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DOUBLE JEOPARDY REJECTED

JUDGE RULES LICENSE SUSPENSION, TRIAL NOT 'EXCESSIVE ACTION'

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Illustration: Photo

By By Randall Edwards

Dispatch Staff Reporter

A Franklin County Municipal judge said she's not buying the argument that the state's drunken-driving laws subject defendants to double jeopardy.

Judge Lisa Sadler, in a ruling issued last week, denied a motion to dismiss a case in which a drunken-driving suspect has completed a 90-day license suspension and still must go to trial.

Defense lawyers have been arguing that the state's on-the-spot license suspension for motorists who register more than 0.10 percent on a blood-alcohol test constitutes legal punishment.

Therefore, they say, the state cannot then prosecute motorists for driving under the influence without violating their constitutional protection against double jeopardy.

Youngstown attorney Martin Delahunty successfully made the argument in November when a Mahoning County judge dismissed a drunken-driving charge against Delahunty's client.

Both the Youngstown case and Sadler's ruling are likely to be appealed. The cases using the double jeopardy defense eventually could be decided by the Ohio Supreme Court, but until then, local judges are likely to come down on both sides of the issue.

Since 1993, police officers have had the power to suspend licenses on the spot for motorists who test above 0.10 percent or those who refuse the blood-alcohol test.

Sadler's ruling came in the case of Terrence L. Weese, who was arrested Aug. 14 by Whitehall police, who said he was driving with a tested blood-alcohol percentage of 0.139. Weese's license was returned to him after a 90-day suspension. A jury trial on the drunken-driving charge is scheduled for Monday.

Weese's lawyer, *Cleve M. Johnson*, asked the judge to dismiss the case, citing recent U.S. Supreme Court decisions that say certain federal drug trafficking laws violate double jeopardy because they combine civil and criminal penalties.

Several other attorneys have raised similar defenses since the Mahoning County ruling, but Sadler is the first judge in Franklin County to rule on the issue.

"Like other state schemes for suspending the drivers licenses of suspected drunk drivers, Ohio's statute is designed to serve remedial purposes," Sadler wrote in her eight-page opinion. "It is intended to protect the public by promptly removing potentially dangerous drivers from the road."

Instead of punishment, the suspension is a temporary interruption of a "privilege" and "does not constitute an excessive action so as to be characterized as punitive," she wrote.

Caption: Sadler

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