

IN THE COURT OF APPEALS OF IOWA

No. 6-808 / 05-1176
Filed November 16, 2006

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JAMES DONALD KALBACH,
Defendant-Appellant.

Appeal from the Iowa District Court for Dallas County, William H. Joy and John Lloyd, Judges.

James Kalbach appeals from the judgment and sentence entered upon his conviction of operating while intoxicated. **AFFIRMED.**

Richard A. Bartolomei of Bartolomei & Lange, P.L.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney General, Wayne M. Reisetter, County Attorney, and Jeannine Gilmore, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Zimmer and Eisenhauer, JJ.

EISENHAUER, J.

James Kalbach appeals from the judgment and sentence entered upon his conviction of operating while intoxicated, first offense, in violation of Iowa Code section 321J.2 (2003). He contends the district court erred in overruling his objections to the admission of his urine test. We review his claim for correction of errors at law. Iowa R. App. P. 6.4.

In the early morning hours of September 15, 2004, Kalbach and David Allsup were drag racing their pickup trucks when they crashed into a parked train. Deputy Sheriff Ryan Bowers smelled the odor of an alcoholic beverage on Kalbach and noticed his eyes were bloodshot and watery. Kalbach stated he had consumed “enough” alcohol. Kalbach refused to submit to a preliminary breath test.

Kalbach was transported to the hospital by helicopter. Deputy Bowers read Kalbach the implied consent advisory and requested a urine sample for analysis. He described Kalbach as conscious and alert. Kalbach spoke with the deputy about his injuries and asked questions regarding the time period for consenting and refusing to submit to the chemical test. Kalbach signed the consent form for the urine test, and testing revealed his blood alcohol concentration was .111.

Prior to and during trial, Kalbach sought to exclude the results of the urine test on several grounds. On appeal, he claims he was incapable of consenting to or refusing a chemical test and there was no evidence presented regarding how the margin of error for urine tests is established. We reject both claims.

Iowa Code section 321J.7 states:

A person who is dead, unconscious, or otherwise in a condition rendering the person incapable of consent or refusal is deemed not to have withdrawn the consent provided by section 321J.6, and the test may be given if a licensed physician, physician assistant, or advanced registered nurse practitioner certifies in advance of the test that the person is unconscious or otherwise in a condition rendering that person incapable of consent or refusal. If the certification is oral, a written certification shall be completed by the physician, physician assistant, or advanced registered nurse practitioner within a reasonable time of the test.

The district court concluded Kalbach was not incapable of consent or refusal:

In this case, the defendant was not dead or unconscious. So the issue is whether he was “in a condition rendering (him) incapable of consent or refusal.” A consideration of the totality of all the circumstances surrounding the defendant demonstrates that he was not rendered incapable of consent when he in fact did consent to the withdrawal of a urine specimen for testing. He was alert and responded to the requests made of him by law enforcement. He even inquired as to the adverse effects if he refused to consent. His condition was such that he was able to understand the choices given by him by law enforcement and to evaluate those choices so that he could select one.

Kalbach offered evidence that he could not remember what occurred in the emergency room and the opinion of his wife, a nurse, that he was not capable of giving consent. The trial court concluded he was capable and because these fact findings are supported by substantial evidence, we are bound by them. *State v. Finn*, 469 N.W.2d 692, 693 (Iowa 1991). The evidence supports the district court’s determination that Kalbach was able to give consent to the chemical test.

Kalbach also argues the test results should be excluded because the State failed to present evidence showing how the Department of Criminal Investigations (DCI) established the margin or error in testing urine for blood alcohol concentration. Iowa Code section 691.2 states:

Any report, or copy of a report, or the findings of the criminalistics laboratory shall be received in evidence, if determined to be relevant, in any court, preliminary hearing, grand jury proceeding, civil proceeding, administrative hearing, and forfeiture proceeding in the same manner and with the same force and effect as if the employee or technician of the criminalistics laboratory who accomplished the requested analysis, comparison, or identification had testified in person.

Accordingly, the DCI lab report containing the analysis of Kalbach's urine was admissible. Kalbach's claim goes to the weight of the evidence, not its admissibility.

Because the results of the urine test were properly admitted, we affirm.

AFFIRMED.