

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed by Rule 23(e)(1).

2012 IL App. (3d) 100823-U

Order filed May 2, 2012

---

IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT  
A.D., 2012

---

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 10th Judicial Circuit Peoria County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-10-0823
	)	Circuit No. 10-CF-224
JAMES F. CLARK,	)	Honorable
Defendant-Appellant.	)	Kim L. Kelly Judge, Presiding.

---

JUSTICE McDADE delivered the judgment of the court.  
Justice Wright concurred in the judgment.  
Justice Holdridge dissented.

---

**ORDER**

¶ 1 *Held:* Where defendant received emergency medical treatment and a blood test was ordered in the ordinary course of providing the medical treatment, rather than at the request of law enforcement and the test was performed by the laboratory routinely used by the hospital; the trial court did not abuse its discretion in admitting the blood test under section 11-501.4 of the Illinois Vehicle Code. Where the blood test indicated the specific amount of alcohol defendant had in his system, the jury's guilty verdict of aggravated driving with a blood alcohol level of 0.08 or more was not against the manifest weight of the evidence.

¶ 2 Following a jury trial, defendant, James F. Clark, was convicted of aggravated driving with a blood alcohol level of 0.08 or more 625 ILCS 5/11--501(d)(2)(C) (West 2010)). On appeal, defendant argues that: (1) the State failed to lay a proper foundation for the admission of his blood test results, and (2) he was not proven guilty beyond a reasonable doubt. We affirm.

¶ 3 **FACTS**

¶ 4 On March 9, 2010, the State charged defendant with aggravated driving with a blood alcohol level of 0.08 or more (625 ILCS 5/11--501(d)(2)(C) (West 2010)). The evidence adduced at trial established that on September 19, 2008, an accident occurred between an automobile and a motorcycle. Defendant stipulated that he was the driver of the motorcycle at the time of the accident. Defendant was seriously injured as a result of the accident. His girlfriend, Juanita Duckwiler, was a passenger on defendant's motorcycle and also suffered injuries as a result of the accident.

¶ 5 Bartonville police officer, Joseph Spear, testified that he arrived at the scene of the accident and found defendant lying on the ground near the motorcycle. Spear was unable to speak with defendant, however, as it appeared he was going into shock as a result of his injuries. Defendant was transported by ambulance to St. Francis hospital.

¶ 6 Spear testified that he arrived at the hospital around 10:00 p.m. At this point, defendant had already been evaluated and received treatment for some of his injuries. Defendant was still awaiting surgery, however, to repair his injured leg. Spear testified that he did not make it to defendant's room until "closer to 11:00 p.m." Upon arriving in the room, Spear spoke with defendant who admitted to consuming alcohol prior to the accident. Defendant also stated that he was unaware of the exact amount of drinks he consumed.

¶ 7 Spear also spoke to the doctor treating defendant. During their conversation, Spear learned that a blood test had been done by the hospital on defendant and the results indicated defendant had alcohol in his system. Spear then requested a breath or blood sample from defendant, which defendant refused. After refusing the test, defendant was taken to surgery. Spear testified that he never asked anyone at the hospital to take blood from defendant. There is no evidence in the record that any other law enforcement was present at the hospital or requested a blood draw.

¶ 8 Karen Miles testified she is a correspondence secretary at the hospital, which requires her to keep track of patients' medical records. Thus, she was familiar with defendant's medical records from September 19, 2008. Miles testified that she also reviewed defendant's records prior to trial. Miles identified People's Exhibit #2 (Exhibit #2) as defendant's lab results from his September 19, 2008, treatment at the hospital. The results indicated that defendant's blood was drawn at 9:58 p.m. and that his blood-alcohol level was greater than .08.

¶ 9 Miles testified that defendant's blood test was analyzed by the laboratory routinely used by the hospital. Miles, at one point, appeared to give conflicting testimony as to whether the tests were ordered during the regular course of defendant's treatment. She explained, however, that defendant's records were made as a memorandum or recording of the acts done by the doctors, nurses and technicians during defendant's treatment. She added that it was within the hospital's regular course of business to contemporaneously make records as events transpired at the time of treatment or within a reasonable amount of time thereafter.

¶ 10 The State moved to admit Exhibit #2. Defendant tendered a foundational objection. Upon hearing argument, the trial court admitted Exhibit #2 into evidence. Specifically, the court

stated:

"[T]he Court will say under the dictates of *People v. Olsen*, [388 Ill. App. 3d 704 (2009),] I think the State has now established a proper foundation that there was evidence that the defendant was receiving emergency medical treatment. The officer testified that's what he was sent there for. The officer's testimony and the time line the State has proffered is that the officer arrived there after the blood draw was taken, so that would certainly be after it was ordered even if it was instantaneous to that matter, and that this records clerk has told us that she can at least recognize the document as being prepared in the regular course and then to the Court as part of the treatment record as the Emergency Room record here, and the Court cannot find a reasonable basis to suggest that it wasn't done for any other reason than medical treatment emergency room treatment. So over your standing objection People's Exhibit 2 is admitted."

¶ 11 Ultimately, the jury found defendant guilty of aggravated driving with a blood alcohol level of 0.08 or more (625 ILCS 5/11--501(d)(2)(C) (West 2010)). The trial court sentenced defendant to three years' imprisonment and two years' mandatory supervised release. Defendant appeals.

¶ 12 ANALYSIS

¶ 13 Defendant first argues that the State failed to lay a proper foundation for the admission of

his blood test results under section 11-501.4 of the Illinois Vehicle Code (Vehicle Code) (625 ILCS 5/11-501.4 (West 2010)). Because the record reveals sufficient evidence to support the trial court's factual finding that defendant received emergency medical treatment, the blood test was ordered in the ordinary course of providing the medical treatment, rather than at the request of law enforcement; and the test was performed by the laboratory routinely used by the hospital; the trial court did not abuse its discretion in admitting the blood test under section 11-501.4 of the Illinois Vehicle Code.

¶ 14 Evidentiary rulings are within the trial court's discretion and will not be reversed absent a clear abuse of discretion. *People v. Olsen*, 388 Ill. App. 3d 704, 709 (2009). To the extent that defendant's argument implicates the requirements of section 11-501.4, it presents a question of statutory interpretation, which we review *de novo*. *Olsen*, 388 Ill. App. 3d at 709. Finally, we will accept any factual findings made by the trial court unless they are against the manifest weight of the evidence. *Olsen*, 388 Ill. App. 3d at 709.

¶ 15 Section 11-501.4 states, in pertinent part:

"Notwithstanding any other provision of law, the results of blood or urine tests performed for the purpose of determining the content of alcohol, other drug or drugs, or intoxicating compound or compounds, or any combination thereof, of an individual's blood or urine conducted upon persons receiving medical treatment in a hospital emergency room are admissible in evidence as a business record exception to the hearsay rule \*\*\* when each of the following criteria are met:

(1) the chemical tests performed upon an individual's blood or urine were ordered in the regular course of providing emergency medical treatment and not at the request of law enforcement authorities; [and]

(2) the chemical tests performed upon an individual's blood or urine were performed by the laboratory routinely used by the hospital." 625 ILCS 5/11--501.4 (West 2010)).

¶ 16 Here, Officer Spear testified that he was unable to speak with defendant at the scene of the accident due to defendant's severe injuries. Defendant was then taken to the hospital for emergency medical treatment. Spear testified that he arrived at the hospital around 10:00 p.m., but did not get an opportunity to speak to defendant until approximately 11:00 p.m. At that point, defendant had already received treatment for some of his injuries. Finally, Spear testified that he did not ask the hospital to draw or test defendant's blood.

¶ 17 Miles testified that she was familiar with defendant's medical records as a result of her employment as a correspondence secretary at the hospital. Miles identified Exhibit 2 as lab results from defendant's treatment at the hospital. Exhibit 2 shows that defendant's blood was drawn at 9:58 p.m., approximately two minutes before Spear even arrived at the hospital and a full hour before he was able to speak with defendant. While we acknowledge that Miles at one point stated that she was "not qualified" to answer whether the test was done in the regular course of providing treatment, she later reversed her position and testified that the test was in fact ordered during the regular course of defendant's treatment. Miles explained that upon review of Exhibit 2 she could tell that it was made as a memorandum or recording of the acts done by the

doctors, nurses and technicians during defendant's emergency treatment. She added that it was within the hospital's regular course of business to contemporaneously make records as events transpired at the time of treatment or within a reasonable amount of time thereafter. Finally, Miles testified that defendant's blood test was analyzed by the laboratory routinely used by the hospital.

¶ 18 In light of the above testimony, we cannot say that the trial court's factual finding that the test was performed by the laboratory routinely used by the hospital is against the manifest weight of the evidence. Nor can we say that the trial court's factual finding that defendant was receiving emergency medical treatment and that the blood test was ordered in the ordinary course of providing the medical treatment rather than at the request of law enforcement is against the manifest weight of the evidence. In coming to this conclusion, we note that "it was up to the trial court, sitting as the trier of fact, to draw reasonable inferences from<sup>1</sup> and resolve any conflict in the evidence." *Olsen*, 388 Ill. App. 3d at 711. Considering all of the evidence, the trial court's ruling that the State satisfied the foundational requirements to admit defendant's blood test results under section 11-501.4 was not an abuse of discretion. See *Olsen*, 388 Ill. App. 3d at 711.

¶ 19 We find support for our holding in the appellate court's recent decision in *Olsen*. The defendant in *Olsen* argued "that, in order for a blood test result to be admitted under section 11-501.4, a 'physician, nurse, or other person with actual knowledge of routine emergency room procedures and the treatment of the patient/defendant' must testify that the test was ordered in the regular course of providing emergency medical treatment." *Olsen*, 388 Ill. App. 3d at 710. In

---

<sup>1</sup>We note in this regard that defendant was scheduled for and actually underwent surgery. Blood testing would obviously be necessary for this reason alone.

rejecting this argument, the court stated:

"Here, regarding section 11-501.4's first requirement, Officer Williams testified that he called the paramedics to transport defendant to the hospital due to defendant's head injury, that he saw defendant being treated in the hospital's emergency room, and that defendant was admitted to the hospital. He also testified that he did not ask the hospital to draw defendant's blood. Beatingo testified that she was in charge of the hospital's clerical section and was familiar with its medical records. She identified exhibit 1 as lab test results from defendant's medical file, which were prepared by hospital personnel in the regular course of business. Beatingo testified that the document listed defendant's 'ED physician,' who was the doctor who saw him in the emergency room. We note that the exhibit lists 'Thomas J. Snyder' next to this notation. Beatingo also testified that the exhibit showed that Dr. Snyder reviewed the results. The above testimony was evidence that defendant was receiving emergency medical treatment and that the blood test was ordered in the ordinary course of providing the medical treatment rather than at the request of law enforcement.

Regarding the statute's second requirement, that the blood test be performed at the lab the hospital routinely used, Beatingo testified that, in the normal course of business, the hospital's lab

tested all blood, that defendant's blood test results looked like they came from the hospital's lab, and that the results were entered into his chart about one hour after he arrived at the hospital. We recognize that she also testified that she did not know where the blood was sent to be tested, but it was up to the trial court, sitting as the trier of fact, to draw reasonable inferences from and resolve any conflicts in the evidence. [Citation.] Considering all of the evidence, the trial court's ruling that the State satisfied the foundational requirements to admit defendant's blood test under section 11--501.4 was not an abuse of discretion." *Olsen*, 388 Ill. App. 3d at 710-11.

¶ 20 Defendant's remaining argument is that there was insufficient evidence to prove him guilty beyond a reasonable doubt of aggravated driving with a blood alcohol level of 0.08 or more. Defendant's sole argument on this issue is premised upon his previous argument that the blood test results were erroneously admitted. We have already rejected this argument. Thus, it follows that defendant's sufficiency-of-the-evidence argument is without merit.

¶ 21 Affirmed.

*People v. Clark*, 2012 IL App (3d) 100823-U

¶ 22 JUSTICE HOLDRIDGE, dissenting:

¶ 23 I dissent. As the majority notes, before the results of a blood alcohol concentration (BAC) test performed on the defendant may be admitted into evidence under section 11-501.4 of the Illinois Vehicle Code (the Code), there must be evidence that the test was "ordered *in the regular course of* providing emergency medical treatment and not at the request of law enforcement authorities." (Emphasis added.) 625 ILCS 5/11-501.4 (West 2010). In my view, there is no evidence in this case suggesting that the defendant's BAC test was ordered in the "regular course" of providing emergency medical treatment.

¶ 24 The majority, like the trial court, relies primarily upon Karen Miles's testimony to establish this fact. However, Miles's testimony merely establishes that the written report of the results of defendant's BAC test was made as a recording of the acts done by the doctors, nurses, and technicians during the defendant's treatment and that it was within the hospital's regular course of business to make such records at the time of treatment or within a reasonable amount of time thereafter. At most, this suggests that: (1) the BAC test was performed during the defendant's treatment; and (2) the results of the test were recorded in the regular course of business. However, it does not suggest (much less establish) that ordering BAC tests is part of the "regular course" of emergency medical treatment. Merriam-Webster's online dictionary defines "regular" as "constituted, conducted, scheduled, or done in conformity with established or prescribed usages, rules, or discipline." <http://www.merriam-webster.com/dictionary>. Similarly, the free internet dictionary defines "regular" as "[c]ustomary, usual, or normal," or "[i]n conformity with a fixed procedure, principle, or discipline." <http://www.thefreedictionary.com/regular>. In her testimony, Miles did not describe the protocol

of St. Francis Hospital regarding the ordering of BAC tests. Nor did she testify that BAC tests are customarily performed on patients who have injuries similar to the defendant's or who undergo the types of treatments that were performed on the defendant. In fact, at one point during her testimony, Miles conceded that she was "not qualified" to answer whether the defendant's BAC test was done in the regular course of providing treatment.

¶ 25 The majority also relies on Officer Spear's testimony. However, that too is unavailing. Officer Spear's testimony suggests that the defendant's BAC test was ordered and performed during his treatment and not at the request of law enforcement authorities. However, Officer Spear did not and could not testify whether ordering a BAC test was within the "regular course" of medical treatment. Only someone familiar with hospital procedures and medical treatment protocols could provide such testimony.

¶ 26 The majority's approach would effectively erase the word "regular" from the statute. Under the majority's reading, the State may satisfy the foundation requirement of section 11-501.4(1) merely by showing that the defendant's BAC test was "ordered *in the course of* providing emergency medical treatment." That is improper because we must presume that the legislature used the word "regular" for a reason. "The most reliable indicator of legislative intent is the language of the statute, given its plain and ordinary meaning." *People v. Jackson*, 2011 IL 110615, ¶ 12. Each word, clause, and sentence of the statute must be given a reasonable meaning, if possible, and should not be rendered superfluous. *Id.* The majority's approach disregards these principles.

¶ 27 I realize that, in *People v. Olsen*, 388 Ill. App. 3d 704, 710-11 (2009), the first district of our appellate court interpreted the foundation requirements of section 11-501.4 less stringently

and affirmed the admission of a BAC test on evidence similar to the evidence presented in this case. In so holding, the *Olsen* court rejected the defendant's argument that a "person with actual knowledge of routine emergency room procedures \*\*\* must testify that the test was ordered in the regular course of providing emergency medical treatment." I respectfully disagree with the conclusions of the *Olsen* court. In my view, unless some such testimony is required, the statutory term "regular" is rendered meaningless and superfluous.<sup>1</sup> It will not be difficult for the State to obtain such testimony. The State could simply call a witness familiar with hospital treatment protocols to testify that the BAC test performed on the defendant was, in fact, "ordered in the regular course of" providing emergency medical treatment. See, e.g., *People v. Spencer*, 303 Ill. App. 3d 861, 866-67 (1999) (holding that defendant's BAC test results were admissible under the statute where an ER physician testified that any person who came to the emergency room with a trauma automatically received the same "standard trauma blood work" (including a BAC test) that the defendant received as part of their treatment).

---

<sup>1</sup> The *Olsen* court declined to rely on some older decisions of our appellate court that arguably support my reading of the statute because it found that they were based on an earlier version of the statute which "emphasized the role of the physician." (From 1988 through 1994, the statute provided that blood alcohol tests could be admitted if, *inter alia*, the tests "were ordered by a physician" on duty at the hospital emergency room and were performed in the regular course of providing emergency medical treatment "in order to assist the physician in diagnosis or treatment[.]" Ill. Rev. Stat. 1989, ch. 95 ½, par. 11-501.4.)) However, even under the current version of the statute, *some* evidence of the "regular course of treatment" must be provided. 625 ILCS 5/11-501.4 (West 2010); see generally *Spencer*, 303 Ill. App. 3d at 866-67.