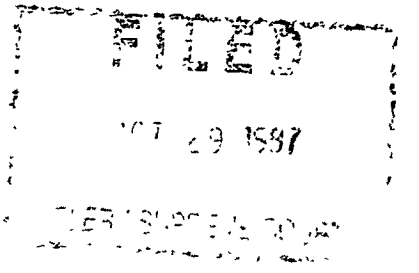
IN THE COURT OF APPEALS OF IOWA

000407

No. 7-380 / 96-1891
Filed 10/29/97



STATE OF IOWA,
Appellee,

vs.

TRACY ALAN IVERSON,
Appellant.

Appeal from the Iowa District Court for Kossuth County, W.B. MacDonald, District Associate Judge.

Defendant appeals the judgment and sentence entered upon his conviction of operating a motor vehicle while intoxicated in violation of Iowa Code section 321J.2 (1993). **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, David C. Skilling, County Attorney, and Patrick S. Shey, Assistant Attorney General, for appellee.

Heard by Sackett, P.J., and Streit, J., and Habhab, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

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STREIT, J.

Defendant Tracy Iverson appeals the district court's ruling admitting testimony of an officer which exceeded the scope of the minutes of evidence. He also appeals the court's denial of his motion to suppress the results of the blood test arguing the requirements of section 321J.6 & .7 of the Iowa Code were not satisfied. We affirm.

I. Background & Facts.

In March of 1994 Ben Skogland made a left-hand turn into Iverson's car. Officer Stence was the first officer to arrive on the scene. She saw open alcoholic beverage containers in Iverson's car and told Officer Erpelding when he arrived on the scene.

Erpelding spoke with Iverson and noticed he was "not real coherent," and "his eyes were a little bit glassy and speech a little bit slurred." Erpelding thought Iverson's condition was due to hitting his head during the accident or alcohol impairment. Iverson was brought to the Kossuth County Hospital for medical treatment. Officer Erpelding asked Officer Schipper to go to the hospital, invoke the implied consent procedures, and obtain a blood sample from Iverson.

Iverson's treating physician, Dr. Moss, signed a certification that Iverson was "in a condition rendering him incapable of consent or refusal" to a blood test. Blood was drawn from Iverson. The blood test showed an alcohol level of .149. Iverson was charged with driving while intoxicated.

Iverson filed a motion to suppress the results of the blood test arguing the State had not complied with the statutory requirements of sections 321J.6 &7. The motion was denied. At trial Iverson objected to Officer Schipper's testimony because it exceeded the scope of the minutes of evidence. The objection was overruled. The jury found Iverson guilty as charged. Iverson appeals.

II. Admissibility of Officer Schipper's Testimony.

Iverson contends the district court erred in allowing Officer Schipper to testify to matters beyond the minutes of testimony. Iverson contends the testimony was highly prejudicial. Evidentiary matters are reviewed for abuse of discretion. *State v. Bennett*, 503 N.W.2d 42, 46 (Iowa App. 1993). Abuse of discretion is found when the court exercises it discretion "on grounds or for reasons clearly unreasonable." *Id.* (quoting *State v. Blackwell*, 238 N.W.2d 131, 138 (Iowa 1976)).

Iowa Rule of Criminal Procedure 5(3) requires the State file minutes of testimony for each witness whose testimony will be offered at trial. Iowa R. Crim. P. 5(3). The minutes must provide "a full and fair statement of the witness' expected testimony." *Id.* The purpose of the rule is eliminate claims of foul play and provide minutes of testimony which allow defendant to prepare a defense. *Bennet*, 503 N.W.2d at 47 (citations omitted). The adequacy of minutes of testimony is determined on a case-by-case basis. *Id.*

The minutes of testimony in this case fully described Officer Erpelding's testimony. Part of Erpelding's testimony was that "[b]lood was then drawn and given

to Officer Curt Schipper." In regard to Officer Schipper's testimony, the minutes stated he would testify "he is employed as an Officer for the Algona Police Department and that he resides in Algona, Iowa. . . . [he] will testify in substantially the same manner and fashion as set forth in the testimony of Officer Erpelding." At trial Schipper testified as to his observations and involvement in taking Iverson's blood sample at the hospital, the packaging of the blood sample, and the transfer of the blood test kit from the hospital to the DCI lab.

The trial court found that the minutes of testimony barely complied with the requirements of Rule 5(3), but admitted the testimony. The minutes of testimony did not comply with Rule 5(3). To detail the testimony of a witness by referencing or incorporating *in toto* the testimony of another witness does not comply with the rule. It would have been completely proper for the trial court to exclude Schipper's testimony for this reason. *See State v. Walker* 281 N.W.2d 612, 614-15 (Iowa 1979). The trial court admitted the testimony, however, and we review this ruling for abuse of discretion. *State v. Kinsel*, 545 N.W.2d 885, 889 (Iowa Ct. App. 1996). Under the circumstances of this case the trial court did not abuse its discretion in admitting Schipper's testimony.

Schipper's testimony was foundational rather than material; it was not evidence necessary to prove the elements of the crime charged, as in *Walker.*[1] 281

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[1] In *Walker* the testimony outside the scope of the minutes was material evidence. It was needed to establish the crime of theft. *Walker*, 281 N.W.2d at 614.

N.W.2d at 614. Prejudice or surprise from admission of the testimony was not established. At the suppression hearing held before trial, Schipper testified about going to the hospital to get a blood sample, seeing defendant in the emergency room, and talking to the doctor about Iverson's condition. Iverson knew Schipper was present when the blood sample was taken and knew he could establish chain of custody for the blood test and sample. Further, Iverson motioned to take depositions of all witnesses. That motion was granted, but Iverson did not take the depositions to gain further insight into Schipper's testimony. It was not an abuse for the court to admit the testimony under these circumstances.

III. Admissibility of Blood Test Results.

Iverson argues admitting his blood test results was error because the procedures used in taking and preserving the blood sample did not comply with the Fourth Amendment or the procedures of Iowa Code sections 321J.6 and 321J.7. We review claims constitutional rights were violated de novo in light of the totality of the circumstances. *State v. Jackson*, 542 N.W.2d 842, 844 (Iowa 1996). We review interpretations of Iowa Code sections 321J.6 and 321J.7 for correction of errors of law. *State v. Palmer*, 554 N.W.2d 859, 864 (Iowa 1996).

A. Implied Consent Under Section 321J.6. Blood samples were taken from Iverson and tests performed on the samples pursuant to Iowa Code section 321J.6; Iowa's implied consent law. The statute allows implied consent to a blood test only under certain conditions. The conditions are set out in section 321J.6. *State*

v. Hopkins, 465 N.W.2d 894, 895 (Iowa 1991). The fact that implied consent is acceptable only under certain conditions recognizes blood testing invades the bodily integrity of citizens without a search warrant. *Palmer*, 554 N.W.2d at 861. Iowa's implied consent law is an exception to the warrant requirement of the Fourth Amendment. *State v. Stanford*, 474 N.W.2d 573, 575 (Iowa 1991). Thus, if blood testing is valid under the implied consent law, the testing does not violate the Fourth Amendment.

The conditions which must exist to invoke implied consent under section 321J.6 are: (1) the withdrawal of bodily substances and the chemical test were "administered at the written request of a peace officer having reasonable grounds to believe that the [defendant] was operating a motor vehicle in violation of section 321J.2," and (2) one of six specified conditions exists. Iowa Code § 321J.6(1). The relevant condition here is section 321J.6(1)(b): "The person has been involved in a motor vehicle accident or collision resulting in personal injury or death." Actual knowledge of the injury is not required. *Hopkins*, 465 N.W.2d at 897. The State must show substantial compliance with these requirements. *Palmer*, 554 N.W.2d at 866.

The officers, collectively, had reasonable grounds to believe Iverson was intoxicated and had a head injury. The knowledge of one police officer, acting in concert with others, is presumed to be shared by all. *State v. Owens*, 418 N.W.2d 340, 342 (Iowa 1988). Officer Erperling observed Iverson's speech was slurred and his eyes were watery and bloodshot. Iverson had difficulty answering Erpelding's

questions, including what his girlfriend's phone number was and what his social security number was. At the scene, officers Stence and Schipper saw the defendant sitting in his car and later wandering around outside his car in a confused or dazed state. Stence saw containers of alcoholic beverages, including empty and partially full containers, in the front and back seats of Iverson's car. Officer Schipper smelled alcohol on Iverson and noticed his speech was slurred.

As in *Schlemme*, the fact all officers were qualified peace officers who were competent to administer the implied consent procedures is notable. *See Schlemme*, 301 N.W.2d at 724. This holding is not contrary to the holding in *Palmer* that the shared knowledge rule cannot be applied for purposes of determining intoxication under the implied consent statute when the arresting officer does not qualify as a peace officer. *Palmer,* 554 N.W.2d at 868. Erpelding, and all the officers at the scene, qualified as peace officers under the statute.

B. Procedures Under Iowa Code Section 321J.7. Iverson argues the state did not follow statutory procedures in obtaining the blood sample. The statute requires a person who is incapable of consent or refusal be given the test only if a licensed physician certifies in advance the person is incapable of consent or refusal. The court denied Iverson's motion to suppress on this issue. We will uphold the court's denial of the motion to suppress if there is substantial evidence to support the ruling. *State v. Laughridge*, 437 N.W.2d 570, 572 (Iowa 1989). Dr. Moss certified Iverson was incapable of consent or refusal. A physician's certification under section

321J.7 is strong evidence of incapacity. *State v. Axline*, 450 N.W.2d 857, 859 (Iowa 1990). Iverson's evidence he was capable of refusal or consent was not as strong as Moss's good faith medical opinion of incapacity. *See id.* at 573.

The rulings of the district court admitting the testimony of Officer Schipper and the blood tests are affirmed.

AFFIRMED.