

Case Summary

Michael Rogers appeals his convictions for Class A misdemeanor operating a vehicle with a blood alcohol content (“BAC”) of .15 or more and Class A misdemeanor operating a vehicle while intoxicated (“OWI”). We affirm.

Issue

The sole issue before us is whether the trial court properly admitted the results of a BAC Datamaster test performed on Rogers.

Facts

Sometime after midnight on March 12, 2007, Indiana State Police Trooper Charles Boller was on duty in Putnam County when a vehicle turned directly in front of him, without signaling, into a driveway. Trooper Boller, who had to slam on his brakes to avoid an accident, got out of his car to tell the driver to be more careful. When Trooper Boller approached the driver, Rogers, he began to suspect that Rogers was intoxicated. After Rogers failed several field sobriety tests and submitted to a portable breath test, Trooper Boller read him the implied consent law and offered a chemical BAC test. Rogers agreed to take the test.

Trooper Boller transported Rogers to the Putnam County Jail, where a certified BAC Datamaster was located. Trooper Boller, who is certified to operate a BAC Datamaster, began observing Rogers at 12:45 a.m. The ticket for the first test Trooper Boller administered to Rogers, however, indicated that it was given at 0:16, or 12:16 a.m., on March 12, 2007. The first test failed to produce a valid result, so Trooper Boller

administered a second one. The ticket for the second test indicated that it was given at 0:41, or 12:41 a.m., on March 12, 2007. Trooper Boller wrote on both tickets, however, that he had begun observing Rogers at 12:45 a.m. Indiana had switched to Daylight Saving Time on March 11, 2007, meaning that time officially had “sprung forward” one hour the night before these tests were administered.

The second BAC Datamaster test indicated Rogers had a BAC of .20. The State charged Rogers with Class A misdemeanor operating a vehicle with a BAC of .15 or more and Class A misdemeanor OWI. Rogers moved to suppress the results of the BAC Datamaster, which the trial court denied. Rogers proceeded to trial and renewed his objection to the BAC Datamaster test results. Trooper Boller testified that the first and second BAC Datamaster tests actually were given at 1:16 and 1:41 a.m., not 12:16 and 12:41 a.m. Rogers was found guilty as charged and now appeals.¹

Analysis

Rogers challenges the admissibility of the BAC Datamaster results because of the discrepancy on the tickets regarding the time the tests were administered. “The admissibility of evidence is within the sound discretion of the trial court, and we will not disturb its decision absent a showing that the court abused that discretion.” Gibson v. State, 777 N.E.2d 87, 89 (Ind. Ct. App. 2002), trans. denied. In a criminal prosecution, “breathalyzer test results are admissible only if the test operator, test equipment, chemicals used in the test, if any, and the test techniques have been approved by the

¹ The trial court stayed execution of Rogers’s sentence pending resolution of this appeal.

department of toxicology.” Id. Generally, failure to follow the techniques renders the breath test’s results inadmissible. Id.

The relevant regulation governing use of a BAC Datamaster states in part:

- (1) The person to be tested must:
 - (A) have had nothing to eat or drink;
 - (B) not have put any foreign substance into his or her mouth or respiratory tract; and
 - (C) not smoke;within twenty (20) minutes before the time a breath sample is taken.
- (2) The green LED on the instrument display must be glowing.
- (3) Depress the run button, enter the password, and insert the evidence ticket or verify that the external printer is ready to use.
- (4) Follow the displayed request for information, and enter the information by the keyboard.
- (5) When “please blow” appears on the display, place a new mouthpiece in the breath tube. The subject must deliver a breath sample.
- (6) When the printer stops, remove the evidence ticket or report sheet from the printer and check the report printed on the evidence ticket or report sheet for the numerical ethanol subject sample and correct date and time. . . .

260 Ind. Admin. Code 1.1-4-8. Rogers notes that both BAC Datamaster tickets failed to record the correct time the samples were taken. Furthermore, it appears that Trooper

Boller did not review the ticket to make sure it recorded the correct time. The discrepancy was first brought to his attention at a July 2007 deposition.

Our supreme court addressed a similar question regarding a BAC Datamaster ticket with an incorrect time stamp in State v. Cioch, 908 N.E.2d 1154 (Ind. 2009). There, as here, the test was administered and the ticket printed soon after a Daylight Saving Time switch.² The officer administering the test in that case noted at the time that the BAC Datamaster's clock apparently had not been adjusted for Daylight Saving Time, and another officer wrote in his incident report the actual time that the test was administered and the difference between the actual time and the time noted on the BAC Datamaster ticket.

Relying primarily on two cases from Missouri, our supreme court held that the inaccurate time stamp raised “only a de minimis concern about the accuracy of the test results” and that the results were admissible. Cioch, 908 N.E.2d at 1156-57. It noted that the fact someone forgot to adjust the date or time on a machine is irrelevant to the issue of whether the machine functioned properly. Id. at 1156 (quoting Bradford v. Director of Rev., 735 S.W.2d 208, 210 (Mo. Ct. App. 1987)). Additionally, “the ‘time and date component of the machine is a separate component from that of the sample collection portion of the unit’ and the ‘machine will still function properly even if the time and date are incorrect.’” Id. (quoting Stuhr v. State, 766 S.W.2d 446, 449 (Mo. 1989)).

² The test in Cioch occurred on November 10, 2007.

Rogers argues that his case is distinguishable from Cioch because the officers there immediately noted that the time display on the BAC Datamaster was inaccurate because of the recent Daylight Saving Time switch, while here Trooper Boller did not notice any time discrepancy issues until it was brought to his attention in a deposition several months after the tests were administered.³ We agree that Trooper Boller ought to have ensured that the tickets displayed the correct date and time at the time they were printed; such a step is required by the regulation. We also note that the date and time on a BAC Datamaster ticket is not wholly irrelevant. It can, when coupled with the officer's written notation of when observation of the defendant began, provide documentary evidence that the defendant's mouth was free of foreign objects for the required twenty minutes before the test was administered.

Still, we cannot say this error creates any more of a concern about the accuracy of the test results than the “de minimis” time stamp inaccuracy that was present in Cioch. It certainly is reasonable to infer—indeed it may be the only reasonable inference—that the discrepancy here was due to the recent Daylight Saving Time switch. Trooper Boller testified as to the actual time the tests were administered—1:16 and 1:41 a.m.—as well as that he had observed Rogers for the required twenty minutes before each test was given. He also wrote on both tickets that he had begun observing Rogers at 12:45 a.m. This

³ In fact, the State in Cioch had argued that the officers “followed each of the required steps for administering the test and that the procedures require only that the operator to [sic] check the evidence ticket for the correct date and time and are silent as to what course of action the operator should take if an anomaly occur[s].” Cioch, 908 N.E.2d at 1156. The State cannot make such an argument here because Trooper Boller did not contemporaneously ensure that the tickets displayed the correct date and time.

provides further indication that the tests occurred after that time, rather than at 12:16 and 12:41 a.m. Given all of this information, we conclude the trial court did not abuse its discretion in admitting the BAC Datamaster test results.

Conclusion

The trial court properly admitted the BAC Datamaster test results into evidence against Rogers. We affirm his convictions.

Affirmed.

MATHIAS, J., and BROWN, J., concur.