

**FILED: September 21, 2011**

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,  
Plaintiff-Appellant,

v.

JOSHUA B. GIROD,  
aka Joshua Bradly Girod,  
Defendant-Respondent.

Coos County Circuit Court  
09CR0798

A144502

Martin E. Stone, Judge.

Submitted on May 12, 2011.

John R. Kroger, Attorney General, David B. Thompson, Interim Solicitor General, and Joanna L. Jenkins, Assistant Attorney General, filed the brief for appellant.

Daniel M. Hinrichs filed the brief for respondent.

Before Schuman, Presiding Judge, and Wollheim, Judge, and Nakamoto, Judge.

PER CURIAM

Reversed and remanded.

1 PER CURIAM

2 In this prosecution for driving under the influence of intoxicants (DUII), the  
3 state appeals from the trial court's suppression of a breath test result. In reliance on our  
4 opinion in *State v. Machuca*, 231 Or App 232, 218 P3d 145 (2009), *rev'd*, 347 Or 644,  
5 227 P3d 729 (2010), the trial court held that defendant had not voluntarily consented to  
6 the test and that there were no exigent circumstances that would justify a warrantless  
7 seizure of defendant's breath sample. We agree with the state that in light of the Supreme  
8 Court's opinion reversing this court in *Machuca* and this court's opinion in *State v. Allen*,  
9 234 Or App 363, 228 P3d 606 (2010), the trial court erred in excluding the breath test  
10 results and the order suppressing the evidence must be reversed.

11 Officer Kirk stopped defendant for the offense of reckless driving, and it is  
12 undisputed on appeal that he immediately thereafter developed probable cause to believe  
13 that defendant had committed the offense of DUII. Under the Supreme Court's opinion in  
14 *Machuca*, when an officer has probable cause to arrest a person for a crime involving the  
15 blood alcohol content of the suspect, "the evanescent nature of a suspect's blood alcohol  
16 content is an exigent circumstances that will ordinarily permit a warrantless blood  
17 draw[.]" 347 Or at 657. In *Allen*, we applied the holding of *Machuca* to a breath test.  
18 234 Or App at 364. We conclude for that reason that the trial court erred in granting  
19 defendant's motion to suppress the breath test.

20 Reversed and remanded.