

## IN THE COUNTY COURT OF MONROE COUNTY, OHIO

STATE OF OHIO,

Plaintiff

vs

WILLIAM E. HALL, JR.,

Defendant

Case No. 10-TR-C-6

**FILED**  
JUL 28 2010  
MONROE COUNTY COURT  
JAMES W. PETERS, JUDGE

## DOCKET &amp; JOURNAL ENTRY

Defendant filed a Motion in Limine on June 10, 2010. The State filed a written response on July 8, 2010. On July 21, 2010, the parties agreed to submit the matter to the court without further argument or testimony. Specifically, the defendant is requesting access to the "source codes" of the Intoxilyzer 8000 breath testing device that was used in this case. Defendant contends that without access to the source codes and an ability to examine and question certain procedures contained in those source codes, the defendant does not have sufficient opportunity to question the test resulting in a violation of the defendant's right to due process.

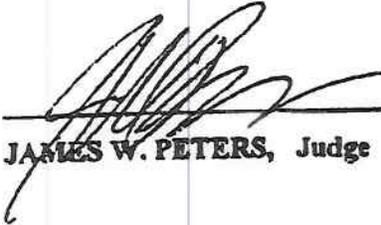
A trial court has broad discretion in admission of evidence, including expert testimony. An Appellate Court will not reverse the trial court's decision absent an abuse of discretion. *State v. Awhal*, 76 Ohio St.3d 324, 331, 1996-Ohio-395, 667 N.E.2d 960. The Ohio Supreme Court has held that R.C. 4511.19 represents a legislative determination that certain breath-testing devices are generally reliable. This determination means that the state has replaced the common-law foundational requirements for admissibility. *State v. Vega* (1984), 12 Ohio St.3d 185, 188-189, 465 N.E.2d 1303; *State v. Massie*, 2nd Dist. No.2007 CA 24, 2008-Ohio-1312; *State v. Luke*, 10<sup>th</sup> Dist. No. 05AP-371, 2006-Ohio-2306. Therefore, an accused may not make a general attack upon reliability and validity of a breath-testing instrument. *Vega*, supra, at 190, 465 N.E.2d 1303; *Massie*, supra at ¶15; *Luke*, supra, at ¶22.

Nevertheless, the accused may attack the reliability of the specific testing procedure and the qualifications of the operator and may present expert testimony on these issues. *Vega*,

supra, at 189, 465 N.E.2d 1303; *Massie*, supra at ¶ 18; *Luke*, supra, at ¶25. The accused "may endeavor to show something went wrong with his test and that, as a consequence, the result was at variance with what the approved testing process would have produced." *Massie*, supra at ¶18; *Luke*, supra, at ¶26.

This court holds that R.C. 4511.19 is a determination by the legislature that the Intoxilyzer 8000 used in this case is generally reliable. By this determination, the state has legislatively replaced the common law foundational requirements for admissibility. To allow the defendant to have access to the Intoxilyzer 8000 source codes would constitute a general attack upon the reliability of the Intoxilyzer 8000, a result clearly disallowed by the Supreme Court's holding in *Vega* and the second district holding in *Massie*. Accordingly, the defendant's motion is denied.

Final pre-trial set for August 11, 2010, at 10:30 a.m. Jury trial set for August 20, 2010, at 9:00 a.m. as Case No. 4.

  
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JAMES W. PETERS, Judge

cc: Thomas Hampton, Asst. Prosecutor  
Mark Morrison, Esquire