

IN THE COURT OF APPEALS OF IOWA

No. 2-301 / 11-1310
Filed May 23, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

GRAHAM DEANE JARED,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Paul L. Macek,
Judge.

Graham Jared appeals from his conviction for operating while intoxicated.

AFFIRMED.

Mark C. Smith, State Appellate Defender, David A. Adams, Assistant Appellate Defender, and Renner K. Walker, Student Legal Intern, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, Michael J. Walton, County Attorney, Will R. Ripley, Assistant County Attorney, and Megan Levetzow, Student Legal Intern, for appellee.

Considered by Vogel, P.J., and Tabor and Bower, JJ.

VOGEL, P.J.

Graham Jared appeals from his conviction for operating while intoxicated first offense. Because there was substantial evidence to support a finding that Jared was under the influence of alcohol at the time he operated a motor vehicle, we affirm.

I. Backgrounds Facts and Proceedings

In the early morning hours of January 22, 2011, Sergeant Sean Goodman of the Bettendorf Police Department was traveling east on State Street, a one-way street in Bettendorf, in the far left lane. Goodman observed headlights and a vehicle driving the wrong-way, heading towards his vehicle. Goodman moved out of the way, turned around, and the pick-up, which was hauling a trailer, pulled over. Goodman instructed the vehicle's driver—Graham Jared—to pull into the parking lot of a nearby gas station. Officer Kevin Hopkins, who was also in the area and responded to the situation, saw Jared proceed the wrong way on State Street and then pull into the gas station. Jared told Goodman and Hopkins he had just come from Purgatory's Pub. Jared was observed by both officers as having bloodshot, watery eyes, an odor of alcohol, and slow and slurred speech. Hopkins attempted to administer three field sobriety tests to Jared, all of which Jared either failed or was unable to complete.

Hopkins then transported Jared to the Bettendorf Police Station. While processing Jared at the station, Hopkins explained implied consent to Jared, but Jared refused to supply a specimen of his breath to test for blood alcohol

content. Hopkins then proceeded to interview Jared after providing Jared his Miranda warnings.¹

On February 22, 2011, Jared was charged by trial information with operating while intoxicated first offense, in violation of Iowa Code sections 321J.2(1) and 321J.2(2)(a) (2011). A jury trial was held on June 20, 2011. Jared moved for judgment of acquittal, which was denied. The jury returned a verdict of guilty. Jared appeals.

II. Standard of Review

We review sufficiency of the evidence claims for correction of errors at law. *State v. Brubaker*, 805 N.W.2d 164, 171 (Iowa 2011).

We will uphold a verdict if it is supported by substantial evidence. When a rational fact finder is convinced by the evidence that the defendant is guilty beyond a reasonable doubt, the evidence is substantial. The evidence is reviewed in the light most favorable to the State, and all of the evidence presented at trial, not just evidence that supports the verdict, is considered. However, it is the State's 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.

Id. (internal citation omitted). “In assessing the sufficiency of the evidence, we find circumstantial evidence equally as probative as direct.” *State v. Meyers*, 799 N.W.2d 132, 138 (Iowa 2011).

¹ See *Miranda v. Arizona*, 384 U.S. 436, 478–79 (1966) (stating the prior to custodial police questioning, an individual must be warned, “that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires”).

III. Sufficiency of the Evidence

Jared claims the district court erred in finding sufficient evidence to support his conviction for operating while intoxicated. “The offense of operating while intoxicated consists of two essential elements: (1) the operation of a motor vehicle (2) while under the influence of alcohol.” See *State v. Boleyn*, 547 N.W.2d 202, 204 (Iowa 1996) (citing Iowa Code § 321J.2). Jared concedes the first element of operating a motor vehicle is not in question and the sole issue at trial was whether he was “under the influence” of alcohol. Our supreme court has held that a person is “under the influence” “when the consumption of alcohol affects the person’s reasoning or mental ability, impairs the 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).

Sergeant Goodman stopped Jared after he observed Jared driving the wrong way on a one-way street. When stopped, Officer Hopkins observed Jared getting out of his pick-up truck and noted that Jared “had to use the steering wheel and the door to maintain his balance.” Both Goodman and Hopkins also observed that Jared had slurred speech. When administering the horizontal gaze nystagmus (HGN) test, Hopkins noted that Jared scored six out of six, indicating that he was intoxicated. Hopkins also attempted to administer the “walk-and-turn” test, but Jared was unable to follow the instructions. When Hopkins attempted to administer the “one-leg stand” test, Hopkins explained that when Jared lifted his foot,

he wasn’t counting out loud and he wasn’t looking down at his toe, he was staring straight ahead. So I asked him to look down at his big toe and count out loud for me, and he did. He counted one

thousand one, one thousand two, and then he put his foot down, took about three steps to the right, took about three more steps—or excuse me, three steps to the left, took about three more steps to the right, and I actually thought he was going to fall down. I mean, I kind of went over like hey, are you okay? And then at that point he said yeah, he's okay, but he didn't want to take the test anymore. He said come on, guys, let's just do this.

And so I took that as him refusing to take the test, and that's where we went from there.

Hopkins further testified that although there was ice and snow on the ground, he conducted the tests on a clear area, under the overhang where the gas pumps were located. Hopkins also recalled that Jared made repeated statements that his designated driver for the evening left the bar, leaving him and his girlfriend without a designated driver. His girlfriend was a passenger in Jared's truck, and in response to whether she had been drinking Jared said, "yeah, she's way worse than me." Based on his observations, Hopkins opined Jared was under the influence.

At trial, Jared testified that he saw no "wrong way" signs as he left the bar that night, and it was not until he saw Goodman that he realized he was driving the wrong direction on a one-way street. He also testified that he had consumed four drinks over the course of the evening. On cross-examination, Jared acknowledged that when he was questioned at the scene, he had told Goodman that he had "a couple" of drinks and told Hopkins he had nothing to drink. With respect to the field sobriety tests administered by Hopkins, Jared explained he refused to perform the "one-leg stand" and the "walk-and-turn" tests because he believed they were "highly inaccurate"; he claimed that he had a herniated disk and that "dancing around like a rock star for four hours" leaves him stiff and sore. He also stated he refused the DataMaster breath test because he did not

“believe in the accuracy of th[e] machine.” While Jared attempted to characterize his behavior as innocent conduct, the district court did not err in denying Jared’s motion for judgment of acquittal, as there was substantial evidence to support a finding that Jared was under the influence of alcohol at the time he operated a motor vehicle. We therefore affirm.

AFFIRMED.