

County Court <u>EL</u> PASO County, State of Colorado Court Address: 20 E. Vermijo P.O. BOX 2980 Colorado Springs, CO 80903	
<hr/> THE PEOPLE OF THE STATE OF COLORADO, Plaintiff,	
<hr/> Defendant.	
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<div style="text-align: center;"><b>ORDER</b></div>	

▲ COURT USE ONLY ▲
Case Number:
Div.:A Ctrm: 505

**THIS MATTER**, coming before the Court on February 26, 2010 for hearing on the Defendant's Motion to Compel Discovery. The Defendant was represented by his attorney, Timothy R. Bussey, and the People were represented by Frederick Stein, Deputy District Attorney. Due to the general interest of the Court in the Defendant's motion, all the Judges of the Court were in attendance including Judges Acker, Wilson, Hansen, Martin, Prudek, Rotolo, Walker and Walter.

After considering the Defendant's motion, the Court finds that the Defendant was stopped by an officer with the Colorado Springs Police Department on June 21, 2009. Following the contact, the Defendant was charged with several offenses including Driving Under the Influence of Alcohol. Pursuant to the express consent provisions of Colorado, the Defendant submitted to a test of his blood. The blood sample was tested by the Colorado Springs Metro Forensic Laboratory. According to a memo published by Dr. Ian Fitch of the Lab, in November 2009 the Lab personnel discovered that at in least 167 cases in 2009 blood alcohol values were elevated. The differences ranged from less than 10% to greater than 50%. Accordingly the defendant is requesting that this Court order that the District Attorney produce discovery materials concerning the laboratory reports and records. Pursuant to C.R.S. 42-4-1301, blood alcohol testing and the results are used by the prosecution as an inference or presumption of impairment or influence of alcohol upon the Defendant's driving. In any prosecution for DUI/DWAI or DUI Per Se, the Defendant shall be entitled to offer direct or circumstantial evidence to show that there is a disparity between what the tests show and other facts so the trier of fact could infer that the tests were in some way defective or inaccurate. The Defendant may offer evidence concerning the accuracy of the testing. C.R.S. 42-4-1301. In any criminal case, the government is obliged under the Due Process Clause of the Colorado and United States Constitutions to provide the defense with evidence in its possession that is "exculpatory," i.e., "material." *California v. Trombetta*, 467 U.S. 479 (1984); *Brady v. Maryland*, 373 U.S. 83 (1963); *People v. Rodriguez*, 914 P.2d 230 (Colo. 1996).

To be “material” for constitutional purposes, information need not itself be admissible at trial. *People v. Gallegos*, 644 P.2d 920 (Colo. 1982).

The Court finds that the Defendant’s motion is well taken and, pursuant to Criminal Rules of Procedure Rule 16, orders that the People produce the following within 10 days. Except with regard to the test for the Defendant’s age, all names and personal information of other defendants shall be redacted or otherwise blocked. If applicable, the information disclosed by this order may be transmitted or made available to the Defendant’s attorney by electronic media such as a DVD. Defense may not distribute or disseminate the material to any other person or party except their investigators or clients.

- The Colorado Springs Metro Crime Lab (hereafter, referred to as the Crime Lab) quality assurance system, to include, but not limited to, procedures, manuals, and policy for the quality assurance system.
- The Crime Lab’s internal investigations or quality assurance system reviews for 2009, including, but not limited to, reports of inaccurate blood test results to include inter-office and intra-office communications.
- Any communications between the Crime Lab and the Colorado Department of Health concerning the quality assurance system.
- The Crime Lab’s reporting of all blood alcohol tests in 2009 that erroneously reported a higher than true actual result of greater than 10%, including, but not limited to, the original reported results and any other results later reported on the suspect samples.
- Any communications between the Colorado Springs Police Department and the Colorado Bureau of Investigations (CBI) concerning an external and independent investigation into the possible causes of inaccurate readings relating to the Crime Lab.
- An Internal Affairs investigation concerning the inaccurate readings at the Crime Lab subject to in Camera review by the Court if requested.
- Inaccurate blood alcohol tests with a variance of greater than 10% at the Crime Lab in 2009
- Including, but not limited to, the inaccurate tests that have been identified, to include forensic reports from each inaccurate blood test result.

- All written or electronic communications between the Colorado Springs Police Department and the Fourth Judicial District Attorney's Office concerning inaccurate blood results at the Crime Lab.
- All written or electronic communications for the years 2008 and 2009 between the Colorado Springs Police Department and the distributor and/or manufacturer of blood testing equipment including, but not limited to, Agilent Technologies.
- Documentation for any lapses in the Crime Lab's certification.
- Information regarding any laboratory testing for inaccurate blood tests at the Crime Lab as follows:
  - a. The name, training, experience, and certification of the person who manages the laboratory and of all persons who handled, processed, and tested material in erroneous reported high blood results and the Crime Lab.
  - b. Certificates of compliance with accrediting agencies for the previous five years for the Crime Lab.
  - c. Internal audits, logs, and reports concerning blood alcohol testing for the last two years for the Crime Lab.
  - d. The number of blood tests conducted by the Lab for 2009 including the number of sample per "batch" samples retested per batch and name of the technician who did the testing.
  - e. All Gas Chromatograph data (electronic data file to include the electronic method) for the samples that were retested in each batch and deemed acceptable, to include the original test and retest.
  - f. All Gas Chromatograph data for all samples that had a variance of more than 10%, to include the original test and the retest.
  - g. Full litigation packet for the tests with more than a 10% variance.
  - h. Full litigation packet for the randomly retested samples that were deemed acceptable.

- Pursuant to the CDPHE (Colorado Department of Public Health and Environment) regulations, provide the following information for the blood alcohol tests at the Crime Lab to include:
  - a. Personnel qualifications, to include curriculum vitae's.
  - b. Standard operating procedure manual for testing blood for alcohol for the Crime Lab.
  - c. Analytical process for the Crime Lab blood alcohol testing.
  - d. Proficiency testing for the Crime Lab blood alcohol testing.
  - e. Quality control for the Crime Lab blood alcohol testing.
  - f. Security for the Crime Lab blood alcohol testing.
  - g. Chain of custody procedure for blood alcohol testing for the Crime Lab.
  - h. Specimen retention for blood alcohol tests at the Crime Lab.
  - i. Records for any errors discovered for blood alcohol testing at the Crime Lab.
  - j. Results reporting for blood alcohol testing at the Crime Lab.

DATED: March 5, 2010

BY THE COURT:

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**Stephen J. Sletta, Judge**