IN THE COURT OF APPEALS OF IOWA

No. 1-675 / 10-2123
Filed September 8, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

J.D. RAY ANDERSON,
Defendant-Appellant.

Appeal from the Iowa District Court for Sioux County, James D. Scott, Judge.

J.D. Ray Anderson appeals from the judgment and sentence entered on his conviction to operating while intoxicated. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, David Adams, Assistant Appellate Defender, and Nnawuihe Ukabiala, Student Legal Intern, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, Coleman McAllister, County Attorney, Jared Weber, Assistant County Attorney, and Ernie Rose, Student Legal Intern, for appellee.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ.

DANILSON, J.

J.D. Anderson appeals from the judgment and sentence entered on his conviction to operating while intoxicated, in violation of Iowa Code section 321J.2 (2009). Anderson contends the district court erred in failing to grant his motion for judgment of acquittal based on the insufficiency of the evidence to support his conviction. If error was not properly preserved in regard to this motion, Anderson argues his counsel was ineffective for failing to properly articulate a motion for judgment of acquittal and to preserve error. Upon our review, we find the evidence in the record supports Anderson's conviction for driving under the influence in the early morning hours of April 7, 2010. Considering the existence of evidence beyond a reasonable doubt of Anderson's guilt, trial counsel was not ineffective in failing to identify specific grounds to support his motion for judgment of acquittal, as such motion would have been meritless. We affirm Anderson's conviction and sentence.

Holiday Inn Express night manager Aaron Yoder called 911 after Anderson stopped at the hotel shortly after midnight on April 7, 2010, to request directions to Sioux City. Yoder believed, due to Anderson's stumbling, slurred speech, and questionable behavior, that Anderson was "a danger to himself and others if he was driving."[1] Yoder was able to give a detailed description of Anderson's vehicle to the dispatcher.

[1] Yoder had asked Anderson if he was drunk at least twice, which Anderson denied and said he was "just perplexed." Although people often asked Yoder for directions, this was the first time Yoder had been so concerned about a person's state that he had called 911.

Three officers testified at trial corroborating Yoder's initial concerns. The first responding officer, Ulf Schaffer, observed Anderson going forty to forty-five miles per hour southbound on Highway 75, "continuously swerving back and forth, crossing the center line several times, and hitting across the fog line at least two or three times." He noted Anderson's erratic driving, failure to use a turn signal, and failure to have a back license plate as reasons he stopped Anderson's vehicle. Right before he was pulled over, Anderson turned west onto a county road, because "he knew there was a vehicle following really close behind him, and there was a really good chance it was a cop, and so he was going to try to turn west, try to avoid [the cop] . . . ."[2]

The other stopping officer,[3] Jose Mora, testified Anderson was "really nervous," seemed "somewhat confused," and was unable to comply with simple tasks. Officer Mora noticed a small odor of alcohol coming from his person. Anderson handed Officer Mora a receipt for car parts instead of his car registration. When Anderson stepped out of the vehicle, he took one step, and his wallet fell on the ground. Anderson failed three sobriety tests. Officer Mora observed Anderson "was off balance and couldn't walk straight." His eyes were dilated. His demeanor went back and forth from being nice, calm, and apologetic, to being demanding, emotional, and "freaking out." However, Anderson's preliminary breath test indicated he had not consumed any alcohol. But Anderson refused to give a urine sample, and got really emotional and said

[2] Anderson later explained to officers that he tried avoid them because he knew his license was suspended.

[3] County Deputy Jose Mora arrived to aid the stop because Officer Schaffer was outside the Sioux Center city limits.

"it was a waste of time, that he was guilty already." He then stated "he smoked some pot before, and then also some amphetamine pills." He later explained he had smoked marijuana and taken the pills "two days earlier." Anderson's erratic behavior and mood swings continued in the patrol car on the way to the police station, as well as at the station during interrogation. He yelled profanities and statements about illegal immigrants. He also made statements about using marijuana because "it makes you happy [and] you don't need a f***ing reason [to use]." Officers Schaffer and Mora, as well as booking officer Brad Dekam, agreed that "there was no doubt [Anderson] was under some type of drug."

We have carefully and thoroughly reviewed the evidence in the record and the briefs of the parties. Considering Anderson's stumbling, slurred speech, mood swings, erratic driving, failure of three sobriety tests, dilated eyes, inability to comply with simple tasks, attempt to evade police, nervousness, and confusion (as corroborated by the testimony of three officers and a hotel clerk), we find the evidence in the record, viewed in the light most favorable to the jury's verdict, clearly supports his conviction for operating while intoxicated, in violation of Iowa Code section 321J.2.

The district court correctly overruled Anderson's motion for judgment of acquittal. *See State v. Hutchison*, 721 N.W.2d 776, 780 (Iowa 2006) (observing evidence in the record must be able to "convince a rational jury of the defendant's guilt beyond a reasonable doubt"); *see also* Iowa R. App. P. 6.903 (correction of errors at law standard of review). We further conclude, considering the substantial evidence of Anderson's guilt set forth above, that trial counsel

was not ineffective in failing to identify specific grounds[4] in support of the motion for judgment of acquittal, when such motion was meritless. *See State v. Braggs*, 784 N.W.2d 31, 35 (Iowa 2010) ("Counsel has no duty to make an objection or raise an issue that has no merit.").

We affirm Anderson's conviction and sentence.

AFFIRMED.

[4] At trial, counsel did make a motion for directed verdict: "At this time I move for directed verdict." The court overruled the motion. A motion for judgment of acquittal must fully set forth the grounds upon which it is based, and must specify the particulars in which the evidence is insufficient. *State v. Williams*, 695 N.W.2d 23, 27 (Iowa 2005).