

**IN THE COURT OF APPEALS OF IOWA**

No. 8-359 / 07-0952  
Filed June 11, 2008

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

**vs.**

**MARK JEROME HACKMAN,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Winneshiek County, John Bauercamper, Judge.

The defendant appeals from his conviction for operating while intoxicated.

**AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Dennis Hendrickson, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Jean Pettinger, Assistant Attorney General, Andrew F. Van Der Maaten, County Attorney, and Stephen J. Belay, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Zimmer and Miller, JJ.

**VOGEL, P.J.**

Mark Hackman appeals following his conviction for operating while intoxicated (OWI), in violation of Iowa Code section 321J.2 (2005). We affirm.

**Background Facts and Proceedings.**

On November 5, 2006, at about 11:30 p.m., Deputy Timothy Felton encountered a vehicle parked near a cemetery with its parking lights on. As Felton approached the vehicle to see if the driver needed assistance, he observed one individual, later determined to be Hackman, in the car moving from driver's side, to the passenger's side, and back. Felton described Hackman's reaction as hostile, agitated, and paranoid. Felton noticed an odor of alcohol and called for assistance. Felton believed Hackman to be under the influence of alcohol and a stimulant drug, possibly methamphetamine.

When Trooper Mike Ewing arrived, Hackman was in his vehicle but soon got out of the car, clenching his fists and glaring at officers. He refused to comply with the officers' request to get back into the car, and then lunged at Trooper Ewing. Felton pepper-sprayed Hackman and was then able to handcuff him and place him in the back of his patrol car. The officers did not perform sobriety tests due to the concern for their safety.

While Deputy Felton transported Hackman to the county jail, Hackman continued with his strange behavior, yelling, screaming, laughing uncontrollably, and talking of conspiracies and nuclear power plants. Hackman continued to be argumentative when asked to give a breath specimen. After Hackman spoke to an attorney, however, he submitted to the test. When he failed to provide a sufficient breath sample, officers deemed his actions to be a refusal. Hackman

then reported to Felton that he had consumed four or five beers, “a couple of drinks” and “of course” felt the effects of consuming the alcohol. A later inventory of Hackman’s vehicle turned up empty beer bottles in both the front and back seats and one full unopened beer bottle in the front seat.

Based on this incident, the State charged Hackman with operating while intoxicated. Following a trial, the jury returned a guilty verdict and the court sentenced him to thirty days in jail, all but two suspended, with probation. Hackman appeals from this conviction.

**Ineffective Assistance of Counsel.**

Hackman first claims his trial counsel was ineffective in failing to object to the introduction of testimonial evidence concerning methamphetamine or other drug use and to the inclusion of drug use in the marshaling instruction as a theory to support guilt of OWI. He asserts the methamphetamine or other drug use evidence was speculative, lacking in foundation, and unduly prejudicial.

Our review of this claim is de novo. *Ledezma v. State*, 626 N.W.2d 134, 141 (Iowa 2001). In order to succeed on a claim of ineffective assistance of counsel, Hackman must prove by a preponderance of evidence that (1) counsel failed to perform an essential duty and (2) prejudice resulted. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984).

We find the record adequate to address this issue on direct appeal. See *State v. Rubino*, 602 N.W.2d 558, 563 (Iowa 1999). In doing so, we conclude Hackman has not shown his trial counsel rendered ineffective assistance. First, Iowa’s rule as to the admissibility of opinion evidence is one of liberality. *State v.*

*Halstead*, 362 N.W.2d 504, 506 (Iowa 1985). Moreover, the officers' training and experience qualified them to testify as to their observations of the defendant's condition and their opinion of how he reached that condition. They each testified as to their history in law enforcement and their special training with drugs, alcohol, and recognizing impaired drivers. Finally, their testimony was not highly technical or specialized, but rather was observational in nature. Thus, because this evidence concerning possible drug impairment was properly in the record, the court correctly instructed the jury on the "under the influence of alcohol, drugs or a combination of alcohol and drugs" alternative. See *State v. Broughton*, 425 N.W.2d 48, 51-52 (Iowa 1988) (court must instruct on all issues raised by the evidence and for which substantial evidence exists). Counsel did not breach an essential duty in failing to object to this testimony or the instruction.

#### **Sufficiency of the Evidence.**

Hackman next claims insufficient evidence existed to convict him of OWI. We review challenges to the sufficiency of the evidence for the correction of errors at law. *State v. Schmidt*, 480 N.W.2d 886, 887 (Iowa 1992). A guilty verdict is binding on appeal, unless there is not substantial evidence in the record to support it, or the verdict is clearly against the weight of the evidence. *State v. Shortridge*, 589 N.W.2d 76, 80 (Iowa Ct. App. 1998). Substantial evidence means evidence that could convince a rational fact finder that the defendant is guilty beyond a reasonable doubt. *Id.*

In order to support a conviction, the State had to prove beyond a reasonable doubt that Hackman operated a vehicle while "under the influence of alcohol, drugs or a combination of alcohol and drugs." Officer Felton detected an

odor of alcohol emanating from Hackman and discovered one unopened and several open beer bottles in his vehicle. Hackman admitted to having drunk several beers as well as a couple of drinks and that he was feeling its effects. In the training and experience of the officers, Hackman's bizarre, agitated, and hostile actions reflected an impairment of judgment. In addition, the officers testified as to their reasons why it appeared to them that Hackman was under the influence of alcohol and possibly methamphetamine or another illegal drug. Based on this wealth of evidence indicating that Hackman was operating "under the influence of alcohol, drugs or a combination of alcohol and drugs," we affirm his conviction.

**AFFIRMED.**