

IN THE MAUMEE MUNICIPAL COURT, LUCAS COUNTY

OHIO

2012 OCT 22 P 4: 34

MAUMEE MUNICIPAL COURT
MAUMEE, OHIO

State of Ohio

Case No. 11 TRC 006486

Plaintiff

OPINION AND ENTRY

-vs-

Archie L. Ong

Defendant

The record reflects that the Defendant was charged with the offense of operating a vehicle under the influence on or about December 11, 2011. Subsequent to his arrest Defendant submitted to a BAC Datamaster in which a breath test result was obtained. It was also indicated that in addition to the BAC Datamaster the State Highway Patrol Post had available an Intoxilyzer 8000 unit that utilized a double test procedure. It was not disputed that the Intoxilyzer 8000 was not connected to a printing unit at the time of Defendant's arrest. The arresting officer chose to utilize the BAC Datamaster unit with a single test

procedure, rather than the Intoxilyzer 8000. Defendant has complained that the use of a single test procedure when a double test procedure was available via the intoxilyzer 8000, violated the Equal Protection and Due Process guarantees embodied in the Fourteenth Amendment of the United States Constitution.

At first blush this Court notes that arresting officers have a number of testing options available when processing an offense of driving under the influence. In addition to a breath test, an officer may choose a blood test or urine test. Additionally each suspect is advised in BMV form 2255 that they are entitled to seek an independent blood alcohol test at their own expense. The type of independent test is not specified. Defendant's claim that the officer's choice to use the BAC Datamaster rather than the Intoxilyzer 8000 creates an impermissible arbitrariness is simply not compelling to this court.

Defendant in his memorandum raises the question: "What is the state's goal in utilizing inaccurate testing when a second test could help insure a valid result?" (See page 4 Defendant's Memorandum). It is this Court's finding that a testing unit that utilizes a double test procedure is

not any more reliable than the single test result provided by BAC Datamaster. A Defendant could ultimately complain that failing to use a single test procedure two, three, or four times is also less reliable than a single test procedure. It is obvious to this court that Defendant's effective argument that 'more is better' is simply not compelling. Courts for many years have made use of single test result of the BAC Datamaster and given the statewide discussion concerning the reliability of the Intoxilyzer 8000, this Court fails to find that Equal Protection or Due Process has been violated by opting for the use of the single test BAC Datamaster. Accordingly Defendant's motion on this basis is denied. See State v. Howell Ottawa County Municipal Court TRC 1004681, decided February 23, 2012.

A more interesting argument is raised by Defendant relative to the use of a BAC Datamaster when an operator access card has been issued to an operator for the Intoxilyzer 8000. Defendant asks this court to interpret the language included in OAC Section 3701-53-09(D). The critical language mandates that once an operator access card for an Intoxilyzer 8000 has been issued, an operator "... shall use not only those evidential breath testing

instruments for which they have been issued an operator access card; but also, any instruments for which they have been issued permits..." Id.

Addressing this issue Judge Grim in State v. Hudepohl (Athens County Municipal Court 11TRC03170 Decided July 15, 2011) observed that there were two possible interpretations, first of which would lead to the absurd finding that a dual operator that held a Datamaster certificate and a Intoxilyzer 8000 access card would be disqualified from operating either instrument. "Such a result is absurd and contrary to the fair, impartial, speedy, and sure administration of justice." Id.

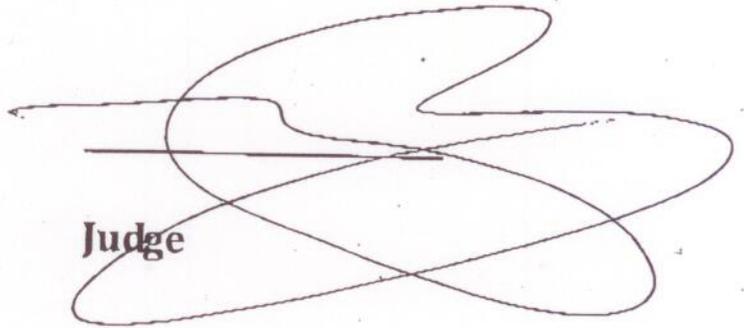
The Second option proposed by Judge Grim was the option:

...to recognize that the apparent overall purpose of both paragraphs(B,D) is to ensure that operators are trained and certified on any type of instruments they use. Just as there are particular endorsements necessary for operating separate classes of vehicles (e.g, motorcycles, school busses), each type of instrument requires a separate authorization... Under this interpretation, Paragraphs (B) and (D) compliment rather than contradict each other. Id.

This Court agrees.

**Accordingly Defendant's motion is found not well taken
and overruled.**

It is so Ordered

A large, stylized handwritten signature in dark ink, consisting of several overlapping loops and a long horizontal stroke extending to the left.

Judge