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Minn. Stat. § 480A.08, subd. 3 (2008).

STATE OF MINNESOTA
IN COURT OF APPEALS
A09-0066

State of Minnesota,
Respondent,

vs.

John Michael Norman,
Appellant.

Filed October 27, 2009
Affirmed
Peterson, Judge

Hennepin County District Court
File No. 27-CR-08-47695

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Michael J. Patera, Peter A. MacMillan, Michele R. Wallace, Assistant Crystal City Attorneys, MacMillan, Wallace, Athanases & Patera, P.A., 9200 Bass Lake Road, Suite 355, Minneapolis, MN 55428 (for respondent)

Rebecca Waxse, 7984 University Avenue Northeast, Fridley, MN 55432 (for appellant)

Considered and decided by Schellhas, Presiding Judge; Lansing, Judge; and Peterson, Judge.

U N P U B L I S H E D O P I N I O N

PETERSON, Judge

Appellant challenges his conviction of driving with an alcohol concentration of .08 or more, as measured within two hours of driving, arguing that the evidence is insufficient to sustain his conviction. We affirm.

FACTS

Appellant John Michael Norman was arrested for driving while impaired. At the jail, an officer read appellant the implied-consent advisory, and appellant agreed to submit to a breath test. The Intoxilyzer 5000 test record showed a reported value of .09. Appellant was charged with driving with an alcohol concentration of .08 or more, as measured within two hours of driving.

The parties stipulated to the facts and submitted the matter to the district court. The district court admitted submissions from the state, including the arresting officer's incident report, the implied-consent advisory, the implied-consent law peace officer's certificate, and the Intoxilyzer 5000 test record. The district court found that a certified Intoxilyzer operator administered the breath test. The district court found that the Intoxilyzer performed the required internal diagnostic check and air-blank checks and tested the value of the control simulator solution, which showed that the Intoxilyzer was in proper working order. The district court concluded that the state satisfied its burden that the Intoxilyzer was operating properly and that the test was administered in a way to ensure its reliability. The district court found appellant guilty of operating a motor

vehicle with an alcohol concentration of more than .08, as measured within two hours of driving. This appeal follows.

D E C I S I O N

Appellant argues that the state failed to prove that he was driving with an alcohol concentration of .08 of more, as measured within two hours of driving. To convict appellant of this offense, the state was required to prove that appellant's alcohol concentration was .08 or more within two hours of the time that he was operating a motor vehicle. Minn. Stat. § 169A.20, subd. 1(5) (2008). When considering a challenge to the sufficiency of the evidence, we conduct a painstaking analysis of the record, viewing the evidence in the light most favorable to the verdict, and we assume that the fact-finder believed the state's witnesses and did not believe the evidence to the contrary. *State v. Hurd*, 763 N.W.2d 17, 26 (Minn. 2009).

Appellant argues that there is no evidence that the device used to measure his alcohol concentration was reliable or accurate. Appellant contends that the only evidence before the court was a sheet of paper with certain figures on it with no additional explanation of their meaning. "The proponent of a chemical or scientific test must establish that the test itself is reliable and that its administration in the particular instance conformed to the procedure necessary to ensure reliability." *State v. Dille*, 258 N.W.2d 565, 567 (Minn. 1977). The results of a breath test, when performed by a trained person, are admissible without expert testimony that an approved breath-testing instrument provides a trustworthy and reliable measure of the alcohol in the breath. Minn. Stat. § 634.16 (2008).

"Once a prima facie showing of trustworthy administration has occurred, it is incumbent on the opponent to suggest a reason why the test was untrustworthy." *Bond v. Comm'r of Pub. Safety*, 570 N.W.2d 804, 806 (Minn. App. 1997) (quotation omitted). "If the prima facie showing of the test's reliability is challenged, the [district court] must rule upon the admissibility in the light of the entire evidence." *Noren v. Comm'r of Pub. Safety*, 363 N.W.2d 315, 318 (Minn. App. 1985) (quotation omitted). Rebuttal of the state's prima facie showing of admissibility of Intoxilyzer results requires more than "speculation that something might have occurred to invalidate those results." *Hounsell v. Comm'r of Pub. Safety*, 401 N.W.2d 94, 96 (Minn. App. 1987) (citing *Falaas v. Comm'r of Pub. Safety*, 388 N.W.2d 40, 42 (Minn. App. 1986)). And expert testimony on the reliability of the Intoxilyzer 5000 test is not required to meet the state's burden of proof. *State v. Birk*, 687 N.W.2d 634, 639 (Minn. App. 2004).

The Intoxilyzer 5000 test record admitted by the district court includes the name and certification number of the Intoxilyzer operator. Appellant claims on appeal that the test record is just a sheet of paper with certain figures on it with no additional explanation of their meaning. But appellant did not challenge the foundation for admitting the test record in the district court or claim that the officer who administered the test was not certified to operate the Intoxilyzer. Instead, appellant stipulated to the evidence, and nothing in the record suggests a reason why the Intoxilyzer test result is not trustworthy. Therefore, we conclude that the evidence is sufficient to sustain appellant's conviction of

operating a motor vehicle with an alcohol concentration of .08 or more, as measured within two hours of driving.

Affirmed.