FILED
MAR 23 1982
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

579

STATE OF IOWA,)
Plaintiff-Appellee,) Filed March 23, 1982
vs.)
JERALD C. STEUK,) 2-18 / 66424
Defendant-Appellant.)

Appeal from Ida District Court - Lawrence W. McCormick, Judge.

The defendant appeals his conviction of OMVUI in violation of section 321.281, The Code 1979. The defendant claims that the trial court erred in admitting an exhibit consisting of a laboratory report with respect to a urine specimen taken from the defendant pursuant to the implied consent law, asserting that there was an inadequate foundation for its admission. AFFIRMED.

Morris C. Hurd of Hurd Law Firm, Ida Grove, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Roxann M. Ryan, Assistant Attorney General, for plaintiff-appellee.

Submitted to Oxberger, C.J., and Donielson, Carter, and Johnson, JJ. Snell, J., takes no part.

DONIELSON, J.

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Our scope of review is limited to correction of errors at law. Iowa R. App. P. 4.

I.

Following his arrest for OMVUI by a state trooper, the trooper requested the defendant submit to a urine test pursuant to the implied consent law. The defendant submitted to the test. A specimen was obtained from the defendant in a styrofoam cup. The trooper used a State blood test kit and vacuumed the urine into two test tubes. The officer sealed the kit and sent it to the State's criminalistics laboratory by ordinary mail. A state analyst concluded that the sample contained alcohol corresponding to a blood alcohol level of twenty-six point four hundreths of one percent.

On cross-examination during the trial, the trooper testified that there was a white powder of anticoagulant in the vacuum tubes when the urine was placed in the tubes. There was no agent placed in the tubes that would retard the growth of bacteria.

At the trial, the defendant objected to the admission of the laboratory report on the ground that an adequate foundation was lacking, asserting in part, there was no showing that the urine specimen tested in Des Moines was in the same condition as when it was taken; that blood anticoagulants were present; that there was no showing that the blood test kit used was appropriate for collecting a urine sample; that the chain of custody failed after the trooper placed the urine

specimen in the mail; and that there was no showing that only one person in the criminalistic's laboratory handled the specimen. The State resisted defendant's objection by asserting that the report indicated the anticoagulant substances did not interfere with the alcohol test method used to prepare the report and no additional foundational showing was required pursuant to section 691.2, The Code 1979. The trial court overruled defendant's objection.

II.

Defendant's assertion that there was not an adequate foundation for the admission of the DCI laboratory report is based primarily upon the similarities between this case and State v. Smith, 272 N.W.2d 859 (Iowa 1978). In Smith, the test results of urine collected in a blood test kit were found not admissible because there was "no indication of what effect the white [anticoagulant] powder in the vacuum tube might have on urine." Id. at 861. In this case, the test report itself states that the anticoagulant substance did not interfere with the alcohol test method. If defendant wanted to challenge this, or any other aspect of the written test results, he was required to request at least 10 days before trial that the employee or technician from the state criminalistics laboratory who performed the test testify in person at the trial. Section 691.2, The Code 1979. By failing to do this we find the defendant cannot now object to the technician's finding in the report that the anticoagulant did not interfere with the alcohol test method used to prepare the report.

Defendant's other allegations of improper foundation are based upon the assumption that the urine sample was not taken and handled in conformity with rules for submitting urine samples to the state criminalistics laboratory. "An item handled in conformity with the rules is presumed to be admissible in evidence as to the period in transit to and from and while in custody of the laboratory without further foundation." Section 691.3, The Code 1979. Based upon our examination of

the transcript in this case, we are convinced that the urine specimen submitted to the state criminalistics laboratory was collected and handled in a manner that fully complied with the relevant departmental rules set forth in 680 I.A.C. §§ 7.4-7.5, 12.1-12.11. The evidence is therefore presumed admissible under section 691.3 and we affirm the defendant's conviction.

AFFIRMED.