

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0161**

State of Minnesota,
Respondent,

vs.

Steven Paul Hess,
Appellant.

**Filed March 18, 2024
Affirmed
Gaïtas, Judge**

Nicollet County District Court
File No. 52-CR-20-242

Keith Ellison, Attorney General, Lydia Villalva Lijó, Assistant Attorney General, St. Paul, Minnesota; and

Michelle Zehnder Fischer, Nicollet County Attorney, St. Peter, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Mark D. Nyvold, Special Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Gaïtas, Judge; and Kirk,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Appellant Steven Paul Hess challenges his conviction for first-degree criminal vehicular homicide, arguing that the district court abused its discretion by allowing evidence that his blood sample—collected after the car accident that caused the victim’s death—was positive for methamphetamine and amphetamine. Hess contends that respondent State of Minnesota failed to establish a chain of custody for the blood sample because it failed to call as trial witnesses two of the three forensic scientists who handled the sample in the laboratory. We conclude that the district court did not abuse its discretion by overruling Hess’s chain-of-custody objection and allowing the evidence, and we affirm.

FACTS

On a cold afternoon in January 2020, an SUV driven by Hess veered into oncoming traffic on U.S. Trunk Highway 14 in Nicollet and collided head-on with a Chevrolet Malibu. The 23-year-old driver of the Malibu was pronounced dead at the scene.

This was Hess’s second traffic accident of the day. Several hours earlier he drove into a ditch. An officer responded to that accident, and Hess explained that he had driven into the ditch to avoid hitting another car. Because the officer did not observe signs that Hess was impaired, the officer allowed Hess to get back on the road.

After the fatal accident, Hess was transported to the hospital. There, he was questioned by a state patrol sergeant. Hess told the sergeant that he did not remember what happened. The sergeant observed that Hess had watery eyes, was slow to respond, and seemed lethargic. He asked Hess whether he had been drinking or using drugs. Hess

denied that he was under the influence of alcohol or drugs, but he admitted that he had used methamphetamine three days earlier.

Investigators obtained a search warrant for Hess's blood, and Hess provided a blood sample. The blood sample was sent to the Minnesota Bureau of Criminal Apprehension (BCA) for analysis. A forensic scientist with the BCA tested Hess's blood sample, which was positive for the presence of methamphetamine and amphetamine.

Based on the fatal accident, the state charged Hess with six offenses: (1) first-degree criminal vehicular homicide, operating a vehicle in a negligent manner with any amount of a Schedule I or II controlled substance present in the body;¹ (2) criminal vehicular homicide, operating a vehicle in a negligent manner while under the influence of a controlled substance; (3) criminal vehicular operation of a vehicle with any amount of a Schedule I or II controlled substance present in the body resulting in great bodily harm to another; (4) criminal vehicular operation of a vehicle while under the influence of a controlled substance resulting in great bodily harm to another; (5) impaired driving while having any amount of a Schedule I or II controlled substance; and (6) impaired driving while under the influence of a controlled substance.

Hess had a jury trial. At trial, Hess admitted that he was driving and caused the fatal accident. The primary issues at the trial were whether Hess had methamphetamine or amphetamine present in his body or was under the influence of a controlled substance at the time of the accident.

¹ Methamphetamine and amphetamine are defined as Schedule II controlled substances. See Minn. Stat. § 152.02, subd. 3(d)(1)-(2) (2018).

Multiple witnesses testified on behalf of the state, including eyewitnesses, police officers, the forensic scientist who detected methamphetamine and amphetamine in Hess's blood sample, the medical examiner, and an accident reconstruction expert. The forensic scientist testified that detectable levels of methamphetamine usually remain in the bloodstream for up to 24 hours after use, but she also acknowledged that, depending on dose and concentration, methamphetamine can be detected in blood even outside of the 24-hour window.

Hess testified that, when he drove into oncoming traffic, there was packed snow on the underside of his vehicle as a result of the first accident, which made steering difficult. He told the jury that he had used methamphetamine seven days before the accident, but he denied feeling any effects of the drug at the time of the accident. Hess testified that he did not remember telling the sergeant at the hospital that he had used methamphetamine three days before the crash. On cross-examination, the prosecutor asked Hess if he would agree that there was methamphetamine and amphetamine in his system, as reflected in the forensic scientist's testimony. Hess responded, "[I]t was in my system."

Following the presentation of evidence, the state dismissed the two counts of criminal vehicular operation of a vehicle, and the district court instructed the jury on the remaining four charges. The jury found Hess guilty of two crimes: (1) criminal vehicular homicide, negligent operation with a Schedule I or II controlled substance present in the body; and (2) driving while impaired, driving, operating, or being in physical control of a car with a Schedule I or II controlled substance present in the body. It found Hess not

guilty of the other two charges. The district court sentenced Hess to 78 months in prison for the criminal-vehicular-homicide conviction.

Hess appeals.

DECISION

Hess challenges the district court's decision allowing the state to present to the jury his blood-test results and the forensic scientist's testimony about those results. He contends that, because two other scientists in the BCA laboratory handled his blood sample but did not testify at trial, the state failed to establish the "chain of custody" for the blood sample. And he argues that because the state did not establish the chain of custody, the district court abused its discretion by admitting the evidence at trial over his objection.

The chain-of-custody rule requires "the prosecution to account for the whereabouts of physical evidence connected with a crime from the time of its seizure to its offer at trial." *State v. Johnson*, 239 N.W.2d 239, 242 (Minn. 1976); *see also* Minn. R. Evid. 901(a) ("The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims."). This rule "serves the dual purpose of demonstrating that (1) the evidence offered is the same as that seized, and (2) it is in substantially the same condition." *Johnson*, 239 N.W.2d at 242. It further ensures "that the items seized have not been exchanged for others more incriminating, and that they have not been contaminated or altered." *Id.* However, there is no "rigid formulation of what showing is necessary in order for a particular item of evidence to be admissible." *Id.* Instead, the chain-of-custody rule requires the district court to "be satisfied that, in all reasonable probability, the item offered

is the same as the item seized and is substantially unchanged in condition.” *Id.* “In the absence of any indication of substitution, alteration, or other form of tampering, reasonable probative measures are sufficient.” *Berendes v. Comm’r of Pub. Safety*, 382 N.W.2d 888, 891 (Minn. App. 1986) (quotation omitted); *see also State v. Hager*, 325 N.W.2d 43, 44 (Minn. 1982) (noting that chain-of-custody authentication is necessary when the item is not unique, but without indication of any forms of tampering, reasonable probative measures are sufficient to establish chain of custody). “Any speculation about tampering may well affect the weight of the evidence but does not affect its admissibility.” *State v. Hallmark*, 927 N.W.2d 281, 303 (Minn. 2019) (quotation omitted).

Chain-of-custody issues, which concern the admissibility of evidence, are within the district court’s discretion. *State v. Hollins*, 789 N.W.2d 244, 251 (Minn. App. 2010), *rev. denied* (Minn. Dec. 22, 2010). To prevail on such an issue on appeal, an appellant must establish that the district court’s chain-of-custody ruling was an abuse of discretion and that the ruling prejudiced the appellant. *Id.* “A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *State v. Guzman*, 892 N.W.2d 801, 810 (Minn. 2017).

Against this legal backdrop, we now turn to the factual circumstances underlying the district court’s decision to allow the blood-test results and the forensic scientist’s testimony regarding the results.

Hess objected to the blood-test evidence for the first time during the forensic scientist’s trial testimony. Before the objection, the forensic scientist described the BCA’s procedure for testing a blood sample once it is received in the laboratory: logging the

evidence into the laboratory information system, labeling the evidence with a bar code so that it can be tracked while in the laboratory, and transferring the evidence to a locked toxicology refrigerated vault.

After eliciting the forensic scientist's testimony about general testing procedures in the BCA laboratory, the prosecutor turned to the testing of Hess's blood sample. The prosecutor asked whether the BCA laboratory had used the same process for securing Hess's blood sample. Hess's counsel then objected on the ground of "speculation," and the district court allowed Hess's counsel to inquire to establish foundation for the testimony. Responding to defense counsel's questions, the forensic scientist testified that two other scientists in the laboratory tested Hess's blood sample before she did. Based on this testimony, Hess's counsel objected to any evidence concerning Hess's blood sample because the state had failed to establish the chain of custody for the sample. The district court took a recess to address the issue out of the jury's presence.

During the recess, the prosecutor stated that he intended to offer a chain-of-custody report from the BCA as an exhibit, which identified the two other scientists and showed the chain of custody. But Hess's counsel maintained the objection. Hess's counsel argued that the other two scientists who handled the blood sample were required to testify for any evidence regarding the blood sample to be admissible. Absent such testimony, counsel contended, there could be no assurance of the integrity of the evidence. Other than generally referencing "crime lab scandals," however, Hess's counsel did not identify any specific concern about the integrity of Hess's blood sample. The prosecutor responded

that, because the BCA performs most of the forensic testing in Minnesota, results from the BCA laboratory have “inherent reliability.”

After considering the caselaw provided by the parties, the district court ruled that the state had established that the blood-test evidence was sufficiently reliable to be admitted. But the district court also ruled that Hess could cross-examine the forensic scientist about the fact that two other scientists at the laboratory had handled the blood sample because, according to the district court, “that goes to weight.”

Before the jury, the forensic scientist then testified that, based upon her analysis, methamphetamine and amphetamine were present in Hess’s blood. Hess’s counsel elicited testimony regarding the work of the two other scientists who tested Hess’s blood sample.

On appeal, Hess does not allege that his blood sample was tampered with, substituted, or altered. Instead, he argues that the district court abused its discretion by allowing the blood-test evidence without requiring the other two scientists who tested the blood sample to testify at trial.

The law does not support this argument. Minnesota caselaw instructs that “the fact that everyone who handled the evidence did not testify is not fatal to establishment of a chain of custody.” *State v. Bellikka*, 490 N.W.2d 660, 664 (Minn. App. 1992), *rev. denied* (Minn. Nov. 25, 1992). In *Bellikka*, as here, the defendant asserted that the state failed to establish the chain of custody for physical evidence because two individuals who handled the evidence did not testify at trial. *Id.* at 663-64. We rejected that argument, determining that the district court did not abuse its discretion in admitting the evidence because it was sealed and labeled before being sent to the BCA, the BCA received the evidence in the

same condition, and the defendant had not offered any evidence of tampering. *Id.* at 664; *see also Johnson*, 239 N.W.2d at 242 (noting that the state need not negate “all possibility of tampering or substitution, but rather only that it is reasonably probable that tampering or substitution did not occur”).

Given the caselaw, and considering the evidence presented during Hess’s trial, we discern no abuse of discretion in the district court’s decision to admit the blood-test evidence. During the trial, the prosecutor elicited testimony showing the path of the blood sample from collection to testing at the BCA. An officer testified that he obtained a search warrant for a blood draw. A nurse at the hospital testified that she drew two vials of Hess’s blood, and the prosecutor presented the nurse’s certificate authenticating the blood draw. The officer testified that he personally mailed the vials of blood to the BCA for testing. Once the blood sample arrived at the BCA, the forensic scientist explained, it was labeled, securely stored, and tracked. The forensic scientist testified that, “When a sample is received in the toxicology section, both [vials] are evaluated to make sure the information matches. And then all testing, if possible, is conducted on a single tube.” Before the forensic scientist performed her test on the sample, one scientist tested some blood from one vial for alcohol. A second scientist removed some more blood from that same vial to conduct a presumptive test for drugs. And then, following the BCA’s secure procedures, the forensic scientist performed a confirmatory test on blood from the same vial, which revealed the presence of methamphetamine and amphetamine. We also observe that Hess made no credible argument that the blood sample had been altered. Accordingly, the

district court was within its discretion to overrule Hess's objection, to reject the argument that the testimony of the other two scientists was required, and to admit the evidence.

Affirmed.