

**IN THE COURT OF APPEALS OF IOWA**

No. 6-317 / 05-1107  
Filed August 9, 2006

**STATE OF IOWA,**  
Plaintiff-appellant,

**vs.**

**AARON BEUFORD STOHR,**  
Defendant-Appellee.

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Appeal from the Iowa District Court for Hancock County, John Mackey,  
Judge.

Following the granting of discretionary review, the State requests reversal  
of a district court order suppressing the results of a DataMaster breath test  
administered to the defendant. **REVERSED AND REMANDED.**

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney  
General, and Karen R. Kaufman Salic, County Attorney, for appellant.

Richard Bartolomei of Bartolomei & Lange, P.L.C., Des Moines, for  
appellee.

Considered by Vogel, P.J., and Zimmer and Vaitheswaran, JJ.

**ZIMMER, J.**

Following the granting of discretionary review, the State seeks reversal of the district court's ruling granting the defendant's motion to suppress the results of a DataMaster breath test administered to Aaron Beuford Stohr. We reverse and remand.

***I. Background Facts & Proceedings***

At approximately 1:15 a.m. on July 4, 2004, Iowa State Trooper Joe Scott observed a vehicle traveling over the speed limit. Trooper Scott stopped the vehicle. Stohr, the sole occupant of the vehicle, was unable to produce his driver's license. Trooper Scott smelled a moderate odor of alcohol coming from Stohr and observed a twelve-pack of beer behind the passenger seat. He also noticed Stohr's eyes were bloodshot and watery. After Stohr was seated in the trooper's patrol car, Scott smelled a strong odor of alcohol on Stohr's breath. Stohr admitted he had consumed four or five beers during a period of approximately one to one and one-half hours. He stated he had finished his last beer about twenty minutes before the traffic stop.

Trooper Scott administered a standardized field sobriety test, the horizontal gaze nystagmus test. Stohr exhibited six out of six clues, indicating a seventy-seven percent probability his blood alcohol concentration exceeded the legal limit. Trooper Scott did not administer any walking tests because Stohr indicated he had broken both ankles in the past, had lifters in his shoes, and was unable to walk properly. Stohr was able to correctly recite the alphabet from A to Z and count backward from sixty-three to forty-eight. Trooper Scott administered

preliminary breath tests that indicated Stohr's blood alcohol concentration exceeded the legal limit.

Trooper Scott transported Stohr to the sheriff's office. At the office, Stohr agreed to submit to a DataMaster breath test. The test results showed Stohr had a blood alcohol concentration of .114. Stohr was charged with operating while intoxicated (OWI), third offense, in violation of Iowa Code section 321J.2 (2003).

Stohr filed a motion to suppress and a motion in limine challenging the admissibility of the DataMaster test results. He made a number of claims directed to the accuracy and reliability of the DataMaster test, including the following: (1) the testing and calibration procedures contain numerous errors, (2) the Division of Criminal Investigation (DCI) does not establish a margin of error for each DataMaster machine, (3) the DCI does not establish a margin of error over the machine's entire range of operation, (4) this DataMaster was not properly certified because it was not tested over the entire operational range, and (5) the State did not establish the accuracy and reliability of the test results.<sup>1</sup>

The district court granted Stohr's motion to suppress the results of the DataMaster test. The court found "[t]he uncertain internal standard and calibration methods, as well as the variable nature of the breath sample being blown into this machine, all give this court reason to question the reliability and accuracy of the methodology employed." Furthermore, the court found "[t]hese

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<sup>1</sup> The suppression hearing record reveals the State and defendant agreed to submit a transcript of testimony previously given by James Bleskacek in another case. Bleskacek is a criminalist with the Iowa Division of Criminal Investigation Criminalistics Laboratory in Des Moines. His testimony concerning the DataMaster was transcribed at a hearing before another judge in Jasper County Case No. OWCR010029, State v. Steven Gerard Koester.

factorial variances render suspect any test result purporting to fall within the statutorily prescribed margin of error adopted by the state.”

The State filed an application for discretionary review of the district court’s suppression ruling. Our supreme court granted discretionary review and transferred the case to this court.

## **II. Scope and Standards of Review**

We review the district court’s interpretation of statutory and administrative requirements for the correction of errors at law. *State v. Booth*, 670 N.W.2d 209, 211 (Iowa 2003). We give deference to the factual findings of the district court, and we will uphold the findings if they are supported by substantial evidence. *State v. Long*, 628 N.W.2d 440, 447 (Iowa 2001).

## **III. Discussion**

The State contends the district court erred in suppressing the results of the defendant’s DataMaster breath test because the State complied with all statutory and administrative requirements for admissibility.<sup>2</sup>

Iowa Code section 321J.15 provides:

Upon the trial of a civil or criminal action or proceeding arising out of acts alleged to have been committed by a person while operating a motor vehicle in violation of section 321J.2 or 321J.2A, evidence of the alcohol concentration or the presence of a controlled substance or other drugs in the person’s body substances at the time of the act alleged as shown by a chemical analysis of the person’s blood, breath, or urine is admissible. If it is established at trial that an analysis of a breath specimen was performed by a certified operator using a device intended to determine alcohol

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<sup>2</sup> After the State’s application for discretionary review was granted, a panel of this court addressed the same issue presented by this appeal in an unpublished opinion in another case. See *State v. Koester*, No. 04-0965 (Iowa Ct. App. Nov. 23, 2005). The panel concluded the DataMaster test results challenged by Koester were admissible. Our supreme court denied Koester’s application for further review on February 7, 2006.

concentration and methods approved by the commissioner of public safety, no further foundation is necessary for introduction of the evidence.

Section 321J.15 describes three requirements that must be met for the introduction of the chemical analysis of an individual's breath for alcohol concentration: (1) the analysis was performed by a certified operator, (2) the operator was using a device intended to determine alcohol concentration, and (3) the certified operator was using methods approved by the Iowa Commissioner of Public Safety. Upon careful review of the record, we conclude the State complied with the statutory and administrative requirements for admitting the results of Stohr's breath test under section 321J.15.

The issue of whether Trooper Scott was a certified operator of the DataMaster machine is not challenged in this appeal. In addition, the DataMaster clearly meets the criteria of a device intended to determine alcohol concentration. *State v. Hornik*, 672 N.W.2d 836, 839-40 (Iowa 2003). Finally, the methods for operating the device have been approved by the commissioner. The record reveals the DataMaster in question was recertified on May 5, 2004, well within one year from July 4, 2004, the date the test was administered to Stohr.<sup>3</sup>

We conclude the district court should have admitted Stohr's test results into evidence. The defendant's challenges to his test results may be relevant to the weight of the evidence, but they do not render the test results inadmissible at Stohr's trial. We reverse the district court's order suppressing the results of the

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<sup>3</sup> All devices used to test an individual's breath for alcohol concentration must be certified to be in proper working order within a period of one year immediately preceding use. Iowa Admin. Code r. 661-7.2(1).

DataMaster breath test administered to Stohr and remand for further proceedings not inconsistent with this opinion.

**REVERSED AND REMANDED.**