

1 KING COUNTY DISTRICT COURT, STATE OF WASHINGTON,
2 FEDERAL WAY DIVISION
3

4 STATE OF WASHINGTON,) Case No.
5 and)
6 CITY OF FEDERAL WAY) The Court's Memorandum Opinion
7 Plaintiffs,) on the Thermometer Issue for
8 vs.) the Federal Way Division.
9)
10 _____)
Defendant)

11
12 **Introduction**

13 These findings and conclusions are entered not specifically in
14 any case but to all cases wherein the BAC Verifier thermometer
15 is at issue. The Court is aware that in some cases a particular
16 Judge may not rule on a motion because of a party filing an
17 Affidavit For Change of Judge. In those cases a particular
18 undersigned Judge is not rendering a holding in that case.
19 We have reviewed the transcript of the proceedings in the Renton
20 Division of the King County District Court, the Brief of those
21 representing Defendants and the Brief from the King County
22 Prosecutor's Office and have heard the arguments of those before
23 the Court on May 3, 2001.
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1 **Opinion of the Court**

2 RCW 46.61.506 (3) requires that "Analysis of the person's blood
3 or breath to be considered valid under the provisions of this
4 section or RCW 46.61.502 or RCW 46.61.504 shall have been
5 performed according to methods approved by the State
6 Toxicologist..."

7 Pursuant to this mandate, the State Toxicologist adopted the
8 rules set forth in Chapter 448-13 WAC. For a test to be valid
9 it must meet the requirements of WAC 448-13-040, 448-13-050 and
10 448-13-055. If the test does not meet these requirements it is
11 invalid and the results are therefore, not admissible.

12 Included in the WAC sections noted above is a requirement that:
13 "the temperature of the solution in the simulator prior to the
14 start of the test must be thirty-four degrees centigrade plus or
15 minus 0.2 degrees centigrade."

16 For the reasons stated in the Memorandum Opinion issued by the
17 King County District Court, Renton Division, this Court likewise
18 reaches the conclusion that the state cannot meet the
19 foundational requirements for admissibility.

20 This Court also accepts the reasoning of the Renton Division
21 with respect to the remedy to be applied, and with the following
22 observation as to the exculpability value of invalid tests.

23 Under normal circumstances, a breath test would not be given
24 unless there had been probable cause to stop a defendant and
25 sufficient evidence (i.e., odor, slurred speech, poor motor

1 skills, etc.) to make an arrest. If these factors exist and a
2 test is administered, presumably a result would be obtained.
3 Any result indicating alcohol in the body would be culpable, not
4 exculpable, and particularly so since that result could be
5 admitted as proof of violating the under the influence prong of
6 RCW 46.61.502 or RCW 46.61.504.

7 **Holding**

8 This Court holds that the BAC test results obtained are
9 suppressed and that none of them are dismissed as suppression
10 effectively eliminates that remedy. The Defendant's motion to
11 suppress is granted. The Defendant's motion to Dismiss is
12 denied.

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14 Entered May 10, 2001.

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16 Respectfully,

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21 E. T. Leverette,
22 Judith R. Eiler, and
23 Judges, Federal Way Division,
24 King County District Court
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