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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4409-15T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

MICHAEL CROSSON,

Defendant-Appellant.

Submitted December 19, 2017 – Decided May 22, 2018

Before Judges Hoffman and Gilson.

On appeal from Superior Court of New Jersey, Law Division, Atlantic County, Municipal Appeal No. 0028-15.

Levow DWI Law, PC, attorneys for appellant (Evan M. Levow, of counsel and on the brief).

Gurbir S. Grewal, Attorney General, attorney for respondent (Dylan P. Thompson, Special Deputy Attorney General, of counsel and on the brief).

PER CURIAM

Defendant Michael Crosson appeals from the Law Division's May 24, 2016 order entered after a trial de novo, finding him guilty of driving while intoxicated (DWI), N.J.S.A. 39:4-50. We affirm.

Police arrested defendant on November 1, 2014. To measure defendant's blood alcohol content (BAC), an officer administered an Alcotest, which showed defendant had a BAC of 0.11 percent.

Our Supreme Court has thoroughly addressed the scientific reliability of the Alcotest and adopted certain standards and procedures in administering the test, including providing two samples with a two-minute lockout period between samples. State v. Chun, 194 N.J. 54, 81 (2008). Defendant challenged the test results and the municipal court conducted an N.J.R.E. 104 hearing to determine the admissibility of the Alcotest results. During that hearing, defendant submitted two exhibits regarding the Alcotest results: the Alcohol Influence Report (AIR) and a digital download printout. Defendant contends those two reports are inconsistent. The AIR shows defendant provided two breath samples, with the first sample starting at 2:25 a.m. and the second sample starting at 2:27 a.m.

The digital download printout submitted to the court was very difficult to read. During the N.J.R.E. 104 hearing, all parties believed the digital printout showed the first sample started at 2:25 a.m. and ended at 2:26 a.m.; and the second sample started at 2:27 a.m. and ended at 2:28 a.m. Defendant argued the required two-minute lockout between samples was not observed because the digital printout shows only one minute between the end of the

first sample and the start of the second sample. The State argued the two-minute lockout was observed because there were two minutes between the start of the first sample and the start of the second sample. The municipal court admitted the AIR, reasoning the two reports were consistent and a two-minute lockout measured from start to start was appropriate. Defendant then entered a guilty plea to the DWI charge and immediately filed an appeal to the Law Division.

During the trial de novo in the Law Division, all parties continued to believe the start and end times testified to in the municipal court hearing. However, the trial judge noted in his written opinion, "[A] closer look at column BT of [the digital printout] indicates that the end time of the first breath test was actually 2:25 and not 2:26. Therefore, the first breath test and the two-minute lockout were valid." The trial judge therefore rejected defendant's argument and found him guilty of DWI, reasoning the two-minute lockout properly occurred and no discrepancy existed between the AIR and the digital printout. This appeal followed.

Defendant raises the following argument on appeal:

POINT I. IN THE ALCOTEST, THE TWO MINUTE LOCKOUT PERIOD RUNS FROM THE END OF THE FIRST BREATH SAMPLE TO THE START OF THE SECOND BREATH SAMPLE.

"We begin our review with the well-settled proposition that appellate courts should give deference to the factual findings of the trial court." State v. Reece, 222 N.J. 154, 166 (2015) (citing State v. Locurto, 157 N.J. 463, 470-71 (1999)). When the Law Division conducts a trial de novo on the record developed in the municipal court, our appellate review is limited. State v. Clarksburg Inn, 375 N.J. Super. 624, 639 (App. Div. 2005). We must determine if there is sufficient, credible evidence present in the record to uphold the findings of the Law Division. State v. Johnson, 42 N.J. 146, 162 (1964).

We conclude defendant's argument is unsupported by the record and without merit. Except as addressed below, it does not warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

While the appeal was pending, and after the parties filed their merits briefs, we granted the State's motion to supplement the record with a clear copy of the digital printout. That copy clearly shows the end time of sample one as 2:25 a.m., not 2:26 a.m. as previously believed. Given the first sample ended at 2:25 a.m. and the second sample started at 2:27 a.m., the record does not support a finding that less than two minutes elapsed between the end of the first sample and the start of the second sample. It is therefore unnecessary to decide whether the two-minute lock out runs from the start of the first sample to the start of the

second sample or whether it runs from the end of the first sample to the start of the second sample. Accordingly, we affirm the admission of the AIR and defendant's subsequent conviction.

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.

CLERK OF THE APPELLATE DIVISION