

1 IN THE MUNICIPAL COURT OF PHOENIX

2 MARICOPA COUNTY

3
4 STATE OF ARIZONA

5 Plaintiff,

6 vs.

7 ETHAN CHARLES ALBERT

8 Defendant

Case No.: 5687811

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**RULING: DEFENSE MOTION
TO CONSOLIDATE**

10 The question presented for this court is whether to consolidate Driving While Under
11 The Influence Of Alcohol (D.U.I.) cases with arrest dates on or after July 23, 1999 with those
12 currently consolidated for hearing on the Motion to Dismiss/Suppress in State vs. Heather
13 Hentges, all of which have arrest dates prior to July 23, 1999.

14 In deciding whether to consolidate the post July 23, 1999 cases with the Motion to
15 Dismiss/Suppress in the pre July 23, 1999 cases, the court must decide if there are sufficient,
16 common issues of law or fact to be litigated that would require consolidation for the purposes
17 of judicial economy. All of these cases involve a challenge to certain record-keeping
18 procedures adopted by the Phoenix Police Crime Lab. Those procedures govern
19 maintenance and accuracy checks of alcohol breath testing devices currently in use by the
20 Phoenix Police Department.

21 The Hentges cases all involve a Motion to Suppress the breath alcohol readings and a
22 Motion to Dismiss based on an allegation of "bad faith" and a violation of due process,
23 wherein the Defense alleges that the State intentionally caused the creation of a software
24 program which allowed it to delete records of specific breath instrument checks that would
25 have contained information on the reliability and accuracy of the instruments. By doing so, the

1 Defense also alleges that the State violated its legal and ethical duty to determine the
2 existence of, preserve and disclose potentially exculpatory evidence.

3 The evidence presented during this hearing included a history and discussion of what
4 was labeled the Adams I program, the Adams II program, and the Phoenix Adams II
5 program, the latter with an effective date of July 23, 1999. The Adams I system was a
6 software program which automatically placed the results of any checks or adjustments to the
7 breath test instruments into a computer storage bank. The Adams II system was a
8 modification to Adams I which allowed deletions of specific test results from the computer
9 storage bank. The Phoenix Adams II system did not include any changes to the computer
10 software (E.P.R.O.M.) of the Adams II system. However, written procedures for Phoenix
11 Adams II require quality assurance specialists (Q.A.S.) to hand-document their findings,
12 including aborted tests, rechecks, service procedures and records, and all numerical results
13 when preparing the PPs (calibration checks) and QQs (quality assurance procedural checks).

14 Based upon the testimony and documentary evidence presented to this court in
15 support of the Motion to Consolidate, the court makes the following findings of fact:

- 16 1. The Phoenix Adams II system is the functional equivalent of Adams I, if one
17 assumes that the Q.A.S. accurately and completely hand-documents the
18 information required by the Phoenix Crime Lab written quality assurance program.
19 In addition, the Phoenix Adams II system has added safeguards that Adams I
20 lacked. The current system will not allow a Q.A.S. to skip required steps or
21 perform those steps in an incorrect order. Furthermore, the Q.A.S. is not
22 required to repeat entry information for each sub-test, thereby decreasing the
23 chance of data entry error.
- 24 2. Records of instrument accuracy and reliability under Phoenix Adams II, (i.e. the
25 Adams PC database, the CD-ROM of scanned PPs and QQs and service
maintenance records) appear sufficient to enable defendants to challenge the

1 breath test results, assuming that the Q.A.S. completely and accurately hand-
2 documents everything required by the Phoenix Crime Lab written quality
3 assurance plan.

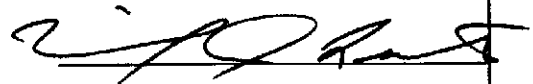
- 4 3. The recently disclosed B.F.M. log of Adams II (the system activity table that
5 shows whether or not any information was deleted, modified, altered or moved
6 from one of the other six tables in Adams II) indicates that, since approximately
7 March of 1999, no data in the Adams II database was deleted, altered or moved.
8 However, the capacity to secretly alter or delete files in Adams II has not been
9 eliminated.

10 I find that, although there are some common issues existing between the pre
11 July 23, 1999 cases and post July 23, 1999 cases, the cases are sufficiently dissimilar to
12 preclude consolidation.

13 IT IS THEREFORE ORDERED that the Defense Motion to Consolidate the post
14 July 23, 1999 cases with the Hentges cases is denied.

15 IT IS FURTHER ORDERED that the 189 cases currently consolidated in Albert, and all
16 similarly situated cases, i.e. Intoxilizer 5000 breath test cases with arrest dates on or after
17 July 23, 1999, will remain consolidated for any additional evidence or argument on the
18 Defense Motion to Dismiss/Suppress.

19 Dated this 8th day of February, 2000

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