

IN THE COURT OF APPEALS OF IOWA

No. 8-613 / 07-1985
Filed August 27, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MORRIS ANTHONY NUNN,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Kyle Williamson,
District Associate Judge.

Appellant Nunn appeals from judgment entered following a guilty plea to
driving while barred. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Elisabeth Reynoldson, Assistant
Attorney General, Michael J. Walton, County Attorney, and Marc Gellerman,
Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Miller and Potterfield, JJ.

POTTERFIELD, J.**I. Background Facts and Proceedings**

On July 31, 2007, the State charged appellant Morris Nunn with driving while barred in violation of Iowa Code sections 321.555(1) and 321.56 (2007); domestic abuse assault resulting in bodily injury (domestic abuse) in violation of Iowa Code section 708.2A(2)(b); and criminal mischief in the third degree in violation of Iowa Code sections 716.1 and 716.5. The charges stemmed from an incident on July 16, 2007, when Nunn went to the residence of his former girlfriend, Hurstrom, slashed her tires, and punched her in the face. Two officers, Farley and Pape, filed incident reports after responding to Hurstrom's residence and interviewing Nunn and Hurstrom.

On October 15, 2007, Nunn entered a written plea of guilty to the charges of driving while barred and domestic abuse in exchange for a dismissal of the criminal mischief charge. Nunn filed a motion in arrest of judgment on November 7, 2007, alleging that he was not advised that he could receive consecutive sentences and that the convictions could have an effect on his Illinois parole or probation. On November 13, 2007, the court denied the motion in arrest of judgment and sentenced Nunn on the driving while barred and domestic abuse pleas. Nunn filed a notice of appeal on November 15, 2007. Nunn argues that his trial counsel was ineffective for allowing Nunn to plead guilty to driving while barred, a crime for which no factual basis existed.¹

¹ Nunn does not appeal his conviction for domestic abuse.

II. Standard of Review

We review ineffective-assistance-of-counsel claims de novo. *State v. Schminkey*, 597 N.W.2d 785, 788 (Iowa 1999).

III. Ineffective Assistance of Counsel

To prevail on a claim of ineffective assistance, Nunn must prove that (1) counsel failed to perform an essential duty, and (2) prejudice resulted. *State v. Simmons*, 714 N.W.2d 264, 276 (Iowa 2006). The district court may not accept a guilty plea unless it has first determined that the plea has a factual basis. *State v. Schminkey*, 597 N.W.2d at 788. If no factual basis exists and counsel allows the defendant to plead guilty, counsel has failed to perform an essential duty, and prejudice is inherent. *Id.* Thus, we must determine whether a factual basis existed for Nunn's guilty plea to the charge of driving while barred. *Id.* In determining whether a factual basis exists, we examine the record, which includes the minutes of testimony. *State v. Keene*, 630 N.W.2d 579, 581 (Iowa 2001).

Nunn specifically contends that there is no evidence that he was in physical control of a vehicle on a roadway, as required by Iowa Code sections 321.561 and 321.1 (2007). He does not dispute that the record shows his license was barred. Nunn's written guilty plea contains his admission that there was a factual basis to the charges and that he did the acts described in the minutes of testimony. The minutes, which include the reports of investigating officers, contain some conflicting statements. Officer Farley's report indicates that Hurstrom informed Pape that Nunn had driven to her residence. However,

Pape's report states that Hurstrom told him she did not know how Nunn got to her residence. Nunn told Officer Farley that he had been dropped off by a friend.

However, the uncontroverted information in the reports is that Hurstrom informed the officers that Nunn drove an older model, black SUV. A vehicle matching this description was found in the area, and Hurstrom confirmed that it was Nunn's vehicle. While searching Nunn, Farley found the keys to this vehicle in Nunn's front pocket. These facts are sufficient to constitute a basis for the charge of driving while barred.

We find that, when considered together, the police officers' reports establish a factual basis for the element of the crime that Nunn was in physical control of his vehicle on a roadway. Accordingly, Nunn's counsel was not ineffective when she permitted Nunn to plead guilty to the charge of driving while barred.

AFFIRMED.