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ATTORNEY FOR APPELLANT:

LOWELL A. SHROYER
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

JUSTIN F. ROEBEL
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

DAREN E. FALLOWFIELD,)

Appellant-Defendant,)

vs.)

STATE OF INDIANA,)

Appellee-Plaintiff.)

No. 41A05-0608-CR-452

APPEAL FROM THE JOHNSON CIRCUIT COURT
The Honorable K. Mark Loyd, Judge
Cause No. 41C01-0402-FD-7

April 3, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Daren E. Fallowfield appeals his conviction of operating a vehicle while intoxicated with a previous conviction, a class D felony, and adjudication as an habitual substance offender.

We affirm.

ISSUES

1. Whether the trial court abused its discretion when it admitted into evidence
 - a. the toxicology report; or
 - b. Fallowfield's driving record and records from his prior convictions.

2. Whether sufficient evidence supports Fallowfield's conviction of operation of a vehicle while intoxicated as a class D felony and his adjudication as an habitual offender.

FACTS

At approximately 1:30 a.m. on January 24, 2004, Trooper Harris Smith of the Indiana State Police was "running stationary radar" when he observed Fallowfield driving a vehicle at a speed of 78 miles per hour in a 45-mile-per-hour zone on County Line Road in Johnson County. (Tr. 39). Smith further observed the vehicle swerve across the center line and the fog line. Smith activated his emergency lights, and Fallowfield pulled over. Smith approached Fallowfield's vehicle and asked him for his driver's license and registration. Fallowfield identified himself by name and provided his driver's license to Smith. Standing next to the vehicle, Smith detected "a smell of alcohol on" Fallowfield, and he observed that Fallowfield's speech was "somewhat slurred," his eyes were "red and glassy," and his hands "fumbled" as he retrieved the

license and registration. (Tr. 8, 11). Smith asked him to step from the vehicle, and Fallowfield volunteered that “he ha[d] been drinking at That Place in Greenwood.” (Tr. 9). Fallowfield stumbled as he exited the vehicle and staggered as he walked to where Smith directed. Smith administered three field sobriety tests to Fallowfield, who was unable to perform any of the tests as instructed.

Smith concluded that Fallowfield was “under the influence of alcohol and impaired, . . . very impaired to the point where he should not be operating a vehicle.” (Tr. 21). Smith informed Fallowfield of Indiana’s informed consent law and offered him the opportunity to submit to a chemical test. Fallowfield “stated he would not take the test.” (Tr. 22). Smith then arrested him and transported him to the Greenwood Police Station. Smith prepared an affidavit of probable cause, seeking a warrant for the drawing of Fallowfield’s blood. Upon the approval of the search warrant, Smith transported him to the Johnson County Sheriff’s Department. There, phlebotomist Betty Lou Poindexter drew 2 vials of Fallowfield’s blood, labeled the samples with “the donor’s name . . . the date, the time” and her initials, and handed them to Smith. (Tr. 54). Smith added his initials to the labels on the vials; completed “paperwork requesting” that the samples be tested for alcohol content; put them in a special evidence box on which was printed “Indiana Department of Toxicology and [its] address”; sealed both ends of the box; and mailed it. (Tr. 46, 47).

On February 4, 2004, the State filed an information charging Fallowfield with one count of operating a vehicle while intoxicated with a previous conviction, a class D

felony, charged four counts of operating a vehicle while intoxicated as misdemeanors, and alleged that he was an habitual substance offender.

Fallowfield was tried to the bench in bifurcated proceedings, with the first taking place on May 25, 2006. Trooper Smith and Poindexter testified to the foregoing. Dr. Peter Method, acting director of the Indiana State Department of Toxicology, testified that he was responsible for all testing done at the Department. Method described the Department's procedure for receiving evidence and for testing it, explaining that "results [were] generated not by a particular person but by" Department personnel; that the initial result was produced by one technician, checked by a second technician, and then the "report and the whole file" was checked by the laboratory supervisor before being sent to the requesting authorities. (Tr. 64). Method further testified that the box containing the samples taken from Fallowfield was received with the seals intact, with Fallowfield's name "on each of the labels" affixed to the two vials of blood and his name on the "accompanying paperwork." (Tr. 67).

The State offered into evidence the toxicology report prepared for Trooper Harris with the results of alcohol screening tests on the samples of blood received by the Department on January 30, 2004. Fallowfield's counsel objected, noting that the report indicated the subject's name to be "Fallowfield, Darren E." although Fallowfield's first name is spelled "Daren." His counsel also noted the lack of evidence concerning "whether [the blood] was properly drawn" and "the processing in which it got to the" Department six days later. (Tr. 76). The report was admitted over the objection. The report stated that Fallowfield's blood contained "202mg/dL (0.202%) alcohol." Ex. 2.

Method testified that this indicated .202% grams of alcohol per 100 milliliters. The trial court found Fallowfield guilty of the three misdemeanor offenses of operating a vehicle while intoxicated.

Thereafter, the trial court heard evidence on the charge of operating a vehicle after a previous conviction, a class D felony, and being an habitual offender. Smith gave further testimony and, over Fallowfield's objection, the trial court admitted into evidence the following:

- the Bureau of Motor Vehicles report of Fallowfield's driving record;
- the certified May 10, 2000 judgment from Marion County Superior Court wherein Fallowfield had been convicted of operating a vehicle while intoxicated, a class D felony, and the court records thereon;
- the certified July 8, 1998 judgment from Marion County Superior Court wherein Fallowfield had been convicted of operating a vehicle while intoxicated, a class A misdemeanor, and the court records thereon;
- the CCS reflecting that on February 12, 1991, Fallowfield had been convicted after a guilty plea of operating a vehicle while intoxicated, a class A misdemeanor, with a statement of the Marion County Clerk stating that only the CCS was available on this matter.

The trial court took the matter under advisement, and on July 24, 2006, it found Fallowfield guilty of operating a vehicle while intoxicated with a previous conviction, a class D felony, and that he was an habitual substance offender.

DECISION

1. Admission of Evidence

The trial court has inherent discretionary power on the admission of evidence. *McManus v. State*, 814 N.E.2d 253, 264 (Ind. 2004), *cert. denied*. The trial court's decisions in this regard are reviewed only for an abuse of that discretion. *Id.* In the

setting of a trial court's decision to admit evidence, an abuse of discretion occurs when the trial court's decision is clearly erroneous and against the logic and effect of the facts and circumstances before the court. *Saunders v. State*, 848 N.E.2d 1117, 1122 (Ind. Ct. App. 2006) (citing *Carpenter v. State*, 786 N.E.2d 696, 702-03 (Ind. 2003)).

a. Toxicology Report

Fallowfield first argues that the trial court “committed reversible error in admitting” the toxicology report over his objection because “no evidence was received by the court that the samples obtained from [him] were the same samples analyzed by the State Department of Toxicology.” Fallowfield’s Br. at 6. We disagree.

As our Supreme Court noted in *Troxell v. State*, 778 N.E.2d 811, 814 (Ind. 2002), blood is “fungible” evidence – evidence whose appearance is indistinguishable to the naked eye. With such evidence, the State must present “reasonable assurances that the evidence remained in an undisturbed condition.” *Id.* However, the State “need not establish a perfect chain of custody, and once the State ‘strongly suggests’ the exact whereabouts of the evidence, any gaps go the weight of the evidence and not to admissibility.” *Id.* (citation omitted). The Court further stated that there “is a presumption of regularity in the handling of evidence by officers,” as well as “a presumption that officers exercise due care in handling their duties.” *Id.* Thus, 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.*

Smith testified that he observed Poindexter draw Fallowfield’s blood. Poindexter testified that she drew the blood into two vials, wrote Fallowfield’s name and the date

and time on labels which she initialed and placed on each vial, and then handed the vials to Smith. Smith testified that he placed his initials on the labels, placed the two vials in a special evidence box addressed to the Department, sealed both ends of the evidence box with special tape, and placed the box in the mail. Method testified that when the box was received at the Department, it was sealed on both ends with that special tape, that the two vials of blood inside were intact, and that Fallowfield's name was on the labels of both vials and the accompanying paperwork.

As he argued to the trial court, Fallowfield reminds us that although his blood was drawn on January 24th, the Department reported that it received the evidence box on January 30th. However, it was undisputed that the evidence box containing the blood samples was sealed before mailing and was sealed when received by the Department. Fallowfield can only hypothesize that tampering might have been possible. Given the presumption of regularity in the handling of evidence by officials, the trial court did not abuse its discretion when it admitted the toxicology report.

b. State's Exhibits Concerning Previous Convictions

Fallowfield also argues that trial court abused its discretion when it admitted the State's four exhibits concerning his previous convictions. He argues that the exhibits "were admitted without sufficient evidence that there was any relationship between the records and Fallowfield." Fallowfield's Br. at 7. As Fallowfield correctly notes, we have held that in enhancement proceedings concerning recidivist conduct, "mere documentary evidence relating to a conviction of one with the same name as the defendant is not

sufficient to demonstrate that it was indeed the defendant who was convicted of the prior offense.” *Livingston v. State*, 537 N.E.2d 75, 77-78 (Ind. Ct. App. 1989).

Before the exhibits were offered into evidence, Trooper Smith had testified again. Smith testified that Fallowfield had identified himself by name and produced his driver’s license in that name; that the license provided his date of birth, signature, Social Security Number, and driver’s license number, as well as his picture, height, weight, eye and hair color; and that the latter matched Fallowfield’s appearance. When the State offered the first challenged exhibit, the BMV driving record, Fallowfield objected based on hearsay. The trial court noted Smith’s testimony providing Fallowfield’s driver’s license number, Social Security Number, and date of birth, and that this information was identical to that reflected in the BMV record. Thus, there was evidence of the relationship between the BMV record and Fallowfield.

The next exhibit is the certified May 10, 2000, judgment of conviction for operating a vehicle while intoxicated, a class D felony, and court records thereon. As the trial court found, the exhibit reflected a conviction of “a Daren Fallowfield, same spelling,” and the same “driver’s license number as provided by [Fallowfield] in a photo ID” given to Smith, as well as the same date of birth. (Tr. 91). This evidence established the relationship between Fallowfield and the May 2000 judgment.

The next exhibit is the certified July 8, 1998, judgment of conviction for operating a vehicle while intoxicated, a class A misdemeanor, and court records thereon. The trial court found that the exhibit recorded the adjudication of “a Daren Fallowfield” with the “same date of birth” and “same driver’s license number.” (Tr. 92, 93). Again, the

additional facts provide more than that a man of the same name was convicted on July 8, 1998.

Finally, the last challenged exhibit was the CCS reflecting a February 12, 1991, conviction of operating a vehicle while intoxicated, a class A misdemeanor, along with a statement from the county clerk indicating that additional records were no longer available. The trial court noted that factual paucity of the CCS. However, it found dispositive as to its admissibility the fact that the 1991 conviction was reflected in the BMV driving record – which had been admitted previously based upon that record’s matching Fallowfield’s name and other personal details.

The challenged exhibits do not simply establish “convictions of one with the same name as” Fallowfield. *Livingston*, 537 N.E.2d at 77. The evidentiary foundation for their admission was established by additional facts establishing their direct relationship to Fallowfield. Therefore, the trial court did not abuse its discretion when it admitted the exhibits.

2. Sufficiency of the Evidence

Fallowfield argues that there was only “documentary evidence relating to a conviction of one with the same name as the defendant,” citing *Livingston*, 537 N.E.2d at 77, and that therefore, the evidence is insufficient to sustain either his conviction for operating a vehicle while intoxicated with a previous conviction or his adjudication as an habitual substance offender. We cannot agree.

When addressing a claim of insufficient evidence, we “consider only the probative evidence and reasonable inferences supporting the verdict.” *McHenry v. State*, 820

N.E.2d 124, 126 (Ind. 2005). Thus, we “must affirm” if the probative evidence and reasonable inferences drawn therefrom could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. *Id.*

The probative evidence in the exhibits, and the reasonable inferences drawn therefrom, established that on January 24, 2004, Fallowfield operated a vehicle while intoxicated with “a previous conviction of operating while intoxicated within the five (5) years immediately preceding the occurrence,” a class D felony offense. Ind. Code § 9-30-5-3. Thus, sufficient evidence supports his conviction of operating a vehicle while intoxicated with a previous conviction. Further, the probative evidence in the exhibits, and the reasonable inferences drawn therefrom, established that Fallowfield had also “accumulated two (2) prior substance abuse convictions,” I.C. § 35-50-2-10, thereby making him an habitual substance offender. Therefore, sufficient evidence supports the convictions.

Affirmed.

BAKER, C.J., and ROBB, J., concur.