

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

COREY MATTHEW WARFIELD,

Defendant-Appellant.

UNPUBLISHED

March 25, 2004

No. 245261

Eaton Circuit Court

LC No. 02-020315-FH

Before: Zahra, P.J., and Saad and Schuette, JJ.

PER CURIAM.

Defendant appeals as of right his convictions of third-degree fleeing and eluding, MCL 750.479a(3), operating a motor vehicle while impaired by alcohol or a controlled substance, third offense, MCL 257.625, driving while license suspended or revoked, second offense, MCL 257.904(3)(b), resisting and obstructing a police officer, MCL 750.479, and transporting open alcohol in a motor vehicle, MCL 257.624a, entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was advised of his chemical test rights, and consented to a urine draw. Two samples were taken one minute apart.¹ Chemical analyses showed that the samples contained .03 grams of alcohol per sixty-seven milliliters, as well as cocaine and cocaine metabolites. A toxicologist testified that the screening data indicated that defendant had used cocaine shortly before the sample was taken. The toxicologist opined that the failure to wait thirty minutes between taking the first and second samples likely would not adversely affect the test results because controlled substances remained in the system for a longer time than did alcohol.

We review a trial court's determination of an evidentiary issue for an abuse of discretion. *People v Bahoda*, 448 Mich 261, 289; 531 NW2d 659 (1995).

¹ Prior to trial defendant moved to exclude the urine test results on the ground that the testing procedure was flawed because thirty minutes did not elapse between the taking of the first and second samples, as required by administrative rule. The trial court denied the motion, concluding that the issue of time went to the weight and not the admissibility of the evidence.

Defendant argues that he was deprived of due process by the admission into evidence of flawed urine test results. We disagree. A sample or specimen of urine or breath must be collected in a reasonable manner. MCL 257.625a(6)(c). The violation of an administrative rule² governing the administration of a chemical test does not require suppression of the test results if the violation does not affect the reliability of the test. In such a case the issue of the violation goes to the weight of the evidence rather than to its admissibility. See *People v Wager*, 460 Mich 118, 126; 594 NW2d 487 (1999); *People v Wujkowski*, 230 Mich App 181, 187-188; 583 NW2d 257 (1998). Defendant has not demonstrated that the failure to wait thirty minutes between the collecting of the urine samples affected the accuracy or reliability of the test results. The admission of the test results did not constitute an abuse of discretion. *Bahoda, supra*.

In reviewing a sufficiency of the evidence question, we view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could conclude that the elements of the offense were proven beyond a reasonable doubt. We do not interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992); *People v Milstead*, 250 Mich App 391, 404; 648 NW2d 648 (2002). A trier of fact may make reasonable inferences from direct or circumstantial evidence in the record. *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

A person may not operate a motor vehicle upon a highway or other place open to the public or generally accessible to motor vehicles when due to consumption of alcohol or a controlled substance the person's ability to operate a vehicle is visibly impaired. MCL 257.625(3). The test results were properly admitted into evidence, and established that defendant operated his vehicle after having consumed alcohol and cocaine. Defendant drove his vehicle in an erratic manner, and was unable to successfully perform roadside sobriety tests. He had a cocaine pipe on his person, he exhibited a burned lip, and a strong odor of alcohol emanated from his person. The evidence was sufficient to allow a rational trier of fact to find that defendant operated his vehicle while his ability to do so was visibly impaired due to his consumption of alcohol or a controlled substance. *Wolfe, supra*.

Affirmed.

/s/ Brian K. Zahra
/s/ Henry William Saad
/s/ Bill Schuette

² AC, R 325.2675(4) provides that a urine sample is to be collected pursuant to the instructions printed on form FSD-93. That form, which was utilized by the police in this case, states that a period of thirty minutes should pass between the collection of the first and second samples.