

FILED
DAYTON MUNICIPAL COURT
TRAFFIC DIVISION

12 OCT 19 PM 1:25

IN THE DAYTON MUNICIPAL COURT

MARK E. OWENS
CLERK

TRAFFIC DIVISION

STATE OF OHIO : CASE NO: 11 TRC 17859

Plaintiff, : JUDGE PICKREL

Vs. :

ALYSSA R. FOLAND : **ENTRY DENYING DEFENDANT'S**
MOTION TO SUPPRESS

Defendant. : **AND**
: **ENTRY DENYING DEFENDANT'S**
: **MOTION TO FILE ADDITIONAL**
: **MOTION TO SUPPRESS AND**
: **MOTION TO DISMISS**

On May 31, 2012, Defendant's Motion to Suppress came before the Court for Hearing. In her Motion, Defendant moves to suppress any and all video/audio recordings of the traffic stop, Defendant's field sobriety and chemical tests to determine her alcohol level, the opinions and observations of all officers who stopped and arrested Defendant or who observed her stop and arrest, and statements taken or caused to be taken from the Defendant. Defendant claims that the Officer had no reasonable suspicion to stop or detain her, no probable cause to arrest her, and no lawful cause to have her perform field sobriety tests. She also claims that she never operated her vehicle in violation of R.C. 4511.19, was not informed of her right to a public defender, did not waive her right to remain silent, and her breathalyzer test was not taken in compliance with proper standards and violated her right to equal protection.

At the Hearing, Deputy Evers testified to the following:

On December 11, 2011, Deputy Evers was working a special traffic detail in Dayton when Defendant drove past him in her vehicle. He identified the Defendant in the courtroom. The Deputy noticed the light over Defendant's rear license plate light

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was out and there was no county sticker on the plate. He pulled the Defendant's vehicle over. When he approached the vehicle, Defendant was behind the wheel, alone, and talking on her cell phone. The Deputy introduced himself, explained why he stopped her and asked for her license and proof of insurance. He noticed a strong odor of alcoholic beverage from Defendant's window and she had glassy eyes, slurred speech, slow motions, and she pulled out her library card instead of her license. In response to the Deputy's questions, the Defendant said that she had come from Lucky's Tavern and admitted that she had had a couple of drinks.

The Deputy testified regarding his training, certification, and experience in detecting impaired drivers and in conducting field sobriety tests. He stated that some of the signs of being under the influence are the odor of alcohol, glassy bloodshot eyes, slurred or marbled speech, slowed reactions, lack of balance, and slow deliberate movements. The Deputy decided to give Defendant field sobriety tests based on the strong odor of alcohol and her glassy eyes, slurred speech, and slow movements and reactions. He saw nothing in the vehicle motion phase that indicated Defendant was impaired. The Deputy went to his patrol car and called for a second car for safety reasons. He ran the Defendant's information to check for license and registration status.

Backup arrived about five minutes later. When the backup arrived, the Deputy asked the Defendant to step out of her car. He then administered field sobriety tests to her on the sidewalk. Defendant attempted all of the tests and never said that she did not want to do them. The Deputy described in detail how each of the field sobriety tests was administered in accordance with NHTSA standards, how the Defendant performed on each test, and the clues that supported his conclusion that Defendant failed the tests. He also gave a detailed account of his NHTSA and police training and certification in relation to administering the field sobriety tests.

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The Deputy decided to arrest Defendant for being under the influence based on the strong odor of alcohol and her glassy eyes, slow reactions, slurred speech, and failed field sobriety tests. He told her that she was under arrest for operating a vehicle while under the influence. He handcuffed her hands behind her back, seated her in the rear of his car, read her BMV form 2255 and provided her with the required notice. Defendant was also advised of her right to an independent test. Defendant agreed to submit to a breath test and the Deputy transported her to the Dayton Police Department. Dayton Police Officer Seiter administered the test on the BAC Datamaster and the Defendant blew the prohibited amount stated on her traffic ticket. The videotape of the stop, the intoxication incidence report, the BMV 2255 form, the NHTSA manual section concerning field sobriety tests and the certificates and awards of Deputy Evers related to his basic, impaired driver, and NHTSA training were admitted without objection by the Defendant.

At the Hearing, Defense Counsel claimed that the BAC Datamaster is less viable and scientifically reliable than the Intoxilyzer 8000 and it was a due process violation to use the less scientifically reliable test on the Defendant. Defense Counsel also claimed that an officer could only be a certified operator of either the BAC Datamaster or the Intoxilyzer 8000, and could not be a certified operator of both concurrently. Defense Counsel attempted to elicit testimony from Deputy Evers on this because he is certified in the BAC Datamaster and the Intoxilyzer 8000. The Court found that Deputy Evers did not do Defendant's breath test and Defendant failed to establish that Deputy Evers was qualified to give this type of testimony. The Court then provided Defense Counsel with an opportunity to pursue this issue with another witness or to submit a written brief, but Defense Counsel declined and submitted the matter for Decision.

The Court finds that there are no grounds for suppressing the evidence cited by Defendant in her Motion. The Defendant's Motion to Suppress is Denied.

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On August 1, 2012, Defendant submitted a Motion for Leave to File an additional Motion to Suppress and a Motion to Dismiss. As grounds for leave to file an additional motion to suppress, Defendant claims that the State has failed to provide her with relevant and necessary discovery and this prevented her from preparing a defense against the admissibility of the breath test results. Further, she claims that the only plausible remedy for the State's repeated discovery violations is dismissal. Defendant argues that the results of her breath test are inadmissible since Officer Seiter was without authority to operate the BAC Datamaster once he received his Intoxilyzer 8000 Operator-Access Card on November 18, 2011. In support, Defendant cites *State v. Castle*, 168 Ohio Misc.2d 6, 2012-Ohio-1937.

The State filed a Response stating that Defendant's Motion for Leave to File a Supplemental Motion to Suppress and Motion to Dismiss should be denied. The State argues that the Suppression Hearing on May 31, 2012, was held after discovery was completed to Defendant's satisfaction; the breath test was only done on the BAC Datamaster and Defense Counsel was provided with Officer Seiter's certificate for that device; and Defense Counsel never requested Officer Seiter's certification on the Intoxilyzer 8000. Further, there were no discovery violations since the State was not required to have and never had the certificate for the Intoxilyzer 8000 in its file. Finally, the State argues that Defendant's Motions are untimely pursuant to Criminal Rule 12.

In her Response, the Defendant claims that she asked for the qualifications of the Officer who administered the breath test and his qualifications on the Intoxilyzer 8000 prohibited him from administering her breath test on the BAC Datamaster.

The Court finds the State's arguments well taken. The Defendant has not established grounds for filing an additional motion to suppress. *State v. Castle* is not binding on this Court, nor does the Court find it persuasive. Officer Seiter was properly certified to use the BAC Datamaster for Defendant's breath test and the Defendant was

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provided with his certification. The BAC Datamaster has been established in Ohio as an approved scientifically reliable breath testing device. *State v. Massie*, 2nd Dist. No. 2007CA24, 2008-Ohio-1312. Moreover, even if Officer Seiter had wanted to use the Intoxilyzer 8000 for the test, Deputy Evers testified that DPD did not have one.

The Court further finds that there are no sufficient grounds for dismissal.

Defendant's original Motion to Suppress is denied. Further, Defendant's Motion for Leave to File an Additional Motion to Suppress and Motion to Dismiss are denied.

10/19/12

DATE

John S. Pickrel

JUDGE JOHN S. PICKREL

Copies to: Garrett Baker, Assistant Prosecutor
 Larry J. Denny, Defense Counsel

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