


THE ARIZONA REPUBLIC

Newspaper archive powered by 

October 1, 1999

Section: Scottsdale/Foothills Community

Edition: Final

Page: 9

JP URGES RESOLUTION OF DUI ISSUES PETITION SEEKS RULING BY STATE HIGH COURT

Brent Whiting, The Arizona Republic

A Phoenix justice of the peace has jumped into the fray involving allegations of evidence tampering by the Arizona Department of Public Safety in drunken-driving cases.

Steven McMurry, the central Phoenix JP, has filed documents urging the Arizona Supreme Court to offer legal guidance on the issue.

McMurry wants the state's highest court to review an Aug. 31 ruling by Judge John Burkholder of Glendale City Court that tossed out breath-test evidence gathered against 88 people accused of driving under the influence.

Nearly 300 DUI cases are pending in Maricopa County justice courts that raise the same issues that were decided by Burkholder, McMurry wrote in a petition. Help is needed so that JPs know how to resolve these cases, he said.

"I do not presume to suggest or to try to influence whatever result this court might reach," McMurry wrote. "I only suggest that some result, some resolution of the issues, is urgently needed."

McMurry said he filed the petition Sept. 13 after being asked by John Ore, a Tempe JP who serves as the presiding JP in Maricopa County, to help facilitate an "orderly resolution" of the DUI issue.

In a 41-page ruling, Burkholder held that the DPS crime lab has engaged in "bad faith" dealings in its handling of evidence relating to breath-test results registered by the Intoxilyzer 5000, a machine used by police statewide in DUI cases.

Defense lawyers have claimed that "tens of thousands of DUI cases" that have been resolved in Arizona since 1995 may be jeopardized because of DPS' practices.

Lawyers Rob Robinson of Glendale and **Craig Penrod** of Tempe have filed a separate petition with the Supreme Court urging that a ruling be issued to break a logjam involving thousands of pending cases throughout the state.

They said Sept. 20 that the Supreme Court has set a briefing schedule in the case and has indicated that some type of order will be issued Oct. 26.

Meanwhile, the Glendale City Prosecutor's Office has appealed Burkholder's ruling to Maricopa County Superior Court.

Tamika Stone, an assistant city prosecutor, has told the Supreme Court that no review should be granted until Superior Court has had a chance to rule on the matter.

DPS Director Joe Albo has denied that the crime lab did anything legally or scientifically improper to justify Burkholder's ruling.