

August 30, 2016

Michael H. Tipton, Esquire
Department of Justice
114 E. Market Street
Georgetown, DE 19947

Alicia A. Porter, Esquire
Office of the Public Defender
14 The Circle, 2nd Floor
Georgetown, De 19947

Re: State v. Pettyjohn, Cr. No. 1512013142; Motion to Suppress

Dear Counsel:

On August 1, 2016, the Court commenced a Suppression Motion/Trial in the above-captioned DUI matter, arising from a December 19, 2015 traffic stop and arrest. Upon the submission of the State's evidence that the Intoxilyzer used to test Defendant's blood alcohol level in this case had been calibrated and confirmed accurate on October 29, 2015 and January 14, 2016, Defendant moved to suppress the December 19, 2015 Intoxilyzer test results because the prior calibration was more than thirty days before the Defendant's blood alcohol test. The Court reserved decision, continued the trial, and requested that counsel brief the issue.

After reviewing and considering the briefs filed by counsel, the parties agree, and the Court acknowledges that the Delaware Supreme Court decision in *Anderson v. State*¹ controls this issue. The Supreme Court held in *Anderson* that the State's failure to follow its standard operating procedure of calibrating Intoxilyzer devices every thirty days did not render an individual Intoxilyzer test result *per se* inadmissible. Rather, the length of time from calibration may be considered in determining the weight to be given to the individual results, unless the length of time since calibration is so long as to be considered unreasonable by the Court, resulting in the individual test result's probative value being outweighed by its prejudicial nature.²

In this case, the post-test calibration was successfully performed 26 days after Defendant's test, well within the 30 day SOP. The pre-test calibration was performed 51 days before Defendant's test. Coincidentally, this Court has held

¹ 675 A.2d 943 (Del. 1996)

² *Id.*

in a previous decision that “51 days under these facts is not so remote in time to prohibit the admissibility of the test results.”³

The Court agrees with this prior decision, and finds the 51 days in this case not so unreasonable a delay in calibration as to render the test results inadmissible or otherwise unreliable. Accordingly, Defendant’s motion to suppress the admission of the Intoxilyer test results is DENIED. Continuation of the trial shall be rescheduled.

IT IS SO ORDERED.

Kenneth S. Clark, Jr., Judge

³ *State v. Dorsey*, 2009 WL 2734650 (Com.Pl. 2009).