WALSBRAEN

BY MARK O
FOX

COMMONWEALTH OF MASSACHUSETTS

ESSEX,SS

DIST CT DEPT
LYNN DIV
NO. 1613CR6258

COMMONWEALTH)
)
V.) FINDINGS
)
CARLOS [redacted])

The Defendant has moved to suppress certain statements attributed to him and the results of a BT examination that he agreed to take. His primary focus, rightfully so, was Focused on the latter.

The Commonwealth has the burden of establishing that the breath tests were administered in compliance with G.L.c.90, s. 20k and 501C.M.R 2.5 and 2.55. Mere deviations from meticulous compliance generally goes to the weight not admissibility of the results. Commonwealth v. Zeininger, 459 Mass. 775 (2011); Commonwealth v. Pierre , 72 Mass. App. Ct. 230 (2008). However , where there have been substantial deviations, the tests are not admissible. Id.; Commonwealth v. , 39 Mass. App. Ct. 448 (1995). The Court has observed the video of the test with Defense Counsel and the Assistant District Attorney assigned. There are various periods, somewhat brief, where the Defendant was not being strictly observed while the Officer attended to other duties. These are not fatal in and of themselves. When combined with three lacunae lasting 20, 30, and 45 seconds where the Defendant was left alone, they are. BT results are excluded.

Conlon, J. 11/27/12