



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. JOSEPH COOPERMAN
CV-12-0319-PR**

PARTIES:

Petitioner: Joseph Cooperman

Respondent: State of Arizona

Amicus Curiae: Navajo County Attorney's Office; Tempe Prosecutor's Office; Arizona Prosecuting Attorney's Advisory Counsel; Arizona Attorneys for Criminal Justice.

FACTS:

Joseph Cooperman is charged with two common DUI offenses. First, he was cited and arrested for operating or being in actual physical control of a motor vehicle while impaired to the slightest degree, in violation of A.R.S. § 28-1381(A)(1). Second, based on results of duplicate Intoxilyzer breath tests, he was also cited for having an alcohol concentration of .08 or more within two hours of driving or being in actual physical control of a motor vehicle, in violation of A.R.S. § 28-1381(A)(2). Both charges will be litigated in one DUI trial, in which the State will be required to introduce Cooperman's breath test results to prove the (A)(2) or "per se" charge.

Before trial, the State moved to preclude Cooperman from presenting evidence to contest the accuracy of his breath test results in the form of "partition ratios" (and other types of evidence not at issue in this case now). In *Guthrie v. Jones*, 202 Ariz. 273, 274 ¶5, 43 P.3d 601, 602 (App. 2002), the court of appeals explained:

Partition ratios translate the amount of alcohol in a person's breath sample to the amount of alcohol in that person's blood. Alcohol in the breath does not cause impairment; impairment results when alcohol enters the body, is absorbed into the bloodstream, and is transported to the central nervous system and the brain. Although it is thus a blood alcohol reading, not a breath alcohol reading, that establishes whether a person is impaired, breath alcohol readings nonetheless indicate blood alcohol levels, and taking a breath sample is easier and less intrusive than taking a blood sample. . . . The actual ratio of an individual's breath-to-blood alcohol level varies.

At an evidentiary hearing, the city magistrate heard expert testimony from both sides about using such evidence. Among other things, the State argued that it would not seek to use breath test results to rely on the statutory presumption of impairment in A.R.S. § 28-1381(G).

The magistrate denied the State's motion, but granted the State an instruction that would

limit the use of partition ratio evidence to the (A)(1) or “impairment” charge. The instruction would be designed in recognition of *Guthrie*’s holding, which established (1) that partition ratio evidence is not relevant to an (A)(2) “per se” charge, but (2) if statutory presumptions are raised using the breath test results to allow the jury to presume a defendant was impaired, partition ratio evidence may be relevant and admissible to rebut the presumption.

The Pima County Superior Court accepted jurisdiction of the State’s petition for special action and denied relief, affirming the city court’s ruling.

The Court of Appeals affirmed in a published opinion. *State v. Cooperman*, 230 Ariz. 245, 282 P.3d 466 (App. 2012). Among the issues the court discussed are whether the statutory presumption of impairment applies only when expressly invoked by the State (not a defendant), whether a defendant who wishes to challenge the “standard” or “generally accepted” partition ratio on which the Intoxilyzer machine is based must present evidence of his own ratio at the time of the test (or whether he may introduce studies or other evidence about variations in the general population to show breath test results overstate a person’s actual level of intoxication), and whether the probative value of partition ratio evidence is outweighed by the potential for jury confusion. The Supreme Court granted review of one of two issues presented.

ISSUE:

1. In *Guthrie*, Division One held that in DUI (A)(2) prosecutions individual partition ratio evidence is irrelevant and inadmissible, but if in DUI (A)(1) prosecutions, the State uses breath test results and the presumption of impairment in (now) § 28-1381(G), that same evidence may be relevant and admissible to rebut that presumption. *Id.*, at ¶ 18, 43 P.3d, at 605. Subsequently, in *Storholm*, the court stated that “[i]ndividual idiosyncracies [*sic*] or environmental factors” are irrelevant in a prosecution under A.R.S. §28-1381(A)(2). *Id.* [*State v. Storholm*, 201 Ariz. 199, 109 P.3d 94 (App. 2005)] at 200-201, ¶10, 109 P.3d, at 95-96. The State did not utilize the statutory impairment presumption. Did Division Two err in holding that a defendant charged with DUI, § 28-1381(A)(1), may offer evidence on partition [ratios], when breath alcohol results are not being linked to impairment?

RELEVANT STATUTORY PROVISIONS:

A.R.S. § 28-101(2) defines “alcohol concentration” as “grams of alcohol per 100 milliliters of blood” or “grams of alcohol per 210 liters of breath.”

A.R.S. § 28-1381(G), the presumptions statute, provides in relevant part:

In a trial, action or proceeding for a violation of this section . . . , the defendant’s alcohol concentration within two hours of the time of driving or being in actual physical control as shown by analysis of the defendant’s blood, breath or other bodily substance gives rise to the following presumptions:

1. If there was at that time 0.05 or less alcohol concentration in the defendant's blood, breath or other bodily substance, it may be presumed that the defendant was not under the influence of intoxicating liquor.

2. If there was at that time in excess of 0.05 but less than 0.08 alcohol concentration in the defendant's blood, breath or other bodily substance, that fact shall not give rise to a presumption that the defendant was or was not under the influence of intoxicating liquor, but that fact may be considered with other competent evidence in determining the guilt or innocence of the defendant.

3. If there was at that time 0.08 or more alcohol concentration in the defendant's blood, breath or other bodily substance, it may be presumed that the defendant was under the influence of intoxicating liquor.

A.R.S. § 13-1381(H) provides: “Subsection G of this section does not limit the introduction of any other competent evidence bearing on the question of whether or not the defendant was under the influence of intoxicating liquor.”