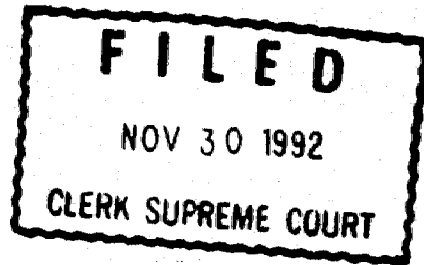


IN THE COURT OF APPEALS OF IOWA

No. 2-483 / 91-1621



STATE OF IOWA,

Appellee,

vs.

JOSE RUIZ,

Appellant.

Appeal from the Iowa District Court for Muscatine County, John G. Mullen, District Associate Judge.

Ruiz appeals his convictions and sentences for operating a motor vehicle while intoxicated, third offense, and driving while his license was under revocation.
AFFIRMED.

Jon Kinnamon, Cedar Rapids, for appellant.

Bonnie J. Campbell, Attorney General; Bridget Chambers, Assistant Attorney General; William F. Creasey, County Attorney; and Suzanne Elwell, Assistant County Attorney, for appellee.

Considered by Donielson, P.J., and Schlegel and Habhab,
JJ.

HABHAB, J.

FACTS

Muscatine County Deputy Sheriff Ken Rogers was on duty around 2:00 a.m. on May 30, 1991, when he met an eastbound vehicle on Highway 22. He observed the vehicle cross a double yellow line and move into the his lane of traffic. The deputy moved his car over as far as he could to avoid any potential collision. At trial, the deputy testified "at least half of the vehicle" crossed the yellow line.

As the two vehicles approached, the suspect vehicle "jerked back" into its own lane of traffic. The deputy noted the license plate number of the car, drove to a spot where he could safely turn around, turned around, and then pursued the suspect vehicle. When the deputy caught up to the suspect vehicle, the vehicle turned into a private drive and stopped. The deputy turned on the red emergency lights and pulled in behind the vehicle.

There were three persons in the car; a male driver and two female passengers. The driver gave the deputy two false names, but he was eventually identified as the defendant, Jose Ruiz. As the deputy spoke with the defendant at the scene, he smelled a strong odor of alcohol coming from the defendant and observed the defendant's eyes were bloodshot and watery. The deputy administered field sobriety tests to the defendant. He first administered the horizontal gaze nystagmus (HGN) test, which the defendant failed. The officer then administered the one-leg-stand

test and the walk-the-line test. The defendant failed these tests also.

The deputy arrested the defendant for operating while intoxicated (OWI). The State filed a trial information charging Jose Ruiz with OWI, third offense, in violation of Iowa Code section 321J.2(1)(a) and driving while his license was revoked, in violation of Iowa Code section 321J.21. The defendant waived his right to a jury trial and a bench trial was held on September 23, 1991.

At trial, the deputy testified as to his training and experience as law enforcement officer. He testified he was certified by the State to perform field sobriety tests, specifically the HGN test. He described the defendant's performance on the HGN test: he observed noticeable jerking at maximum deviation in the left eye and uncontrollable jerking from start to finish in the right eye. He testified the defendant "failed that [HGN] test with a score of four." The State then asked Deputy Rogers what a score of four indicated to him. The defendant objected that there was "no foundation for an opinion as to the defendant's sobriety." However, the court overruled the objection. The deputy testified he was trained at the academy that "a [score of] four would definitely show -- in most cases would show an alcohol concentration of over .10 and possibly the .15 area." The deputy testified that based upon the field sobriety tests and his observations of

the defendant at the scene the defendant was under the influence of an alcoholic beverage.

Following the testimony, the trial court announced its decision from the bench. It found the State established the defendant was guilty of OWI and operating the vehicle while his license was under revocation. The defendant stipulated it was his third OWI offense. The district court later filed written findings of fact finding the defendant guilty of OWI, third offense, and driving while his license was under revocation. The defendant was sentenced on each charge and the sentences are to run concurrently. Ruiz appeals. We affirm.

ANALYSIS

I. Evidentiary Rulings.

The defendant argues the district court abused its discretion in admitting Deputy Roger's testimony about the HGN test. He argues there was no foundation to establish the officer possessed the expertise to convert the results of the HGN test into the defendant's sobriety. The State argues the defendant failed to preserve error.

We agree with the State and find the defendant failed to preserve error on this issue. The defendant did raise a timely objection to Deputy Roger's testimony regarding the alcohol concentration which would be consistent with the defendant's performance on the HGN test. However, the objection raised was a general foundation objection and did

not specify in what manner the defendant felt the foundation was insufficient. A general foundation objection does not preserve error for appeal. State v. Burrell, 255 N.W.2d 119, 123 (Iowa 1977); State v. Rush, 242 N.W.2d 313, 317 (Iowa 1976); State v. Wright, 191 N.W.2d 638, 642 (Iowa 1971).

Technically, we are unable to review this issue on appeal because it has not been properly preserved. Nevertheless, even assuming this issue had been properly preserved for appellate review, we are unable to conclude the district court abused its discretion in admitting the testimony in question. 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 State v. Burnor, 132 Vt. 603, 326 A.2d 138, 140 (1974)).

An officer may testify to the results of an HGN test. State v. Murphy, 451 N.W.2d 154, 158 (Iowa 1990). In Murphy, the arresting officer was permitted to testify that, based on the HGN test, the defendant was "intoxicated." We find the district court was clearly within its discretion in allowing Deputy Rogers to testify about the results of the HGN.

We affirm the district court on this issue.

II. Iowa Code section 321J.21.

The defendant also argues there was insufficient evidence to support his conviction of driving while his license was revoked. The scope of review of a sufficiency challenge is for errors at law. State v. Allen, 348 N.W.2d 242, 247 (Iowa 1984). The standard of review is whether "substantial evidence" exists in the record to support the jury's verdict of guilty. State v. Robinson, 288 N.W.2d 337, 340 (Iowa 1980).

It is well established that in determining whether there is sufficient evidence to support a conviction the appellate court reviews the record in the light most favorable to the State. State v. Wheeler, 403 N.W.2d 58, 60 (Iowa App. 1987). This "favorable light" includes the making of any legitimate inferences and presumptions which may fairly and reasonably be deduced from the evidence in the record. State v. Bass, 349 N.W.2d 498, 500 (Iowa 1984). As noted, the test for whether the evidence is sufficient to withstand appellate scrutiny and support a verdict involves inquiry as to whether the evidence is "substantial." State v. Aldape, 307 N.W.2d 32, 39 (Iowa 1981). The findings of the fact finder are to be broadly and liberally construed, rather than narrowly or technically, and in cases of ambiguity, they will be construed to uphold, rather than defeat, the verdict. State v. Price, 365 N.W.2d 632, 633 (Iowa App. 1985). Evidence meets the threshold criteria of substantiality if

it is evidence which would convince a rational fact finder that the defendant is guilty beyond a reasonable doubt. State v. LeGear, 346 N.W.2d 21, 23 (Iowa 1984). In the case at bar, the evidence establishing the defendant's guilt was substantial.

The defendant argues the district court erred and denied him due process in finding he operated a motor vehicle while his driving privileges were revoked. He argues there was no showing he was served with notice of revocation. The State argues the defendant failed to preserve error on his contention he did not receive adequate notice of the revocation of his license. We assume this issue has been properly preserved and find the State presented sufficient evidence to sustain the defendant's conviction for driving while his license was revoked.

Under Iowa Code section 321J.21, a person commits the crime of driving while his or her license is revoked if the following elements are established:

A person whose motor vehicle license . . . has been denied or revoked as provided in this chapter [Iowa Code chapter 321J] and who drives a motor vehicle upon the highways of this state while the license or privilege is denied or revoked commits a serious misdemeanor.

Iowa Code § 321J.21 (1991).

The defendant does not dispute the fact that he was driving on a highway in the state of Iowa. He also does not dispute the fact he did not have a valid license on the

date in question. He testified he knew he did not have a valid license at the time of the offense but that he believed his license was "suspended" rather than "revoked." He claims the State failed to prove his license was properly revoked under chapter 321J at the time of the arrest. However, we find there was sufficient evidence to prove the defendant's license was revoked on the date of the offense.

At trial, the State introduced a certified copy of the defendant's driving record. This driving record shows the defendant had at least three revocations in effect on the date of the offense. The defendant's license was revoked for a period of one year on February 6, 1990, for a test failure and remained under revocation for failure to pay the \$100 reinstatement fee under Iowa Code section 321J.17. His license was also revoked on April 9, 1990, for 540 days for a test refusal and was to remain under revocation until October 1, 1991, and until the \$100 reinstatement fee was paid. The defendant's license was also revoked on August 21, 1990, for driving under revocation and was to remain under revocation until August 21, 1991, and until he filed proof of financial responsibility and paid the \$100 reinstatement fee.

The defendant argues there is no evidence he was personally served with notice of revocation and that the notices sent by certified mail were signed for by someone other than the defendant. The notice dated January 26,

1990, was signed for by "Chris Ruiz." The notice date August 16, 1990, was signed for by "Sandra Garcia." The defendant maintains revocation of his license violated due process because he did not receive adequate notice.

Due process only requires that the method of notice of revocation be reasonably calculated to reach the intended party. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 70 S. Ct. 652, 94 L. Ed. 865 (1949). Mail is an efficient and effective means of communication. Id. The record shows the State complied with the due process requirements by mailing notice of revocation to the defendant at his known address and by personal service of the notice of revocation on the defendant. Actual receipt of the notice is not required to meet the due process requirement. See State v. Green, 351 N.W.2d 42 (Minn. Ct. App. 1984); State v. Kindler, 466 A.2d 984 (N.J. 1983); State v. Wenof, 246 A.2d 59 (N.J. 1968); Hodges v. State, 649 P.2d 775 (Okla. 1982).

As previously stated, the record in this case reflects the defendant's license was actually under three separate revocations at the time of his arrest on May 30, 1991. The district court based its ruling on its finding that the defendant's license was revoked on March 19, 1990, for a period of 540 days. The defendant argues this notice was never served on him and, as a result, the State failed to prove the element of revocation. However, the defendant failed to object to the introduction of this evidence at

trial. Moreover, there is sufficient evidence that notice of the February 6, 1990 and the August 21, 1990, revocations were served on the defendant by certified mail. There is no question that notice was sent by certified mail on two of the defendant's three revocations. Therefore, even if we assume the defendant did not receive notice of the April 9, 1990 revocation, we find sufficient evidence that he had notice of the other two revocations. Furthermore, the Iowa Supreme Court has held that knowledge of revocation is not an element of the offense of driving while revoked. State v. Thompson, 357 N.W.2d 591, 594 (Iowa 1984); see also State v. Carmer, 465 N.W.2d 303, 304 (Iowa App. 1990); State v. Sonderleiter, 251 Iowa 106, 109, 99 N.W.2d 393, 395 (Iowa 1959). Therefore, the State was not required to prove at trial that the defendant actually received notice of revocation.

We find the State presented sufficient evidence to sustain the defendant's conviction for driving while his license was revoked. We affirm the district court on this issue.

CONCLUSION

After considering all issues presented, we affirm the district court. The defendant's convictions and sentences for OWI, third offense, and driving while his license was revoked are affirmed.

Costs of this appeal are taxed to the appellant.

AFFIRMED.