

SLIPOW, ROBUSTO & KELLAM, P.C.

ATTORNEYS AND COUNSELORS AT LAW

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2476 Nimmo Parkway, Suite 121
VIRGINIA BEACH, VIRGINIA 23456

LARRY B. SLIPOW
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MELINDA R. GLAUBKE
DEBORAH J. DOLENTI

May 14, 2015

VIA E-MAIL (kbyler@pendercoward.com)

Kathryn Byler, Esquire
Pender & Coward, P.C.
222 Central Park Avenue, Suite 400
Virginia Beach, VA 23462-3026

Re: VBBA Bench Bar Conference - May 21, 2015

Dear Kathryn:

I know the Commonwealth Attorney's office has provided you an outline to be filed for CLE credits. It is principally a basic Commonwealth primer. I have not been in a position to do a supplemental outline but here are some defense resources I may refer to. If you think it is appropriate and timely, you may want to append it to the outline.

With warmest regards, I remain

Very truly yours,

SLIPOW, ROBUSTO & KELLAM, P.C.



Larry B. Slipow

LBS/djd
Enclosure

cc: Scott Vachris, Esquire via E-Mail (svachris@vbgov.com)
Brian Latuga, Esquire via E-Mail (blatuga@vbgov.com)

TOOLS WHICH MAY BE OF ASSISTANCE IN DEFENDING DUI CASES

WEBSITES:

NHTSA DWI Detection and Standardized Field Sobriety Testing, March 2013 Edition,
Participant Guide: www.katzjustice.com/FST2013.pdf

Draeger Interlock XT User Manual (2013):

http://www.draeger.com/sites/assets/PublishingImages/Products/cdi_interlock_xt/Modal/interlock-xt-if-en-user-manual.pdf

Intox EC/IR II, Breath Test Operator Instructional Manual, Dept. Of Forensic Science Breath Alcohol Section, Effective July 7, 2008:

<http://www.dfs.virginia.gov/wp-content/uploads/2013/07/InstructionalManualIntoxECIRII.pdf>

HELPFUL CASES:

[Yap v. Commonwealth](#), 49 Va. App. 622, 643 S.E.2d 523 (2007)

[Grant v. Commonwealth](#), 682 S.E.2d 84, 54 Va.App. 714 (Va. App., 2009)

[Roseborough v. Commonwealth](#), 281 Va. 233, 704 S.E.2d 414 (Va., 2011)

[Mwangi v. Commonwealth](#), 672 S.E. 2d 888, 277 Va. 393 (Va., 2009)

OTHER HELPFUL RESOURCES:

Freedom of Information Act (FOIA) request to police department for what vehicle a police officer was driving on his shift and if it was equipped with a video/audio camera. (Form attached.)

Request for DFS records regarding specific breath test. (Form attached.)

Response to Request for DFS records regarding specific breath test. (Sample attached.)

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May 14, 2015

Sgt. G. M. Gonda.
Virginia Beach Police Department
2509 Princess Anne Road, Building 11
Virginia Beach, VA 23456

Dear Sgt. Gonda:

Pursuant to Chapter 37 of the Va. Code, I hereby make a Freedom of Information Act request for the following:

Please advise if the vehicle driven by Officer J. W. Overton during his shift on September 1, 2014 was equipped with audio and/or video recording equipment and whether any reports were made for said equipment malfunctioning during that time period.

Thank you for courtesy and cooperation. With warmest regards, I remain,

Very truly yours,

SLIPOW, ROBUSTO & KELLAM, P.C.

Larry B. Slipow

LBS/sms

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DEBORAH J. DOLENTI

April 15, 2015

Alka B. Lohmann
Department of Forensic Science
Breath Alcohol Section
700 N. Fifth Street
Richmond, VA 23219

VIA FACSIMILE: 804-786-6139

Re: City of Virginia Beach vs. @@
Court: Virginia Beach General District Court
Court date: @@
Date test was performed: @@
Instrument serial number: @@
Operator's license number: @@

Dear Ms. Lohmann:

Please be advised that I have been retained to represent the above named defendant. Under the provisions of the Virginia Freedom of Information Act, Va. Code sec. 2.2-3700, *et seq.*, and in order to avoid issuing a subpoena for your appearance and a subpoena *duces tecum* for certain records in the captioned matter, I am writing to request the following documents which relate to the above referenced matter:

1. Subject test information;
2. Computer generated logs for the period beginning seven days prior to the aforementioned test and ending seven days after that test;
3. Instrument certification and Maintenance history for the twelve months preceding the test date;
4. Instrument location history with regard to the seven months preceding the last date;
5. Certificate of Instrument Accuracy for the instrument applicable to this matter;

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Breath and Alcohol Division
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6. The "trouble call log" for the instrument applicable to this matter for the twelve months preceding the test date and one month after said date; and
7. Computer generated license verification of the individual who operated the instrument referenced above.

I understand that you will comply with this request at least one week prior to the above referenced court date.

Thank you for your cooperation. If you have any questions regarding this correspondence, please do not hesitate to call this office. With kind regards, I remain

Very truly yours,

SLIPOW, ROBUSTO & KELLAM, P.C.

Larry B. Slipow

LBS/sms
Enclosure



COMMONWEALTH of VIRGINIA

DEPARTMENT OF FORENSIC SCIENCE

CENTRAL LABORATORY
A Nationally Accredited Laboratory

700 NORTH 5TH STREET
RICHMOND, VIRGINIA 28219
(804) 786-6971

January 7, 2015

Va. Beach General District Court
2425 Nimmo Parkway
Virginia Beach, VA 23456 9057
Attn: Clerk of Court

FACSIMILE

RE: Commonwealth v. [REDACTED]
Return Date: 1/8/2015

This is in response to:

 Letter recieved
 X *Subpoena Duces Tecum* dated 12/30/2014

Enclosed please find:

1. A copy of the subject test results.
2. Copies of the computer generated logs from 10/22/2014-11/05/2014.
3. A copy of the certification and repair records for instrument 010438 from 10/29/2013-11/29/2014.
4. A copy of the location history for instrument 010438 from 08/25/2014-11/12/2014.
5. A copy of the Certificate of Accuracy for instrument 010438.
6. A copy of the trouble call log from 10/29/2013-11/29/2014.
7. A copy of the operator license verification.
8. A copy of the operator class history.
9. The breath test worksheet filled ^{by} by the operator for this test is not in the possession of the Department of Forensic Science.

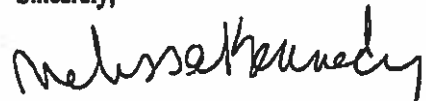
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FILED
VIRGINIA BEACH
GENERAL DISTRICT COURT

The "monthly preventive maintenance/simulator solution change checklist" is not applicable to the Intox EC/IR II. The Department of Forensic Science Quality Manual and Breath Alcohol Procedures Manual can be accessed through our website. www.dfs.virginia.gov.

I, the undersigned, do hereby certify that: (1) I am a custodian of the records for the Breath Alcohol Section of the Virginia Department of Forensic Science; (2) the attached records of the Department relating to the subject's breath test are true and accurate copies of the original records of this office; and (3) I have custody of the referenced records.

Sincerely,



Melissa S. Kennedy
Program Manager, Calibration & Training

Enclosures

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2015 JAN - 8 PM 2: 30
VIRGINIA BEACH
GENERAL DISTRICT COURT
FILED