## IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

FEBRUARY 1998 SESSION

## STATE OF TENNESSEE

Appellee

v.

DAVID L. HATHAWAY

Appellant.

Cecil W. Crowson Appellate Court Clerk NO. 01C01-9703-CR-00094 PICKETT COUNTY HON. JOHN A. TURNBULL

FILED

July 2, 1998

(D.U.I.)

## **CONCURRING OPINION**

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I concur in the result reached by Judge Barker in his thorough opinion. Having concurred with Judge Wade in his opinion in <u>State v. Jerry Wayne Edison</u>, No. 03C01-9605-CC-00199 (Tenn. Crim. App., Knoxville, June 18, 1997) that an abuse of discretion standard applies to this court's review of the trial court's ruling on the admissibility of intoximeter results, I write separately to indicate that I favor the <u>Edison</u> standard of review as opposed to the standard of preponderance of the evidence to which Judge Barker adheres in this case. I agree that the trial court's decision would be affirmed under either standard of review.

CURWOOD WITT