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FAX COVER SHEET

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TO (Fax No.) 614 728 9179

FROM: Bill Ferguson, Cambridge City Law Director

RE: Intox. 8000

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**CAMBRIDGE MUNICIPAL COURT
GUERNSEY COUNTY, OHIO**

**STATE OF OHIO
PLAINTIFF**

CASE#11TRC02983

CAMBRIDGE MUNICIPAL COURT
GUERNSEY COUNTY, OHIO

2011 AUG 11 P 4:01

-VS-

August 11, 2011

LAURIE ENDLY
CLERK OF COURT

**KILEY M. FLYNN
DEFENDANT**

DOCKET & JOURNAL ENTRY

This case came on for a hearing on August 8, 2011 on the issue of the Defendant's Motion to Suppress Evidence regarding the tests of the Defendant's sobriety and alcohol breath level, including the Intoxilyzer 8000 breath test administered to the Defendant.

One of the basic issues raised was whether the particular Intoxilyzer 8000 was in proper working order; specifically whether an instrument check or certification was performed on the machine when it was placed in service at the Cambridge Post of the Ohio Highway Patrol.

It is that basic issue on which the Court focuses this opinion.

The State's sole witness, Mary Martin, testified that she is the program administrator for drug and alcohol administration for the Ohio Department of Health. She is a licensed attorney, who has been trained on the Intoxilyzer 8000 and its certification by Ohio Department of Health personnel.

Ms. Martin was not the person who had calibrated and certified the machine, that function having been performed by John Kucmanic, from the Ohio Department of Health. At the time of the hearing, Mr. Kucmanic was no longer employed by the Ohio Department of Health and he did not testify.

In a hearing such as this, particularly with the function of a machine which is new, the State is required to demonstrate that there has been substantial compliance with the applicable Ohio Department of Health regulations.

A trial Judge is to be the "gate keeper" in decisions concerning the admissions of scientific evidence. *Daubert v. Merrell Dow Pharmaceuticals, Inc.* (1993) 509 US 579.

On issues of first impression concerning this Intoxilyzer 8000, this Court cannot understand why the State of Ohio has not made available to local prosecutors a person who could testify to a greater degree than did Mary Martin (with all due respect to Ms. Martin).

In short, based on the evidence presented, the Court cannot find that there has been sufficient evidence presented to demonstrate that the use of the particular machine in question has been in substantial compliance with the Ohio Department of Health

regulations. This is not to say that Intoxilyzer 8000 is defective; the Court simply cannot say that substantial compliance with the appropriate regulations has been demonstrated. If in the future, the State is able to present a sufficient level of evidence, the Court would consider it and would rule on it appropriately.

Therefore, the breath test results in this case are ordered suppressed.

At the hearing, and on the record, Defendant's counsel withdrew the motion to suppress the results of the HGN test.

SO ORDERED.


JOHN M. NICHOLSON, JUDGE

Cc: William Ferguson, Law Director
Jack Blakeslee, Attorney for Defendant

JMN/lak