

**IN THE COURT OF APPEALS OF IOWA**

No. 3-104 / 12-0538  
Filed July 24, 2013

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

**vs.**

**LOREN LEE BISHOP,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Polk County, Scott D. Rosenberg,  
Judge.

Loren Lee Bishop appeals his conviction for homicide by vehicle.

**AFFIRMED.**

Mark C. Smith, State Appellate Defender, and David Arthur Adams,  
Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney  
General, John Sarcone, County Attorney, and Brendan E. Greiner and James P.  
Ward, Assistant County Attorneys, for appellee.

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ.

**BOWER, J.**

Loren Lee Bishop appeals his conviction for homicide by vehicle in violation of Iowa Code section 707.6A (2009). Bishop argues there is insufficient evidence to support his conviction in light of his prescription drug affirmative defense and the district court erred in allowing certain evidence into the record. We find sufficient evidence to support the conviction and also find the district court properly admitted evidence of Bishop's prescription refill history. We affirm.

**I. Background Facts and Proceedings**

On January 22, 2011, Loren Bishop refilled three prescriptions, all of which warned about possible side effects including dizziness and drowsiness.<sup>1</sup> Bishop had been on various medications for more than a year. The prescriptions were written by an orthopedic surgeon and pain management specialist, a family practice doctor, and a psychiatrist. Bishop, at various times, suffered from a number of ailments including a spinal cord and arm injury.

Bishop was later observed at Prairie Meadows Racetrack and Casino. He was repeatedly found asleep at a slot machine. After leaving the casino Bishop was observed driving his vehicle at the intersection of Army Post Road and Fleur Drive in Des Moines. Eyewitnesses testified that Bishop rolled through the intersection and came to a stop in the median where he was found slumped over his steering wheel. After speaking briefly with another driver, Bishop continued driving eastbound along Army Post Road. Bishop was next seen driving west on Army Post Road where he nearly collided with another vehicle. The driver of that

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<sup>1</sup> The prescriptions filled on January 22, 2011, included venlafaxine, baclofen, and alprazolam.

vehicle, Terri Van Gorp, swerved to avoid Bishop and followed him, observing his erratic driving as he continued along Army Post Road. A passenger in Van Gorp's vehicle called 911 and alerted police to Bishop's behavior. A short time later Bishop's vehicle left the roadway and crashed through the back of Mary Miller's home, pinning her to a couch, and pushing her through the front of the home. Miller died from her injuries.

Following the crash Bishop stated that he had fallen asleep, was handicapped, and was not at fault. Bishop was transported to the police station where he tested negative for alcohol, though he was administered and failed a number of field sobriety tests. Officers concluded, based upon the test results, that Bishop was under the influence of some intoxicating substance at the time of the accident. A urine sample was obtained and indicated the presence of the following prescription drugs: gabapentin, methadone, venlafaxine, a metabolite of venlafaxine, alprazolam, a metabolite of alprazolam, and a metabolite of tramadol.<sup>2</sup>

On March 3, 2011, a trial information charging Bishop with homicide by vehicle was filed. Bishop pled not guilty and advised the State of his intention to rely upon a prescription drug affirmative defense found in Iowa Code section 321J.2(11). Following a jury trial where Bishop was convicted, he was sentenced to an indeterminate term not to exceed twenty-five years in prison. Bishop appeals, arguing there was insufficient evidence to rebut his prescription drug

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<sup>2</sup> The urinalysis could not determine the quantities of any substance in his system.

affirmative defense and certain evidence was improperly admitted into the record.

## **II. Standard of Review**

Challenges to the sufficiency of evidence are reviewed for errors at law. *State v. Sanford*, 814 N.W.2d 611, 614–15 (Iowa 2012). Evidence is viewed in the light most favorable to the verdict and all legitimate inferences and presumptions are construed in that light. *Id.* at 615. “Evidence is considered substantial if, when viewed in the light most favorable to the State, it can convince a rational jury that the defendant is guilty beyond a reasonable doubt.” *Id.*

Evidentiary matters are reviewed for abuse of discretion. *State v. Richards*, 809 N.W.2d 80, 89 (Iowa 2012). The district court abuses its discretion when the decision rests upon grounds or reasons clearly untenable. *Id.*

## **III. Discussion**

### **A. Sufficiency of Evidence**

Bishop argues the State presented insufficient evidence to support the verdict in this case. Bishop’s argument does not concern the elements of the crime for which he was convicted but instead concerns the sufficiency of evidence in the record to overcome his prescription drug affirmative defense.<sup>3</sup>

As an affirmative defense Bishop had the burden to show by sufficient evidence that the prescription medication defense applied. *State v. Lawler*, 571 N.W.2d 486, 489 (Iowa 1997). Once the defense was sufficiently invoked, the

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<sup>3</sup> The parties concede that Bishop unintentionally caused the death of Mary Miller by operating a motor vehicle while intoxicated.

State had the burden to disprove, beyond a reasonable doubt, the application of the defense. *State v. Schories*, 827 N.W.2d 659, 665 (Iowa 2013).

The parties agree Bishop had a prescription for the medications in question. The sole point of contention is whether Bishop was taking the medications in accordance with the accompanying directions or in accordance with the doctor's orders.

The State presented evidence that Bishop was not following the prescription directions. The evidence showed Bishop had obtained fifteen, thirty-day supplies of his drugs within a twelve-month period. The State argued this proved Bishop was abusing his prescription drugs. Urinalysis testing showed the presence, but not quantity, of certain narcotics shortly after the accident. The State also produced monographs containing drug specific warnings which were given to Bishop with each prescription. The monographs contained warnings against driving.

Our supreme court recently addressed a similar situation in *Schories*. The defendant in *Schories* asserted the same prescription drug affirmative defense we confront today. *Id.* at 660. Our supreme court analyzed the evidence in two parts. First, the court examined whether substantial evidence existed, based upon the defendant's symptoms and behavior, at the time he was stopped by police and concluded the evidence could establish the presence of narcotics but was insufficient to establish the abuse of those narcotics. *Id.* at 665–66. Next, the court examined the warnings contained in the monographs and found, because the defendant had not been warned about an inability to drive, the

evidence was insufficient to prove a violation of the conditional warning in the monograph. *Id.* at 666-67

In addition to the evidence discussed earlier the State presented the testimony of Dr. Rachel Sokol, who treated Bishop in the emergency room on January 15, 2011, seven days prior to the accident. Dr. Sokol gave Bishop a five-day prescription for Tramadol and specifically ordered him not to operate a motor vehicle. Dr. Sokol testified that Bishop would not normally have been under the influence of the drug seven days later,<sup>4</sup> but the urine test did show the recent presence of the drug in his system.

In the present matter, one of two possible conclusions is likely. Bishop could have exhausted his supply of Tramadol prior to January 22, 2011, and was no longer under the influence of the medication, in which case his drowsiness and inability to safely operate a motor vehicle was an on-going and known condition which he chose to ignore, or Bishop could have remained under the influence of Tramadol, in which case operating a motor vehicle violated the clear direction of Dr. Sokol. In either instance, abuse of his prescriptions is the most reasonable and supported conclusion for Bishop's extreme condition and erratic behavior on January 22, 2011. Taking the evidence in the light most favorable to the jury's verdict, we find the verdict is supported by substantial evidence.

### **B. Evidentiary Issues**

Bishop raises evidentiary issues on appeal. He argues the district court improperly admitted Exhibits 54, 55, and 58 into evidence. The exhibits in

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<sup>4</sup> The accident occurred on January 22, 2011, seven days after Bishop was treated by Dr. Sokol.

question are pharmacy records showing Bishop's history of refilling his prescriptions on a schedule consistent with a pattern of abuse. Bishop claims admission of these exhibits violated multiple rules of evidence.

Bishop first argues the evidence is irrelevant and should be excluded under Iowa Rule of Evidence 5.401 and 5.402. Evidence is relevant when it tends to make any fact of consequence more or less probable. Iowa R. Evid. 5.401. Irrelevant evidence is not admissible. Iowa R. Evid. 5.402. We believe the evidence of Bishop's refill history is relevant. A recent history of abuse would show that Bishop was abusing his prescription drugs on January 22, 2011.<sup>5</sup>

We find the evidence introduced at trial is not of the "bad acts" type prohibited by the rule, but the evidence presented shows Bishop abused his medications in an ongoing fashion. Though we recognize our supreme court has held past instances of intoxication are not admissible to prove present intoxication, we find these facts to be different than the typical intoxication case. *See, e.g., Duncan v. City of Cedar Rapids*, 560 N.W.2d 320, 325 (Iowa 1997). The issue in the present case is not intoxication but abuse of prescription medications. The evidence offered did not prove intoxication, but rather provided probative circumstantial evidence of abuse by way of a continuing and ongoing pattern. Evidence of Bishop's prescription refill history does not show a past act but rather an ongoing pattern of prescription abuse. The district court did not abuse its discretion in admitting the evidence.

**AFFIRMED.**

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<sup>5</sup> This is especially true in light of evidence that Bishop had run out of his medications in the days leading up to the accident and had obtained refills on January 11, 2011.