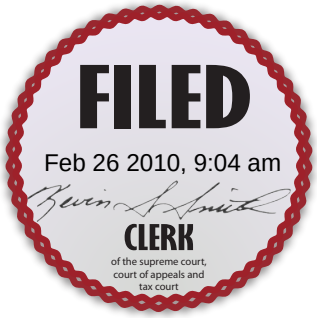

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IN THE
COURT OF APPEALS OF INDIANA

DENNIS SNOWDY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-0905-CR-296
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Linda E. Brown, Judge
Cause No. 49F10-0708-CM-170868

February 26, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Dennis Snowdy appeals his conviction for Operating a Vehicle While Intoxicated, as a Class A misdemeanor, following a jury trial. He presents two issues for our review:

1. Whether the trial court denied his Sixth Amendment right to confrontation when the court prohibited references to the National Highway Traffic Safety Administration Student Manual during cross-examination of the State's chief witness.

2. Whether the trial court abused its discretion when it admitted into evidence the results of a blood alcohol test over Snowdy's objection.

We affirm.

FACTS AND PROCEDURAL HISTORY

During the early morning of August 21, 2007, Snowdy was driving his vehicle without the headlights on. Lawrence Police Department Officer Brian Sharp saw the vehicle, noticed that the headlights were off, and observed the vehicle swerving within its lane of travel. Officer Sharp initiated a traffic stop and smelled a strong odor of alcohol on Snowdy. Officer Sharp also noted that Snowdy had bloodshot eyes and slurred speech. When Officer Sharp ordered Snowdy to exit the vehicle, he complied, but he staggered and was unable to maintain a steady balance as he was standing up.

A portable breath test showed that Snowdy had consumed alcohol. Officer Sharp then conducted three field sobriety tests: the horizontal gaze nystagmus ("HGN") test; the one-leg stand test; and the nine-step walk-and-turn test. Snowdy failed the first two tests, but passed the third test. After Snowdy refused to consent to a blood draw, Officer Sharp obtained a warrant to conduct the blood test. That test showed that Snowdy's BAC was .14%.

The State charged Snowdy with operating a vehicle while intoxicated, as a Class A misdemeanor.[1] A jury found him guilty as charged. The trial court entered judgment accordingly and sentenced Snowdy to one year, with 301 days suspended to probation. This appeal ensued.

DISCUSSION AND DECISION

Issue One: Sixth Amendment

The right to cross-examine witnesses is guaranteed by the Sixth Amendment to the United States Constitution and is one of the fundamental rights of our criminal justice system. Washington v. State, 840 N.E.2d 873, 886 (Ind. Ct. App. 2006), trans. denied. However, this right is subject to reasonable limitations imposed at the discretion of the trial court. Id. Trial courts retain wide latitude to impose reasonable limits on the right to cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant. Id. We will find an abuse of discretion when the trial court controls the scope of cross-examination to the extent that a restriction substantially affects the defendant's rights. Id.

Snowdy contends that the trial court "prevented [him] from effectively presenting his defense when it refused to allow defense counsel to cross-examine Officer Sharp by referring to the National Highway Traffic Safety Administration ("NHTSA") Student Manual to impeach administration of the horizontal gaze nystagmus ("HGN") test." Brief of Appellant at 5. In particular, Snowdy maintains that the trial court erred when it

[1] The State also issued a citation to Snowdy for operating a vehicle at night without headlights. Snowdy does not challenge that citation on appeal.

sustained the State's objection claiming that the NHTSA manual was "inadmissible hearsay." Id. at 8. Snowdy asserts that he should have been permitted to challenge Officer Sharp's ability to administer the HGN test with reference to his reliance on the NHTSA manual in his training.

Initially, the State points out that Snowdy has waived this issue because he did not assert his right to confront Officer Sharp regarding the NHTSA manual under the Sixth Amendment. We must agree. See Small v. State, 736 N.E.2d 742, 747 (Ind. 2000) (holding defendant's failure to assert Sixth Amendment right to trial court after court prohibited defendant's question of witness regarding prior out-of-court statement resulted in waiver of the issue on appeal). Waiver notwithstanding, we address this issue on the merits.

Snowdy directs us to two instances in the course of his cross-examination of Officer Sharp where the trial court sustained the State's objections to defense counsel's references to the NHTSA manual. While the trial court did sustain the State's hearsay objection to a question about something Officer Sharp had been told during training, transcript at 198, defense counsel's next question, without objection, was: "Briefly, as I mentioned you had to study at some point having been trained on the national highway traffic safety administration student manual, yes?" Transcript at 200. And defense counsel referenced the NHTSA manual a few more times thereafter, all without objection. So, contrary to Snowdy's assertion on appeal, he was not deprived of an opportunity to question Officer Sharp with reference to the NHTSA manual.

Moreover, defense counsel thoroughly cross-examined Officer Sharp regarding his competency in conducting HGN tests, both with and without references to the NHTSA manual. And defense counsel's entire cross-examination of Officer Sharp covers more than 100 pages of the trial transcript. Snowdy has not demonstrated that the trial court restricted the scope of cross-examination such that his rights were substantially affected. See Washington, 840 N.E.2d at 886. The trial court did not abuse its discretion. Even assuming error, in light of the extent of the cross-examination of Officer Sharp and the substantial evidence of Snowdy's guilt in this case, the error was harmless. See Reed v. State, 748 N.E.2d 381, 391 (Ind. 2001).

Issue Two: Chain of Custody

Snowdy next contends that the State failed to establish a sufficient chain of custody for the blood sample used to establish his blood alcohol content. It is well settled that an exhibit is admissible if the evidence regarding its chain of custody strongly suggests the exact whereabouts of the evidence at all times. Culver v. State, 727 N.E.2d 1062, 1067 (Ind. 2000). That is, in substantiating a chain of custody, the State must give reasonable assurances that the property passed through various hands in an undisturbed condition. Id. We have also held that the State need not establish a perfect chain of custody whereby any gaps go to the weight of the evidence and not to admissibility. Id.

Here, the State introduced into evidence the test results showing that Snowdy had a BAC of .14%. On appeal, Snowdy asserts that "there was a nine-day window of time, after Officer Sharp obtained vials of Snowdy's blood and before it was scientifically tested, where the evidence was in the custody of an unidentified individual for unknown

reasons." Brief of Appellant at 13. The State presented the following evidence regarding chain of custody: Officer Sharp testified that he witnessed a nurse draw Snowdy's blood and fill two vials; the nurse placed labels on the vials and wrote her initials on the labels; Officer Sharp also wrote his initials on the labels; Officer Sharp placed the vials into a sealed plastic bag; Officer Sharp transported the vials to the secure property room at the Lawrence Police Department; nine days later, an unidentified individual transported the vials to the Indianapolis-Marion County Forensic Crime Lab ("IMCFCL") for testing.

The State's exhibit showing chain of custody reveals that someone "received" the vials on August 20 and again on August 29, but the State did not present evidence regarding that person's identity, and that person did not testify at trial. On appeal, the State contends that the evidence supports an inference that the unidentified person was an employee of the Lawrence Police Department, and we must agree. Officer Sharp testified that he delivered the sealed bag containing the vials of blood to the secure property room at the Lawrence Police Department. There is a presumption of regularity in the handling of evidence by officers, and there is a presumption that officers exercise due care in handling their duties. Troxell v. State, 778 N.E.2d 811, 814 (Ind. 2002). To mount a successful challenge to the chain of custody, one must present evidence that does more than raise a mere possibility that the evidence may have been tampered with. Id.

On appeal, Snowdy does no more than speculate that the vials may have been tampered with since the State did not identify the person who received the evidence on August 20 and August 29. But speculation, without more, is insufficient to undermine the State's evidence establishing the chain of custody. Id. The evidence shows that the

vials were in a sealed bag and placed in a secure property room before they were transported to the Crime Lab. There is no evidence of tampering. Snowdy cannot show that the trial court abused its discretion when it admitted the blood test results into evidence. Again, any gaps in the evidence go to the weight of the evidence and not admissibility. See Culver, 727 N.E.2d at 1067.

Affirmed.

FRIEDLANDER, J., and BRADFORD, J., concur.