

**Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.**

ATTORNEY FOR APPELLANT:

**PAUL D. STANKO**  
Crown Point, Indiana

ATTORNEYS FOR APPELLEE:

**STEVE CARTER**  
Attorney General of Indiana

**ARTURO RODRIGUEZ II**  
Deputy Attorney General  
Indianapolis, Indiana

---

**IN THE  
COURT OF APPEALS OF INDIANA**

---

BRUCE SCOTT HOPPAS,  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
Appellee-Plaintiff.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

No. 57A03-0701-CR-43

---

APPEAL FROM THE NOBLE SUPERIOR COURT  
The Honorable Michael J. Kramer, Judge  
Cause No. 57D02-0503-CM-217

---

**September 20, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**KIRSCH, Judge**

Bruce Scott Hoppas was convicted after a jury trial of operating a vehicle while intoxicated<sup>1</sup> as a Class A misdemeanor and adjudicated to be an habitual substance offender.<sup>2</sup>

He appeals, raising two issues, which we restate as:

- I. Whether the trial court committed fundamental error when it allowed the results of a portable breath test (“PBT”) to be admitted into evidence; and
- II. Whether sufficient evidence was presented to support Hoppas’s conviction for operating a vehicle while intoxicated.

We affirm.

### **FACTS AND PROCEDURAL HISTORY**

On June 14, 2003, at approximately 2:50 a.m., Deputy Michael Duncan of the Noble County Sheriff’s Department and Officer Brian Kreager of the Albion Police Department responded to a battery complaint outside of the Hilltop Tavern in Albion, Indiana. While Deputy Duncan was interviewing the victim, he saw Hoppas drive into the parking lot. Hoppas exited his vehicle and began to walk toward the bar. Hoppas walked with a “staggering gait” and was unable to walk in a straight line. *Tr.* at 62. When Hoppas reached the bar, he had difficulty opening the door, taking three attempts to do so. Deputy Duncan told Officer Kreager to watch for Hoppas to come out of the bar. About five minutes later, Hoppas left the bar and walked toward his vehicle. Deputy Duncan walked over to Hoppas and told him to stop. Deputy Duncan asked Hoppas why he was at the bar, and Hoppas responded that he stopped to use the restroom. *Id.* at 66. As Hoppas was speaking, Deputy

---

<sup>1</sup> See IC 9-30-5-1.

Duncan smelled the odor of alcohol on his breath and asked him if he had consumed any drinks while inside of the bar. *Id.* at 66-67. Hoppas reiterated that he had only gone in to use the restroom and had come right back out. *Id.* at 67. While speaking with Hoppas, Deputy Duncan noticed that his eyes were glassy and red-rimmed, he had slurred speech, and he had difficulty maintaining his balance, in addition to the smell of alcohol.

Because of these things, Deputy Duncan offered Hoppas a PBT, which Hoppas agreed to take. Before the PBT was administered, Hoppas stated that he did not think that he would pass the test. *Id.* at 110. The results of the PBT indicated that Hoppas's blood alcohol level was .20. Hoppas was arrested and taken to the Noble County Sheriff's Department. At the Sheriff's Department, Hoppas failed three field sobriety tests and submitted to a breathalyzer test, which showed his blood alcohol level to be .17.

The State charged Hoppas with operating a vehicle while intoxicated as a Class A misdemeanor and with being a habitual substance offender. A jury trial was held on August 31, 2006. During the trial, both officers testified that Hoppas appeared intoxicated before entering the bar. On direct examination, Officer Kreager was asked questions regarding the PBT, and he stated that Hoppas's test results showed that he had a .20 blood alcohol level. *Id.* at 110-11. On cross-examination, Officer Kreager was asked if the officers ever went inside the bar to determine whether Hoppas drank anything while he was inside of the bar. *Id.* at 112. Officer Kreager replied that they had not because Hoppas told them that he went in to use the restroom. *Id.* Officer Kreager testified that this was consistent with the time

---

<sup>2</sup> See IC 35-50-2-10.

frame. *Id.* On re-direct, the prosecutor asked Officer Kreager, “[You] routinely accept admissions from criminals don’t you,” to which he responded, “Absolutely.” *Id.* at 113. No objections were made to either the reference to the PBT results or to the prosecutor’s use of the word “criminals.” At the conclusion of the trial, the jury found Hoppas guilty as charged. He now appeals.

## **DISCUSSION AND DECISION**

### **I. Admission of PBT Results**

For the results of a breath test to be admissible, the test operator, test equipment, chemicals used in the test, and the techniques used in the test must have been approved by the Department of Toxicology. IC 9-30-6-5(d); *Smith v. State*, 751 N.E.2d 280, 283 (Ind. Ct. App. 2001), *trans. denied*. As a general rule, PBT results are not admissible at trial because the test has not been approved by the Department of Toxicology. *Smith*, 751 N.E.2d at 283; *State v. Johnson*, 503 N.E.2d 431, 433 (Ind. Ct. App. 1987), *trans. denied*. Hoppas argues that the trial court erred when it allowed his PBT results to be admitted into evidence. He concedes that he did not object during trial to the admission of the PBT results, but now claims that it was fundamental error for the trial court to admit such evidence.

A specific and timely objection must be made to preserve an error in the admission of evidence for review. *Tate v. State*, 835 N.E.2d 499, 505 (Ind. Ct. App. 2005), *trans. denied*. In the absence of such an objection, a claim regarding the admission of evidence is not available on appeal unless it constituted fundamental error. *Troxell v. State*, 778 N.E.2d 811, 814 (Ind. 2002). Fundamental error is extremely narrow and only applies when the error constitutes a substantial, blatant violation of basic principles, which renders the trial unfair

and deprives the defendant of fundamental due process.” *Burnside v. State*, 858 N.E.2d 232, 241 (Ind. Ct. App. 2006); *Tate*, 835 N.E.2d at 505. “To qualify as fundamental error, ‘an error must be so prejudicial to the rights of the defendant as to make a fair trial impossible.’” *Tate*, 835 N.E.2d at 505 (quoting *Merritt v. State*, 822 N.E.2d 642, 643 (Ind. Ct. App. 2005)). In determining whether a claimed error made a fair trial impossible, a reviewing court considers whether the resulting harm or potential for harm is substantial. *Pope v. State*, 737 N.E.2d 374, 380 (Ind. 2000).

Here, there is no indication that Hoppas was unfairly prejudiced by the admission of the PBT results. Although the PBT was mentioned several times in the officers’ testimony to show how their investigation proceeded, the actual results of the PBT were only mentioned twice briefly. Additionally, Hoppas actually relied upon the PBT as a large part of his defense by arguing that the high result was caused because Hoppas had consumed a drink while inside of the bar. The evidence supporting Hoppas’s conviction consisted of the officers’ testimony that Hoppas was staggering after he exited his vehicle, had difficulty opening the door of the bar, had the odor of alcohol on his breath when the officers spoke to him, had glassy, red-rimmed eyes, had slurred speech, had difficulty maintaining balance, failed three field sobriety tests, and had a blood alcohol level of .17 after taking the breathalyzer. We conclude that the admission of the PBT results had a minimal impact on the jury, did not deny Hoppas fundamental due process, and therefore, was not fundamental error.<sup>3</sup>

---

<sup>3</sup> Hoppas also seems to contend that the prosecutor’s use of the word “criminals” on the re-direct examination of Officer Kreager constituted fundamental error. This contention is not supported by citation to

## II. Sufficiency of the Evidence

Our standard of review for sufficiency claims is well settled. We do not reweigh the evidence or judge the credibility of the witnesses. *Dickenson v. State*, 835 N.E.2d 542, 551 (Ind. Ct. App. 2005), *trans. denied*. We will consider only the evidence most favorable to the judgment together with the reasonable inferences to be drawn therefrom. *Id.*; *Robinson v. State*, 835 N.E.2d 518, 523 (Ind. Ct. App. 2005). We will affirm the conviction if there is sufficient probative evidence to support the judgment of the trier of fact. *Dickenson*, 835 N.E.2d at 552; *Robinson*, 835 N.E.2d at 523.

Hoppas argues that the evidence was insufficient to support his conviction for operating a vehicle while intoxicated. He contends this is because, although the officers observed him staggering before he entered the bar, all of the other evidence of his intoxication came after he exited five minutes later, which he claims was enough time for him to consume a double shot of Jack Daniels as he testified at trial.

In order to convict Hoppas of operating a vehicle while intoxicated as a Class A misdemeanor, the State was required to prove that he operated a vehicle with an alcohol concentration equivalent to at least fifteen-hundredths (.15) gram of alcohol per either 100 milliliters of his blood or 210 liters of his breath. IC 9-30-5-1(b). The evidence presented showed that the officers observed Hoppas drive into the parking lot of the Hilltop Tavern, exit his vehicle, and walk towards the bar with a “staggering gait” and unable to walk in a

---

any authority. “A party waives an issue where the party fails to develop a cogent argument or provide adequate citation to authority and portions of the record.” *Davis v. State*, 835 N.E.2d 1102, 1113 (Ind. Ct. App. 2005), *trans. denied* (2006); *see also* Ind. Appellate Rule 46(A)(8). Therefore, Hoppas has waived this argument.

straight line. *Tr.* at 62. When Hoppas reached the door of the bar, he attempted to open the door three times before entering. After approximately five minutes, Hoppas emerged from the bar and walked back to his vehicle with a “staggering gait.” *Id.* at 64. When Deputy Duncan spoke with Hoppas, he smelled the odor of alcohol on his breath and observed that Hoppas had glassy, red-rimmed eyes, slurred speech, and difficulty maintaining his balance. Later, after Hoppas was taken to the Noble County Sheriff’s Department, he failed three field sobriety tests and registered a .17 blood alcohol level after taking a breathalyzer test. We conclude that sufficient evidence was presented to support Hoppas’s conviction for operating a vehicle while intoxicated as a Class A misdemeanor. His argument to the contrary is merely a request to reweigh the evidence, which we cannot do. *Dickenson*, 835 N.E.2d at 551.

Affirmed.

ROBB, J., and BARNES, J., concur.