

**Filed 6/26/08 by Clerk of Supreme Court
IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

2008 ND 122

State of North Dakota,

Plaintiff and Appellee

v.

Darrell Huber,

Defendant and Appellant

Nos. 20080058-59

Appeal from the District Court of Morton County, South Central Judicial District, the Honorable David E. Reich, Judge.

AFFIRMED.

Per Curiam.

Christopher J. Nyhus, Assistant State's Attorney, 210 2nd Ave. NW, Mandan, N.D. 58554, for plaintiff and appellee.

Benjamin C. Pulkrabek, 402 1st St. NW, Mandan, N.D. 58554-3118, for defendant and appellant.

State v. Huber
Nos. 20080058-59

Per Curiam.

[¶1] Darrell Huber appeals the criminal judgments after a jury found him guilty of driving under the influence and driving with a suspended license. Huber moved for a judgment of acquittal before jury deliberations began. The district court denied his motion. On appeal, Huber argues the district court erred when it denied his motion for a judgment of acquittal because the evidence presented at trial was not sufficient to identify him as the defendant. Although Huber did not object to any of the jury instructions at trial, he argues the district court should have asked whether he wanted a jury instruction explaining Huber did not need to testify at trial.

[¶2] We affirm the criminal judgments entered on the jury's verdicts under N.D.R.App.P. 35.1(a)(3), concluding the verdicts are supported by substantial evidence, and under N.D.R.App.P. 35.1(a)(7), concluding our decision in Woehlhoff v. State, 531 N.W.2d 566 (N.D. 1995) (citing N.D.R.Crim.P. 30) is controlling regarding Huber's argument that, despite Huber's failure to object to the trial court jury instructions, the district court committed reversible error by failing to ask Huber whether he wanted a jury instruction regarding his decision not to testify at trial.

[¶3] Gerald W. VandeWalle, C.J.
Mary Muehlen Maring
Daniel J. Crothers
Dale V. Sandstrom
Carol Ronning Kapsner