



THURSTON COUNTY

WASHINGTON

SINCE 1852

EDWARD G. HOLM PROSECUTING ATTORNEY

2000 Lakeridge Drive S.W.
Olympia, Washington 98502

(360) 786-5540

Fax: (360) 754-3358

February 6, 2008

Ms. Linda Callahan
Attorney at Law
P.O. Box 130
Shelton, WA 98584

Dear Ms. Callahan:

I am writing in regard to State v. Christopher Scott, Thurston County District Court Cause No. 6Y5002474, which is set for a 2-13-08 hearing on issues relating to the Washington State Toxicologist and State Toxicology Lab. Having reviewed decisions rendered in a series of District Courts around the state on these issues, it is the decision of the Thurston County Prosecuting Attorney that in any case prosecuted by this office in which a charge of RCW 46.61.502, Driving Under the Influence of Intoxicating Liquor and/or Drugs, or a charge of RCW 46.61.504, Physical Control Under the Influence of Intoxicating Liquor and/or Drugs has been filed, the State will not seek to admit at trial the results of any breath alcohol test run with a simulator solution from a batch approved by the State Toxicology Lab prior to Batch 07027. In all but a few instances, this decision will only affect tests run prior to August 24, 2007. It is the belief of this office that solutions from Batch 07027 onward do not suffer from any of the procedural or substantive errors which have been the basis for motions to suppress the results of tests using solutions from earlier batches.

The motions set to be addressed by the Court at the February 13th hearing include not only motions to suppress breath test results, but also motions to dismiss. The Office of Prosecuting Attorney does not agree that dismissal is an appropriate remedy in these cases.

Given the decisions of this office set forth above, I would appreciate your response as to whether your client wishes to proceed with the hearing set for February 13th. I will await your response at your earliest convenience.

Sincerely,

James C. Powers
Deputy Prosecuting Attorney