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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)

Plaintiff-Appellee,) Filed February 24, 1981

vs.)

RAYMOND E. LEWIS,) 0-431
64119

Defendant-Appellant.)

Appeal from Fremont District Court - Harold L. Martin, Judge.

Defendant appeals his conviction of O.M.V.U.I. in violation of section 321.281, Supplement to the Code 1977. REVERSED AND REMANDED.

Richard G. Davidson of Davidson & Hemphill, Clarinda, Iowa, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa; John P. Messina, Assistant Attorney General; and Richard Maher, Fremont County Attorney; for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendant appeals his conviction of O.M.V.U.I. in violation of section 321.281, Supplement to the Code 1977. He claims that the trial court erred on various foundational grounds in admitting into evidence the results of a breath test administered to determine the amount of alcohol in defendant's blood. We reverse the conviction and remand for a new trial.

I. Defendant first argues that the breath test results should not have been admitted because the particular test used was not shown to have been approved by the Commissioner of Public Safety. The State concedes on appeal that it was not shown at trial that this was in fact an approved method. Instead, the State argues that this issue was not properly preserved because defendant's lengthy objection did not specifically apprise the trial court of this alleged foundational deficiency. We disagree. Although defendant's objection was lengthy, he specifically stated at one point "[t]hat no proper identification or description has been made for approval of devices and procedures by the Department of Public Safety." We find that defendant preserved error on this issue.

We also agree with defendant on the merits. As stated in State v. Hansen, 203 N.W.2d 216, 223 (Iowa 1972):

> . . . the results of the breathalyzer test administered to defendant should be admitted only upon a showing (1) of the devices and methods approved by the Commissioner of Public Safety for the taking of such tests as provided in section 321B.4 and (2) proof that the test was given by use of the approved devices and methods.

Section 321B.4, The Code, provides in part as follows:

> However, any peace officer, using devices and methods approved by the commissioner of public safety, may take a specimen of a person's breath or urine for the purpose of determining the alcoholic content of the person's blood (emphasis added).

Before the results of a breath test may be admitted, the State must show that the device used has been so approved. Its failure to do so in this case requires reversal of defendant's conviction.

II. We agree, however, with the State's argument that defendant failed to preserve error on his claim that the breath test was not properly administered. Defendant's objection at trial made a general complaint to the effect that procedures as approved by the Department of Public Safety were not used. The eight required procedures for the breath test given in this case are set forth in 680 I.A.C. section 7.3(3). Defendant's objection did not specify which of the various procedures were

allegedly not followed. Defendant had the duty to "indicate the specific grounds to the court so as to alert the judge to the question raised and enable opposing counsel to take proper corrective measures to remedy the defect if possible." State v. Clay, 213 N.W.2d 473, 476-77 (Iowa 1973). His failure to do so on this issue leaves us with nothing to review.

III. Defendant's next argument is that breath tests may not be used to determine blood alcohol content because there is no correlation between the two. In his words, "the procedure used violates the rules of chemistry and is not accepted by the State Department of Public Safety or its successor." The latter statement is incorrect (see 680 I.A.C. section 7.3); as for the former, we are not told which rules of chemistry are involved here. In any event, defendant has presented no reasons other than his own unsubstantiated speculations as to why blood alcohol content may not be determined from breath tests. We are not prepared, on this meager record, to overturn the expert judgment of the Department of Public Safety that such tests are indeed reliable. This issue is without merit.

IV. Finally, defendant claims that introduction of the test results was erroneous because the State failed to prove the foundational element of chain of delivery. We disagree. The arresting officer testified that he administered the test, sealed the results and placed them in a container which was then transported to the state criminalistics laboratory by the U.S. mail. Absent any indication to the contrary,we presume that the sample was properly handled at the laboratory. See section 691.3, The Code. Defendant has given us no reason to think otherwise. The trial court did not abuse its discretion in overruling this chain-of-custody objection. See State v. Davis, 269 N.W.2d 434, 441 (Iowa 1978).

For the reasons stated in Division I of this opinion, we reverse defendant's conviction and remand for a new trial.

REVERSED AND REMANDED.