

IN THE DISTRICT COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF MASON

STATE OF WASHINGTON,	)		
Plaintiff,	)		
	)		
vs.	)		
	)		
Benson-Schreiber, Joseph	)	C603710	
Blue, Katherine	)	C631027	
Brocius, Lisa M.	)	C603895	
Casey, Neil Andrew	)	C631155	
Clark, Christopher L.	)	C603356	
Farrington, Andrew	)	C551505	
Green, Athena	)	CR10720	
Histo, Lawrence W.	)	C603945	
Kemp, Marvin	)	CR09974	
Lehman, Brian	)	C506035	
Luckman, Clinton C.	)	C631905	Court's Ruling Re:
Lund, Robb R.	)	C631705	BAC Motion
Manning, Lucas	)	C603747	
Moore, Gerald	)	C631079	
Ogg, Reece C.	)	C603988	
Plummer, Debra	)	C603885	
Rancourt, Allen	)	C631039	
Randall, Thomas	)	C631563	
Seaman, Melody	)	C551273 and C631901	
Smith, John Henry III	)	C631043	
Smith, Kevin	)	C631444	
Temple, Paul Allen	)	C631037	
Ycaman, Kyle	)	C631767	
Defendants	)		
_____	)		

These matters having been heard in open court on March 31, 2008, argument presented by Ted Vosk, Attorney, on behalf of all defendants joined in the motion and Tim Higgs, Deputy Prosecutor on behalf of the State of Washington. Attorneys James Gazori, Bruce Finlay, Jeanette Boothe, Linda Callahan, Wade Samuelson, George Steele were also present for part or all of the hearing. Many defendants formally waived their presence.

The court having considered motions and briefs and exhibits filed by each party and transcripts and exhibits from State v. Ahmach, et al, King County District Court No. C0627921, et al; State v. Sharon K. Gilbert, Skagit County District Court, No. C00669127 and Eric Amtson v. State of Washington, Department of Licensing Hearing.

Rod Gullberg, the State's expert witness testified in these proceedings that he has a lack of confidence in breath tests which involved QAP (quality assurance procedure) and field solutions prior to and including solution number 07025 due to the various errors which have been testified to in several hearings, said transcripts having been incorporated into these proceedings by agreement of the parties. Rod Gullberg was a Sargent in the breath test section of the Washington State Patrol for over twenty years and more recently has served as a research analyst with the Washington State Patrol Breath Alcohol Test Section as a civilian employee.

Ordinarily, the court would agree with the State's position that wherein there is a dispute as to the accuracy of the breath test, the issue would be one for the jury to decide. However, the multiplicity of errors in reporting data, the flagrant falsification of certifications by the head of the breath test section (Ann Marie Gordon) and collusion by next in charge (Edward Formosa), errors in the computer program/software, errors in documentation, lack of documentation and various violations of the State Toxicologist's Protocols lead the court to the same conclusion that Rod Gullberg has arrived at. There is a lack of confidence in the accuracy in the breath tests involving QAP and Field solutions prior to solution number 07025. This does not mean that all test results are inherently suspect. It should also be noted that although the term "discarded data" has been used, there is no evidence that actual data or test results of the solutions in question were discarded or destroyed. The term "discarded data" refers to "outliers" or test results which were not utilized in calculating the mean (average) of test results. Further, there is no evidence that the underlying testing of the solutions, or the results thereof, were falsified or tampered with in any way.

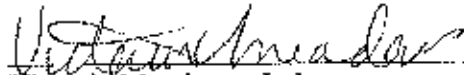
Many of the errors result in a lower reading than the actual test would have been had the solutions been correct. The vast majority of the readings appear to be accurate on a state wide level. However, at this time, as to the cases pending before this court which have been joined for the motion heard on March 31, 2008, it is the court's conclusion that the evidence relating to the breath tests which are directly related to instruments utilizing QAP and or field solutions 07025 or lower are unreliable.

The court is not persuaded by the defense argument that the Washington State Toxicology Lab must comply with standards set by other agencies. There was significant discussion regarding the use of weighted mean vs. arithmetic mean in determining the average of the solutions and when to discard outlier results in calculations. The legislature empowered the Washington State

Toxicologist to make those determinations, not the courts and not other agencies.

In so far as it appears that each of the cases joined in this motion are impacted by the use of solutions 07025 or prior in either the QAP or the field solution, the breath test is suppressed. It appears from the State's exhibits, the last QAP on the BAC instruments in question utilized solutions prior to 07025. If this is in error, the State is invited to show the court the updated report in the exhibits.

Dated this 16 day of April, 2008

  
Victoria Mcadows, Judge

  
Stephen Greer, Judge Pro Tem