

1 KING COUNTY DISTRICT COURT  
2 WEST DIVISION

3  
4  
5 STATE OF WASHINGTON,  
6

7 Plaintiff,

8 vs.

9 OSCAR LEE CRUMPLER,  
10

11 Defendant,  
12

} Case No.: C0601206

} RULING ON DEFENDANT'S MOTION  
} TO SUPPRESS REFUSAL OF BAC  
13

14 **I. MOTION**

15 The defendant in the above-entitled case moves for an order suppressing  
16 evidence at trial that the defendant refused to take the breath test on the grounds  
17 that the Implied Consent Warnings that were given at the time of arrest were  
18 confusing and inaccurate.

19 **II. FACTS**

20 On June 10, 2006, at 2340 hours, Washington State Patrol trooper Clifford  
21 Pratt was on patrol on Interstate 5 near Fife. Dispatch received a 911 call reporting  
22 that a Geo Metro had just been involved in a hit and run collision and was now  
23 traveling eastbound on State Route 18 towards Auburn. Shortly after the initial call,  
24 dispatch advised that the Geo Metro had been stopped by the Auburn police and that  
25 the 911 caller was also at the scene.  
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1 Trooper Pratt contacted the driver of the Geo Metro and identified him as  
2 Oscar Crumpler. The trooper observed that the defendant's eyes were watery and  
3 bloodshot. There was an obvious odor of intoxicants on the defendant's breath. The  
4 defendant denied "hitting anything" but when asked if he had been drinking, admitted  
5 having "a few." The defendant was asked to perform some voluntary field sobriety  
6 tests. The trooper noticed that the defendant was "noticeably off balance" and  
7 "needed to steady himself to stand or walk." The defendant was unable to stand with  
8 one foot in front of the other while the tests were being explained and then refused to  
9 perform any additional tests.  
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12 At the Auburn police station, the defendant was advised of his constitutional  
13 rights and his implied consent warnings for breath. After the 15 minute waiting  
14 period, the defendant was offered the opportunity to take the breath test and he  
15 declined to do so. The defendant now seeks to suppress evidence at trial that he  
16 refused to take the test.  
17

### 18 **III. IMPLIED CONSENT WARNINGS**

19 The privilege to drive on the roads in the state of Washington carries with it an  
20 implicit consent to comply with a request of law enforcement to submit to a breath  
21 test to determine alcohol concentration. RCW 46.20.308(1). Drivers must be  
22 properly advised, prior to being offered the opportunity to submit to a breath test, of  
23 the consequences of taking or refusing the test. The purpose of the Implied Consent  
24 Warnings is to provide defendants arrested for DUI the opportunity to make a  
25 knowing and intelligent decision about the consequences of taking or refusing the  
26 breath test. Drivers have a statutory right to refuse to take the test test. However, if  
27  
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1 properly advised of the consequences, a refusal will result in suspension of the  
2 privilege to drive for at least one year and the fact of the refusal may be used against  
3 the driver in a subsequent criminal trial. RCW 46.20.308(3) and RCW 46.61.517.  
4

5 In the instant matter, the defendant contends that he was not given adequate  
6 warning of the consequences of refusing to take the test. Accordingly, he argues that  
7 evidence of the refusal should be suppressed.  
8

9 Both sides agree that the implied consent warnings given to the defendant in  
10 this case complied with the statute. RCW 46.20.308.<sup>1</sup> In essence, the defendant  
11 was told:  
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13  
14 1. If he refused the test:

15 a. His license will be suspended for one year, and  
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19 <sup>1</sup> (a) If the driver refuses to take the test, the driver's  
20 license, permit, or privilege to drive will be revoked or  
denied for at least one year; and

21 (b) If the driver refuses to take the test, the driver's  
22 refusal to take the test may be used in a criminal trial; and

23 (c) If the driver submits to the test and the test is  
24 administered, the driver's license, permit, or privilege to  
drive will be suspended, revoked, or denied for at least ninety  
25 days if the driver is age twenty-one or over and the test  
indicates the alcohol concentration of the driver's breath or  
26 blood is 0.08 or more, or if the driver is under age twenty-one  
and the test indicates the alcohol concentration of the  
27 driver's breath or blood is 0.02 or more, or if the driver is  
under age twenty-one and the driver is in violation of RCW  
46.61.502 or 46.61.504."

1           b. The refusal may be used against him at trial.

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3       2. If he took the test, his license would be suspended for 90 days if:

4           a. He was **over age 21** and blew .08 or higher, or

5           b. He was under age 21 and blew .02 or higher, or

6           c. He was under age 21 and was subsequently convicted of DUI or Physical  
7 Control.

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9           The defendant was not advised that his license would be suspended for 90  
10 days if:

11           d. He was **over age 21** and was subsequently convicted of DUI or Physical  
12 Control.

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14           The warnings given, albeit in compliance with the statute, implicitly suggest to  
15 drivers over the age of 21, that there will be no adverse consequences to their  
16 drivers' licenses so long as the test result is under .08. The failure to advise drivers  
17 over age 21 that they may lose their license for 90 days even if their BAC was under  
18 .08 may coerce some defendants to submit to the breath test. Accordingly, a driver,  
19 over the age of 21, may decide to take the test because he or she believes that the  
20 results will be under .08 and that his or her license will not be affected by a DUI  
21 conviction. If the driver had been fully advised that even if his BAC was under .08, he  
22 could still lose his license upon conviction, a different decision may have been made.  
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25           The defendant in this case is over the age of 21. He argues that the failure to  
26 warn him that he could lose his license upon conviction for DUI may have misled him  
27 into **refusing** to take the breath test. In support of this contention he cites Cooper v.  
28 DOL, 61 Wn.App. 525 (1991). The defendant in Cooper was advised that his refusal

1 to take the breath test would result in revocation of his license “probably for at least a  
2 year, depending on his driving record, maybe two.” He then refused to take the test.

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4 The court determined that the warning given was inaccurate since it was an absolute  
5 certainty, not just a probability, that the defendant’s refusal to take the breath test  
6 would result in a suspension of his license for at least one year. The court then went  
7 on to consider whether the inaccurate warning may have encouraged the defendant  
8 *not* to take the test:

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10 If Mr. Cooper thought it was possible his license would be revoked for less than 1 year,  
11 he might have been more willing to risk revocation by refusing the Breathalyzer. We  
12 conclude the information was misleading and prevented Mr. Cooper from making a  
13 knowing and intelligent decision.

14 In the instant matter, Mr. Crumpler was advised that if he refused to take the  
15 test, he would lose his license for one year. Mr. Crumpler was not advised that his  
16 license may also be suspended for 90 days, regardless of his breath test result, if he  
17 is convicted of DUI. Could the failure to provide this additional information somehow  
18 have encouraged or misled Mr. Crumpler not to take the breath test? Had he been  
19 given the additional warnings advising him about the loss of his driving privileges for  
20 90 days upon conviction, would Mr. Crumpler have been more likely to take the test?

21 In State v. Whitman County, 105 Wn.2d 278 (1986), some defendants were  
22 advised that a refusal to take a breath test “shall” be used against them at trial (when  
23 the statute only provided that the refusal “may” be used at trial). The court found that  
24 the “shall” language may have encouraged some defendants to take the test  
25 because they were not given the opportunity to make a decision with the knowledge  
26 that the refusal may or may not be used against them at trial. Those refusals were  
27 suppressed. In contrast, a defendant who was told that his refusal “shall” be used  
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1 against him at trial and who chose to refuse the test could not have been prejudiced  
2 or misled into not taking the test. Gonzales v. DOL, 112 Wn.2d 890 (1989). That  
3 refusal was not suppressed. The reasonable and logical conclusion from the  
4 Whitman County and Gonzales cases is that the same language that potentially  
5 misleads or coerces a driver into taking the test cannot at the same time mislead or  
6 coerce a driver into not taking the test.  
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9 As in Gonzales, it is difficult to envision a factual scenario where the omitted  
10 warnings that may have misled some drivers into taking the test due to incomplete  
11 information could have also misled Mr. Crumpler into refusing to take the test. The  
12 defendant was given complete and accurate information about the consequences of  
13 refusing to take the test and chose not to do so.  
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16 IV. RULING

17 The defendant's motion to suppress evidence of his refusal to take the breath  
18 test is denied.  
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20 DATED this 15<sup>th</sup> day of January, 2008  
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27 Mariane C. Spearman, Judge  
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