

**IN THE COURT OF APPEALS OF IOWA**

No. 2-011 / 11-0245  
Filed February 1, 2012

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

**vs.**

**DEAN THOMAS O'REGAN,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Polk County, Arthur E. Gamble,  
Judge.

Dean O'Regan appeals his conviction for operating a motor vehicle while  
under the influence of a drug. **REVERSED AND REMANDED WITH  
INSTRUCTIONS.**

Aaron D. Hamrock of McCarthy & Hamrock, P.C., West Des Moines, for  
appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney  
General, John Sarcone, County Attorney, and David Porter, Assistant County  
Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

**MULLINS, J.**

Dean O'Regan appeals from the judgment and sentence entered upon a jury verdict finding him guilty of operating a motor vehicle while under the influence of a drug in violation of Iowa Code section 321J.2 (2009). O'Regan contends the trial court erred in denying his motion for judgment of acquittal because the State failed to present sufficient evidence to rebut his prescription medication defense. We find the State failed to disprove the affirmative defense beyond a reasonable doubt, and therefore reverse the judgment of conviction and remand for dismissal of the charge.

**I. Background Facts and Proceedings.**

At approximately 10:04 a.m. on November 28, 2009, Trooper Bryan Guill of the Iowa State Patrol observed a vehicle travelling over the speed limit and on the inside shoulder of Interstate 80 near Mitchellville.<sup>1</sup> Trooper Guill caught up to the vehicle and observed erratic driving including four crosses of the yellow fog line in the left lane, each of which were near or over the rumble strip. The vehicle then moved into the right lane, where it crossed the right fog line and almost hit a vehicle in front of it. Trooper Guill activated his lights and stopped the vehicle.

Trooper Guill approached the driver, who was identified as O'Regan. Trooper Guill testified that O'Regan appeared lethargic and exhibited motor skill difficulties. According to Trooper Guill, when he asked if O'Regan was okay, O'Regan responded that he was taking medication which he believed was

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<sup>1</sup> A DVD recording from Trooper Guill's in-car camera captured the events that followed and was admitted into evidence. However, some portions of the audio are less than ideal due to the noise of passing vehicles.

affecting his driving. Trooper Guill took O'Regan's driver's license and returned to his patrol car. Trooper Guill informed dispatch that O'Regan had stated that he was "bipolar and on medication."

Eventually Trooper Guill had O'Regan join him in his police vehicle. When O'Regan entered the vehicle, he stated, "They're overmedicating me." After a conversation regarding O'Regan's vehicle being towed, O'Regan told Trooper Guill, "This medication, it makes me all drowsy." O'Regan then informed Trooper Guill that he was taking four different medications and that they made him "tired." Trooper Guill performed a search of O'Regan's vehicle, and discovered pill bottles prescribed to O'Regan for clonazepam, lithium carbonate, olanzapine, and benztropine. A sticker on the clonazepam prescription bottle provided:

May cause drowsiness. Alcohol may intensify this effect. Use care when operating a car or dangerous machinery.

After Trooper Guill returned to the police vehicle, O'Regan stated, "I wish the doctors would have proscribed or said I couldn't drive on it." O'Regan then admitted that "it's a struggle driving." A couple of minutes later, O'Regan stated, "I'm pretty sure none of those drugs say I shouldn't drive though, I talked to a doctor."<sup>2</sup>

At post headquarters, Trooper Guill had O'Regan perform three field sobriety tests. O'Regan passed the horizontal gaze nystagmus test, but failed the walk-and-turn and the one-leg-stand tests. After the tests, O'Regan again

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<sup>2</sup> The prosecutor misrepresented this quote during trial as "I'm pretty sure I'm not supposed to drive." This misquote was never objected to or corrected by defense counsel. The State continues to argue this misquote as an admission in its briefing to this court.

told Trooper Guill, “The doctor that gave me this medication swore to me I could drive,” and “My doctor told me, oh no, you shouldn’t have any problems driving a car.”

Implied consent procedures were invoked, and O’Regan submitted breath and urine samples. The breath test showed that O’Regan had not consumed any alcohol. The urine sample tested positive for clonazepam and a clonazepam metabolite.

The State subsequently charged O’Regan with operating a motor vehicle while under the influence of a drug in violation of Iowa Code section 321J.2. The case proceeded to a jury trial on December 15-17, 2010.

At trial, Trooper Guill was the State’s only witness. O’Regan called Dr. Beng Choon Ho, a psychiatrist from the University of Iowa Hospital and Clinics, to testify. According to Dr. Ho’s testimony and the medical records admitted at trial, O’Regan was admitted to the University of Iowa Hospital on a mental health hold on October 21, 2009. During his commitment, O’Regan required high doses of several medications, including clonazepam, to help manage his psychosis. During his high dosage period, O’Regan exhibited side effects including slurred speech, unsteady gait, sedation, and drooling. However, as O’Regan’s mental health improved, the medication dosages were reduced. For a good part of the last week that O’Regan spent at the hospital, he was only taking a milligram of clonazepam twice a day, which was the same amount he was prescribed to take upon his release. In addition, to clonazepam, O’Regan was also prescribed olanzapine, lithium carbonate, and benztropine upon discharge. O’Regan was

discharged on November 18, 2009, ten days before he was pulled over by Trooper Guill.

Upon direct examination, Dr. Ho testified that he did not tell O'Regan he was prohibited from driving, and that he had no evidence that O'Regan was overusing his medication. However, upon cross examination, Dr. Ho stated that although he did not remember having a specific conversation with O'Regan it is very likely he would have been informed to not drive until he knew how the medication would affect him. Dr. Ho also testified that driving was not one of his chief concerns for O'Regan upon discharge. Rather, Dr. Ho wanted to ensure that O'Regan's condition was maintained and that he adhered to his medication regimen. Dr. Ho testified O'Regan had a history of not taking his medications.

O'Regan also testified in his own defense. He stated that upon his discharge Dr. Ho told him he could drive. O'Regan further stated that he had his car at the hospital and drove home upon discharge. O'Regan testified that he took his medications as prescribed after his discharge and on November 28.

At the close of trial, O'Regan also moved for a judgment of acquittal. The district court denied the motion. A clonazepam information sheet was admitted into evidence at this time, which provided:

This medicine may cause drowsiness, dizziness, lightheadedness, blurred vision, or difficulty with coordination. These effects may be worse if you take it with alcohol or certain medications. Use this medication with caution. Do not drive or perform other possibly unsafe tasks until you know how you react to it.

The jury returned a guilty verdict on December 17, 2010. O'Regan filed a motion in arrest of judgment and a motion for new trial. The trial court denied both motions. O'Regan stipulated that this operating while intoxicated was his

second offense, and was sentenced to two years of incarceration with all but seven days suspended and two years probation.

O'Regan now appeals, arguing the trial court erred in denying his motion for judgment of acquittal because the State failed to present sufficient evidence to disprove his prescription medication defense.

## **II. Standard of Review.**

A motion for judgment of acquittal is a means of challenging the sufficiency of the evidence, and we review such claims for correction of errors at law. *State v. Serrato*, 787 N.W.2d 462, 465 (Iowa 2010). If the verdict is supported by substantial evidence, we will uphold a finding of guilt. *Id.* “Substantial evidence” is evidence that would convince a rational trier of fact the defendant is guilty beyond a reasonable doubt. *Id.* In making this determination, we consider all the evidence, not just the evidence supporting the verdict. *Id.* We view the evidence in the light most favorable to the State, including legitimate inferences and presumptions that may fairly and reasonably be deduced from the record evidence. *Id.*

At trial, the State must prove every element of the crime charged beyond a reasonable doubt. *State v. Gibbs*, 239 N.W.2d 866, 867 (Iowa 1976). The State’s evidence must raise a fair inference of guilt and do more than create speculation, suspicion, or conjecture. *State v. Hamilton*, 309 N.W.2d 471, 479 (Iowa 1981). In weighing the evidence, direct and circumstantial evidence are equally probative. Iowa R. App. P. 6.904(3)(p).

### III. Analysis.

The prescription medication defense is set forth by statute as:

[Section 321J.2] does not apply to a person operating a motor vehicle while under the influence of a drug if the substance was prescribed for the person and was taken under the prescription and in accordance with the directions of a medical practitioner as defined in chapter 155A or if the substance was dispensed by a pharmacist without a prescription pursuant to the rules of the board of pharmacy, if there is no evidence of the consumption of alcohol and the medical practitioner or pharmacist had not directed the person to refrain from operating a motor vehicle.

Iowa Code § 321J.2(7)(a) (2009). As an affirmative defense, the defendant has the burden of going forward with sufficient evidence to show that the defense applies. *State v. Lawler*, 571 N.W.2d 486, 489 (Iowa 1997); see also Iowa Code § 321J.2(7)(b) (labeling the prescription medication defense as “an affirmative defense”). However, once the defendant has produced evidence sufficient to invoke the defense, the burden shifts to the State to disprove the defense beyond a reasonable doubt, so that the ultimate burden of proof remains on the State. *Lawler*, 571 N.W.2d at 489.

It is undisputed that O’Regan provided sufficient evidence showing the prescription medication defense applies in this case. Further, it is undisputed that O’Regan had a valid prescription for clonazepam and had not consumed any alcohol. *Cf. State v. Wolfe*, 369 N.W.2d 458, 460 (Iowa Ct. App. 1985). Accordingly, the trial court properly instructed the jury, in pertinent part, with the following regarding the prescription medication defense:

[T]he State has the burden to prove either of the following propositions.

- (1) The doctor or pharmacy directed the defendant to refrain from operating a motor vehicle; or

- (2) The controlled substance was not taken in accordance with the directions of a doctor and the labeling directions of the pharmacy.

If the State has proved either of these propositions, the prescription medication defense does not apply.

Upon our review of the evidence in this case, we find the State failed to prove either of these propositions beyond a reasonable doubt.

First, Iowa Code section 321J.2(7)(a) requires the State to prove that the medical practitioner or the pharmacist “directed the person to refrain from operating a motor vehicle.” There is no evidence of such a direction in this case. Dr. Ho testified that he did not tell O’Regan that he could not drive. His testimony as well as the pill bottle and information sheet only warned that O’Regan should understand the drug’s side effects before driving. These “conditional warnings” are not sufficient under the language of the statute.

In addition, the State has presented no evidence that O’Regan was not taking his medications in accordance with Dr. Ho’s directions or the labeling instructions. The urine test only showed that clonazepam was in O’Regan’s system. It did not show the amount in O’Regan’s system, or whether this level would be consistent with overuse. The State also did not present any evidence showing how many pills were in the prescription bottle, and whether this amount would be unusual give the dosages and time of the prescription. There was also no definitive admission by O’Regan. The State has misquoted one alleged admission, and the fact that O’Regan believed he was “overmedicated” simply refers to his belief that the doctors are prescribing him too much medication, not that he is overmedicating himself. Finally, the State relies on O’Regan exhibiting



the same side effects he exhibited while admitted to the University of Iowa hospitals. However, side effects can be present even if the medication is taken as directed. To infer that the side effects were present due to overmedication can only be done through speculation, suspicion, or conjecture. *State v. Truesdell*, 679 N.W.2d 611, 618 (Iowa 2004).

#### **IV. Conclusion.**

Because the State failed to disprove the prescription medication defense by sufficient evidence, we reverse the judgment for operating a motor vehicle while under the influence of a drug and remand the case for dismissal of the charge.

**REVERSED AND REMANDED WITH INSTRUCTIONS.**