

1 IN THE DISTRICT COURT OF KING COUNTY FOR THE STATE OF WASHINGTON

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3	STATE OF WASHINGTON,) Case No. C076949 and 9Y6231062
4	Plaintiff,) ORDER LIFTING BAC SUPPRESSION
5	vs.) UNDER STATE v. AHMACH
6)
7	FAUSTO, LESLIE PERPUSE, and)
8	BALLOW, BRETT RICHARD,)
	Defendants.)

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11 In a joint motion, the State asks this court¹ to determine whether the Washington State

12 Toxicology Laboratory Division² (WTLD) has addressed the multiple problems fully

13 documented in this court's previous ruling in State v. Ahmach.³ Defendants, in the two Driving

14 Under the Influence (DUI) cases herein, request suppression of their breath test results under

15 E702, ER 403 and ER 901. We write separately here only concerning the request of the State.

16 Evidence regarding WTLD remedies for the Ahmach issues was heard at the beginning of the

17 hearings which addressed the issue of uncertainty of measurement in the Fausto and Ballow

18 cases, held August 2, - 6, 2010.

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22 ¹ Pursuant to King County District Court (KCDC) local rule, LCrRLJ 8.2 (2), the Ahmach motion was declared a

23 motion of countywide significance and heard by a three judge panel consisting of judges from different divisions of

24 the KCDC. Those same three judges, Mark Chow, Darrell Phillipson and David Steiner, sat as a panel and heard

25 evidence in these new cases.

² The WSTD was known as the Washington State Toxicology Laboratory at the time of the Ahmach decision. As a

part of the office's reorganization, it is now known as the Washington State Toxicology Laboratory Division. To

avoid confusion, this decision will refer to the lab, both historically and in the present, as the WSTD.

³ In the previous ruling of this Court, State v. Sanafim Ahmach, et al., C00627921³, (Ahmach), we suppressed the

breath test results of Sanafim Ahmach and other similarly situated defendants. The bases for suppression were

broad, but were all related directly to the inability, at the time, of the WSTD to produce a reliable work product.

1 For the reasons stated herein, we find that the problems addressed in Ahmach have been
2 addressed by the WTL D and that the bases for the original order of suppression no longer apply.

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4 **Findings of Fact**

- 5 1. The court suppressed breath test results in the Ahmach case under ER 702 based on a
6 multiplicity of errors within the WTL D.
7
8 2. The defense has not alleged that any of the errors which caused suppression in the Ahmach
9 proceeding still exist. While not conceding that all Ahmach issues have been resolved, the
10 defense has likened its position to that of "no contest."
11
12 3. The defense has raised other issues, specifically regarding "uncertainty of measurement."
13 This ruling is limited to applying the Ahmach ruling to the facts of the cases before the
14 court. A ruling on the "uncertainty issues" is made under separate order.
15
16 4. The defense has not alleged that the breath test results in this case do not meet the
17 foundational requirements of RCW 46.61.506(4).
18
19 5. The court finds that the errors and omissions which caused suppression in Ahmach do not
20 exist in these cases, based on the following new evidence:

21 a. In the years since the Ahmach ruling there have been significant changes in
22 the personnel, procedures and protocols at the WTL D. These changes have greatly
23 improved the ability of the WTL D to eliminate errors in the work of the WTL D. These
24 changes demonstrate that the expectation within the division is that all personnel will
25 perform to the highest standards and with the highest integrity in their work.

These changes include:

The appointment of a new State Toxicologist, Dr. Fiona Couper;

1 The hiring of a Quality Assurance Manager, Mr. Jason Sklerov. Mr.
2 Sklerov's sole job is to assist in the development of quality assurance
3 procedures and to ensure enforcement of those procedures;

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5 The implementation of a system of peer review of the work of all
6 laboratory analysts in the testing and certification of simulator solutions.
7 This peer review includes a three tier review of all the work by analysts
8 before any simulator solution is placed in use;

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10 The implementation of a three tier system of peer review of the
11 work of Breath Test Program technicians who perform quality assurance
12 procedures on breath test instruments;

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14 The revision and creation of detailed manuals, articulating all
15 procedures, protocols and quality expectations of the WTLD;

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17 The implementation of proficiency testing for simulator solution
18 analysts and breath test technicians;

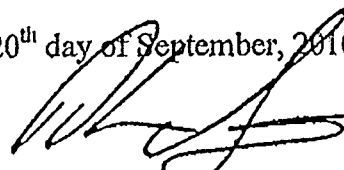
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20 The implementation of scheduled supervisory reviews and annual
21 internal audits of all the work of toxicologists and breath technicians to
22 assure compliance with standards;

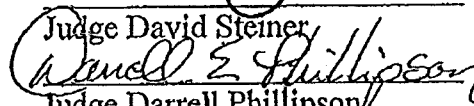
1 principles which this court found previously at the WTLD, the current WTLD culture appears
2 geared toward rigorous science and leadership in the area of forensic toxicology.⁴

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4 **Conclusion**

5 All of the evidence and testimony presented herein indicated that the WTLD has
6 successfully corrected all of the issues raised in Ahmach. This court finds that the problems
7 addressed in Ahmach have been addressed by the WTLD and that the basis for the original order
8 of suppression no longer applies.⁵

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10 Dated this 20th day of September, 2010

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12 
13 Judge David Steiner

14 
15 Judge Darrell Phillipson

16 
17 Judge Mark Chiswick

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23 ⁴ While this court has also issued an order suppressing breath-alcohol readings absent a measure of their uncertainty
24 (see Order Suppressing Defendant's Breath-Alcohol Measurements in the Absence of a Measurement for
25 Uncertainty, State v. Fausto, C076949), the WSTD is leading all other forensic toxicology labs and breath test
programs simply because it has developed and implemented a program to determine breath-alcohol uncertainty.

⁵ The decision above comes with the proviso that this order must be read only in conjunction with this court's order
on uncertainty, Id.