unresponsive to questions from the officers at one point. The court found Hintze's "judgment was impaired by the use of alcohol or his reason or mental ability was affected by the use of alcohol" as evidence by the "extremely poor decision of turning a routine traffic stop into a chase into a ditch toward a wooded area along Highway 415 at 11:15 at night." The court observed Hintze was sitting in his vehicle with two police officers behind him, yet his judgment or reason or mental ability was so impaired he got out of the car, tried to run away, and ignored orders to stop or to get back into his car. This "cannot have been a properly reasoned decision. Clearly Mr. Hintze's judgment was impaired."

We review sufficiency-of-the-evidence claims for correction of errors at law. *State v. Sanford*, 814 N.W.2d 611, 615 (Iowa 2012). We examine the evidence in the light most favorable to the State and draw all fair and reasonable inferences that may be deduced from the evidence. *State v. Hennings*, 791 N.W.2d 828, 832-33 (Iowa 2010). "We will uphold a verdict if it is supported by substantial evidence." *State v. Brubaker*, 805 N.W.2d 164, 171 (Iowa 2011). Substantial evidence is evidence that could convince a rational fact finder the defendant is guilty beyond a reasonable doubt. *Id.* Direct and circumstantial evidence are equally probative. Iowa R. App. P. 6.904(3)(p).

To convict Hintze, the State had to prove he (1) operated a motor vehicle (2) while under the influence of an alcoholic beverage or other drug or

combination of such substances. See Iowa Code § 321J.2(1)(a). Hintze does not dispute he operated a motor vehicle. The State does not allege drugs were involved. Hintze contends there is insufficient evidence he was “under the influence” of alcohol. A person is “‘under the influence’ when the consumption of alcohol affects the person’s reasoning or mental ability, impairs a person’s judgment, visibly excites a person’s emotions, or causes a person to lose control of bodily actions.” *State v. Truesdell*, 679 N.W.2d 611, 616 (Iowa 2004). “Thus, conduct and demeanor normally become important considerations in determining whether a person is ‘under the influence.’” *State v. Price*, 692 N.W.2d 1, 3 (Iowa 2005).

The trial court found Hintze’s decision to run from the officers was evidence his judgment or reasoning was impaired by alcohol. Hintze argues he was on parole at the time and his license was barred; therefore, his decision to run “was clearly an attempt to avoid prison for driving while barred.” Regardless of the reason Hintze attempted to flee, the decision to do so reveals his reasoning and judgment were impaired. See *Truesdell*, 679 N.W.2d at 616. Hintze’s decision to flee, together with the smell of alcohol from him, the beer cans in his vehicle, and his watery, bloodshot eyes, constitutes substantial evidence supporting the court’s finding Hintze was “under the influence.” Hintze’s sufficiency-of-the-evidence claim fails. We affirm the judgment of the trial court.

AFFIRMED.