


THE ARIZONA REPUBLIC

Newspaper archive powered by 

April 15, 2000

Section: Valley & State

Edition: Final Chaser

Page: B1

BREATH TESTS TOSSED IN DUIS LAB RESULTS INVALID FOR 1,300 CASES

Brent Whiting, The Arizona Republic

Breath-test results in nearly 1,300 drunken-driving cases were tossed out Friday by a Phoenix judge, handing a major legal victory to defense attorneys.

The ruling by Judge Michael Carroll of Phoenix Municipal Court is part on an ongoing legal battle across Arizona involving the Intoxilyzer 5000, a device used by many police agencies in investigations of driving under the influence.

Carroll's decision fell short of outright dismissal of the 1,300 DUI cases, which were filed from January 1996 to last July 23.

He sided with arguments by defense lawyers that record-keeping practices by the Phoenix Crime Laboratory during the 42-month period deprived defendants of finding out whether breath-test results were obtained on machines that were properly maintained and calibrated.

But he refused to dismiss the cases, saying there was no evidence of bad-faith dealings to warrant such action.

"We're very pleased," said Cliff Girard, one of several defense lawyers who worked on the case. "It's a message that the courts won't tolerate the filtering of data from data banks."

Defense attorney **Craig Penrod** said he's disappointed that Carroll didn't go one more step by dismissing the cases.

"The bottom line is that he found a due-process violation and that defendants who had breath tests during the period didn't have a fair chance to challenge the results," **Penrod** said.

The ruling means that prosecutors can attempt to prove the DUI cases by other means, including evidence of slurred speech, impaired driving or failure to pass field-sobriety tests, but they are barred from using breath-test readings obtained by the Intoxilyzer 5000.

But without such test results, defense lawyers said, it's often difficult to prove a DUI case beyond a reasonable doubt.

Paul Badalucco, chief of the appeals section of the Phoenix Prosecutor's Office, said Carroll's ruling will be appealed in an attempt to win reinstatement of the Intoxilyzer 5000 readings. Under court rules, the 1,300 cases will be dismissed pending the outcome of the appeal.

If the city fails to get the decision overturned, Badalucco said, there will be a case-by-case review to determine which are strong enough to be refiled.

The crime lab changed its record-keeping practices in July 1999, but another round of motions is pending before Carroll on defense claims that the lab didn't go far enough. The motions involve hundreds of DUI cases.

Other Intoxilyzer 5000 challenges are pending in Maricopa County Superior Court involving hundreds of criminal cases.