



remember anything about the accident or the hours preceding it. She remembers only that she went to work that day, but she cannot remember what time she left work. Because of her memory loss, her counsel filed a motion to determine her fitness to stand trial, claiming that the memory loss rendered the defendant unable to assist in her defense. The circuit court found a *bona fide* doubt regarding the defendant's fitness and ordered an evaluation and a fitness hearing. Following a hearing before a jury, the defendant was found fit to stand trial.

The cause proceeded to a trial before a jury, which found the defendant guilty of both counts. A sentence was imposed and a judgment entered only on the charge of aggravated driving under the influence of alcohol. The defendant was sentenced to four years of imprisonment. She appeals, raising four issues: (1) whether the evidence presented at the fitness hearing was sufficient to establish that the defendant was fit to stand trial, (2) whether the circuit court erred in admitting into evidence the toxicology report of the defendant's blood-alcohol content where the State did not provide an adequate foundation, (3) whether the circuit court erred in allowing the State to reopen its case to produce additional evidence regarding the defendant's blood test results after the defendant had moved for a directed verdict at the close of the State's case, and (4) whether the defendant was proved guilty beyond a reasonable doubt where, other than the unreliable blood-alcohol test results, no evidence established that she had consumed alcohol. For reasons that follow, we affirm.

The following evidence was presented at the defendant's fitness hearing. Clinical psychologist Daniel Cuneo testified that the defendant's IQ test showed her functioning in the mildly mentally retarded range of intelligence. Her cognitive level is roughly that of a 10- to 11-year-old. Her thinking is very concrete or literal as opposed to abstract. She suffers from some depression. Cuneo concluded that the defendant was moderately brain-damaged as a result of the accident. Cuneo testified that a person with moderate brain damage is able to assist in her defense.

Cuneo testified that the defendant was oriented to person, place, and time; that she understood that she was charged with two offenses and that she would have to stand trial; that she would understand who all the people are in the courtroom, who her attorney is, and that he is there to help her; that she understood that if she were to be found guilty, she could be sentenced to prison; and that she understood the concepts of plea bargaining and probation.

Cuneo further testified as follows. With respect to her ability to assist in her defense, the defendant knew that she was to tell her attorney the circumstances surrounding the offense. The defendant communicates quite well and is able to get her point across. She understands when people talk to her, but at the level of a 10-year-old. However, the defendant has no memory of the events surrounding the car accident. She knows that she had been working on the day of the accident because she always worked weekends, but she has no independent memory of that day. She is, however, capable of communicating with her coworkers and employer and her friends and family to determine the events of that day. She is able to read the discovery in the case. Cuneo concluded that the defendant has a rational and factual understanding of the proceedings against her.

Cuneo concluded that, based upon a reasonable degree of psychological certainty, the defendant, though mentally ill, would be able to cooperate with her attorney in her defense. Cuneo explained as follows. Neither her depression nor her amnesia would prohibit her from assisting in her defense. Although she cannot independently remember the events surrounding the offense, she is capable of garnering that information from other sources. She can consult with and assist her attorney. The defendant's low IQ does not prevent her from assisting her attorney in her defense.

Dr. Cuneo found no evidence of malingering with regard to the defendant's memory loss. The memory loss had been consistent for more than two years. The memory loss is

permanent.

The defendant's mother, Marquita Jackson, testified that the defendant resides with her. Marquita further testified as follows. The defendant is not able to cook for herself because she forgets what she is doing. She cannot remember things very well and suffers from headaches. The defendant remembers nothing about the accident.

The defendant testified that she is 27 years of age and lives with her mother. She stated that she remembers nothing about the accident. She stated that she believes that she had been at work the day of the accident because that was her pattern but that she has no recollection. She testified that she does not remember what she did after getting off work and before the accident and does not even remember if she had been driving the car at the time of the accident.

The jury found the defendant fit to stand trial. The defendant argues on appeal that the evidence is insufficient to prove her fit to stand trial.

A defendant is presumed to be fit to stand trial. 725 ILCS 5/104-10 (West 2010). A defendant is unfit if, because of her mental or physical condition, she is unable to understand the nature and purpose of the proceedings against her or to assist in her defense. 725 ILCS 5/104-10 (West 2010). The State has the burden of proving, by a preponderance of the evidence, that the defendant is fit. *People v. Baugh*, 358 Ill. App. 3d 718, 732 (2005). A circuit court's ruling on the issue of fitness will be reversed only if it is contrary to the manifest weight of the evidence. *People v. Haynes*, 174 Ill. 2d 204, 226 (1996). A finding is contrary to the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented. *People v. Deleon*, 227 Ill. 2d 322, 332 (2008).

Dr. Cuneo testified that the defendant understood the nature and purpose of the proceedings against her, and the defendant does not contend otherwise. Accordingly, the

only question concerns the defendant's ability to assist in her own defense. The defendant argues that she was unable to assist in her defense because she had no memory of the accident and the hours leading up to it and was therefore unable to testify on her own behalf to rebut the evidence presented against her, unable to explain where she was and what she was doing in the hours leading up to the accident, and unable to explain why her vehicle crossed the median and collided with Dunavan's vehicle. Conceding that memory loss alone may not be sufficient to establish that she was unfit to stand trial, the defendant argues that her memory loss was compounded by the brain damage she suffered as a result of the accident, leaving her with cognitive loss and an IQ in the mentally retarded range.

In making the fitness determination, the court should consider whether the defendant has sufficient present ability to consult with defense counsel with a reasonable degree of rational understanding and whether the defendant has a rational and factual understanding of the proceedings. *People v. Baugh*, 358 Ill. App. 3d 718, 732 (2005). Dr. Cuneo testified that neither the defendant's memory loss nor her low IQ would prevent her from assisting in her defense. She was able to communicate effectively with her attorney and understood what was communicated to her. Cuneo testified that the defendant had a rational and factual understanding of the proceedings against her. He concluded that the defendant was able to assist in her own defense and that she was fit to stand trial. The circuit court's finding that the defendant was able to assist in her own defense and was fit to stand trial is not contrary to the manifest weight of the evidence.

The defendant next argues that the circuit court erred by admitting into evidence at her jury trial the toxicology report showing her blood-alcohol content because the State did not provide an adequate foundation to establish its accuracy and reliability. The State's case against the defendant was based in large part on a computer-generated toxicology report which indicated that the defendant's blood-alcohol content was 0.263. The report was

derived from a blood sample taken from the defendant during the course of her treatment in the emergency room following the accident. The defendant argues that the State failed to present any evidence regarding the actual withdrawal of the defendant's blood, thus failing to establish that the sample was not contaminated by the use of an alcohol swab and creating a test result too unreliable to be admissible. The defendant further argues that no witness testified to maintaining protective measures to ensure that the blood taken from the defendant was not changed or substituted and that there was no evidence establishing the operational reliability and accuracy of the machine used to test the blood. The defendant argues that the process and procedures used to withdraw and test the defendant's blood were inadequate to establish a reliable foundation for the admission of the test results.

A ruling on the admission of evidence will not be disturbed on appeal in the absence of an abuse of discretion by the circuit court and a showing of prejudice to the defendant. *People v. Lach*, 302 Ill. App. 3d 587, 593 (1998). An abuse of discretion will be found only where the circuit court's decision is arbitrary, fanciful, or unreasonable or where no reasonable person would take the view adopted by the court. *People v. Menssen*, 263 Ill. App. 3d 946, 952 (1994).

The defendant's blood-alcohol test result was admitted pursuant to section 11-501.4 of the Illinois Vehicle Code (625 ILCS 5/11-501.4 (West 2010)). That section provides that, in prosecutions for reckless homicide or driving under the influence of alcohol, the results of blood tests performed for the purpose of determining the content of alcohol of an individual's blood 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 the chemical tests were ordered in the regular course of providing emergency medical treatment and not at the request of law enforcement authorities and the chemical tests were performed by the laboratory routinely used by the hospital. The results of the chemical tests

are admissible into evidence regardless of the time that the records were prepared. 625 ILCS 5/11-501.4 (West 2010).

The purpose of section 11-501.4 is to ensure the reliability and integrity of the test results. *Lach*, 302 Ill. App. 3d at 594. Section 11-501.4 ensures trustworthiness and reliability by requiring the timely involvement of the physician actually treating the person whose blood test results are at issue. *People v. Hoke*, 213 Ill. App. 3d 263, 269-70 (1991). Records compiled for use in making life-and-death decisions carry an inherent degree of reliability. *People v. Lendabarker*, 215 Ill. App. 3d 540, 559 (1991). In enacting section 11-501.4 the legislature obviously concluded that if these blood-alcohol test results are sufficiently trustworthy and reliable for the emergency room physician to use and consider when deciding what treatment is appropriate, then those results are sufficiently reliable to be received into evidence at a later trial. *Hoke*, 213 Ill. App. 3d at 269-70.

Despite the plain language of this statute, the defendant argues that before the blood test results were admissible, the State was required and failed to present evidence of a chain of custody, that is, that adequate protective measures were taken to ensure that the blood taken from the defendant was not changed or substituted. The purpose of requiring evidence of a chain of custody is to negate the possibility of tampering or substitution and to connect demonstrative or real evidence to the defendant. *Lach*, 302 Ill. App. 3d at 593. To serve its purpose, the chain of custody must be of sufficient completeness to render it improbable that the item has been tampered with, exchanged, or contaminated. *Lach*, 302 Ill. App. 3d at 594. To establish a sufficient chain of custody, the State need not exclude every possibility of tampering. *Lach*, 302 Ill. App. 3d at 594. Rather, the State need only show that it took reasonably protective measures after the substance was seized and that it was probable the evidence was not changed in any important respect or substituted. *Lach*, 302 Ill. App. 3d at 594. Unless the defendant provides actual evidence of tampering or substitution, the State

need only establish the stated probability, and any deficiencies go to the weight and not the admissibility of the evidence. *Lach*, 302 Ill. App. 3d at 594.

In *Lach*, 302 Ill. App. 3d at 594, the appellate court clearly and conclusively declared that compliance with section 11-501.4 is sufficient in and of itself to establish the admissibility of blood test results and that additional chain of custody evidence is not required. See also *People v. Henderson*, 336 Ill. App. 3d 915, 922 (2003). By complying with the statute, the State demonstrates that reasonably protective measures have been taken to ensure that the blood taken from the defendant and tested in the hospital laboratory was not changed or substituted. *Lach*, 302 Ill. App. 3d at 594.

We believe that compliance with the statute is also sufficient in and of itself to establish the operational reliability and accuracy of the machine used to test the blood. The statute requires that the chemical tests be performed by the laboratory routinely used by the hospital. It is assumed that the laboratory routinely used by the hospital in diagnosing and treating patients is operationally reliable and accurate. Compliance with the statute therefore ensures the operational reliability and accuracy of the machine used to test the blood, and no other foundational evidence is required. As a foundation for the admissibility of the blood-alcohol test results under section 11-501.4, the State need not present any evidence regarding either the appropriateness of the test procedures or the good working condition of the machinery utilized. *People v. Crowe*, 232 Ill. App. 3d 955, 967-68 (1992).

The evidence in the case at bar was sufficient to establish that the defendant's blood was drawn and tested in compliance with section 11-501.4. The defendant concedes that the blood test was ordered in the regular course of providing emergency medical treatment and not at the request of law enforcement authorities. The physician who treated the defendant in the emergency room of the hospital following the car accident testified at the trial that she ordered the blood test during emergency medical treatment as a matter of routine. The

evidence also establishes that the blood was tested by the laboratory routinely used by the hospital. The defendant's treating physician in the emergency room testified at the defendant's trial that the hospital has its own laboratory to which blood was always sent for blood-alcohol testing. The defendant's blood was tested by this laboratory. No other foundational evidence is required for the admission of the blood test results. See *People v. Olsen*, 388 Ill. App. 3d 704, 710 (2009).

The defendant also argues that the State failed to present any evidence regarding the actual withdrawal of the defendant's blood, thus failing to establish that the sample was not contaminated by the use of an alcohol swab and creating a test result too unreliable to be admissible. However, the defendant's treating physician in the emergency room, Dr. Rice, testified that even if an alcohol swab was used to sterilize the defendant's arm prior to withdrawing blood, the first vial of blood drawn is thrown away and not tested, so the alcohol swab would not affect the test results. This is a sufficient foundation to establish that the defendant's blood was not contaminated by the use of an alcohol swab.

We conclude that the circuit court did not abuse its discretion in admitting the toxicology report of the defendant's blood-alcohol test result.

The defendant next argues that the circuit court abused its discretion in allowing the State to reopen its case to introduce additional evidence regarding the blood-alcohol test results after the defendant had moved for a directed verdict at the close of the State's case. During the State's case in chief, Dr. Rice testified that the defendant's toxicology report indicated that her blood-alcohol level was 0.263. Dr. Rice testified that this reflected the defendant's "whole blood" alcohol level. The toxicology report itself does not indicate whether the result is a "whole blood" level or a "serum blood" level. The State's toxicology expert, Dr. Long, testified that he believed that the toxicology report showed the defendant's "serum blood" alcohol level, which is typically higher than a whole-blood result. Although

there is a mathematical formula for converting serum-blood results to whole-blood results, no testimony regarding that formula was presented during the State's case in chief.

At the close of the State's case, the defendant moved for a directed verdict, arguing that the State had failed to prove the defendant's whole-blood-alcohol level, which is the standard unit required by the Illinois Vehicle Code in defining the offense with which the defendant was charged. 625 ILCS 5/11-501(a)(1) (West 2010). See *People v. Thoman*, 329 Ill. App. 3d 1216, 1218 (2002) (while the results of a blood serum analysis are admissible at a trial, the State must still prove beyond a reasonable doubt that the defendant's whole-blood-alcohol concentration was 0.08 or more). The State immediately made a motion to reopen its case to recall its expert, Dr. Long, to testify about the formula for converting serum-blood results to whole-blood results. The circuit court found that no prejudice would result to the defendant if the State were allowed to recall Dr. Long, that the defendant would not be surprised by Dr. Long's testimony, that the State's failure to present the evidence had been inadvertent, and that the evidence was important to the State's case. The State's motion to reopen its case to call Dr. Long was granted and the defendant's motion for a directed verdict was denied.

When recalled, Dr. Long testified that if the test result of 0.263 was a serum-blood test result, when converted to a whole-blood result, the defendant's blood-alcohol concentration would have been 0.222, still well over the legal limit of 0.08.

The defendant now argues that the circuit court abused its discretion in allowing the State to reopen its case to present the testimony of Dr. Long.

A circuit court has discretion to allow the State to reopen its case in appropriate circumstances even where the defendant has made a motion for a directed verdict and even where the evidence sought to be presented is offered to establish the very facts essential for a conviction. *People v. Berrier*, 362 Ill. App. 3d 1153, 1166 (2006). The exercise of that

discretion will not be reversed on appeal absent a clear showing of abuse. *Berrier*, 362 Ill. App. 3d at 1163.

The defendant in the case at bar was neither surprised nor prejudiced by Dr. Long's testimony on recall. The defendant was well aware of the requirement that blood-alcohol test results be presented in terms of whole blood and could not have been surprised that Dr. Long was able to testify about how to convert the results from serum blood to whole blood. The defendant knew that this was an element of the State's case, and she had an adequate opportunity to prepare for Dr. Long's testimony, to cross-examine him, and even to get her own expert if necessary. Given the fact that both the whole-blood test results and the serum-blood test results were well above the legal limit, it cannot be argued that the State made a calculated decision not to introduce evidence of the whole-blood-alcohol concentration; the failure to introduce this evidence could only have been the result of inadvertence or innocent mistake. The evidence of the defendant's whole-blood-alcohol concentration was of the utmost importance to the State's case, and no cogent reason exists to justify denying the State's motion to reopen its case. Accordingly, the circuit court did not abuse its discretion in granting the State's motion to reopen its case to present the testimony of Dr. Long regarding the defendant's whole-blood-alcohol concentration.

Finally, the defendant argues that the State failed to prove the defendant guilty beyond a reasonable doubt because a reasonable doubt exists regarding the reliability and accuracy of the results of her blood-alcohol test. She relies on her argument, which we have already rejected, that insufficient foundational evidence was presented by the State regarding who drew the defendant's blood and whether an alcohol swab was used, whether adequate protective measures were taken to ensure that the blood sample was not contaminated or substituted, and whether the instrument used to test the blood was working properly. Because the blood was drawn and tested during the defendant's emergency medical treatment

in compliance with section 11-501.4 of the Illinois Vehicle Code, the result of the blood-alcohol test is inherently reliable. No evidence was introduced of its unreliability or inaccuracy.

The defendant also argues that a reasonable doubt exists concerning the blood test results, arguing that her expert witness testified that the result is unreliable because the defendant's blood might have contained a high level of lactate due to trauma and the administration of medication, which tends to result in false positive results for alcohol in the blood. The defendant's expert further testified that the use of an alcohol swab might have altered the result of the test, making it unreliable.

We note, however, that Dr. Rice, the defendant's treating physician, testified that adding lactate to the blood does not affect the blood-alcohol test result. She testified that it does not change the level of alcohol in blood and that if it had any result, it would lower the alcohol concentration.

The defendant further argues that without the results of the blood-alcohol test, there is no other evidence in the record that the defendant had consumed any alcohol prior to the accident or that she was driving under the influence at the time of the accident. However, in order to prove the defendant guilty of driving under the influence of alcohol, the State need only prove that the defendant's blood-alcohol concentration was 0.08 or more, which can be established through the results of the blood-alcohol test.

A criminal conviction will not be set aside unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). It is not the function of a reviewing court to retry the defendant or substitute its judgment for that of the jury. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). The relevant question is whether, after viewing all the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements

of the crime beyond a reasonable doubt. *Collins*, 106 Ill. 2d at 261. The weight to be given the witnesses' testimony, the credibility of the witnesses, the resolution of inconsistencies and conflicts in the evidence, and reasonable inferences to be drawn from the testimony are the responsibility of the trier of fact. *Sutherland*, 223 Ill. 2d at 242.

The State presented evidence in the form of a blood-alcohol test result that the defendant's blood-alcohol concentration shortly after the accident was 0.22, well above the legal limit of 0.08. Any deficiencies the defendant points to in the test result go to its weight, and it is for the jury to weigh the evidence. Similarly, to the extent the evidence regarding the blood test result was conflicting, it was up to the jury to resolve those conflicts.

Based on the evidence presented, we cannot conclude that no rational trier of fact could have found the essential elements of driving under the influence of alcohol beyond a reasonable doubt. Accordingly, we affirm the defendant's conviction.

For the foregoing reasons, the judgment of the circuit court of St. Clair County is affirmed.

Affirmed.