

FILED

AUG 27 1986

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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STATE OF IOWA,	)	Filed August 27, 1986
Plaintiff-Appellee,	)	
DENNIS JOHN BISHOP,	)	<u>6-140</u>
Defendant-Appellant.	)	85-143

Appeal from the Iowa District Court for Lucas County (No. CR 1406)

- M. C. Herrick, Judge.

Defendant appeals his conviction of operating a motor vehicle while intoxicated, claiming that the trial court erred in admitting evidence of the results of a urine test administered to him following his arrest. **AFFIRMED.**

Linda Del Gallo, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General; Lona Hansen, Assistant Attorney General; Paul Goldsmith, Lucas County Attorney, for plaintiff-appellee.

Considered by Oxberger, C.J., Schlegel and Sackett, JJ.

PER CURIAM

Defendant, in his appeal of his conviction for operating a motor vehicle while intoxicated, claims that the court erred in admitting evidence of the results of a urine test administered to him following his arrest. The test results showed a blood-alcohol content of .146. Defendant claims that the State failed to show that the test was given under prescribed procedures, and that the court failed to decide whether there was proper foundation for the test's admission.

The court ruled on defendant's motion in limine, by stating that the admissibility of the evidence would be ruled upon at the time it was offered during the trial. At the time of the trial, before evidence was received, defendant again urged his motion in limine, and the court ruled that it was a question for the jury to decide under all the evidence, including the testimony of the experts, "whether the urine specimen was properly taken". It is obvious the court had exercised its discretion to rule that upon the laying of a proper foundation, including the testimony of experts - which the court was advised would testify - the evidence concerning the test would be allowed, and the defendant's claims would be submitted to the jury. The defendant seems to be asking that the court rule upon the ultimate question as to the reliability of the test, by insisting that such reliability be included in the court's determination of proper foundation for the evidence of the test.

Unlike the case of State v. Smith, 272 N.W.2d 859, 860 (Iowa 1978), where the urine sample was placed in a blood test bottle containing anticoagulant with no testimony as to the effect of this mixture, and the evidence of the test was excluded, the State produced sufficient evidence to lay a proper foundation for the jury to decide whether the test was reliable. The expert testimony, on that specific point, was not disputed in the record.

We find no error. The court properly exercised its discretion in its refusal to exclude the evidence, and in its ruling that the issue was for the jury to decide, upon all the evidence.

AFFIRMED.