



STATE OF OHIO  
COUNTY OF PORTAGE

IN THE PORTAGE COUNTY MUNICIPAL COURT  
RAVENNA DIVISION  
CASE NUMBER: R 2011 TRC 4090

STATE OF OHIO,

JUDGE MARK K. FANKHAUSER

Plaintiff,

-vs-

JUDGMENT ENTRY

KYLE M. JOHNSON,

Defendant.

FILED  
PORTAGE COUNTY MUNICIPAL COURT  
JAN 06 2012  
LINDA K. FANKHAUSER, CLERK  
RAVENNA, OH

This matter came on for hearing on Defendant's Motion to Suppress on December 13, 2011. The Court finds the Defendant was present represented by Attorney Chris Sestak. The State of Ohio was present represented by Assistant Prosecuting Attorneys Tim Plero and Theresa Scahl.

The Court finds that the Defendant's sole issue in his Motion to Suppress is as follows: Whether or not the B.A.C. test result from the Intoxilyzer 8000 is relevant, admissible and scientifically reliable. The Court in its Entry filed October 13, 2011 indicated at a previous Suppression Hearing on October 11, 2011 that the State of Ohio needs to produce some relevant, competent evidence to convince the Court that the test results from the Intoxilyzer 8000 are scientifically reliable and, therefore, would be admitted at the trial of the Defendant in this matter. The Court granted the State of Ohio a sixty (60) day continuance for the purpose of presumably calling a witness from the Ohio Department of Health and possibly an expert witness from the company that manufactures the Intoxilyzer 8000.

At the hearing held on December 13, 2011 the State of Ohio

informed the Court that it has chosen not to call any witnesses to convince the Court that the Intoxilyzer 8000 does produce scientifically reliable and admissible breath test results.

The State at the hearing on December 13, 2011 attempted to convince the Court that the State did not need to produce any evidence as to those issues. The State argued pursuant to certain case law, including Vega, and statutes found in the Ohio Revised Code, that the Court is required to admit the breath test results from the Intoxilyzer 8000 and is to deem the breath test results from the Intoxilyzer 8000 admissible without any testimony at a Suppression Hearing as to the technology and science used to obtain the breath test result.

This Court is somewhat familiar with the problems that have come up with the new breath testing instrument the State of Ohio decided to purchase a couple years ago, that being the Intoxilyzer 8000. This Court is also familiar with cases from the States of Florida and Arizona, and has recently read the decision from the Judge in the Athens County Municipal Court.

This Court did not have the benefit of hearing expert testimony on the issue of the reliability and admissibility of the test result from the Intoxilyzer 8000 as the Court in Athens County did. This Court granted the State of Ohio a sixty (60) day continuance in order for the State to produce some evidence as to the technology and science of the Intoxilyzer 8000. This Court has no firsthand knowledge as to the scientific reliability and general technology used by the Intoxilyzer 8000 to determine the alcohol content in a person's blood by way of that person's breath.

The State argues the Court does not have to consider any evidence rule, including Evidence Rule 702(c) to admit breath test results from the Intoxilyzer 8000. The State argues the legislature mandates the Court to admit breath test results from the Intoxilyzer 8000 at trial because the Ohio Department of Health has approved the Intoxilyzer 8000 in the State of Ohio.

The Court is the gatekeeper of the evidence and determines what is relevant evidence, scientifically reliable evidence and admissible evidence at trial. To simply admit the breath test results from the Intoxilyzer 8000, as the State would want the Court to do, without any hearing to determine the general scientific reliability and admissibility of the breath test results from this machine, and then to argue that the defense can not challenge the test results at trial pursuant to Vega is in this Court's opinion a violation of the Defendant's due process rights. The position the State of Ohio is taking in this case by not calling any witnesses at the Suppression Hearing is not fair and just.

Since the State of Ohio has decided not to produce any competent, relevant, credible evidence at the Hearing on the Motion to Suppress on December 13, 2011 after given adequate time to do so, the Court, therefore, grants Defendant's Motion to Suppress and finds that the breath test results from the Intoxilyzer 8000 are not admissible at the trial of the Defendant.

Count one a violation of ORC 4511.19A1a and Count three a violation of ORC 4511.21C shall be set for Trial on the Court's docket.

**IT IS SO ORDERED.**



**MARK K. FANKHAUSER, JUDGE**  
**January 4, 2012**

cc: Tim Piero, Assistant Prosecuting Attorney  
Theresa Scahill, Assistant Prosecuting Attorney  
Chris Sestak, Attorney for Defendant