



LEGAL UPDATE

ADMISSIBILITY OF BREATH TEST RESULTS

Commonwealth v. Hallinan, 491 Mass. 730 (2023).

RELEVANT FACTS

On October 5, 2013, Hallinan was arrested for operating under the influence of alcohol (OUI), second offense and took a breath test with a result of .23. In November 2013 the defendant admitted to sufficient facts and was placed on probation. The defendant later moved to withdraw her plea arguing that it was not knowing and voluntary based upon governmental misconduct regarding the Officer of Alcohol Testing's (OAT) discovery practices that came to light in the Ananias litigation. The motion was denied. The defendant appealed.

ANANIAS I AND II

In prior litigation, hundreds of OUI defendants consolidated their cases and sought to challenge the reliability of the breath test device in what is known as a Daubert-Lanigan hearing. Discovery was ordered to be produced prior to the hearing. The discovery order required OAT to produce documents regarding the annual certification for breath test devices.

After it was reported that all requested documents had been produced, a Daubert-Lanigan hearing that spanned over 10 days took place. The judge issued a decision, known Ananias I, that found that OAT did not have written protocols to be followed when calibrating and certifying a breath test device until September 14, 2014. For this reason, the court ordered that breath test results prior to that date were presumptively unreliable and could not be admitted into evidence unless the Commonwealth produced information that the specific device used "had been calibrated and certified using scientifically reliable methodology." Breath tests results after written protocols were adopted by OAT were deemed presumptively reliable.

For specific guidance on the application of this case or any law, please consult your supervisor or your department's legal advisor.

After Ananias I, it was discovered that OAT had failed to disclose exculpatory information, specifically a large number of worksheets related to failed certification tests. The Ananias defendant filed a motion to compel discovery and to impose sanctions.

The Executive Office of Public Safety and Security investigated the discovery practices of OAT and issued an extensive report that “identified a history of intentional withholding of exculpatory evidence by OAT, blatant disregard of court orders, and other misconduct.”

After a hearing on the defendant’s motion, the judge issued a decision, Ananias II.

“The judge found that OAT’s misconduct resulted in a deprivation of the consolidated defendants due process rights because they had been unable to obtain a full, fair, and complete Daubert-Lanigan hearing. The judge concluded that EOPSS’s findings regarding OAT’s approach to producing exculpatory information had had a devastating impact on public trust and confidence in the fairness of the criminal justice system and the integrity of the process.”

The judge ordered OAT to complete seven remedial measures and ruled that breath tests would be presumptively excluded until those measures were taken. As of April 18, 2019, OAT had satisfied all requirements mandated by the court.

APPLICATION OF THE ANANIAS DECISIONS

To succeed on a motion to withdraw her plea, the defendant must show that the government misconduct was so egregious that it rendered her decision to plea involuntary. To meet her burden, the defendant must prove that the egregious misconduct occurred before she entered her plea and that the misconduct influenced her decision to enter that plea.

The court found that the misconduct of OAT by its years-long practice of intentional withholding of exculpatory evidence was “a lapse of systematic magnitude in the criminal justice system, that can be cured only by a global remedy.”

“Accordingly, in cases in which a defendant seeks to vacate a guilty plea as a result of the revelation of OAT’s misconduct, and the defendant’s breath test took place between June 1, 2011, and April 18, 2019, the defendant is entitled to a conclusive presumption that egregious governmental misconduct occurred.”

The court also ordered that breath test results of Alcotest 9510 devices in any pending OUI cases between June 1, 2011 - April 18, 2019 are inadmissible in criminal prosecutions.

To succeed on a motion for new trial, a defendant must still meet the second prong of the test which is a reasonable probability that the defendant would not have pleaded to the charge but for the government misconduct. The defendant here proved that she would not have pleaded the case if the breath test result had been suppressed.

The denial of her motion to withdraw must be reversed.

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