IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA )

Plaintiff-Appellee, Filed November 26, 1980

vs. )

ROBERT EARL HINES )

Defendant-Appellant. )

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CLERK SUPREME COURT

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Appeal from Scott District Court - James Havercamp, Judge.

Defendant appeals his O.M.V.U.I. conviction in violation of section 321.281, The Code Supp. 1977. - AFFIRMED.

Samuel J. Walker, Bettendorf, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Jeanine Freeman, Assistant Attorney General, for plaintiff-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendant appeals his O.M.V.U.I. conviction in violation of section 321.281, The Code Supp. 1977. Defendant contends that the trial court erred in overruling his motion for judgment of acquittal and in admitting two exhibits into evidence over his objections. We affirm.

I. The motion for judgment of acquittal was based on the allegation that the results of an intoxilizer test were improperly admitted over defendant's objection, because the requirements of section 321B.4, The Code 1977, were not met. Section 321B.4 specifies that results of an intoxilizer test are admissible at trial only if the devices and methods used to administer the test are approved by the commissioner of public safety. State v. Hansen, 203 N.W.2d 216, 223 (Iowa 1972). Defendant alleges that since the device and method used in administering the intoxilizer test to him were not approved by the commissioner of public safety, the results of the test were inadmissible.

Rule 18(10)(a) of the Iowa Rules of Criminal Procedure, which governs motions for judgment of acquittal, specifies that a judgment of acquittal shall be entered when "the evidence is insufficient to sustain a conviction of such offense or offenses." Defendant does not base his motion on the ground that there was insufficient evidence supporting his conviction, but rather on the ground that certain evidence was improperly admitted. The trial court properly overruled the motion.

Even assuming that the allegation of improperly admitting evidence is a legitimate ground for a successful motion for judgment of acquittal, defendant failed to preserve error on the issue of the admissibility of the intoxilizer results into evidence. Defendant objected to the introduction of results of the intoxilizer test on the ground that "it has not been shown that this machine has been approved for use in the manner herein discussed." The trial court sustained defendant's objection. Defendant, therefore, can allege no trial court error. Defendant made several other objections to introduction of the results of the intoxilizer test, but made none on the ground that 321B.4 would be violated. When a specific objection is overruled at trial, it is effective on appeal to the extent of the ground specified and no other. State v. Winquist, 247 N.W.2d 256, 259 (Iowa 1976). Every ground of exception which is not particularly

specified is lost on appeal. State v. Droste, 232 N.W.2d 483, 487 (Iowa 1975). An objection that might have been supported by a legitimate reason but was not cannot support reversal. Winquist, 247 N.W.2d at 259. Therefore, because defendant did not object at trial to the admission of the intoxilizer results on the ground of 321B.4, he has failed to preserve error on that issue.

Finally, even if defendant did successfully preserve error, the State introduced adequate evidence that the intoxilizer used to test defendant was approved by the commissioner of public safety. State's exhibit #2 is an official report of the Iowa Department of Public Safety. The report states that the intoxilizer used to test defendant "is certified to be in proper working order to perform direct breath testing for alcohol on July 1, 1978." The report states that the intoxilizer's certification is in effect for a one year period. Defendant was tested on the intoxilizer on October 20, 1978, within the certification period. There was an adequate foundation for the admission of the intoxilizer results into evidence.

II. Defendant contends that the trial court erred by admitting into evidence State's exhibit #4, a data card containing information printed on it by the intoxilizer. Defendant based his objection to the data card on the ground that "[n]o proper foundation" was laid by the prosecution. An objection to the admission of evidence must be sufficiently specific to preserve error on appeal. Droste, 232 N.W.2d at 487. The Iowa Supreme Court has stated:

> [R]eversible error may not be predicated upon a general objection that no proper foundation has been laid for admission into evidence. A party objecting to the offer of evidence for this reason must point out in what particular or particulars the foundation is deficient so the adversary may have opportunity to remedy the alleged defect, if possible.

State v. Welsh, 245 N.W.2d 290, 295-96 (Iowa 1976). Accord Twin-State Engineering & Chemical Company v. Iowa State Highway Commission, 197 N.W.2d 575, 581 (Iowa 1972). Defendant's general objection that the prosecution failed to lay a proper foundation for the admission of the data card does not preserve error.

Even if defendant did preserve error, his contention is without merit. Defendant lists nine foundational requirements of the admissibility of evidence found in Lessenhop v. Norton, 261 Iowa 44, 52-53, 153 N.W.2d 107, 112 (1967). But the nine Lessenhop

requirements control the admissibility of blood test results into evidence, not breath test results. The criteria for the admissibility of intoxilizer test results are furnished by section 321B.4. See State v. Young, 232 N.W.2d 535, 537 (Iowa 1975); Hansen, 203 N.W.2d at 223. There was evidence presented at trial establishing that the device and method used for taking defendant's breath sample were approved by the commissioner of public safety, as required by section 321B.4, thereby furnishing an adequate foundation for the admission of the test results.

III. The State utilized State's exhibit #2 to establish a foundation for the admissibility of the intoxilizer results. Defendant contends that the trial court erred in admitting State's exhibit #2 into evidence, because exhibit #2 contains a statement of law, section 749A.2, The Code 1977. In his appellate brief defendant cites no authority for the proposition that an exhibit may not contain a statement of law. Failure to cite authority in support of an issue may be deemed a waiver of that issue. State v. Potts, 240 N.W.2d 654, 656 (Iowa 1976); State v. King, 225 N.W.2d 337, 343 (Iowa 1975); Iowa R. App. P. 14(a)(3). We deem the issue waived.

AFFIRMED.