

Worcester,SS

District Court Department

Fitchburg-1216CR1885 et.al.

Commonwealth

Vs.

James Astie, Sr. 1215 CR 1885

Peter Fiynn, 1216 CR 2529

Thomas Fiynn, 1216 CR 2311

Matthew Damian, 1316 CR 1378

J. Bean, 1416 CR 751

J. Marshall, 1316 CR 1813

Craig Boivin, 1316 CR 2166

Andrew Ryba, 1216 CR 966

Curt Cormier, 1216 CR 1513

Kyle Catabia, 1216 CR 1117

Kristopher Cormier, 1216 CR 279

Brittany Herrick, 1216 CR 701

Erin Schubmahi, 1416 CR 893

Jevin Jarosz, 1416 CR 1149

Eric Hammond, 1316 CR 1211

Laythe Hasson, 1316 CR 2228

John Jarvela, 1416 CR 697

Keith Lord, 1316 CR 1204

Kristopher Cormier, 1216 CR 279

Peter Munnis, 1216 CR 593

Cassandra Stacy, 1361 CR 137

Brandon Beyeler, 1268 CR 1385

The Court's Orders Relative to the Defendant's Written Requests for "Breath Test Discovery Supplemental", the Defendant's Verbal Motion to Reconsider the Court Prior Findings on Other Discovery Motions, and the Court's Finding with Respect to the Defendant Oral Motion for Additional Code Information Pertaining to the Breath Machine which is the Subject of the Aforementioned Cases

I. The Defendant's Motion for "Breath Test Discovery Supplemental":

In Support of this Motion, the defendant relied upon an email from Stacy Czarnowski, Dated August 18, 2014. (It is part of Exhibit 1 which was accepted into Evidence during the Hearing). No Affidavits were offered by the defendant in support of the motion and no testimony was offered by the defendant in support of said discovery request. A representative of OAT was present in the courtroom and the Assistant District Attorney consulted with her during the motion. The ADA credibly asserted during the hearing that the calibration range set by the manufacturer is greater than the range set by OAT (.074% to .086%). A review of the memorandum of S. Czarnowski in the context of the ADA's explanation of the memorandum the court is satisfied that there is no operational deficiency with the breathalyzer used in the aforementioned tests. Consequently, the Motion for Supplemental discovery is denied as there is no credible basis to support said additional discovery requests*.

ii. The Defendant's Oral Motion to Reconsider the Prior Court Decision on other Discovery Motions:

DENIED

iii. The Defendant's Oral Motion for Additional Code Information Pertaining to the Breath Machine which is the Subject of the Aforementioned Cases:

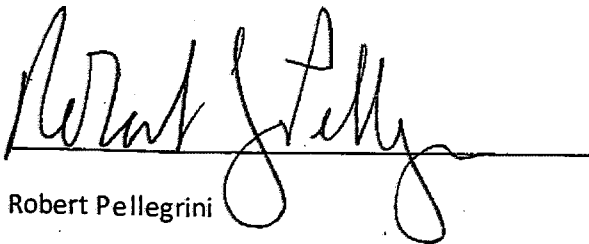
The District Attorney has agreed to reach out to the manufacturer of the subject breathalyzer machine to obtain code definitions of the type mentioned by the Defendant at the hearing, and if they exist, the Commonwealth will produce said code definitions to the defendant's attorney within thirty days of this date.

*Notwithstanding the court's aforementioned rulings, the parties have reached agreement relative to additional discovery that will be provided to the defendant by the Commonwealth on these cases by the January 2015 compliance date. The agreement is as follows:

As to the Alcotest 9510 Breathalyzer (BT) serial numbers for the BT machines used for the above referenced defendants are ARBE-0037—SP Leominster; ARBE-57, Lunenburg; ARCA-57 FPD; ARBA-10 SP Holden; ARBF-0153 Clinton PD.

The following documents relative to the above referenced BT machines only, from the period of one year prior to the defendants' breath tests to one month after the defendants' breath tests will be produced: all 90-24 breath test and diagnostic test reports and 90-24 BT refusal or other for the above named referenced defendants if the documents have not already been sent in the standard discovery packet from OAT; certification documents, including calibration and verifications results; periodic tests; a redacted (personal identifying information only) implied consent use log in a hardcopy spreadsheet, and any repair records of any of the above named referenced BT instruments that were sent to Draeger Diagnostics (this assumes of course that such documents exist). Additional items to be produced by agreement: any notifications concerning functionality of the BT instruments distributed specifically to the Officers in Charge of the aforementioned law enforcement departments, and Melissa O'Meara will inquire of Draeger about what the "functionality check" numbers represent in the "PRE..." and "post Diagnostic Test" listed on the "90-24 Breath Test Refusal" or other documents from OAT.

So Ordered:


Robert Pellegrini

Associate Justice

Dated: 10/31/14