

IN THE COURT OF APPEALS OF IOWA

No. 3-175 / 12-0564
Filed May 15, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CAMI LEIGH MUNGER,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Gregory Brandt, District Associate Judge (motion to dismiss and motion to suppress), Scott D. Rosenberg, Judge (bench trial).

Cami Munger appeals the denial of two pretrial motions and her conviction and sentence for operating while intoxicated. **AFFIRMED.**

John C. Heinicke, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney General, John Sarcone, County Attorney, and Jessica Tucker, Assistant County Attorney, for appellee.

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ.

DANILSON, J.

Cami Munger¹ appeals the denial of two pretrial motions and her conviction and sentence for operating while intoxicated (OWI), second offense. Upon our review, both pretrial motions were properly denied. In a bench trial, Munger stipulated to the element of being under the influence. At sentencing, she stipulated that she was previously convicted of OWI. Because Munger's statements that she drove the vehicle were sufficiently corroborated with other proof and there was sufficient evidence to support the verdict, we affirm.

I. Background Facts and Proceedings.

Bob and Martha Munger called the Ankeny police department on April 27, 2011 to report that their daughter Munger was trespassing on their property. A no-contact order prohibited Munger's presence at her parent's home. Officer Parks responded to the call and found Investigator Ryan King of the Des Moines Police Department with Bob Munger. King had previously arranged to meet with Munger to give her citations from an earlier, unrelated incident. When she did not appear for their scheduled meeting, Officer King called Munger and learned that she was involved in a trespass incident at her parents' home. He went to the Munger residence to deliver the citations.

When King arrived, he observed that Munger "appeared to be under the influence of something" and "just couldn't control her body." Officer King asked how she got to the residence, and Munger replied that she had driven there. King then requested assistance of drug recognition experts (DREs). Iowa State

¹ Throughout this opinion the name Munger refers to Cami Munger. Specific references to her parents Bob and Martha include their first names.

Patrol Troopers Griggs and Sonnenfelt responded. Sonnenfelt concluded Munger was under the influence of drugs.

Trooper Griggs requested Munger's car keys, which she produced from within her sweatshirt. The trooper noted that Munger's vehicle was filled with so many belongings that he believed there was no room for a passenger. The officers had to remove two large bags from the front passenger area to gain access to the glove box. However, Munger is small in stature, and Officer King conceded that while it would not have been legal for an individual to ride in the passenger seat given the contents of the vehicle, it may have been possible for someone of Munger's size to do so.

Despite her previous admission that she drove to the residence, when told she was being investigated for OWI, Munger told Trooper Sonnenfelt that her friend Cattie drove the vehicle. However, she subsequently admitted for a second time that she had driven the car.

At trial Daniel Durlam testified he drove Munger to her parents' residence and that she had been sitting in the front passenger seat. He testified he gave the car keys to Martha Munger and walked back to his house.

Although Martha did not observe the vehicle approach, her testimony confirmed that Durlam brought Munger to the residence and gave her Munger's car keys. Martha then gave the keys to her husband, Bob, and told him that Durlam brought Munger to the residence.

Bob testified that he got the keys from Martha and tried to get Munger to leave, but Munger indicated that she was not capable of driving. Bob did not

witness the vehicle approach; however, he observed Durlam walking away from his home.

Linda Cole lives next-door to the Mungers. She was visiting the Munger household during the afternoon of April 27, 2011, and testified that Munger and Durlam walked into the house and gave Martha the car keys. She, like all other witnesses, did not observe the vehicle as it approached the house.

The State charged Munger with OWI second offense, in violation of Iowa Code section 321J.2, on June 28, 2011. She entered a plea of not guilty. On August 11, she filed a motion to suppress alleging that there was no reasonable suspicion to justify her detention and investigation for operating while intoxicated. On October 10, she filed a motion to dismiss alleging there was no corroboration of her statements to law enforcement officers and no other proof she committed the offense. The State resisted the motion as untimely. On November 1, Munger filed an amended motion to dismiss asserting the State had produced no evidence of guilt. The State resisted the motion, noting it was not the appropriate device with which to challenge sufficiency of the evidence. After an evidentiary hearing, the district court overruled her motions to suppress and dismiss on the merits of the claims, despite potentially dispositive procedural errors.

Munger waived her right to a jury and proceeded to a bench trial. She stipulated to being under the influence, so the only issue for consideration by the court was whether Munger operated a vehicle. The court found her guilty. At the subsequent sentencing, Munger stipulated to a previous OWI conviction.

On appeal, Munger challenges the district court's denial of her motion to suppress and motion to dismiss. She further contends there was insufficient evidence to support her conviction.

II. Standard of Review.

Because Munger's challenge to the district court's denial of her motion to suppress implicates her constitutional right to be free of unreasonable searches and seizures, our review is de novo. *State v. Kurth*, 813 N.W.2d 270, 272 (Iowa 2012). We review the district court's ruling on a motion to dismiss for errors at law. *Geisler v. City Council of Cedar Falls*, 769 N.W.2d 162, 165 (Iowa 2009).

We review challenges to the sufficiency of evidence for errors at law. *State v. Sanford*, 814 N.W.2d 611, 615 (Iowa 2012). We will uphold a verdict supported by substantial evidence. *Id.* Evidence is considered substantial if, when viewed in the light most favorable to the State, it can convince a rational trier of fact that the defendant is guilty beyond a reasonable doubt. *Id.*

III. Discussion.

A. Motion to Dismiss.

Pretrial motions must be filed "when the grounds therefore reasonably appear but no later than forty days after arraignment." Iowa R. Crim. P. 2.11(4). Munger's motion to dismiss was filed on October 10, 2011, eighty-four days after arraignment. Accordingly, Munger's motion to dismiss was not timely filed and was properly denied by the district court.

B. Motion to Suppress.

Munger's timely filed motion to suppress contended (1) the law enforcement officers did not have probable cause or reasonable suspicion to believe Munger had committed an illegal act, (2) the officers' actions constituted an illegal search and seizure, and (3) the urine collection did not comply with the Iowa Administrative Code.²

We have reviewed the record and the district court's ruling, and we conclude the ruling should be affirmed. Munger's initial detention was in response to a 911 call asking for assistance as Munger was violating a no-contact order. During this detention reasonable suspicion arose to investigate whether Munger had committed the offense of OWI.³ For the forthcoming reasons, Munger's admission that she operated her vehicle by driving it to her parents' residence was sufficiently corroborated. Accordingly, the motion to suppress was properly denied.

C. Sufficiency of the Evidence.

The crime of operating while intoxicated requires proof of the following elements beyond a reasonable doubt: (1) the defendant operated a motor

² At the hearing on the pretrial motions, Munger's counsel withdrew the averments in paragraph nine and ten of the motions to suppress. Because the urine collection issue was not addressed by the district court or in Munger's brief, we consider that issue waived. *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) ("It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal."); *see also State v. Mitchell*, 757 N.W.2d 431, 435 (Iowa 2008) ("Issues not raised before the district court, including constitutional issues, cannot be raised for the first time on appeal.").

³ Officer King noticed that Munger was unable to control her body movements. She was "very twitchy," and had watery eyes and numerous open sores around her mouth and chest that were consistent with methamphetamine use. He asked when she last used methamphetamine, and Munger admitted to using one day earlier.

vehicle; and (2) she was under the influence of alcohol or a controlled substance or a combination of the two at the time. *State v. Truesdell*, 679 N.W.2d 611, 616 (Iowa 2004); see Iowa Code § 321J.2(1). As noted above, Munger stipulated before trial to the second element; thus, the State only had to prove she was operating a vehicle at the time.

Munger alleges the statements she made to police were not sufficiently corroborated as required by *State v. Polly*, 657 N.W.2d 462, 466 (Iowa 2003).

The general rule is that a confession standing alone will not warrant a criminal conviction unless other proof shows the defendant committed the crime. The requirement of corroborating evidence stems from the incidence of false confessions and the need to prevent errors in convictions based upon untrue confessions alone. The need for corroboration is also based in part on the belief that a system of criminal law enforcement which comes to depend on the “confession” will, in the long run, be less reliable and more subject to abuses than a system which depends on extrinsic evidence independently secured through skillful investigation.

Polly, 657 N.W.2d at 466 (internal citations, quotation marks, and footnote omitted). Iowa Rule of Criminal Procedure 2.21(4) states that the confession of a defendant, unless made in open court, does not warrant a conviction unless it is accompanied with other proof that the defendant committed the offense.

For purposes of the corroboration rule, admissions are treated the same as confessions. *State v. Meyers*, 799 N.W.2d 132, 139 (Iowa 2011).

Corroborating evidence is sufficient to support a conviction based on a confession when it tends to confirm some material fact connecting the defendant with the crime. It is sufficient as long as it supports the content of the confession and if, together with the confession, proves the elements of the charge against the defendant beyond a reasonable doubt. Corroborating evidence may be either direct or circumstantial. It need not be strong evidence, nor need it go to the whole of the case so long as it confirms some material fact connecting the defendant with the

crime. Circumstantial corroborating evidence may include several facts that, when combined, support the admission.

Id. (internal citations and quotation marks omitted).

Here, Munger was found outside her parent's residence, and her vehicle was parked in the driveway. She had only been at the residence for a few minutes when officers arrived, and there were no other suspected "operators" on the scene. She admitted, at least twice, that she had driven her vehicle to her parents' residence. The vehicle was registered to Munger, and she had the keys. The vehicle was also filled with possessions such that it did not appear there was adequate room for a passenger.

Durlam testified that he had driven Munger's vehicle to her parents' residence, left the keys with Munger's mother, and walked home. No other witness observed the vehicle as it approached Munger's parents' residence. Martha and Bob Munger and Linda Cole all testified to their belief that Durlam brought Munger to the residence, as each saw Durlam at the residence or walking away from the residence.

The State contends other circumstantial evidence including Munger's possession of the keys to the vehicle, the vehicle being registered in Munger's name, and the clutter in the vehicle corroborates Munger's admissions. If Durlam was not at the residence, we must also conclude that weight should be withheld from the testimony of Durlam and the three other witnesses that supported his recollection of the facts.

The district court concluded Durlam lacked credibility because neither he nor any other witness reported to law enforcement officers that Munger was not

driving but rather that Durlam operated the vehicle. We infer from the district court ruling that the court rejected the alternative that Durlam drove Munger to her parents' residence although no credibility findings were made concerning the other three witnesses who supported Durlam's explanation. Though it may demonstrate a lack of thorough investigation, we do not believe this fact is a significant factor affecting credibility. Nonetheless, our supreme court has stated, "[d]eterminations of credibility are in most instances left for the trier of fact, who is in a better position to evaluate it." *State v. Weaver*, 608 N.W.2d 797, 804 (Iowa 2000). Similar to the court's conclusion in *Weaver*, we defer to the district court's assessment of credibility and conclude there is substantial evidence to support the court's finding.

Finally, Munger urges us to "reinvigorate the meaning" of Iowa Code section 321J.2(1)(a), which states "[a] person commits the offense of operating while intoxicated if the person *operates* a motor vehicle . . . [w]hile under the influence of an alcoholic beverage or other drug or a combination of such substances." (Emphasis added.) She urges that the statute requires present operation of the vehicle, noting Justice Snell's dissent in *State v. Boleyn*, 547 N.W.2d 202, 206-08 (Iowa 1996).

In *Boleyn*, the defendant was found slumped over the steering wheel with the keys in the ignition at a cemetery, but Boleyn was not operating the vehicle when the officers encountered him. 547 N.W.2d at 204. After officers aroused Boleyn, he admitted that he drove his vehicle to the cemetery where he was found. *Id.* The supreme court affirmed Boleyn's conviction, concluding there

was substantial evidence that Boleyn had driven to the cemetery in an intoxicated condition. *Id.* at 206. Although the essence of Justice Snell's dissent in *Boleyn* is appealing, it has never been adopted by our supreme court, and we leave that decision where it rightly belongs, with our supreme court.

We conclude there is substantial evidence to support the verdict, barely, when the evidence is viewed in the light most favorable to the State. We also believe Munger's admission that she was the operator was sufficiently corroborated.

IV. Conclusion.

Because Munger's pretrial motions were properly denied, her admissions to operating the vehicle were sufficiently corroborated with other proof, and there was sufficient evidence to support her conviction, we affirm.

AFFIRMED.