

FILED: September 08, 2011

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,
Plaintiff-Appellant,

v.

BENJAMIN RYAN ORNELLAS,
Defendant-Respondent.

Clatsop County Circuit Court
097199

A144501

Philip L. Nelson, Judge.

Argued and submitted on July 28, 2011.

Joanna L. Jenkins, Assistant Attorney General, argued the cause for appellant. With her on the brief were John R. Kroger, Attorney General, and Jerome Lidz, Solicitor General.

Ryan T. O'Connor, Senior Deputy Public Defender, argued the cause for respondent. With him on the brief was Peter Gartlan, Chief Defender, Office of Public Defense Services.

Before Haselton, Presiding Judge, and Armstrong, Judge, and Sercombe, Judge.

PER CURIAM

Reversed and remanded.

1 PER CURIAM

2 In this prosecution for driving under the influence of intoxicants, ORS
3 813.010, the state appeals a pretrial order granting defendant's motion to suppress the
4 results of his breath test, ORS 138.060(1)(c).¹ A recitation of the facts would not benefit
5 the bench, the bar, or the public. The trial court's ruling was predicated on our decision
6 in [State v. Machuca](#), 231 Or App 232, 218 P3d 145 (2009) (*Machuca I*). After the trial
7 court granted defendant's motion, the Supreme Court reversed our decision in *Machuca I*,
8 holding that,

9 "for purposes of the Oregon Constitution, the evanescent nature of a
10 suspect's blood alcohol content is an exigent circumstance that will
11 ordinarily permit a warrantless blood draw of the kind taken here. We do
12 so, however, understanding that particular facts may show, in the rare case,
13 that a warrant could have been obtained and executed *significantly* faster
14 than the actual process otherwise used under the circumstances. We
15 anticipate that only in those rare cases will a warrantless blood draw be
16 unconstitutional."

17 [State v. Machuca](#), 347 Or 644, 657, 227 P3d 729 (2010) (*Machuca II*) (emphasis in
18 original).

19 This case is materially indistinguishable from *Machuca*. Accordingly,
20 under the operative principles that the Supreme Court explained in *Machuca II*, the trial
21 court erred in granting the motion to suppress.

22 Reversed and remanded.

¹ In his motion, defendant also sought to suppress the results of the field sobriety tests that the officer administered as well as any evidence derived from those tests. However, during the hearing concerning the motion to suppress, defendant withdrew those issues from the court's consideration. Accordingly, the trial court's order concerned only the suppression of defendant's breath test results.