

IN THE SUPREME COURT OF IOWA**No. 24-1449****Grundy County No. STA0036862****ORDER****STATE OF IOWA,
Plaintiff-Appellee,****vs.****PATRICK MICHAEL HACKETT,
Defendant-Appellant.**

This matter comes before the court upon appellant's motion to waive fees. Also before the court on its own motion are appellant's notice of appeal, combined certificate, two statements of evidence, and a document titled as a brief.

A review of the district court's docket shows appellant filed a notice of appeal from an order affirming the trial court's judgment of sentence for failure to maintain control of a vehicle in violation of Iowa Code section 321.288. Except where otherwise indicated, violations of Iowa Code chapter 321 are simple misdemeanors. Iowa Code § 321.482. Appellant does not have a right to appeal, but rather must seek discretionary review. Iowa Code § 814.6(2)(d); Iowa R. Crim. P. 2.72(6). This court may proceed as though the proper form of review has been requested pursuant to Iowa Rule of Appellate Procedure 6.151(1), and therefore treats the notice of appeal as an application for discretionary review, Iowa R. App. P. 6.106(1)(a).

Appellant paid the filing fee on September 17, 2024. Accordingly, the motion to waive the filing fee should be denied as moot. The combined certificate indicates the trial was recorded by the Zoom audio/visual application, and then indicates appellant will prepare a statement of the evidence. A statement of the evidence is intended to "create a record of a hearing or trial for which a transcript is unavailable." Iowa R. App. P. 6.806(1). Here a transcript can be produced from the Zoom recording, and the court notes appellant filed such an application on September 18, 2024. The court finds the combined certificate,

and the statements of evidence filed on September 20, 2024, should be stricken. Finally, no brief was due, and arguments for the reviewing court's consideration can only be made in a brief filed pursuant to rule of appellate procedure 6.903.

Upon consideration, the motion to waive the filing fee is denied, and any other requests for relief therein are denied. The combined certificate filed on September 17, 2024; the statements of evidence filed on September 20, 2024; and the brief filed on September 22, 2024, are stricken.

The application for discretionary review is denied.

Copies to:

Patrick M. Hackett
201 Pondview Lane
Saint Joseph, MN 56374

Iowa Attorney General's Office
Criminal Appeals Division
Hoover Building, Second Floor
1305 E. Walnut
Des Moines, IA 50319

Clerk of District Court, Grundy County



IOWA APPELLATE COURTS

State of Iowa Courts

Case Number
24-1449

Case Title
State v. Hackett

So Ordered

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Dana L. Oxley, Justice

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IN THE SUPREME COURT OF IOWA

No. 24-1449

Grundy County No. STA0036862

ORDER

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

vs.

**PATRICK MICHAEL HACKETT,
Defendant-Appellant.**

This matter comes before the court, Waterman, Mansfield, and McDonald, JJ., upon appellant's motion for review of a single-judge order. Iowa R. App. P. 6.1002(5)(b). Also before the court on its own motion are appellant's October 8, 11, and 16, 2024 filings.

The court finds the October 8, 11, and 16, 2024 filings are notices or copies of petitions for writ of certiorari to the Supreme Court of the United States, and that those filings require no action be taken by this court.

Upon consideration, the October 4, 2024 order denying appellant's application for discretionary review is confirmed as the order of the court. The court takes no action on the October 8, 11, and 16, 2024 filings.

Copies to:

Patrick M. Hackett
201 Pondview Lane
Saint Joseph, MN 56374

Iowa Attorney General's Office
Criminal Appeals Division
Hoover Building, Second Floor
1305 E. Walnut
Des Moines, IA 50319

CLERK OF SUPREME COURT

OCT 28, 2024

ELECTRONICALLY FILED



IOWA APPELLATE COURTS

State of Iowa Courts

Case Number
24-1449

Case Title
State v. Hackett

So Ordered

A handwritten signature in black ink, appearing to read "Tom Waterman", is written over a horizontal line.

Thomas D. Waterman, Justice

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IN THE IOWA DISTRICT COURT FOR GRUNDY COUNTY

STATE OF IOWA)	
Plaintiff)	Case No. STA0036862/STA0036872
)	
)	
VS)	
)	RULING
PATRICK MICHAEL HACKETT)	
Defendant)	

This matter came before the court on January 22, 2024, for a non-jury trial. The Defendant, Patrick Hackett was charged via citation with Failure to Maintain Control in violation of Iowa Code 321.288(1) a scheduled violation in case STA0036862 and with Driver in Possession of Intoxicating Beverage while on Duty or Driving in violation of Iowa Code 321.449 which references Federal/Administrative Code 392.5A3, a scheduled violation in case STA0036872. The State appeared by Assistant Grundy County Attorney Kali Adams. The Defendant Patrick Adams appeared Pro Se. All parties appeared via ZOOM video and a ZOOM recording was made. The State introduced State's Exhibits 1,2 and 3 and they were admitted into evidence.

FINDINGS OF FACT

The State presented sworn testimony from Trooper Todd Valentine. Trooper Valentine testified he has been employed with the Iowa State Patrol since 1994. He is a graduate of the University of Northern Iowa where he graduated with a degree in Criminology and is a graduate of the Iowa Department of Public Safety Academy. He has completed training for the Iowa State Patrol in motor vehicle enforcement and is a certified peace officer for the State of Iowa. Trooper Valentine testified on August 18, 2023; he was working in his official capacity when he was notified of a motor vehicle crash on Highway 20 involving a cement truck at the 218-mile marker, in Grundy County Iowa. Trooper Valentine testified one of his duties for the Iowa State Patrol is an accident investigator, so he traveled to the accident scene. Trooper Valentine testified upon arrival he observed two Grundy County deputies, an ambulance and witnesses to the accident. The Deputies were talking to the driver of the cement truck, later identified as the Defendant, Patrick Hackett, and were administering field sobriety tests. Trooper Valentine testified first responders pointed out alcohol containers to him on scene.

Trooper Valentine identified Mr. Hackett through his driver's license issued by the State of Kansas. The cement truck was observed to be on its passenger side in the median. The State introduced State's Exhibit 1, a photograph of the vehicles in question at the accident scene. Trooper Valentine noticed the cement truck was towing a smart car which was issued to Mr. Hackett. The smart car was as Trooper Valentine stated "up on wheels." Trooper Valentine began inspecting the cement truck for vehicle defects which may have caused the accident and to see if Mr. Hackett had the qualifications to drive the cement truck. Trooper Valentine testified he

did not find anything he believed contributed to the accident and Mr. Hackett had a Class B license, Class A license and his medical card. Trooper Valentine indicated Mr. Hackett stated to him the wind had caught the cement truck and he rolled the vehicle into the ditch. Trooper Valentine testified he observed no skid marks or vehicle failure on the cement truck. Trooper Valentine testified based on his training and experience that Mr. Hackett did not maintain control of the cement truck.

Trooper Valentine went on to describe the cement truck pulling the smart car as a drive away, tow away. He stated the cement truck was being delivered from North Carolina to Montana and the smart car had been hooked up to the cement truck. Trooper Valentine testified alcohol has been transferred while the vehicles were traveling and was most likely in the smart car but could have been in the cement car. Trooper Valentine testified to State's Exhibit 2, a photograph of a can labeled Jack Daniels Lemonade and State's Exhibit 3, a photograph of a bottle labeled Purple Haze laying in a grassy area. Trooper Valentine testified the can in State's Exhibit 2 was located near clothing and bags from the accident and the bottle in Exhibit 3 was in proximity to the vehicles in question and near items freshly placed on scene.

Trooper Valentine stated Mr. Hackett stated alcohol could have been in his personal vehicle and not a commercial vehicle. Trooper Valentine testified alcohol would not be allowed in Mr. Hackett's personal vehicle because it was being used in connection with the cement truck which would make the smart car a commercial motor vehicle. Trooper Valentine testified alcohol would only be allowed in the smart car if it manifested as part of a shipment.

The Defendant, Patrick Hackett presented sworn testimony. Mr. Hackett testified he has been driving for 3 years and has traveled 600,000 miles of driveaway all over the country. He self-proclaimed himself as the busiest driveaway driver in the country who prides himself on safety. Mr. Hackett indicated his smart car is his residence when he travels. Mr. Hackett indicates he was driving 60 in a 65 and hugging the right lane in his big vehicle. A vehicle was moving slowly ahead of him, and he noticed a gap, so he moved to the left lane and intended to move back to the right lane after passing the vehicle. Mr. Hackett stated he was driving straight, minding his own business when he lost steering and was not able to correct. He began swerving and had ineffective steering. Mr. Hackett stated his first concern was had had not quite passed the vehicle so he counter steered to the left and spiraled and there was nothing he could do so he ended up in the ditch. He testified he did not make a statement about wind because it would be speculation. Mr. Hackett stated he lost consciousness on impact. He suffered a bump on his head and a torn ligament in his thumb. He denied medical assistance and had not been drinking. Mr. Hackett stated in his experience there was an uncontrollable loss of steering which caused the accident, and his smart car was totaled.

CONCLUSIONS OF LAW

In case STA0036862, the State must prove beyond a reasonable doubt the elements of Failure to Maintain Control in violation of Iowa Code 321.288(1). Iowa Code 321.288(1) states:

321.288 Control of vehicle

1. A person operating a motor vehicle shall have the vehicle under control at all time.

The State argued Mr. Hackett did not maintain control of his vehicle and that he testified he did not have control. Mr. Hackett argued the State did not provide any evidence the accident was outside of the Defendant's control.

The court relies on the credible testimony of Trooper Valentine in this matter. Trooper Valentine testified to his investigation of the accident. He was unable to observe anything that would have contributed to the accident other than Mr. Hackett failed to maintain control of the cement truck. No skid marks or tire failure was observed. Trooper Valentine found no vehicle defects and Mr. Hackett had the qualifications to drive the vehicle. State's Exhibit A shows the cement truck on its side on the median showing its position after the accident. While the court sympathizes with Mr. Hackett's predicament and appreciates his pride in taking safety precautions when driving his testimony even stated he lost control due to something whether it be steering, wind or another factor beyond his control, The fact of the matter is Iowa Code 321.288(1) requires a driver to be in control of their motor vehicle "at all time." Even if some outside force caused Mr. Hackett to lose control of the cement truck, he is still responsible for keeping it in control and on the road under Iowa law.

The court finds the State has proven Mr. Hackett has violated Iowa Code 321.288(1) Failure to Maintain Control beyond a reasonable doubt in case STA0036862.

In case STA0036872 the State must prove beyond a reasonable doubt Iowa Code 321.449. Iowa Code 321.449 states:

321.449 Motor carrier safety rules.

1. *a.* A person shall not operate a commercial vehicle on the highways of this state except in compliance with rules adopted by the department of public safety, in consultation with the department of transportation, under chapter 17A. The rules shall be consistent with the federal motor carrier safety regulations promulgated under United States Code, Tit. 49, and found in 49 C.F.R. pts. 385, 390 – 399 and adopted under chapter 17A.

Testimony was presented at length of whether the cement truck towing the smart car makes it a commercial vehicle under 321.449 and subject to federal administrative law. Based on the testimony of Trooper Valentine that the commodity in this matter is the cement truck and it is pulling the smart car, the smart car is considered a commercial vehicle. The court finds the smart car is a commercial vehicle when being pulled by the cement truck. However, Iowa Code 321.449 incorporates Section 392.5A3 of the Code of Federal Regulations. Section 392.5A3

392.5 Alcohol prohibition.

(a) No driver shall—

(1) Use alcohol, as defined in § 382.107 of this subchapter, or be under the influence of alcohol, within 4 hours before going on duty or operating, or having physical control of, a commercial motor vehicle; or

(2) Use alcohol, be under the influence of alcohol, or have any measured alcohol concentration or detected presence of alcohol, while on duty, or operating, or in physical control of a commercial motor vehicle; or

(3) Be on duty or operate a commercial motor vehicle while the driver possesses wine of not less than one-half of one per centum of alcohol by volume, beer as defined in 26 U.S.C. 5052(a), of the Internal Revenue Code of 1954, or distilled spirits as defined in section 5002(a)(8), of such Code. However, this does not apply to possession of wine, beer, or distilled spirits which are:

(i) Manifested and transported as part of a shipment; or

(ii) Possessed or used by bus passengers.

The court finds the testimony of Trooper Valentine credible but when listening to the evidence and viewing State's Exhibits 2 and 3 the court finds evidence has been presented beyond a reasonable doubt to show Mr. Hackett was operating a commercial motor vehicle while in possession of alcohol or beer. Trooper Valentine stated alcohol was most likely in the smart car but could have been in the cement truck. No evidence was presented by the State that alcohol was in either vehicle or ejected from the vehicles in the accident. State's Exhibits 2 and 3 show a can and bottle on the road and in the grass near objects but there is no evidence as to if they opened or unopened, empty or full. The testimony from Trooper Valentine is they were near objects from the accident, but no evidence was presented how it was known these items were from the accident, belonging to Mr. Hackett and not just everyday trash found along a busy highway. There was also no evidence presented as to how Trooper Valentine knew these items were freshly placed where they were observed.

SENTENCING

IT IS HEREBY ORDERED; the State has proven the elements of Failure to Maintain Control in violation of Iowa Code 321.288 beyond a reasonable doubt. In case number STA0036862 the Defendant is adjudged GUILTY of Failure to Maintain Control in violation of Iowa Code 321.288 and is sentenced to the scheduled fine of \$135.00 plus a 15% surcharge and court costs for a total of \$210.25.

IT IS FURTHER ORDERED the court holds the State has failed to prove the elements of Driver in Possession of Intoxicating Beverage while on Duty-Driving in violation of Iowa Code 321.449 referencing Code of Federal Regulations 392.5A3 beyond a reasonable doubt. In case number STA0036872 the court finds the Defendant NOT GUILTY of Possession of Intoxicating Beverage while on Duty-Driving and the case is dismissed at State's cost.

Payment is due at the rate of \$50 per month beginning the 10th day of August 2024 and the 10th of each month until paid in full. The judgment shall be paid at the office of the Grundy County Clerk of Court or online at www.iowacourts.gov.

A party takes an appeal by giving verbal notice to the judge at the time judgment is rendered that the party appeals or by filing with the clerk of the district court not later than ten (10) days after judgment is rendered a written notice of appeal.

The Defendant is assumed to have the reasonable ability to pay any Category B restitution. The Defendant is on notice if a request for a hearing on the reasonable ability to pay, or for the court to make a determination of the Defendant's reasonable ability to pay along with the filing of a financial affidavit the Defendant waives his right to challenge reasonable ability to pay Category B restitution.

Bond on appeal is \$500 cash.

Copies to: Parties



State of Iowa Courts

Case Number
STA0036862
Type:

Case Title
STATE OF IOWA VS HACKETT, PATRICK MICHAEL
ORDER OF DISPOSITION

So Ordered

Michelle M. Wagner

Michelle M. Wagner, District Associate Judge
First Judicial District of Iowa

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IN THE IOWA DISTRICT COURT IN AND FOR GRUNDY COUNTY**State of Iowa,
Plaintiff,****vs.****PATRICK MICHAEL HACKETT,
Defendant.****Case No. STA0037848****ORDER Re APPEAL**

The above-captioned matter came before the Court based upon the appeal filed by the defendant on July 12, 2024. The matter was tried before the district associate court on January 22, 2024, via Zoom. Following the trial the district associate court found the defendant guilty in Grundy County case STA0036862 for failure to maintain control in violation of Iowa Code §321.288. The defendant was found not guilty of the alleged violation in case STA0036872.

Thereafter the defendant filed his notice of appeal and accompanying pleadings on July 12 and July 13, 2024. The Court has reviewed the district associate court's personal notes, the video recording of the trial (including the testimony of Trooper Valentine and the defendant Patrick Hackett), Exhibits 1, 2, and 3, and the district associate court's ruling filed July 10, 2024. Defendant's appeal references defense exhibits; however, no such exhibits were offered and admitted (per the notes of the judge and a review of the trial video transcript).

CONCLUSIONS OF LAW

Iowa law requires the defendant's appeal to be decided by a district judge or different district associate judge. If tried by judicial magistrate, the appeal is to be decided by district judge or district associate judge.

Review of verdict rendered by court is for sufficiency of the evidence: evidence is viewed in light most favorable to the verdict, and reviewing court accepts as established all reasonable inferences tending to support it. Appellate court is not bound by erroneous rulings on law. State v. Gay, 526 N.W.2d 294 (Iowa 1995).

The defendant was charged and convicted of violating Iowa Code §321.288 which reads as follows:

321.288 Control of vehicle

1. A person operating a motor vehicle shall have the vehicle under control at all times.

The defendant focused upon the tag axle with his testimony and the cross examination of Trooper Valentine. Per the defendant's own testimony, he was driving under the speed limit (60mph in a 65-mph zone). He testified to passing a vehicle traveling even more significantly under the speed limit. As he was roughly safely beyond the vehicle, when he experienced an "irreconcilable and irredeemable" loss of control of steering. It resulted in the defendant experiencing pronounced swerving back and forth / right and left. Defendant testified his attempts to steer the vehicle thereafter were ineffective. Per the defendant, he entered into what he characterized as a "death wobble." The defendant states the situation spiraled from there and he entered into the ditch. Defendant claimed he lost consciousness upon impact. Defendant denied he attributed the accident to the wind (despite the testimony from Trooper Valentine). Defendant asserts the State has failed to prove the accident was not beyond the defendant's control. The standard referenced by the defendant is inaccurate.

Given a thorough review of all of the above, the Court finds the State proved the defendant simply failed to have his vehicle under control at all times. Sufficient evidence exists to support the Court's finding.

The Court will address the defendant's other appeal points individually.

1. Defendant is correct. The trial court incorrectly identified the vehicle being on it's passenger side. Trial Judge Wagner's misstatement regarding the position of defendant's vehicle is irrelevant.
2. Similarly, the incorrect physical description of the smart car as described by Judge Wagner is irrelevant.
3. Defendant focuses upon Judge Wagner's alleged reliance upon Trooper Valentine's testimony. Upon review of the evidence, the exhibits, the judge's notes, the video transcript, and Judge Wagner's ruling, ample evidence exists supporting the defendant's failure to maintain control. The finding is derived beyond the testimony of Trooper Valentine. The testimony of the defendant alone is sufficient to prove beyond a reasonable doubt that the defendant failed to maintain control of his vehicle (despite his asserted reasons or defenses for failing to maintain control).
4. Defendant again references his perceived loss of control of steering as justification for his loss of control of the motor vehicle. The alleged mechanical failure, while unsupported by any physical evidence or mere speculation of the defendant, is not a defense to Iowa Code §321.288.
5. The defendant's focus upon the driving status and commercial licensing of the defendant is irrelevant to the Court's findings of a violation of Iowa Code §321.288.
6. Defendant asserts the introduction of evidence "pictures and sworn testimony filings labeled 'written plea of guilty.'" No such exhibits or testimony were presented at

the trial of January 8, 2024. Consequently, defendant's assertion that the trial judge ignored said evidence is inaccurate.

7. Again, defendant asserts the district associate court failed to acquit defendant based upon his asserted defense that he lost control "when steering was no longer effective to control the vehicle." As noted above, the allegation is not a defense. Further, the allegation is not supported by any evidence presented.

8. Defendant makes several allegations regarding credibility of Trooper Valentine. Again, upon review, the Court finds the testimony alone of the defendant is sufficient for the Court's findings of a violation of Iowa Code §321.288.

9 & 10. Defendant's allegations of the district associate court's bias does not merit a response and is irrelevant to the Court's finding.

11. The district associate court's error in the defendant's last name is irrelevant to the Court's ultimate findings.

IT IS THEREFORE ORDERED the appeal is DENIED. All costs of the initial trial and appeal shall be assessed to the defendant.



State of Iowa Courts

Case Number
STA0036862
Type:

Case Title
STATE OF IOWA VS HACKETT, PATRICK MICHAEL
ORDER ON APPEAL

So Ordered

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Joel Dalrymple, District Court Judge,
First Judicial District of Iowa

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