

check case and sample

Toxicology Analysis Request Form

NEW Mailing Address:
Bureau of Forensic Toxicology
PO Box 144300
Salt Lake City, UT 84114-4300

Physical Address:
4431 South 2700 West
Taylorsville, UT 84119

Enter information electronically and print a copy to submit with the samples.
Submit ONE form per subject.

Evidence Receiving Phone: (801) 965-2451
Evidence Receiving Fax: (801) 965-2450
Email: forensictox@utah.gov
www.health.utah.gov/lab/toxicology

SUBJECT INFORMATION

Last Name	[REDACTED]
First Name	[REDACTED]
Middle Name	[REDACTED]
Gender:	<input checked="" type="radio"/> Male <input type="radio"/> Female
Date of Birth	09/22/82
ID#	[REDACTED]
ID type	Driver License
State	Utah
Subject Type:	Driver

SAMPLE INFORMATION

Sample Type	Number of Samples	Collection Date	Collection Time (24:00)
<input checked="" type="checkbox"/> Blood	<input type="radio"/> 0 <input type="radio"/> 1 <input checked="" type="radio"/> 2 <input type="radio"/> 3	01/01/14	03:03
<input type="checkbox"/> Urine	<input type="radio"/> 0 <input type="radio"/> 1 <input type="radio"/> 2 <input type="radio"/> 3		
Samples collected by: J. Payne			

SAMPLE SUBMISSION CHECKLIST

To ensure your samples are processed without delays, please verify that:

- ☒ The blood and urine samples are each labelled with the subject name, your agency case #, and the subject ID# or date of birth.
- ☒ The tubes, containers, and packaging are each sealed, Initialed, and dated.
- ☒ This form is included with the sample.

Samples that do not meet the submission requirements will be returned.

CHAIN OF CUSTODY

☐ Samples were delivered by mail/courier.

☒ Samples were delivered by agency personnel. Name: [REDACTED]

Date 01/02/14

Time 9:33

PRINT

Clear both forms

Fin-016f
02/09/2010

Barcode 1: L2014- [REDACTED] - BLOOD
Barcode 2: L2014- [REDACTED] - BLOOD
For BFT use only.

AGENCY INFORMATION

Agency Name	SLCPD
Requesting Officer	Baldwin
Agency case#	[REDACTED]
County	Salt Lake [LE01]

OFFENSE INFORMATION

Offense Date 01/01/14 Time (24:00) 01:40

Incident Information (check all that apply)

- ☒ DUI ☐ DUI metabolite ☐ Accident
- ☐ Vehicular homicide ☐ Fatal Accident
- ☐ Other: [REDACTED]

List any drugs suspected or administered for medical treatment prior to blood draw:

TEST(S) REQUESTED

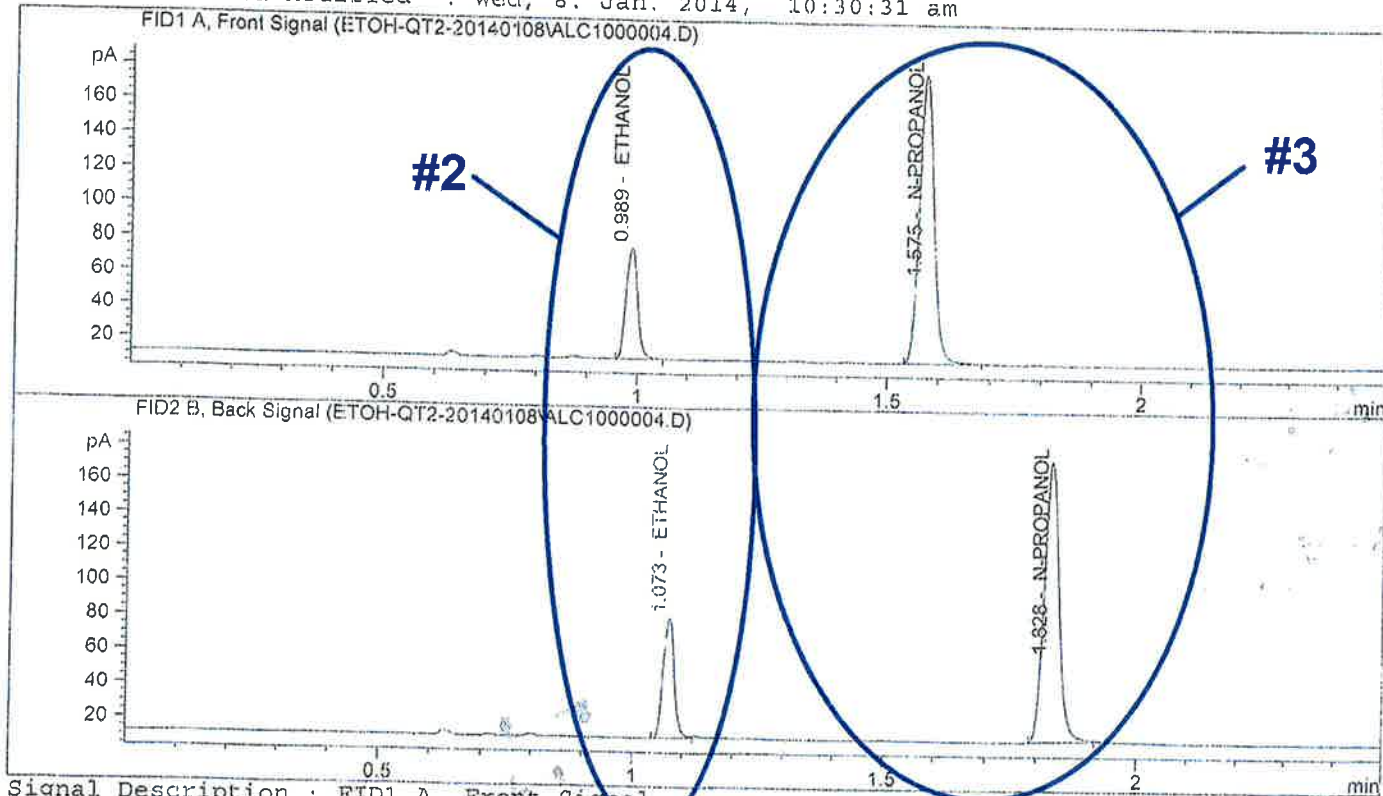
- ☒ Alcohol
- ☐ Drugs of Abuse (THC, Cocaine, Morphine, Meth)
- ☐ Prescription Drug Panel *

* The current list of drugs included in the Prescription Drug Panel may be found in our Services Manual on our website.

File : D:\DATA\ETOH-QT2-20140108\ALC1000004.D

Injection Date and Time : Wed, 8. Jan. 2014 2:25:16 PM
 Sample and Project #/Name : [REDACTED] B
 Acquisition Operator Name : LEXIMAY
 Acquisition Method: C:\CHEM32\1\METHODS\ETHANOL_DEFAULT.M
 Analysis Method : C:\CHEM32\1\METHODS\ETHANOL_DEFAULT.M
 Calibration Data Modified : Wed, 8. Jan. 2014, 10:30:31 am

Seq Line : 4
 Vial 4
 Inst. # GCHS-2



Signal Description : FID1 A, Front Signal

RT [min]	Type	Area	Amount [G/DL]	Name
0.989	BB	106.600	0.13278	ETHANOL
1.575	BB	343.178	0.02000	N-PROPANOL

Signal Description : FID2 B, Back Signal

RT [min]	Type	Area	Amount [G/DL]	Name
1.073	BB	107.693	0.13245	ETHANOL
1.828	BB	338.298	0.02000	N-PROPANOL

*** End of Report ***

- #1-check sample and project # as well as operator name
- #2-check for any interfering peaks in chromatography
- #3-check for any issues with internal standard
- #4-check calculated values for ethanol
- #5-check for analyst initials





Unified State Laboratories: Public Health
Bureau of Forensic Toxicology
4431 South 2700 West
Taylorsville, Utah 84129
Telephone: (801) 965-2400
Fax: (801) 965-2455

AGENCY CODE: LE01H

SALT LAKE CITY POLICE DEPT.
ATTN: RECORDS SUPERVISOR
PO BOX 145497
SALT LAKE CITY, UT 84114-5497

Case Information
Lab Case #: L2014-
Sample #:
Source: Blood
Date Received: 01/02/2014
Date Completed: 01/09/2014

Subject Information
Subject Name:
Subject DoB: 09/22/1982

Officer Information
Submitting Officer: BALDWIN
Agency Case #:

Page 1 of 1

Toxicology Information
Test Run: Alcohol by Headspace GC
Ethanol Result: 0.13 grams per 100 milliliters of Blood
I certify under criminal penalty of the State of Utah
that the foregoing is true and correct.
Analyzed by: Lexi May

- #1-check lab case #, sample # and type of sample ie urine or blood
- #2-compare final result vs calculated result on chromatography
- #3-verify analyzing toxicologist signature

Practice Note Re Substitute Toxicologist

(1) *Bullcoming v. New Mexico*, 131 S.Ct. 2705, held that a substitute toxicologist cannot testify in lieu of the now-unavailable analyzing toxicologist using the Toxicology Final Report (i.e., the New Mexico equivalent of the last page of Appendix A attached hereto). *Id.* at 2719.

(2) Justice Sotomayor's concurrence, which was the fifth vote that formed the majority, left open the possibility of "a case in which an expert witness was asked for his expert opinion about underlying testimonial reports that were not themselves admitted into evidence." *Id.* at 2722. So, a substitute for Lexi May can bring to court the gas chromatogram page (i.e., the first page of the attached Appendix A with the graphs with peaks and troughs) and testify about what that says about defendant's BAC (or prohibited drug content), without violating *Bullcoming's* holding.

(3) Justice Sotomayor's concurrence left open the possibility of "a case in which the State introduced only machine-generated results, such as a printout from a gas chromatograph." *Id.* (i.e., also the first page of the attached Appendix A with the graphs with peaks and troughs). And based on (2) above a substitute toxicologist can presumably opine about what those machine-generated results say about defendant's BAC (or prohibited drug content), without violating *Bullcoming's* holding.

That brings up the question, What's the difference? Why allow "underlying testimonial reports" or "machine-generated results" or "raw data output" as some of the decisions call the preceding? Why allow those but not the Toxicology Final Report? One reason is that, like in New Mexico, *see Bullcoming*, 131 S.Ct. at 2722, in Utah there is a manual step done by a human (Lexi May) where the analyzing toxicologist manually enters the machine-generated result into a PC that prints the Toxicology Final Report. Presumably there is room for a mistake to be made (though unlikely because the analyzing toxicologist's work is reviewed by a supervisor), but it's a distinction.

Further, Gambrelli has provided some additional information about the comparative level of information on the gas chromatogram page (which a substitute toxicologist knows how to read) and the Toxicology Final Report:

Some of the information that is available on the gas chromatogram page but not on the Toxicology Final Report are:

- 1) A list of all the analytes that were identified, including those that do not get reported due to levels below the reporting limit.
- 2) Are the peak(s) at the correct retention time?
- 3) Are the chromatographs of good quality? (smooth peaks that don't overlap)
- 4) On what date was the sample analyzed?
- 5) Date of calibration
- 6) Based on the gas chromatogram page, what results would the substitute toxicologist report? Do those results match the results on the Toxicology Final Report prepared by Lexi May?
- 7) Who conducted the test? Does that match the analyst on the Toxicology Final Report?
- 8) What are the sample number and case number? Do these match what is on the Toxicology Final Report?

Of course the above evidence will need to be elicited in direct examination of the proposed substitute toxicologist at any hearing where whether he or she can testify will be decided. The above points appear to be points that appellate courts in other jurisdictions are seizing upon to justify allowing a substitute toxicology to testify. Those decisions are contained in the "Lexi May" briefs previously posted on the forum.

where x_i is the result of the i th measurement and \bar{x} is the arithmetic mean of the n results considered.

Calculator tip: It is usually easiest to use the function key on a calculator to find the estimated standard deviation. Enter the readings into the calculator memory according to the instructions for your calculator, then use the 'estimated standard deviation' key (s , or σ_{n-1} 'sigma n minus one'). See Section 13 for more information on the use of calculators.

3.7 How many readings do you need to find an estimated standard deviation?

Again, the more readings you use, the better the estimate will be. In this case it is the estimate of *uncertainty* that improves with the number of readings (not the estimate of the mean or 'end result'). In ordinary situations 10 readings is enough. For a more thorough estimate, the results should be adjusted to take into account the number of readings. (See Section 16 for further reading which covers this subject.)

4 Where do errors and uncertainties come from?

Many things can undermine a measurement. Flaws in the measurement may be visible or invisible. Because real measurements are never made under perfect conditions, errors and uncertainties can come from:

- **The measuring instrument** - instruments can suffer from errors including bias, changes due to ageing, wear, or other kinds of drift, poor readability, noise (for electrical instruments) and many other problems.
- **The item being measured** - which may not be stable. (Imagine trying to measure the size of an ice cube in a warm room.)
- **The measurement process** - the measurement itself may be difficult to make. For example measuring the weight of small but lively animals presents particular difficulties in getting the subjects to co-operate.
- **'Imported' uncertainties** - calibration of your instrument has an uncertainty which is then built into the uncertainty of the measurements you make. (But remember that the uncertainty due to not calibrating would be much worse.)



Visual alignment is an operator skill. A movement of the observer can make an object appear to move. 'Parallax errors' of this kind can occur when reading a scale with a pointer.

- **Operator skill** - some measurements depend on the skill and judgement of the operator. One person may be better than another at the delicate work of setting up a measurement, or at reading fine detail by eye. The use of an instrument such as a stopwatch depends on the reaction time of the operator. (But gross mistakes are a different matter and are not to be accounted for as uncertainties.)
- **Sampling issues** - the measurements you make must be properly representative of the process you are trying to assess. If you want to know the temperature at the work-bench, don't measure it with a thermometer placed on the wall near an air conditioning outlet. If you are choosing samples from a production line for measurement, don't always take the first ten made on a Monday morning.
- **The environment** - temperature, air pressure, humidity and many other conditions can affect the measuring instrument or the item being measured.

Where the size and effect of an error are known (e.g. from a calibration certificate) a correction can be applied to the measurement result. But, in general, uncertainties from each of these sources, and from other sources, would be individual 'inputs' contributing to the overall uncertainty in the measurement.

Not Reported in P.3d, 2002 WL 538462 (Utah App.), 2002 UT App 112
(Cite as: 2002 WL 538462 (Utah App.))

**UNPUBLISHED OPINION. CHECK COURT
RULES BEFORE CITING.**

Court of Appeals of Utah.
STATE of Utah, Plaintiff and Appellee,
v.
Javier PUERTO, Defendant and Appellant.

No. 20010482-CA.
April 11, 2002.

Defendant was convicted, in the Third District Court, Salt Lake Department, Randall N. Skanchy, J., of misdemeanor driving under the influence (DUI). Defendant appealed. The Court of Appeals, Thorne, J., held that sufficient evidence supported the conviction.

Affirmed.

West Headnotes

[1] Automobiles 48A 355(6)

48A Automobiles
48AVII Offenses
48AVII(B) Prosecution
48Ak355 Weight and Sufficiency of Evidence
48Ak355(6) k. Driving While Intoxicated. **Most Cited Cases**

Automobiles 48A 356(6)

48A Automobiles
48AVII Offenses
48AVII(B) Prosecution
48Ak356 Questions for Jury
48Ak356(6) k. Driving While Intoxicated. **Most Cited Cases**

(Formerly 48Ak356)

Defendant's contentions, that the arresting officer had improperly performed one of the three field sobriety tests and that the less than perfect environmental conditions under which defendant performed the remaining two field sobriety tests rendered the results of those tests invalid, did not establish that the evidence was insufficient to support defendant's conviction for misdemeanor driving under the influence (DUI); rather, defendant's contentions involved credibility determinations which were within the jury's exclusive functions of weighing the evidence and determining the credibility of witnesses. U.C.A. 1953, 41-6-44.

[2] Automobiles 48A 355(6)

48A Automobiles
48AVII Offenses
48AVII(B) Prosecution
48Ak355 Weight and Sufficiency of Evidence
48Ak355(6) k. Driving While Intoxicated. **Most Cited Cases**

Arresting officer's testimony that upon approaching defendant, he could smell alcohol on defendant's breath, that defendant admitted consuming alcohol prior to his encounter with the officer, that defendant had a glassy stare and difficulty balancing upon exiting his vehicle, that defendant failed to properly perform any of the three field sobriety tests the officer administered prior to arresting defendant, and that defendant refused to comply with the required breath-test procedures after initially consenting, supported conviction for misdemeanor driving under the influence (DUI). U.C.A. 1953, 41-6-44.

Not Reported in P.3d, 2002 WL 538462 (Utah App.), 2002 UT App 112
(Cite as: 2002 WL 538462 (Utah App.))

Brenda Viera, Salt Lake City, for appellant.

William Kendall, Salt Lake City, for appellee.

Before **DAVIS, GREENWOOD**, and **THORNE, JJ.**

MEMORANDUM DECISION (Not For Official
Publication)

THORNE, Judge.

*1 Javier **Puerto** appeals from his conviction for Driving Under the Influence, a class B misdemeanor, in violation of **Utah Code Ann. § 41-6-44 (1999)**. We affirm.

[1] **Puerto's** sole claim on appeal is that the evidence presented to the jury was insufficient to support his conviction.^{FN1} “We will reverse on this ground ‘only when the evidence ... is sufficiently inconclusive or inherently improbable that reasonable minds must have entertained a reasonable doubt.’ “ *State v. Mead*, 2001 UT 58, ¶ 65, 27 P.3d 1115 (citations omitted) (alteration in original).

FN1. More specifically, **Puerto** argues that the evidence presented demonstrated (1) that the arresting officer had improperly performed one of the three field sobriety tests; and (2) that the less than perfect environmental conditions under which **Puerto** performed the remaining two field sobriety tests rendered the results of those tests invalid. **Puerto**, however, fails to recognize that under these circumstances these arguments inherently involve credibility determinations and “ ‘[i]t is the exclusive function of the jury to weigh the evidence and to determine the credibility of the witnesses.’ “ *Child v. Gonda*, 972 P.2d 425, 433 (Utah 1998) (quoting *State v. Booker*, 709 P.2d 342, 345 (Utah 1985) (citation omitted)) (alteration in original); see also *State v. Mead*, 2001 UT 58, ¶ 67, 27 P.3d 1115 (stating “ ‘It is the

*exclusive function of the jury to weigh the evidence and to determine the credibility of the witnesses.’ “ (Citation omitted)). Accordingly, our analysis focuses exclusively on whether the State presented sufficient evidence to the jury to support **Puerto's** conviction.*

[2] Here, the arresting officer testified, inter alia, that upon approaching **Puerto** he could smell alcohol on **Puerto's** breath, that **Puerto** admitted consuming alcohol prior to his encounter with the officer, and that **Puerto** had a glassy stare and difficulty balancing upon exiting his vehicle. Finally, the officer testified that **Puerto** failed to properly perform any of the three field sobriety tests the officer administered prior to arresting **Puerto** and that **Puerto** refused to comply with the required breathalyzer procedures after initially consenting.

After examining the record, we can see nothing to suggest that the evidence was so “ ‘ ‘sufficiently inconclusive or inherently improbable that reasonable minds must have entertained a reasonable doubt.’ “ *Mead*, 27 P.3d 1115, 2001 UT 58 at ¶ 65 (citations omitted).

Accordingly, we affirm **Puerto's** conviction for Driving Under the Influence of Alcohol.

JAMES Z. DAVIS and **PAMELA T. GREENWOOD**, JJ., concur.

Utah App., 2002.

State v. Puerto

Not Reported in P.3d, 2002 WL 538462 (Utah App.), 2002 UT App 112

END OF DOCUMENT

Rule 37. Citation to decisions.

Published decisions of the Supreme Court and the Court of Appeals may be cited as precedent in all criminal proceedings. **Unpublished decisions may also be cited as precedent, so long as all parties and the court are supplied with accurate copies at the time the decision is first cited.**

STATE V. OLOLA

339 P.3d 164, 773 Utah Adv. Rep. 11, 2014 UT App 263
(Cite as: 339 P.3d 164)

Decision, in which Judges **JOHN A. PEARCE** and **KATE A. TOOMEY** concurred.

***166 Memorandum Decision**

DAVIS, Judge:

¶ 1 Julius Ochieng Olola appeals his convictions of **driving** under the **influence** of alcohol and related charges. We affirm.

[1] ¶ 2 Olola first argues that the evidence was insufficient to support a determination beyond a reasonable doubt that he operated a motor vehicle—an element of each offense of which he was convicted. Olola argues that the trial court should have granted his motion for a directed verdict because the evidence supporting the jury's determination that he operated a motor vehicle was “sufficiently inconclusive or inherently improbable that reasonable minds must have entertained a reasonable doubt that [Olola] committed the crime of which he was convicted.” See *State v. Shumway*, 2002 UT 124, ¶ 15, 63 P.3d 94.

In reviewing the denial of a motion for a directed verdict based on a claim of insufficiency of the evidence, [w]e will uphold the trial court's decision if, upon reviewing the evidence and all inferences that can be reasonably drawn from it, we conclude that some evidence exists from which a reasonable jury could find that the elements of the crime had been proven beyond a reasonable doubt.

State v. Montoya, 2004 UT 5, ¶ 29, 84 P.3d 1183 (alteration in original) (citation and internal quotation marks omitted).

[2] ¶ 3 The primary evidence that Olola operated a motor vehicle came from a witness who testified that he was standing two to four feet from Olola's van when he saw Olola stagger toward the van, climb in, and turn it on. The witness testified that while attempting to leave his parking spot, Olola first hit the car in front of him, then backed up and hit the car

behind him. The witness then watched Olola drive to a nearby gas station and hit a light pole in the gas station parking lot.

¶ 4 There were several inconsistencies between the witness's testimony at trial and the written statement he filled out immediately following the incident. In the written statement, the witness did not mention the light pole, claimed that Olola hit the cars while trying to park rather than while leaving his parking spot, stated that Olola hit the car behind him before he hit the car in front of him, and claimed to have witnessed the incident from fifty feet away rather than the two to four feet he recalled at trial.

[3] ¶ 5 Relying on these inconsistencies, Olola asserts that the witness's testimony was so inherently improbable that it could not support the jury's verdict. “Substantial inconsistencies in a sole witness's testimony ... can create a situation where the prosecution cannot be said to have proven the defendant's guilt beyond a reasonable doubt....” *State v. Robbins*, 2009 UT 23, ¶ 17, 210 P.3d 288. However, a jury's credibility determinations may be reevaluated on this basis only “where (1) there are material inconsistencies in the testimony and (2) there is no other circumstantial or direct evidence of the defendant's guilt. The existence of any additional evidence supporting the verdict prevents the [trial] judge from reconsidering the witness's credibility.” *Id.* ¶ 19 (emphasis added).

¶ 6 Here, the State presented physical evidence of damage caused to the two cars that Olola allegedly hit while trying to get out of his parking spot. Photographs provided at trial depicted damage matching the height and shape of Olola's vehicle. This physical evidence was sufficient to corroborate the witness's testimony. Thus, reevaluation of the jury's verdict by the trial court on the basis of inherently improbable witness testimony would have been inappropriate. See *id.* Although the various inconsistencies in the witness's testimony certainly undermine his credibility, his credibility was not “so weak that no reasonable