

**IN THE COURT OF APPEALS OF IOWA**

No. 8-322 / 07-1003  
Filed June 25, 2008

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

**vs.**

**JANET CHRISTINE SKOGMAN,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Plymouth County, Robert J. Dull, Judge.

Janet C. Skogman appeals her conviction for operating while intoxicated.

**AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Shellie L. Knipfer, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, Darin J. Raymond, County Attorney, and Amy K. Oetken, Assistant County Attorney, for appellee.

Considered by Miller, P.J., and Vaitheswaran and Eisenhauer, JJ.

**MILLER, P.J.**

Janet C. Skogman appeals her conviction for operating while intoxicated (OWI). She contends the trial court erred in overruling her hearsay objection. We affirm.

On October 15, 2006, shortly after midnight, Plymouth County Deputy Rick Singer observed a dark colored minivan with Minnesota plates heading south on a gravel road near Hinton, Iowa. In early October the Plymouth County Sheriff's office had received two complaints about a dark green minivan in the area with Minnesota plates that was perhaps involved in burglary or drug activity. For this reason, Deputy Singer turned his vehicle around to follow the minivan. However, as soon as Singer did so the van turned into a private driveway at 26466 Imperial Road. Deputy Singer pulled into the drive behind the minivan and focused his spotlight on the van. He then realized the van was in fact purple, not green. He nevertheless decided to ask the driver for identification. The driver of the van was later identified as the defendant, Skogman.

When Singer asked Skogman for identification, the driver's side window was down approximately six inches and Singer thought he detected an odor of alcoholic beverage. Singer noticed that Skogman's words were slurred, some of the words she was using were not making sense in the context in which she was using them, and her eyes were red and bloodshot. As soon as Deputy Singer approached Skogman and asked for identification and inquired what she was doing in the area she began yelling and cursing at him and demanded that he leave her property. She initially told him she lived on the property, but then stated her mother lived there and she was staying with her. Skogman refused to provide Singer with identification and rolled her window up all the way shortly after he activated his video camera. The deputy told Skogman if she

would just provide identification it would all be over. She continued to refuse. At that point, realizing the direction the encounter was heading, Singer called for back-up.

At one point Skogman turned her back on Deputy Singer and reached under her seat. Singer drew his weapon and ordered her to show her hands. She did show her hands, but the incident resulted in even more anger and ranting from Skogman. At one point Skogman tipped her seat back and told Singer she could wait all night. When he told her he too could wait, she again became very irate and agitated. When other officers arrived they had no better luck getting Skogman to get out of the van. Eventually, after warning her they would do so if she did not get out of the van, officers broke the passenger window and physically removed Skogman from the van. After she was removed a search of the van revealed two knives in the area under her seat where she had earlier been reaching. Each knife exceeded five inches in length.

Once Skogman was out of the van, Deputy Singer advised her that he believed she was intoxicated and requested she perform field sobriety tests. She refused. Based on how the entire encounter had gone, Singer did not press the subject. Believing he already had sufficient evidence to do so, Deputy Singer then arrested Skogman for OWI. After the arrest Singer read Skogman the implied consent advisory and requested a breath sample. She refused to provide a breath sample, and refused to sign the form.

The State charged Skogman, by trial information, with OWI, first offense, in violation of Iowa Code section 321J.2 (2005), and carrying a concealed weapon, in violation of section 724.4(3)(b). At an ensuing jury trial the State offered the testimony of Deputy Singer and the testimony of Officer Matt Simoni of the Hinton Police

Department. Simoni was one of the officers from the Hinton Police Department who had come to the scene to assist Deputy Singer with Skogman. Simoni testified that he has had to deal with a number of intoxicated persons and from doing so has learned to recognize the symptoms of intoxication, including slurred speech, incoherence, watery and bloodshot eyes, loud and obnoxious behavior, the smell of alcoholic beverage, and unsteady balance. Based on this experience and expertise, when asked to describe Skogman's condition in layman's terms Simoni testified that in his opinion Skogman was "hammered" on the night in question.

A videotape recorded the majority of the officers' encounter with Skogman. The tape reveals a thirty-five minute stand-off in which Skogman, despite repeated orders from numerous officers to do so, refused to provide identification or get out of the van. It shows Skogman repeatedly telling Deputy Singer to "get fucked," threatening a "fucking lawsuit" for his "harassing" behavior, and repeatedly telling him to get off of her private property. There are also various points during the tape in which Skogman's mother speaks, first to Officer Simoni and then to Deputy Singer. In addition, at one point on the tape Simoni repeats to Singer what Skogman's mother had told Simoni about Skogman. Generally, each of the statements contains assertions from Skogman's mother that Skogman probably had been at either a wedding or a party, and that she had probably been drinking. The State offered the tape into evidence. Skogman made a general hearsay objection to the portion of the tape with "the Deputy's interview" of Skogman's mother. The court overruled the objection and admitted the videotape. The entire tape was played for the jury.

The jury found Skogman guilty of OWI and not guilty of the concealed weapons charge. Skogman filed a motion for new trial arguing, in part, that the court erred in overruling her hearsay objection to the videotape. The court summarily denied the motion. Skogman appeals, contending the trial court erred in overruling her hearsay objection to the videotape. In the alternative, she argues that if error was not preserved on this issue we should address it as an ineffective assistance of counsel claim.

The State contends error is not preserved as Skogman's objection to the tape was too general in nature because it did not identify the specific statements on the tape which allegedly constituted hearsay. Although we have serious questions as to whether Skogman's objection was sufficiently specific to preserve error, because we find her claim to be without merit we need not rest our determination on error preservation grounds.

The standard of review for hearsay rulings is for correction of errors at law. *State v. Ross*, 573 N.W.2d 906, 910 (Iowa 1998). Hearsay is an out of court statement, other than one made by a declarant while testifying at trial, offered to prove the truth of the matter asserted. Iowa R. Evid. 5.801(c). Hearsay is not admissible except as provided by the Iowa Constitution, by statute, by the rules of evidence, or by other rules of the Iowa Supreme Court. Iowa R. Evid. 5.802. Generally, the erroneous admission of hearsay is presumed to be prejudicial unless the contrary is established affirmatively. *State v. Hildreth*, 582 N.W.2d 167, 170 (Iowa 1998); *State v. Rice*, 543 N.W.2d 884, 887 (Iowa 1996). However, that prejudice will not be found where substantially the same evidence is in the record without objection and thus the challenged testimony is

merely cumulative. *Id.* To warrant reversal, error in the admission of evidence must have prejudiced the defendant. *State v. Williams*, 574 N.W.2d 293, 298 (Iowa 1998).

The contested statements on the videotape here may have constituted some evidence that Skogman had probably been drinking on the night in question. However, they neither suggested how much Skogman may have consumed nor suggested any possible level of intoxication. Therefore, this evidence was merely cumulative to Skogman's own testimony on direct examination. Specifically, in response to her attorney's question of whether she was under the influence of alcohol at the time of the incident Skogman responded, "Not to the extent that they're saying, no." This testimony by Skogman itself clearly implied that she had been consuming alcohol.

In addition, Deputy Singer testified he believed Skogman was intoxicated at the time of the incident because he could smell alcoholic beverage on her, he noticed her words were slurred and not all making sense, her eyes were red and bloodshot, and she was extremely irate and somewhat irrational. Further, and as previously noted, Officer Simoni testified that in his opinion, based on his professional experience with intoxicated people, Skogman was under the influence of alcohol and was in fact "hammered" on the night in question.

Without determining whether the statements on the videotape constitute improperly admitted hearsay we conclude it cannot not have been prejudicial to Skogman. Although the videotape included statements indicating that Skogman may have been drinking on the night in question, her own testimony provided evidence she had been drinking and was possibly "under the influence of alcohol," Singer testified he believed she was "intoxicated," and Simoni testified he believed she was "hammered,"

the latter clearly suggesting she was highly intoxicated. Thus, the challenged statements on the videotape indicating Skogman had probably been drinking were merely cumulative and cannot be seen as at all prejudicial to her. Nothing of substance on the videotape was not presented elsewhere in the record without challenge.

Accordingly, we conclude the trial court did not commit reversible error in overruling Skogman's hearsay objection to the statements on the videotape, as substantially the same evidence is in the record without objection. Thus the challenged testimony is merely cumulative, cannot have prejudiced Skogman, and no reversible error occurred. Based on our resolution of this issue on the merits we need not and do not address Skogman's ineffective assistance of counsel claim.

**AFFIRMED.**