IN THE COURT OF APPEALS OF IOWA

No. 1-047/ 00-1118
Filed February 28, 2001

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CLERK SUPREME COURT

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DAVID ALLEN ROCKWELL,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, D.J. Stovall, Judge.

On appeal from his conviction for homicide by vehicle, defendant contends there was insufficient evidence to support the district court's finding he was the driver of the vehicle. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and David Arthur Adams, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney General, and John P. Sarcone, County Attorney, and Odell McGhee and Teresa Vens, Assistant County Attorneys, for appellee.

Considered by Streit, P.J., and Hecht and Vaitheswaran, JJ.

VAITHESWARAN, J.

Paul Havran and his wife awoke to discover a car wrapped around a tree outside their Des Moines home. Havran recognized David Rockwell as the driver and Keith Hilpipre as the passenger. Soon, police and paramedics arrived. After approximately an hour and a half of labor, they extracted Rockwell from the driver's side of the car where he was pinned behind the steering wheel. Rescue personnel took Rockwell to a hospital. An officer detected signs of intoxication and sought a blood specimen from Rockwell. After he refused, officers obtained a warrant for the sample. Tests revealed a blood alcohol content of .109. Hilpipre died at the scene.

The State charged David Rockwell with vehicular homicide. Iowa Code § 707.6A (1999). Trial began before a jury but ended abruptly when the district court granted a defense motion for a mistrial. Rockwell subsequently waived his right to a jury trial. The parties stipulated Rockwell had possession and control of his mother's vehicle on the night of the accident and stipulated to testimony presented in the aborted jury trial. After considering this and other evidence, the district court found Rockwell guilty of vehicular homicide and sentenced him to an indeterminate prison term not exceeding twenty-five years. This appeal followed.

I. Sufficiency of Evidence

Rockwell argues there was insufficient evidence to establish he, rather than Hilpipre, was the driver of the vehicle. A district court's finding of guilt is binding upon us if there is substantial evidence in the record to support the finding. *State v. Abbas*, 561 N.W.2d 72, 74 (Iowa 1997). Evidence is substantial if it could convince a rational fact finder of the defendant's guilt beyond a

reasonable doubt. *State v. Hopkins*, 576 N.W.2d 374, 377 (Iowa 1998). We consider all the record evidence, not just the evidence supporting guilt, but view the evidence in the light most favorable to the State. *Id.*

A person commits vehicular homicide when the person unintentionally causes the death of another by operating a motor vehicle while intoxicated. Iowa Code § 707.6A. The overwhelming evidence establishes Rockwell was the operator of the vehicle on the night of the crash. First, Havran identified Rockwell as the driver immediately after the crash. Second, police officers identified Rockwell as the person they saw in the drivers seat upon arriving at the scene. Third, rescue personnel extracted Rockwell from the driver's seat. Finally, an expert witness opined that Hilpipre was seated in the passenger side of the vehicle. The record, therefore, contains substantial evidence to support the district court's finding that Rockwell was the driver of the vehicle at the time of the accident.

II. Ineffective Assistance of Counsel

Rockwell next asserts his trial attorney was ineffective in failing to secure blood samples from the scene for DNA testing to establish he was not the driver. We review ineffective assistance of counsel claims de novo. *State v. Westeen*, 591 N.W.2d 203, 207 (Iowa 1999). While we generally preserve such claims for postconviction relief, we may review them on direct appeal if the record is adequate. *State v. Schminkey*, 597 N.W.2d 785, 788 (Iowa 1999). We deem the record adequate.

To prevail on his ineffective assistance of counsel claim, Rockwell must show counsel breached an essential duty and prejudice resulted. *State v. Laffey*,

600 N.W.2d 57, 60 (Iowa 1999). In light of the overwhelming evidence of guilt cited above, we conclude Rockwell cannot establish he was prejudiced, even if he could establish a breach of an essential duty. *See Wemark v. State*, 602 N.W.2d 810, 817 (Iowa 1999) (noting prejudice element requires showing that, but for counsel's errors, trial outcome would have been different). Accordingly, we reject this claim.

We affirm Rockwell's judgment and sentence for vehicular homicide.

AFFIRMED.