IN THE COURT OF APPEALS OF IOWA

No. 8-026 / 97-0483

000423

STATE OF IOWA,

Plaintiff-Appellee,

vs.

LARRY JEAN BYLSMA,

Defendant-Appellant.

FILED
MAR 27 1998
CLERK SUPREME COURT

Appeal from the Iowa District Court for Sioux County, Robert J. Dull, District Associate Judge.

Defendant appeals from the judgment and sentence entered upon his conviction for operating while intoxicated, second offense, in violation of Iowa Code section 321J.2 (1993). **AFFIRMED.**

Stanley E. Munger and Jay E. Denne of Munger & Reinschmidt, Sioux City, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney General, Mark J. Schouten, County Attorney, and Timothy J. Rylaarsdam, Assistant County Attorney, for appellee.

Heard by Cady, C.J., and Sackett and Mahan, JJ.

MAHAN, J.

Larry Bylsma appeals his conviction on the charge of operation of a motor vehicle while intoxicated, second offense. Bylsma alleges the district court erred when it: (1) denied his motion to dismiss; (2) denied his motion for judgment of acquittal; (3) admitted evidence which violated the physician-patient privilege and other hearsay evidence; and (4) found sufficient evidence existed of a prior conviction. We affirm.

Sometime between 12:30 and 1:00 a.m. Daniel Fedders discovered a car, with its headlights on, in a pasture near the road. Fedders turned his car to shine his headlights into the pasture. Unable to see anyone, he headed into Hull, Iowa, to find a police officer or someone who had medical training. Fedders told Kurt Vermeer about what he had seen, then returned to the scene. Vermeer flagged down Sioux County Deputy Sheriff Larry Hoekstra.

Fedders returned to the scene to find Andy Landman helping Bylsma out of the ditch and onto the road. When Hoekstra arrived, Bylsma was by Landman's Blazer. Bylsma's head and upper body were covered with blood. Hoekstra gave first aid to Bylsma and asked Bylsma if there were any others in the car with him. Bylsma told Hoekstra he did not know. Hoekstra could smell alcohol on Bylsma.

While Hoekstra treated Bylsma, Fedders and Loren Sohl searched the area around the car, but they did not find any other people. After the ambulance took

Bylsma, Hoekstra conducted his own search of the area and did not discover any other people. Hoekstra then called Deputy Dick Knight and asked him to go to the Sioux Center Hospital to observe Bylsma and have a blood sample drawn from him.

While in the ambulance, the EMT attending to Bylsma asked him if there were any other people with him. Bylsma told the EMT there were no other people, he was alone. A blood sample was withdrawn from Bylsma at the hospital. The blood test showed a blood alcohol content of .165.

I. MOTION TO DISMISS. Bylsma filed a motion to dismiss, alleging Hoekstra lacked probable cause for the seizure and arrest of Bylsma. The court determined Hoekstra had authority to invoke implied consent under Iowa Code section 321J.6 (1995). The State argues Bylsma's motion to dismiss is essentially a motion to suppress and was not timely filed. Bylsma answers that the State agreed to waive all objections as to the timeliness of the filing of the motion in exchange for a waiver of the right to a jury trial.

First, we note the label attached to a motion does not determine its legal significance. *Halverson v. Iowa District Court*, 532 N.W.2d 794, 799 (Iowa 1995). We look to the motion's content to determine its real nature. *Id.* This motion sought to suppress the blood sample and dismiss the charges. While titled a motion to dismiss, it was really a motion to suppress.

When the admission of evidence depends on the interpretation of a statute, we review for correction of errors of law. *State v. Palmer*, 554 N.W.2d 859, 864 (Iowa

1996). Thus, we must decide whether the district court's ruling was based on the correct interpretation of Iowa Code chapter 321J. *Id.* A blood test may be administered if: (1) the officer has reasonable grounds to believe the defendant was operating a motor vehicle while under the influence of alcohol or while having a blood-alcohol concentration of .10 or more; (2) the officer makes a written request to the driver; (3) the person has been involved in a motor vehicle accident resulting in personal injury; and (4) the person consents. Iowa Code § 321J.2, .6, .9.

An officer has reasonable grounds when the facts and circumstances known to the officer at the time the action was required would have warranted a prudent person's belief that an offense had been committed. *State v. Satern*, 516 N.W.2d 839, 841 (Iowa 1994). The knowledge of one police officer, acting in concert with others, is presumed to be shared by all. *Id.*

We believe the facts provide substantial evidence to support the court's finding there were reasonable grounds for Hoekstra to believe Bylsma had been operating the vehicle while intoxicated. While it is true no one saw Bylsma operating the vehicle, both direct and circumstantial evidence may be considered in determining whether reasonable grounds exist. *Pointer v. Iowa Dep't of Transp.*, 546 N.W.2d 623, 626 (Iowa 1996). Bylsma's car was in a pasture; his headlights were still on; Bylsma was covered with blood; he smelled of alcohol; he was the only person found within the area; and the highway was heavily traveled. *See Satern*, 516 N.W.2d at 840-41.

It is clear the remaining requirements of chapter 321J have been met. Bylsma was clearly involved in an accident, he was injured, and Knight gave Bylsma a written consent form that Bylsma signed.

By satisfying the requirements of chapter 321J, we find the requirements of the constitution and probable cause were also satisfied. *See Palmer*, 554 N.W.2d at 862 (Iowa legislature was sensitive to the concerns of the Supreme Court in enacting the implied consent statute; the legislature incorporated limitations on the State's ability to conduct a warrantless search of a suspected drunk driver.). Further, we find Bylsma's consent to the blood test was voluntary. *See State v. Owens*, 418 N.W.2d 340, 344 (Iowa 1988).

II. ADMISSION OF EVIDENCE. Bylsma contends the trial court erred when it allowed the State to present evidence Bylsma told the EMT he had been alone in the car. He also contends the trial court erred when it allowed Hoekstra to testify regarding the car's registration. We find it unnecessary to decide these issues. Regardless of whether these statements should have been admitted, we find Bylsma suffered no prejudice. The State produced substantial evidence to convict Bylsma without these items of proof.

III. JUDGMENT OF ACQUITTAL. Bylsma contends removing the statement he made to the EMT and the statement by Hoekstra regarding the registration leaves the State with insufficient evidence. In the alternative, he argues

even with the evidence the State did not prove the elements of the offense. We review challenges to the sufficiency of evidence for errors at law. Iowa R. App. P. 4; *State v. Kraklio*, 560 N.W.2d 16, 17 (Iowa 1997). In evaluating such a claim, we view the evidence in a light most favorable to upholding the jury's verdict. *Kraklio*, 560 N.W.2d at 17. We give the State all reasonable inferences and presumptions the evidence will bear. *State v. Liggins*, 557 N.W.2d 263, 269 (Iowa 1996). The verdict is binding on us unless the record contains no substantial evidence to support it. *Kraklio*, 560 N.W.2d at 17. Evidence is substantial if it could convince a rational trier of fact that the accused is guilty beyond a reasonable doubt. *Id.* Direct and circumstantial evidence are equally probative. Iowa R. App. P. 14(f)(16). A jury is free to believe or disbelieve any testimony as it chooses and to give as much weight to the evidence as, in its judgment, such evidence should receive. *Liggins*, 557 N.W.2d at 269. Additionally, discrepancies in testimony, in and of themselves, do not preclude proof beyond a reasonable doubt. *See generally State v. Phanhsouvanh*, 494 N.W.2d 219, 223 (Iowa 1992) (jury could adopt evidence it found credible); *State v. Forsyth*, 547 N.W.2d 833, 836 (Iowa App. 1996) (jury's function to determine credibility and resolve conflicts in evidence). A jury's assessment of credibility may only be ignored on appeal when the testimony is so impossible, absurd, and self-contradictory that it may be deemed a nullity. *See State v. Smith*, 508 N.W.2d 101, 103 (Iowa App. 1993).

To convict Bylsma of operating while intoxicated, the State had to prove he was operating a motor vehicle: (1) while under the influence of alcohol; or (2) while having a blood-alcohol concentration of .10 or more. Iowa Code § 321J.2. When viewing the evidence in the light most favorable to upholding the jury's verdict, even without the statement by the EMT and Hoekstra's testimony regarding the vehicle registration, we find the State produced substantial direct and circumstantial evidence that could convince a rational trier of fact Bylsma is guilty beyond a reasonable doubt.

IV. PRIOR CONVICTION. Bylsma contends the State failed, as a matter of law, to prove he was the same individual who had been previously convicted in Lyon County for operating while intoxicated.

In considering the sufficiency of the evidence of the prior conviction, we view such evidence in the light most favorable to the State. *State v. McKay*, 256 Iowa 993, 998, 129 N.W.2d 741, 744 (1964). We are bound by the determination if there is substantial evidence to support it. *Id.* The State introduced a certified copy of the prior conviction and a certified copy of Bylsma's driving record. The certified driving record showed Bylsma's address, driver's license/social security number, and date of birth matched that given for the defendant in the original complaint. More importantly, the certified driving record also showed a previous conviction for an OWI in Lyon County. Further, the court had the consent form signed by Bylsma

when he agreed to the blood test. The consent form also showed the same address, driver's license/social security number, and date of birth. We find there is substantial evidence to support the court's finding Bylsma had a prior conviction for operating while intoxicated.

We have carefully reviewed all of Bylsma's claims and affirm his conviction.

AFFIRMED.