

"Ohio appeals court upholds the suppression of Breath test results in DUI case"

CASE NAME: Ohio v Jimenez (Court of Appeals No. E-13-030, December 13, 2013)

FACTS:

On October 5, 2012, at approximately 5:00 a.m., a dispatcher relayed to an Ohio highway patrol trooper that a motorist reported a vehicle driving erratically on the Ohio turnpike. A few moments later the trooper observed the car matching the description that he had received for dispatch. The trooper then began following the car and stopped the car for a lane violation after he had observed the vehicle swing the car from the extreme right hand lane into the center lane without a signal. The trooper later testified that when he approached the driver (Juan Jimenez), that he could smell an odor of alcoholic beverage and Jimenez's eyes were bloodshot. After administered a field test, a portable breath test registered a .15 percent BAC. Next, the driver was offered a BAC DataMaster breath test which yielded a .154 percent BAC. Jimenez then was charged with DUI/drank driving, DUAC and a lane violation.

PROCEDURAL HISTORY:

At the suppression hearing, calibration tests for the BAC DataMaster were submitted into evidence for September 30, 2012 and October 7, 2012. Both tests indicated that the machine was operating properly. However, six weeks later, the machine at issue failed to perform. Jimenez's attorney called a series of other highway patrol officers who testified to multiple failures of calibration checks for the BAC DataMaster used on October 5, 2012, and its replacements. After several other tests, which the machine failed, it was taken out of service approximately one month later. Over the next three months three more BAC DataMaster machines were installed and all three failed initial testing and had to be replaced.

In granting Jimenez's motion to suppress the breath test, the trial court noted that at least nine calibration checks failed in a period of approximately 60 days after the defendant's test. No explanation of the cause of these failures was provided to the court; and the court concluded that it "simply had no faith in the reliability of the BAC DataMaster test conducted on the defendant."

The State's appeal of the trial court followed.

ISSUE:

Did the trial court err in granting Jimenez's motion to suppress based on calibration checks which were conducted more than a month and a half after the defendant's blood alcohol test had been administered?

HOLDING:

No. A review of the record before the court supports the factual finding of the trial court; and therefore, the trial court's order of suppression of the breath test result in the case at bar is upheld.

"A motion to suppress presents a mixed question of law and fact. When considering a motion to suppress, the trial court assumes the role of trier of fact and is, therefore, in the best position to resolve factual questions. Upon review, there is a presumption in favor of the decision of the trier of fact."

The legal standard in Ohio is simply that a chemical breath test must be suppressed if it is not reliable. Reliability of the breath test is presumed if the State proves compliance with the regulations established by the Department of Health, but that presumption dissipates if it is rebutted by the defense. The trial

court found that the evidence of multiple unexplained failures of multiple machines shortly following the defendant's test rebutted the presumption of reliability. Upon review of the record as a whole, we cannot say that such a finding was without evidentiary support; and accordingly, the state's appeal of said ruling is denied.

ACCORDINGLY, the lower court ruling suppressing the results of the breath test is hereby affirmed.