IN RE THE COURT OF APPEALS OF IOWA

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586

STATE OF IOWA,)

Plaintiff-Appellant,)

vs.)

MICHAEL STEPHEN SHIPLEY,) 4-464
83-1375

Defendant-Appellee.)

Appeal from the Iowa District Court for Fremont County - Paul H. Sulhoff, Judge.

State appeals trial court's order suppressing breath test results in a prosecution for operating while intoxicated in violation of 1983 Iowa Code section 321.281. REVERSED.

Thomas J. Miller, Attorney General of Iowa, and Lona Hansen, Assistant Attorney General, for plaintiff-appellant.

Verd R. Bailey of Davidson & Bailey, Clarinda, Iowa, for defendant-appellee.

Considered by Donielson, P.J., Hayden, and Sackett, JJ.

This is a discretionary review.

Before commencement of trial of defendant on the charge of operating while intoxicated in violation of 1983 Iowa Code section 321.281, the trial court sustained defendant's motion in limine and suppressed defendant's breath test results. The State was prepared to show the officer was certified to operate an intoxilyzer and had complied with statutory requirements, but was not permitted to do so. The trial court expressed the belief that the veracity of the intoxilyzer was too much in doubt to permit its use as evidence. Defendant was acquitted at trial.

The fighting issue before us has now been put to rest in the case of State v. Steadman, 350 N.W.2d 172, 173-4 (Iowa 1984), wherein the Iowa Supreme Court upheld the admissibility of breath test results from an intoxilyzer, stating at page 173:

> The General Assembly has expressly provided for admissibility of chapter 321B test results in any civil or criminal action "arising out of acts alleged to have been committed by any person while operating a motor vehicle in violation of section 321.281." Iowa Code § 321B.28 (1983). (Emphasis ours.)

The court also stated at page 174:

> The court has recognized that an important purpose of the stringent chapter 321B requirements is to guarantee the reliability and accuracy of test results. . . . Exclusion of test results has been mandated when chapter 321B requirements affecting test reliability and accuracy have not been satisfied. (Citations omitted.)
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> In addition to imposing unique foundation requirements in implied consent cases by statute, the legislature has delegated to the commissioner of public safety the responsibility to approve devices and methods used to obtain a specimen of breath or urine. § 321B.15. In carrying out this responsibility, the commissioner has approved the intoxilyzer 4011A and requires that the operator "shall proceed in accordance with the instructions contained in the operator's manual for such device, or instructions furnished by the Iowa department of public safe-

> ty criminalistic laboratory . . . ." 680 I.A.C. 7.2(1). We have given the laboratory checklist procedures the same force and effect as the statutory foundation requirements.

On this assignment of error we hold the trial court erred in refusing to permit the prosecution to offer evidence and testimony for foundation purposes to show the officer was qualified and had complied with the statutory requirements for the admission of defendant's breath test results.

REVERSED.