MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Andrew Thomas Craney,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

January 17, 2023

Court of Appeals Case No.
22A-CR-1697

Appeal from the
Hamilton Superior Court

The Honorable
David K. Najjar, Judge

Trial Court Cause No.
29D05-1907-F6-5882

Vaidik, Judge.

Case Summary

[1] Andrew Thomas Craney was convicted of Level 6 felony operating a vehicle with an ACE of 0.08 or more. He now appeals, arguing the trial court erred in admitting his breath-test results and that without the results, the evidence is insufficient to support his conviction. We affirm.

Facts and Procedural History

[2] In the early morning hours of July 18, 2019, Westfield Police Department Officer Wade Burtron pulled over Craney because the truck he was driving did not have a license plate. When Officer Burtron spoke to Craney, he smelled alcohol and saw that Craney's eyes were bloodshot. Officer Burtron asked Craney if he had anything to drink, and Craney said he had "one drink." Tr. p. 85. Officer Burtron eventually asked Craney to exit the truck so that he could perform field-sobriety tests. At that point, Officer Burtron again "noticed a strong odor of alcoholic beverage." *Id.* at 86. When Officer Burtron told Craney about the strong odor, Craney admitted that he had more than one drink, stating that "he was drinking an alcoholic beverage about every half hour for who knows how long." *Id.* Officer Burtron performed three field-sobriety tests; Craney failed one and passed two. As Officer Burtron prepared to administer a portable breath test, Craney told him that he knew police officers had discretion and that Officer Burtron should use his discretion because there were "people more drunk" than him driving. *Id.* at 96. After the portable breath test, Officer Burtron asked Craney if he would submit to a chemical breath test, and Craney

agreed. Officer Burtron transported Craney to jail and administered a chemical breath test, which showed that his ACE was 0.119. *See* Ex. 3.

[3] The State charged Craney with operating a vehicle while intoxicated as a Class C misdemeanor, operating a vehicle while intoxicated as a Level 6 felony based on a prior conviction, operating a vehicle with an ACE of 0.08 or more as a Class C misdemeanor, and operating a vehicle with an ACE of 0.08 or more as a Level 6 felony based on a prior conviction. A bifurcated jury trial was held in May 2022.

[4] During trial, Craney objected to and moved to suppress the results of the chemical breath test. He argued that the Indiana Administrative Code ("IAC") called for only two breath samples and that because a third sample was required from him, an error necessarily occurred. A suppression hearing was held outside the presence of the jury. Officer Burtron testified that he was trained to operate the Intox EC/IR-II breath-test machine and that he was familiar with the requirements of the IAC. He explained that generally only two samples are required but a third sample was required in Craney's case because the results of the first two samples deviated by more than 0.02. *See* Ex. 4 (setting forth the procedures under the IAC for using the Intox EC/IR-II breath-test machine, including when a third sample is required because the first two samples deviate by more than 0.02). Officer Burtron testified that after Craney provided the third sample, the machine generated a print-out showing that the results were 0.098 (taken at 2:51 a.m.), 0.119 (taken at 2:55 a.m.), and 0.119 (taken at 2:59 a.m.). *See* Ex. 3. According to Officer Burtron, because the second and third

results did not deviate by more than 0.02, the results were valid. The trial court denied Craney's motion to suppress and admitted the results of the chemical breath test.

[5] The jury found Craney not guilty of Class C misdemeanor operating a vehicle while intoxicated but guilty of Class C misdemeanor operating a vehicle with an ACE of 0.08 or more. Craney then stipulated to his prior conviction, and the trial court entered judgment of conviction for Level 6 felony operating a vehicle with an ACE of 0.08 or more. The court sentenced Craney to 545 days, with 60 days executed, 485 days suspended, and 365 days of probation.

[6] Craney now appeals.

Discussion and Decision

[7] Craney frames his argument as a challenge to the sufficiency of the evidence, but his real argument is that the trial court erred in admitting his breath-test results and that without the results, the evidence is insufficient to support his conviction. Trial courts have broad discretion in ruling on the admissibility of evidence. *Blount v. State*, 22 N.E.3d 559, 564 (Ind. 2014).

[8] Craney argues the trial court should not have admitted his breath-test results because they are "unreliable on their face." Appellant's Br. p. 8. He claims the second and third results should not have been identical:

> Because the body of a person who has imbibed is always engaging in either the absorption or elimination of alcohol, it

> seems statistically unlikely that an accurate instrument would give identical readings four minutes apart.

Id. Craney, however, did not make this argument below and does not support it with any authority on appeal. The results are not unreliable on this basis.

[9] Craney next argues his breath-test results are unreliable because Officer Burtron testified about when a third sample is required and the 0.02 rule from his "mind and experience" but not "directly from" the IAC. *Id.* During the suppression hearing, the State admitted Exhibit 4, which detailed the procedures required by the IAC. On appeal, Craney cites no IAC provision to dispute the procedure that was followed here. The results are not unreliable on this basis either. The trial court did not abuse its discretion in admitting Craney's breath-test results, and thus his sufficiency challenge fails. We therefore affirm Craney's conviction for Level 6 felony operating a vehicle with an ACE of 0.08 or more.[1]

[10] Affirmed.

Riley, J., and Bailey, J., concur.

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[1] Craney also contends his sentence is inappropriate. His argument, however, is just one sentence and cites neither relevant law nor portions of the record. *See* Appellant's Br. p. 9. The State responds that Craney has waived this argument for "failing to present a cogent argument . . . demonstrat[ing] how the nature of his offense or his character renders his sentence inappropriate." Appellee's Br. p. 8. Notably, Craney did not file a reply brief to dispute the State's claim. We agree with the State that Craney has waived this argument.