

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
BRIAN S. MILLER, JUDGE

DIVISION II

CACR06-718

February 28, 2007

JACOB CALLAWAY  
APPELLANT

v.

STATE OF ARKANSAS  
APPELLEE

AN APPEAL FROM THE BRADLEY  
COUNTY CIRCUIT COURT  
[CR-2005-47-4]

HONORABLE DON E. GLOVER,  
JUDGE

AFFIRMED

Following an October 18, 2005, bench trial, the Bradley County Circuit Court convicted appellant Jacob Callaway of driving while intoxicated and careless driving. He was fined \$1250 plus court costs. On appeal, Callaway argues that the trial court erred when it admitted the results of his blood test. We affirm Callaway's conviction.

Because Callaway does not challenge the sufficiency of the evidence, only a brief recitation of the facts is necessary. On October 4, 2004, while driving to work in Warren, Arkansas, Callaway was involved in a motor-vehicle accident. Callaway did not smell of intoxicants; however, because his speech was slurred, his eyes appeared bloodshot, and he was unsteady on his feet, the responding officer had Callaway submit to a series of sobriety

tests. When Callaway was unable to perform any of the tests, he was placed under arrest for driving while intoxicated. After being transported to the police station and informed of the informed consent laws, Callaway was taken to a local hospital to have blood drawn for a drug analysis that would test for the presence of non-alcoholic substances.

During his bench trial, Callaway objected to the State's introduction of the results of his blood analysis. He argued that, because it was not possible to perform the blood analysis according to a method approved or adopted by the Department of Health, the results were not admissible. The trial court took Callaway's objection under advisement. The trial court later ruled that the results of the blood-analysis results were admissible. Callaway now challenges the trial court's ruling on the admissibility of the results of the blood analysis.

Callaway argues that the blood-analysis results were inadmissible because the State failed to show that the analysis was conducted by a method approved or adopted by the State Health Department. Arkansas Code Annotated section 5-65-204(b) (Repl. 2005) provides in pertinent part:

(1)(A) A chemical analyses made to determine the presence and amount of alcohol of a person's blood, urine, or breath to be considered valid under the provisions of this act shall be performed according to a method approved by the Division of Health of the Department of Health and Human Services or by an individual possessing a valid permit issued by the division for this purpose.

When a defendant challenges the admissibility of evidence under this section, it is the State's burden to establish the validity of the chemical analysis. *Tenner v. State*, 88 Ark. App. 123, 195 S.W.3d 383 (2004).

During a pretrial hearing, the State admitted that the State Department of Health had yet to provide guidelines for the testing of non-alcoholic controlled substances. Furthermore, when Callaway raised his argument during trial, the State failed to offer any evidence as to the validity of the blood analysis. In response to Callaway's argument on appeal, the State argues that any error was harmless. We agree. The harmless error rule provides that when evidence of guilt is overwhelming, and the error slight, we can declare the error to be harmless. *Criddle v. State*, 338 Ark. 744, 1 S.W.3d 436 (1999). Furthermore, a DWI conviction is not dependent upon evidence of blood-alcohol content in view of other sufficient evidence of intoxication. *Wortham v. State*, 65 Ark. App. 81, 985 S.W.2d 329 (1999); *see also Weeks v. State*, 64 Ark. App. 1, 977 S.W.2d 241 (1998).

If the contested results were omitted from evidence, there would still be overwhelming evidence of Callaway's guilt. At Callaway's trial, Officer Justin Davis of the Warren Police Department testified that he was the arresting officer. He testified that when Callaway exited his vehicle, Callaway had trouble standing up. He admitted that Callaway did not smell of any type of intoxicating substance but said that Callaway's eyes were blood-shot and his speech was slurred. Officer Davis also said that Callaway failed his field sobriety tests.

Callaway testified that, at the time of the accident, he was returning to work after going home to take his medication. During his testimony, he stated:

Yes, sir, I was under a doctor's care at the time, Dr. Pennington. Yes, I was supposed to be taking prescribed medication. It's called Amaryl. It's for sugar. Well, I'm borderline [diabetic]. And what it was, was I would skip taking it and it would get high, so I'd double up on taking it and drop out. That's what would cause the thing,

I found out later. That what would cause me to — I've done it before. The dizzy spells.

Callaway testified that he was to take the medication twice a day, once in the morning and again in the evening. He said that, before the accident, the last time he had taken his medication was the evening of October 2. He said that, on October 4, because he was not feeling well, he drove home and took two pills, double the prescribed amount.

Based on Officer Davis's testimony and Callaway's own testimony, there was overwhelming evidence of Callaway's guilt. We hold that even if the blood-analysis results had been omitted, the State could establish Callaway's guilt and that any error that occurred by the admission of the blood-analysis results was harmless. Accordingly, we affirm.

Affirmed.

VAUGHT and HEFFLEY, JJ., agree.