

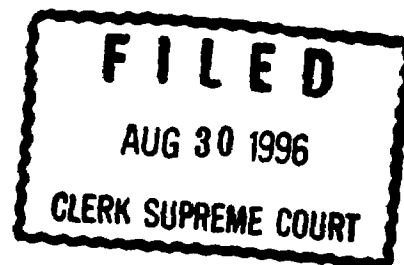
IN THE COURT OF APPEALS OF IOWA

No. 6-416 / 95-1851

STATE OF IOWA,
Appellee.

vs.

SAM LEE SMITH,
Appellant.



Appeal from the Iowa District Court for Calhoun County, William C. Ostlund,
Judge.

Sam Smith appeals the judgment and sentence entered upon his conviction of
driving while intoxicated in violation of Iowa Code section 321J.2 (1993).

AFFIRMED.

Linda Del Gallo, State Appellate Defender, and Annette L. Hitchcock,
Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Ann E. Brenden, Assistant Attorney
General, and Cynthia Voorde, County Attorney, for appellee..

Considered by Cady, P.J., and Streit and Vogel, JJ.

VOGEL, J.

Sam Lee Smith appeals the judgment and sentence entered upon his conviction of Operating While Intoxicated following a jury trial. Smith claims there was insufficient evidence to support a guilty verdict that he was actually operating his car. He also claims the district court abused its discretion in admitting evidence concerning a urine sample over his objections to foundation and chain of custody. We affirm.

I. Sufficiency of the Evidence. Our standard of review in a challenge to the sufficiency of the evidence is whether there is substantial evidence to support the verdict. *State v. Crone*, 545 N.W.2d 267, 270 (Iowa 1996). Evidence is substantial which would convince a rational fact-finder the defendant is guilty beyond a reasonable doubt. *State v. Barrett*, 445 N.W.2d 749, 753-54 (Iowa 1989). We view the record in the light most favorable to the State. *Crone*, 545 N.W.2d at 270. There were no witnesses who actually saw Smith driving his car. Therefore the issue of whether Smith was “operating” could only be established by circumstantial evidence. The elements of a crime may be proven by circumstantial evidence as well as direct evidence. *State v. Braun*, 495 N.W.2d 735, 739 (Iowa 1993). Direct evidence and circumstantial evidence are equally probative. Iowa R. App. P. 14(f)(16).

Smith was found standing next to his disabled car on Highway 20 at approximately 9:15 p.m. on February 13, 1995. Chris Maier, one of the persons who stopped to assist Smith, testified Smith was alone. Smith told Maier his car had died

and he had been there about twenty minutes before Maier stopped. Maier also testified Smith appeared to be intoxicated based on his slurred speech, stumbling gait, and the smell of alcohol on his breath. Maier did not see Smith consume any alcohol.

A short time later, Deputy Sheriff Scott Anderson and Deputy Sheriff Kelly Owen arrived. Deputy Anderson testified Smith told him he was driving home alone when his car died. Smith also told him he had been drinking at home but hadn't drank since he left home nor had he had anything to drink after his car broke down. Deputy Owen offered similar testimony. Both deputies testified in some detail as to Smith's apparent intoxication. Given the circumstances of the incident and Smith's statements, we find there was substantial evidence to support the verdict that the defendant was operating a motor vehicle on the night in question and that he was intoxicated at the time.

II. Foundational and Chain of Custody Objections. We review for an abuse of discretion. *State v. Mehner*, 480 N.W.2d 872, 877 (Iowa 1992). In order to show an abuse of discretion, one generally must show that the court exercised its discretion “on grounds or for reasons clearly untenable or to an extent clearly unreasonable.” *State v. Blackwell*, 238 N.W.2d 131, 138 (Iowa 1976) (quoting *Weeks v. Burnor*, 326 A.2d 138, 140 (Vt. 1974)).

Deputy Anderson testified that, after invoking the implied consent law, he accompanied Smith to the restroom in the courthouse to collect a urine sample from Smith. The collection cup was dry and free from any visible contamination. After

the sample was collected, Deputy Anderson handed the cup to Deputy Owen. Deputy Owen testified he followed standard procedure for packaging the collected urine sample. The sample was placed in two vials and sealed. The vials were placed in a plastic container and sealed. The container was placed in a cardboard box and again sealed. The box was pre-addressed to the Department of Criminal Investigation (DCI) lab in Des Moines. He then left the box to be mailed by the office deputy. The box did not leave the Sheriff's office before it was mailed. After the DCI lab completed its analysis, a report was completed and received by Deputy Anderson. Smith objected to the lab report based on improper foundation and chain of custody, especially from the time the sample was taken until it was mailed.

There was nothing in the record to indicate Deputy Anderson deviated from normal procedure in the collection of the sample. Likewise, Deputy Owen followed proper sealing and packaging procedure. The trial court has considerable discretion in determining whether the State has shown the chain of custody necessary for admission. *State v. Langlet*, 283 N.W.2d 330, 337 (Iowa 1979). For the trial court to overrule an objection because there was not a showing of chain of custody to the postoffice for mailing a sealed and preaddressed box is not an abuse of discretion. This is especially true when the report was received from the DCI lab with ample information to connect it to the sample presumably mailed by the office deputy.

The State argues Smith did not preserve a chain of custody objection regarding DCI lab procedures and personnel. While there was only a general foundational

objection, the trial court, following a discussion with counsel off the record ruled, “There’s a presumption that the State agents would not tamper with it . . .” The trial court’s ruling would infer a more specific objection was made, although not properly preserved in the record for review. The trial court correctly stated there is a presumption the DCI agents would not tamper with the sample in the laboratory analysis. *See Langlet*, 283 N.W.2d at 337. Smith failed to call any witnesses from the DCI. Iowa Code Section 691.2 (1993) allows the admission into evidence a lab report with the same force and effect as if the technician involved had testified in person. We fail to find an abuse of discretion. We affirm Smith’s convictions.

AFFIRMED.