

**IN THE COURT OF APPEALS OF IOWA**

No. 1-160 / 10-1115  
Filed April 13, 2011

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**TERRY LYNN HOBBS,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Polk County, Carla T. Schemmel,  
Judge.

A defendant appeals her judgment and sentence for operating while  
intoxicated, contending that the jury's finding of guilt is not supported by  
substantial evidence. **AFFIRMED.**

Susan R. Stockdale, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney  
General, John P. Sarcone, County Attorney, and Olubunmi Salami, Assistant  
County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Eisenhauer and Danilson, JJ.  
Tabor, J., takes no part.

**VAITHESWARAN, P.J.**

Terry Lynn Hobbs appeals her judgment and sentence for operating while intoxicated. See Iowa Code § 321J.2 (2009) (defining the offense of operating while intoxicated). She contends the jury's finding of guilt was not supported by substantial evidence. See *State v. Bass*, 349 N.W.2d 498, 500 (Iowa 1984) (establishing the standard under which a challenge to the sufficiency of the evidence is reviewed—whether the record contains substantial evidence to support the charge).

The jury was instructed that the State would have to prove the following:

1. On or about the 8th day of September, 2009, the defendant operated a motor vehicle, AND
2. At that time, the defendant was under the influence of a drug.

The jury was further instructed, "A person is under the influence when, through the use of drugs; any amount of controlled substance is present in the person, as measured in the person's blood or urine."

A reasonable juror could have found the following facts. A Des Moines police officer observed a vehicle driving fifty-one miles per hour in a thirty-five mile-per-hour zone. He stopped the vehicle for speeding and identified Hobbs as the driver. After noticing signs of intoxication in Hobbs, the officer asked her to submit to field sobriety testing. Hobbs agreed. She failed many of the tests. The officer then asked her to undergo further testing at the police station. Hobbs agreed to this testing, including a urine test. The urine sample she provided tested positive for amphetamine and methamphetamine.

Hobbs challenges the methods used to collect the urine sample and, consequently, the accuracy of the urine test. She notes that the sample was collected in a Styrofoam cup rather than a sterile container and was taken home by the officer prior to its submission for testing.

The officer explained that he did not initially have Hobbs urinate into the sterile container provided with the urine collection kit because he was told by a female officer that the container's opening was "impossible to pee into." He immediately transferred the sample from the Styrofoam cup to the collection kit, sealed and labeled the kit, put the kit into a bigger box, sealed that box, and logged the box as evidence. He locked the box in his home office and delivered it to the laboratory the next day. These procedures were consistent with Department of Public Safety rules pertaining to urine collection and transmission. See Iowa Admin. Code rs. 661-157.3(2) ("As soon as practicable, the subject shall urinate into a urine alcohol kit-supplied bottle, cup or other suitable container which is clean, dry, and free from any visible contamination."), -157.4 ("Any sample of urine or blood may be submitted to the division of criminal investigation criminalistics laboratory or other appropriate laboratory via ordinary mail, private courier, or personal delivery."); see also Iowa Code § 321J.11 ("[A]ny peace officer, using devices and methods approved by the commissioner of public safety, may take a specimen of a person's breath or urine for the purpose of determining the alcohol concentration, or may take a specimen of a person's urine for the purpose of determining the presence of a controlled substance or other drugs.").

A reasonable juror could have found that the accuracy of the results was not undermined by the officer's use of a Styrofoam cup and his overnight storage of the sample at his home. A reasonable juror could have further found that the test result amounted to substantial evidence to support a finding that Hobbs operated a motor vehicle while under the influence of a drug. Accordingly, we affirm Hobbs's judgment and sentence for operating while intoxicated.

**AFFIRMED.**