

1                   IN THE MUNICIPAL COURT FOR THE CITY OF SEATTLE

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3                   CITY OF SEATTLE,                   )

4                                   Plaintiff,                   ) Cause No. 633895

5                                   vs.                                   ) Superior Court Appeal

6                   ROOSEVELT WIGGINS,                   ) No. 19-1-03033-6 SEA

7                                   Defendant.                   )

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9                                   HEARING - VOLUME IV

10                   The Honorable Anita Crawford-Willis Presiding

11                                   January 18, 2019

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21                   TRANSCRIBED BY: Bonnie Reed, CET

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## 1 A P P E A R A N C E S

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2 January 18, 2019

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4 MS. SRA: And then good afternoon, Your Honor. Gory Sra  
5 on behalf of the City.

6 This is the matter of Roosevelt Wiggins, Cause No. 633895.

7 THE COURT: Thank you.

8 Counsel, did you want to make your appearance for the  
9 record?

10 MS. WHYTE: Yes. Sorry, Your Honor. Of course.

11 THE COURT: That's all right.

12 MS. WHYTE: Lindsey Whyte from Defender Association on  
13 behalf of Mr. Wiggins, who is --

14 THE COURT: Thank you.

15 MS. WHYTE: -- here seated to my left.

16 THE COURT: Good afternoon.

17 MS. WHYTE: And I'm from the Defender Association.

18 THE COURT: Good afternoon, Mr. Wiggins.

19 MR. WIGGINS: Good afternoon, Your Honor.

20 THE COURT: All right. So the Court heard argument on,  
21 and I (inaudible) day it was now. Couple weeks ago, right?

22 MS. SRA: It was January 9th and 10th, Your Honor.

23 THE COURT: Thank you. And really the sole issue that the  
24 Court was left with was whether or not the City should be  
25 able to admit the blood results and the testing through a

1 toxicologist, Mr. Capron, who did not do the primary  
2 testing.

3 So are we -- that's the issue that's before me. Everybody  
4 agree with that?

5 MS. SRA: That's correct, Your Honor.

6 THE COURT: Ms. Whyte?

7 MS. WHYTE: Yes, Your Honor.

8 THE COURT: All right. Thank you.

9 So I went back, and I read the briefs. I looked at the  
10 cases, looked at the notes that I had taken on the argument.

11 And so a couple of things that I started out with is  
12 really listening to the description by Mr. Capron and by the  
13 Defense's expert as to what actually was done by Ms. Mata.

14 So Mr. Capron, he described the process that she  
15 performed -- that was performed by Ms. Mata, and he  
16 described it as testing, that she did the testing, she did  
17 the analysis following protocols initiated by Washington  
18 State Lab.

19 He also testified that he didn't do any of the things that  
20 Ms. Mata did in her preparation for the testing; that he  
21 reviewed the results that she came up with, which took him  
22 about ten minutes. He didn't have any of the evidence,  
23 blood. He didn't calibrate. He didn't measure.

24 The test results we'll see is something (inaudible).  
25 These are all things that he said Ms. Mata would have done

1 and needed to do per Washington State Patrol Toxicology Lab  
2 procedure. And he basically took the paperwork, reviewed  
3 that the protocols were followed.

4 And the Court does not find that that equals testing.  
5 Court further, in looking at the cases and listening to  
6 the -- looking at the cases and reviewing the testimony,  
7 Court did not find that the information that Mr. Capron  
8 looked at was raw data. What he looked at was the testing  
9 that was done by Ms. Mata, and her conclusions as the  
10 primary analyst and toxicologist.

11 That being said, as I look at the cases, and I think  
12 Defense (inaudible) differences between the different  
13 standards.

14 So I think City argued about the DNA and the cell phone  
15 records. In both those instances, the information that was  
16 gathered by the initial person was (inaudible) and so it  
17 would be like raw data. It didn't have any -- it didn't  
18 take effect. It didn't do anything. It didn't connect to  
19 the defendant until the second person came in and said, I've  
20 looked at these numbers, and this is what they mean as it  
21 relates to this defendant.

22 In this case with the toxicologist, it's different. From  
23 the very beginning the blood was drawn from Mr. Wiggins.  
24 It's drawn for purposes of determining whether or not he had  
25 either alcohol or drugs in his system, and whether that

1 level was above what the legal level was. So it was always  
2 being drawn for the purposes of using it down the road  
3 against in trial or (inaudible) proceedings. And nothing  
4 else needed to be done.

5 Ms. Mata then tested it and found out that these were --  
6 this is what the levels were, and then that was the end of  
7 it. Those numbers that she came up with after doing her  
8 testing, again, it's all part of the same chain. Nothing  
9 else needed to be done to connect it. Mr. Capron's review  
10 didn't connect it. It already was at the time Ms. Mata did  
11 her testing and came up with the .11 reading.

12 The other thing that the case has talked about -- because  
13 I know the City said, well, he could give an analysis of  
14 what she did because he also -- it's just reviewing what she  
15 did to see if she did it correctly.

16 But the cases talk about the aspect of the human -- the  
17 human aspect in doing these tests. And again, I think it's  
18 because the tests -- when she's complete with the test, it's  
19 complete. No one else needs to do anything to make it  
20 complete.

21 And so a lot of the things were subjective, like how she  
22 opened -- how did she find the vial when she took it from  
23 the locker -- the evidence locker? Did she put the right  
24 amounts in initially? Did she record that accurately? The  
25 calibration, did she recalibrate it to the things that she

1       said?

2           We don't know those things, and I think the cases talk  
3       about those things, and that's what makes it even more  
4       important that there's a right to confront, because of these  
5       subjective things that needed to -- that need to be  
6       addressed; and Mr. Capron cannot address those, because he  
7       wasn't there.

8           Now, perhaps if he was there in the lab and he observed  
9       her do it, then perhaps that would be a different story.  
10       That's like, you know, the blood draw where we don't have  
11       the -- the nurse doesn't have to come in. The officer makes  
12       an observation.

13          But in this case he didn't observe. He does not answer to  
14       any of those questions. Only Ms. Mata could give the answer  
15       to those questions. And you have both Mr. Capron  
16       acknowledged that, as did the Defense's expert acknowledge  
17       that these are things that could affect the result of the  
18       reading, but we have no answer because Ms. Mata was not  
19       there for testimony.

20          And then this is distinguishable from the cases where  
21       there was the DNA profiled as pulled by a number of people.  
22       It didn't have (inaudible) it didn't mean anything until the  
23       expert came in and compared it and said, yes, this is the  
24       DNA profile of this defendant.

25          The phone numbers from the cell phone didn't mean anything

1           until the other person looked at it and compared them to the  
2           records of the defendant to say, yes, this is a connection.

3           So it's the person that connects it that makes it  
4           basically have life and can be used against Defendant.  
5           That's the person who is necessary to give the testimony.

6           And in this case I find that that person would be  
7           Ms. Mata, because again, she is the one who did all of the  
8           work starting from the beginning, getting the vial, and all  
9           of the testing that went on. And even the City's witness  
10          continually referred to her as the primary analyst, the  
11          tester. And even (inaudible) he's called the reviewer. So  
12          that in and of itself, to me -- he's not the -- he didn't  
13          test it. He reviewed.

14          So based on the Court's reviewing the facts in this case,  
15          the Court reviewing the cases -- the different cases, which  
16          would be Bullcoming, also would be Lui, would be  
17          Melendez-Diaz, the Court is going to find that the City  
18          cannot use Mr. Capron as the witness to substitute for  
19          Ms. Mata, because it would be a violation of Mr. Wiggins's  
20          Fifth Amendment right to confrontation.

21          So I'm going to deny the City's motion.

22          MS. SRA: Thank you, Your Honor. And the City would like  
23          to make a record. Based on the Court's ruling, the City is  
24          unable to proceed in this case due to the fact that the City  
25          cannot produce Christie Mitchell-Mata.



1           Accordingly, I would ask the Court to make a 2.2 finding.

2           THE COURT: Did you want to say anything?

3           MS. WHYTE: Just a moment, Your Honor.

4           THE COURT: I think what I'm -- go ahead. I think what I  
5 might ask the parties to do is to do written findings and  
6 conclusions for me. That way we can --

7           MS. SRA: Sure.

8           MS. WHYTE: That's fine.

9           MS. SRA: Certainly, Your Honor.

10          THE COURT: Did you want -- were you going to say  
11 something, Ms. Whyte?

12          MS. WHYTE: No, Your Honor. I think -- is the Court -- is  
13 the Court wanting those in the context of its 2.2 findings?

14          THE COURT: Yes.

15          MS. WHYTE: I mean, we can do that.

16          THE COURT: All right. When do you want to have them  
17 completed?

18          MS. SRA: Your Honor, the City would request at least a  
19 week.

20          MS. WHYTE: We can do a week.

21          THE COURT: Okay. So should we say -- well, we have a  
22 short week next week. So should we say, like, the Tuesday?  
23 Is that good? The 29th? Because you have a short week next  
24 week.

25          MS. WHYTE: I mean, we can do whenever, Your Honor.

1 Friday, Tuesday, Monday.

2 THE COURT: Okay.

3 MS. SRA: The City's preference would be January 29th,  
4 Tuesday, Your Honor.

5 THE COURT: All right. And so procedurally, do I -- City,  
6 are you going to -- do you want to wait until that's done  
7 before I dismiss it? Or do we need to -- I'm thinking  
8 about -- isn't it set for master and --

9 MS. SRA: I'm not actually sure if we are set, Your Honor.

10 THE COURT: Oh, maybe we didn't.

11 MS. SRA: I think we --

12 THE COURT: We didn't set, did we? Because we --

13 MS. SRA: No, we didn't.

14 THE COURT: Good. Never mind. Never mind.

15 MS. SRA: Your Honor, quite frankly, I'm not really sure  
16 procedurally --

17 THE COURT: Okay. You can wait.

18 MS. SRA: I don't --

19 THE COURT: I just was thinking we had a master. But I  
20 remember we didn't set it, because we didn't know when the  
21 witnesses were going to be available.

22 MS. WHYTE: Right. Your Honor, may I address one thing  
23 then with the Court?

24 THE COURT: Uh-huh.

25 MS. WHYTE: So Mr. Wiggins had been -- as an initial

1 condition of release on May 31st, he was given day reporting  
2 with random UAs. That condition was struck on 12/26 by the  
3 Superior Court. Ms. Jackson took a writ in this case, and  
4 the Superior Court found that the UAs were unlawful.

5 The UA requirement striking has been communicated to day  
6 reporting, but day reporting's perspective is that he's  
7 still obligated to come in and sign his name.

8 THE COURT: Okay.

9 MS. WHYTE: I believe from the transcript of the  
10 arraignment -- which I have here if the Court wants to see,  
11 and I've shown it already to the City -- that the animating  
12 force behind the Court's decision to impose the day  
13 reporting was so that he can have the UAs.

14 The Court said things like -- so for example, Mr. Wiggins  
15 was supposed to come to a DUI OCA. And in arraignment we  
16 explained that he actually had never gotten the letter. And  
17 the Court said --

18 THE COURT: Was the day reporting, though, already  
19 stricken back in November?

20 MS. WHYTE: No, Your Honor. It was --

21 THE COURT: I thought I see a note that says --

22 MS. WHYTE: He was still --

23 THE COURT: -- strike day reporting. Okay.

24 MS. WHYTE: He was still on day reporting. We had moved  
25 to strike it.

1 THE COURT: Okay.

2 MS. WHYTE: He was reduced. He was initially put on two  
3 days a week, and then he was reduced to one day a week. But  
4 that was still in the context of doing these UAs.

5 THE COURT: Okay.

6 MS. WHYTE: And the Court had said (inaudible) that came  
7 up. It's not even that long a transcript. But the Court  
8 had said basically, okay, I understand you didn't get the  
9 letter, I'm not going to ding you for that. But you have a  
10 bad driving history, and I want you to do the UAs.

11 The City had been asking for EHM, and Mr. Wiggins was  
12 unable to afford that, and so the UAs were kind of seen as,  
13 like, a way of addressing that.

14 THE COURT: Okay.

15 MS. WHYTE: In other words, I think that the day reporting  
16 was never the result of a concern about his FTA history.

17 THE COURT: It was connected with the --

18 MS. WHYTE: But it was connected with UAs. And so day  
19 reporting needs communication from the Court is what they  
20 told us --

21 THE COURT: Okay.

22 MS. WHYTE: -- in order to take him off of the day -- the  
23 weekly reporting requirement.

24 THE COURT: All right.

25 MS. WHYTE: So we would be asking the Court to correct

1           that.

2           THE COURT: All right.

3           MS. WHYTE: And I'll note, too, I mean, he's -- since then  
4 he's been present for at least 12 court hearings. He's  
5 always been on time. So I think that the track record for  
6 him on FTAs really has been demonstrated that he's been in  
7 compliance with day reporting. He's been showing up.

8           It's just with the UAs, something happened where he was  
9 taken off UAs, but not off the day reporting.

10          THE COURT: So it looks like -- and I don't know what  
11 happened. But there's a note that says that on November 8th  
12 it said to strike day reporting. So I don't know what  
13 happened.

14          But, City, did you want to be heard? It seems like  
15 that's --

16          MS. SRA: I'll defer to the Court, Your Honor.

17          THE COURT: Okay. Yeah. It looks like -- I don't know  
18 what happened between November and December 24th, but the  
19 note says strike. But maybe that didn't get communicated.  
20 I don't know.

21          Okay. So I will indicate that day reporting is stricken.  
22 I'm just trying to see how that information will be to  
23 probation since we're not doing a --

24          THE CLERK: (Inaudible).

25          THE COURT: Yes.

1 THE CLERK: Okay.

2 THE COURT: I'm just trying to think how to communicate  
3 that to day reporting.

4 THE CLERK: (Inaudible).

5 THE COURT: On the docket, okay. So (inaudible).

6 MS. WHYTE: Thank you, Your Honor.

7 THE COURT: And then I'm going to put that the findings  
8 and conclusions will be submitted January 29th.

9 And could the parties notify Court staff when you  
10 submitted them so I'll know to go in and look?

11 MS. SRA: Yes, Your Honor.

12 MR. BURNTON: Of course, Your Honor.

13 THE COURT: Thank you. All right. Anything else?

14 MS. WHYTE: Not from Defense, Your Honor.

15 THE COURT: Ms. --

16 MS. SRA: So, Your Honor, are we having another hearing?

17 Or --

18 THE COURT: Yeah. Let me get the briefs first, and then  
19 we'll just set to issue to do them orally.

20 MS. SRA: Okay.

21 THE CLERK: (Inaudible).

22 THE COURT: Well, I couldn't do it on that day. It would  
23 have to be on the Friday. But I want to review them before.  
24 So is that the 31st? I can't see.

25 MS. WHYTE: Friday would be the 1st of February, Your

1 Honor.

2 THE COURT: The 1st.

3 THE CLERK: (Inaudible). So would you like to --

4 THE COURT: Yes.

5 THE CLERK: -- set a (inaudible) motion?

6 THE COURT: Yes.

7 THE CLERK: For Friday afternoon?

8 THE COURT: Yeah.

9 THE CLERK: So that will be February 1st at 1:30 p.m. in  
10 Court 10-02.

11 THE COURT: Thank you. Thank you.

12 MS. WHYTE: I'm sorry. 1:30, Madam Clerk?

13 THE COURT: Uh-huh.

14 THE CLERK: Yes.

15 MS. SRA: Wait. Sorry. I'm confused. Okay. So the  
16 briefing is due on --

17 THE COURT: Yeah. I want to see it a few -- I want to  
18 have it a few days before. The 29th.

19 MS. SRA: Okay. And then the hearing is?

20 THE COURT: That Friday.

21 MS. SRA: The February 1st, right?

22 THE COURT: Yes.

23 MS. SRA: Okay. Thank you.

24 THE CLERK: (Inaudible).

25 MS. SRA: 633895.

1 THE COURT: All right. Thank you.

2 MS. SRA: Thank you. Have a great weekend, everyone.

3 THE COURT: Thank you. Yes. Absolutely.

4 (January 18, 2019, conclusion of hearing)

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3 STATE OF WASHINGTON )

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5 COUNTY OF SNOHOMISH )

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7 I, the undersigned, do hereby certify under penalty  
8 of perjury that the foregoing court proceedings, recorded  
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10 direction as a certified transcriptionist; and that the  
11 transcript is true and accurate to the best of my knowledge and  
12 ability, including any changes made by the trial judge reviewing  
13 the transcript; that I am not a relative or employee of any  
14 attorney or counsel employed by the parties hereto, nor  
15 financially interested in its outcome.

16

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18 IN WITNESS WHEREOF, I have hereunto set my hand this  
19 13th day of March, 2019.

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23 \_\_\_\_\_  
Bonnie Reed, CET

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