SEATTLE MUNCIPAL COURT

KING COUNTY, WASHINGTON

In re: Delta-9 THC Testing and Analsyis,	Case No.: 4250004976 RULING ON EN BANC MOTION

In these consolidated cases, defendants have asked this court to suppress evidence of THC levels reported by the Washington State Patrol Toxicology Laboratory (WSP Lab), on two theories: 1) that the procedures used by the WSP Lab to report THC levels are not considered reliable by the general scientific community under Frye; and 2) that the methods used by the WSP Lab are not reliable under ER 702. The defendants also ask this court to dismiss these and related cases due to violations of CrRLJ 8.3 and CrRLJ 4.7, on the primary theory that the WSP Lab failed to disclose issues related to detection of Delta-8 THC in blood samples when they first detected the interference in 2020.

The panel has reviewed the pleadings and exhibits submitted by the parties, heard argument and testimony at the En Banc proceedings on June 1-5, 2026. Based on its review of these materials and testimony, the court rules as follows:

1) The defendants' motion to suppress evidence is DENIED;

2) The defendants' motion to dismiss the cases is DENIED.

I. FINDINGS OF FACT

All defendants whose cases are consolidated in the instant litigation are charged with either Driving Under the Influence or Actual Physical Control. SMC 11.56.020(A) and RCW 46.61.502 (DUI) and SMC 11.56.020(B) and RCW 46.61.504 (Physical Control). While the toxicology results vary among the cases consolidated under this action (some indicate more than one category of drug or alcohol), each result indicates the presence of Delta-9 THC.

Based on the exhibits and testimony, the court now makes the following findings of fact:

THC AND CONSUMER PRODUCTS GENERALLY

1) Delta-9 THC is a primary psychoactive compound present in marijuana and is classified as a Schedule I controlled substance by the United States Drug Enforcement Administration.

2) Washington State has legalized Delta-9 THC for recreational use and licensed retail outlets to sell Delta-9 THC products since 2014.

3) Since approximately 2018, consumer cannabis products available throughout the United States have begun to incorporate Delta-8 THC and other isomers and analogs attendant to the production of intoxicating cannabis products from hemp.

4) Delta-8 THC is a naturally occurring minor cannabinoid found in most cannabis plants. Delta-8 THC is typically manufactured from hemp-derived cannabidiol (CBD).

5) Delta-8 THC products are widely regarded as products of circumvention because they make intoxicating cannabis available to consumers without violating the federal regulations for Delta-9 THC.

6) Products containing Delta-8 THC are now widely available at gas stations, dispensaries, liquor stores, and through online retailers all over the nation.

7) Delta-8 THC is psychoactive and intoxicating, though early research suggests it is less potent than Delta-9 THC.

8) Exo-THC (Delta-11-THC) is a psychoactive byproduct of Delta-8 product synthesis and co-occurs in consumer products with Delta-8 THC. No blood toxicology studies or forensic lab reporting exist which indicate the presence of Exo-THC in blood analysis.

9) Regardless of potency, users of cannabis products titrate their ingestion to achieve the desired level of intoxication irrespective of the type of product a user consumes or the way it is ingested.

10) Delta-9 THC products remain available for purchase in Washington at licensed retail outlets for recreational use by consumers over the age of 21.

LC-MS/MS GENEARLLY AND THC TESTING

11) Liquid chromatography-tandem mass spectrometry (LC-MS/MS) is the primary scientific method used for confirmation and quantitation of drugs in biological samples.

12) LC-MS/MS results are displayed as peaks on chromatograms, with the X axis representing the time it takes for a substance to travel through the instrument's column and the Y axis representing intensity.

13) LC-MS/MS methodology is popular in chemical analysis because the capabilities of both liquid chromatography and mass spectrometry are enhanced. Liquid chromatography separates compounds in the blood and mass spectrometry provides information helpful in compound identification.

14) The possibility of interference is a known theoretical risk in LC-MS/MS testing. Laboratories must adjust to changes in the drug landscape that would include users ingesting new or novel substances that could interfere with the detection of the target compound. Fentanyl derivatives, bath salts, and synthetic cannabinoids are all examples of a changing drug landscape.

15) In LC-MS/MS toxicology testing, complete chromatographic separation of peaks from the liquid chromatograph is not always necessary because the tandem mass spectrometry detection system is typically highly selective, yielding different signals for each compound. However, when interference is detected, the scientific community generally accepts that the interfering substance must be separated from the target compound to accurately measure the target compound. Separating Delta-9 from any Delta-8 present is an example of this.

16) Though the underlying scientific methodology is the same, each lab must validate their own method to meet accreditation requirements. Each individual lab using LC-MS/MS must use unique testing parameters according to the instrumentation they have, their testing environment, and desired reporting criteria.

17) Data generated by the instrumentation following the testing of individual samples in batches is then reviewed and scrutinized by analysts, including a review of chromatographic data and retention time against acceptability criteria established by the laboratory.

18) For drug testing using LC-MS/MS, the American Board of Forensic Toxicology (ABFT) scientific community generally accepts +/- 2-3% for acceptable retention time criteria. Labs are permitted to tighten that criteria, as WSP has done with THC confirmation.

19) For drug testing using LC-MS/MS, the forensic toxicologist community generally accepts that a review of chromatographic data by trained analysts includes visual review for anomalies, such as issues with the peak shape that would deviate from the traditional gaussian peak. Examples would include fronting, tailing, peak broadening, shouldering and split peaks or double peaks without baseline resolution.

20) The presence of anomalies in the chromatography or failure to meet retention time criteria can be indicative of the presence of an interferant.

21) When Delta-9 THC is ingested, it is expected that a metabolite of that psycho-active compound is also produced in the blood.

22) Delta-9-THC-COOH (carboxy-THC) is a non-psychoactive metabolite of Delta-9 THC and frequently appears in chromatography, but it is easily identified and does not interfere with the measurement of THC.

23) Because carboxy THC is known to stay in the body longer than Delta-9 THC, it is expected that for any positive Delta-9 THC testing, the carboxy THC metabolite will also be detected.

WSP TOXICOLOGY LABORATORY GENERALLY

24) The WSP Lab has been continuously accredited by the American Board of Forensic Toxicology (ABFT) since 2005.

25) Since 2016, the WSP Lab is further internationally accredited to ISO/IES 17025 for forensic toxicology testing via the ASCLD/LAB. This is now known as ANAB.

26) The WSP Lab completed the most recent accreditation cycle in 2025, including an on-site visit. This included providing the technical assessor and lead assessor access to all SOPs for test methods, validation studies, information on any new personnel authorized to conduct testing, on site access to observe work being done each laboratory location, and access to personnel to interview.

27) The ANAB technical assessor and lead assessor are qualified experts external to the WSP Lab. Technical assessors are typically qualified experts in the field of forensic toxicology with extensive training by ANAB on how to conduct accreditation. They must also be familiar with consensus standards and what is generally acceptable in the forensic toxicology community.

28) WSP State Toxicologist Amanda Black is a qualified technical assessor. WSP Toxicology Lab Assistant Division Commander Brian Capron is also a qualified technical assessor. Chris Heatsill is qualified as both a technical assessor and a lead assessor. Dr. Matt Slawson has been qualified as an assessor in the workplace drug testing laboratory context.

29) Dr. Jennifer Souders, Ms. Janine Arvizu, and Dr. Zachariah Hildenbrand are not technical assessors. None of the defense witnesses have worked in a forensic laboratory performing tests on blood samples.

30) Any testing performed by an external reference lab also requires that the reference lab be accredited by ANAB to the ISO/IEC 17025 standard.

31) The WSP Lab uses LC-MS/MS as the instrumentation and scientific methodology for both qualitative and quantitative analysis of drugs in blood samples, including THC, opiates, benzodiazepines, amines, and other drug compounds.

32) According to written WSP Lab testing protocols, an analyst first conducts a screening test to detect the presence of THC prior to a second confirmation test to confirm the presence and quantify the compound in the blood. If there is not sufficient agreement among the screening and confirmation testing, a result is not reported.

33) If an analyst detects an interferant during any testing, they are trained to flag the sample and follow protocols for potential testing by an outside lab that separates Delta-9 THC and Delta-8 THC. No THC result is reported by WSP Lab if an interferant is detected at any stage of testing.

34) Each analyst must undergo training for each type of testing, including THC screening and confirmation, prior to doing testing on actual casework. The training includes demonstration of ability to follow established protocols for sample preparation, instrument preparation, data review, and reporting criteria.

35) For calibration of the testing instruments, as well as for the internal standard, the WSP toxicology lab purchases certified reference materials from an accredited manufacturer. Use of reference materials is the best scientific practice.

36) For the purposes of the testing and reporting results of these consolidated cases, the WSP Lab quantitatively reports THC and the metabolite carboxy THC, but does not report results for Delta-8 THC or its metabolite.

37) The WSP Lab uses a reference lab to separate delta-8 THC and delta-9 THC when separate quantification is needed to deal with the presence of an interferant.

38) Any positive Delta-8 THC test result would be reported by an outside lab that separates Delta-8 THC and Delta-9 THC and not by WSP Lab.

39) The WSP Lab accreditation has been continuous from the dates of initial accreditation(s), including since the lab validated methods for screening and quantification of THC in unknown blood samples using LC-MS/MS.

40) Accreditation requires documentation of laboratory policies and procedures, including having a written standard operating procedure (SOP) for THC confirmation testing.

41) The WSP Lab publishes their SOPs, including for cannabis confirmation, on a public facing website. Archived versions are also available on the site. https://wsp.wa.gov/crime/toxlab-resources

42) The current method for THC quantification was initially validated in 2014. The SOP for this method was amended in June 2025 to narrow the acceptable retention time criteria.

43) The 2014 THC confirmation method using LC-MS/MS was properly validated and generally accepted in the scientific community at the time it was deployed.

44) The same THC confirmation method was used in each of these consolidated cases as it relates to preparation of the sample and instrument parameters, calibrators, and controls. While WSP has updated the SOPs over time in response to the emergence of Delta-8, those are updates to reporting criteria and documentation of the potential for interference from Delta-8. The underlying analytical chemistry has not changed.

45) Before a positive THC result is reported by the WSP Lab, several analysts review the data generated by the testing instrument, beginning with the analyst who prepared the sample for testing. There is another analyst that also reviews the entire batch data before distribution to the analyst assigned to the case. The assigned case analyst[1] reviews all the data and prepares a draft report, which cannot be signed out unless a supervisor also reviews the test data and approves. A minimum of three people must review the data and determine it meets all reporting criteria prior to a positive THC result report leaving the WSP Lab.

IDENTIFICATION OF INTERFERANTS IN THC TESTING

46) In approximately 2019, the WSP Lab analysts began to note an increase in poor chromatography during testing of blood samples for THC. WSP Lab personnel suspected

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[1] In some cases this is the analyst doing the testing, and other times may be a fourth person doing data review for a THC result.

the possibility of Delta-8 THC interference as a cause and later determined that was the case for those samples.[2]

47) Delta-8 THC and Delta-9 THC are chemically similar and differ only as to the location of a double bond on the alicyclic ring.

48) Because of the change in consumer habits, the WSP Lab, as well as labs around the country, began to notice the potential for interference in Delta-9 THC testing and confirmation of whole blood samples.

49) When the WSP Lab detects an interferent in a sample, the sample may be sent to a reference lab to separate the interferent and report quantitative results for both substances. This practice is generally accepted in the forensic toxicology community.

50) National Medical Services (NMS Lab) is an independent provider of clinical toxicology and forensic science services. NMS Lab serves as a reference laboratory for hospitals, coroners, medical examiners, forensic laboratories, and law enforcement agencies across the United States, including the WSP Lab.

51) NMS Lab was the first known lab to develop a validated method to separate Delta-8 and Delta-9 THC. NMS published a study in 2022 regarding the increasing prevalence of Delta-8 THC in blood samples.

52) The WSP Lab is a high-volume laboratory. WSP Lab handled over 19,000 case submissions in 2025 and is on track to receive more than 20,000 case submissions in 2026.

53) It is not scientifically appropriate for one lab to take another laboratory's validated method and begin using it without going through a method development and method validation process. Forensic toxicology testing is too complex and the testing instruments too sensitive to analogize this to installing a new operating system or software update for computers, tablets, or phones.

54) State Toxicologist Amanda Black, who previously worked as the laboratory's QA manager, has taken the lead on investigating the possibility of interference from Delta-8 THC and other isomers or analogs that can occur when hemp is synthesized into intoxicating cannabis products. This led to a document identified as a "technical communication" from the toxicology laboratory to its customers on June 9, 2025. This technical communication was the first public acknowledgement from the WSP Lab that

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[2] There were no specific allegations of interference present in the toxicology analysis of any of the consolidated cases.

they had detected an increase in Delta-8 (and other) interferants when testing for Delta-9 THC.

55) Ms. Black has spent significant time examining cannabis testing and changes in consumer product since 2019. The availability of information and reference materials increased around 2024-2025. Over the past 18 months, Ms. Black has dedicated significant time doing instrument verification for a cannabis method and staying current on the availability of reference materials to investigation the possibility of interference.

56) Ms. Black's review of potential interferants based on available reference materials led to the conclusion that Delta-8 THC is a potential interferant for Delta-9 THC testing. However, other isomers and analogs are not likely to appear without Delta-8 also being present because they are byproducts of the synthesis required to produce intoxicating Delta-8 products.

57) Where Delta-8 is detected in a blood sample, the WSP Lab is not able to confirm and report the presence of Delta-9 THC with the current validated testing method.

58) As of the hearing date, Ms. Black testified the WSP Lab has completed method development for a new method to separate Delta-9 from Delta-8, but that method was not in use at the time of testing these consolidated cases.

59) The WSP Lab interference studies, conducted in October 2020, included testing known concentrations of Delta-8 THC alongside Delta-9 THC. This included concentrations from 0.5, 1, 2, 5, 10ng/mL to determine whether there was a visual impact to chromatography or a shift in retention time attendant to Delta-8 interference.

60) Dr. Slawson testified that this interference study to review the performance of a previously validated method is very consistent with what any active forensic toxicology laboratory would do.

61) Ms. Black concluded from the interference test that there was a visual impact to chromatography of the Delta-9 peak, even at smaller concentrations, near the per se limit under Washington impaired driving law.

62) Delta-8 THC elutes after Delta-9 THC when testing is conducted using LC-MS/MS instruments and methods. This relationship is consistent regardless of the individual variation of elution time of the internal standard that is inherent to different columns or instruments performing the testing.

63) Dr. Slawson testified Delta-8 elutes approximately .06-.07 minutes after Delta-9.

64) In April of 2025, the State Toxicologist convened a meeting of the analysts that addressed THC testing. This review included a refresher on Delta-8 THC as an interferant and how it appears in chromatography, as well as a discussion of enhanced retention time

criteria. The enhanced retention time criteria coincided with the release of June 9, 2025 technical communication that that references this new criteria for reporting.

65) The June 20, 2025 version of the SOP for THC testing incorporated the enhanced retention time criteria of +.03 minutes.

66) Ms. Black undertook a retrospective review of prior THC testing whether the WSP method for THC testing is capable of identifying the Delta-8 interferant. This review began with cases from 2023-2024, and is ongoing with review of 2022 and 2025 cases.

67) During this review, Ms. Black reviewed thousands of tests across multiple batches and found only a single example of a case that was incorrectly reported. Ms. Black took appropriate corrective action, including communicating this to the accrediting body. That case is not one of the consolidated cases in this action. There are no other examples of THC test reports being recalled or withdrawn for any reason at all.

68) There are no confirmed examples of Delta-8 THC hiding entirely under the Delta-9 peak in WSP case reports that meet reporting criteria. No case examples from any WSP testing have shown a falsely inflated Delta-9 THC result reported by the WSP toxicology lab.

69) There are no confirmed examples of incorrectly reported Delta-9 THC results based on the theoretical possibility of complete misidentification of Delta-8 as Delta-9. In fact, the shift in retention time for Delta-8 appearing alone would likely fail to meet the enhanced retention time criteria of +.03 minutes.

70) Ms. Black concluded based on these retrospective case reviews that analysts were correctly applying their training for review of the chromatography and testing data, leading to correct reporting decisions.

71) However, the retrospective review of prior THC testing batches was primarily used to determine whether the lab could meet tightened retention time criteria of +.03 minutes, which would be a change from the +/- 2% generally accepted standard for drug testing.

72) Ms. Black determined based on historical test data that the WSP testing method for THC confirmation was generally capable of meeting enhanced retention time criteria, ultimately leading to that change in the reporting criteria for cannabis testing. The underlying scientific principles of LC-MS/MS, sample preparation and instrument parameters did not change.

73) On January 19, 2024, the WSP Lab conducted instrument verification to get new instruments online with established THC testing methods. This process resulted in Ms. Black, the State Toxicologist, having increased confidence that interference can be visually identified through the normal quality assurance process, including examining

chromatography, retention time, batch performance, presence of lack of the expected metabolite, and having multiple data reviewers.

74) EXO-THC, also known as Delta-11 THC, is an isomer that can be synthesized from hemp, and has been known to appear in commercial products based on forensic testing and product labeling.

75) There has been no scientifically verified evidence that EXO-THC appears in blood samples either in Washington or other labs, including laboratories that separate Delta-9 from Delta-8, EXO-THC and other isomers. None of the witnesses called by either the defense or the City provided an example of EXO-THC appearing in a whole blood sample. Despite strong evidence that users ingest this compound, the reasons for it not later appearing in blood are not currently known. EXO-THC remains only a theoretical possibility of interference to Delta-9 THC testing under any LC-MS/MS method.

76) While the WSP Lab does not use empirical measurement tools to evaluate chromatography, there was no evidence presented that any forensic toxicology laboratory does this or that it is specifically required by any consensus standards.

I. APPLICABLE LAW AND BACKGROUND

In Washington State, a person is guilty of driving a motor vehicle under the influence of cannabis if they drive a vehicle and have, within two hours after driving, a THC concentration of 5.00 ng/mL or higher. RCW 46.61.501(1)(b); see also RCW 46.611.504(1) (physical control). "THC concentration" is defined as "nanograms of delta-9 tetrahydrocannabinol per milliliter of a person's whole blood" ("Delta-9 THC") and does not include measurement of the metabolite carboxy-THC. RCW 46.04.586.

At the time this *per se* limit of THC was enacted, the primary form of THC available in commercial products was Delta-9 THC. Due to a variety of factors, THC producers began manufacturing products that contain THC isomers, partly to avoid the regulations that apply only to Delta-9 THC. Isomers are substances that have chemical structures that differ from Delta-9 THC in small but significant structural bonds. One of these isomers, Delta-8 THC, has gradually increased in popularity in THC products.

The WSP Lab uses liquid chromatography-tandem mass spectrometry (LC-MS/MS) to analyze blood samples for the presence of intoxicating substances such as alcohol, cannabis, and other controlled substances such as methamphetamine and fentanyl. This method of analysis has been used for decades and is used by most, if not all, forensic toxicology labs in the United States.

The procedure used by the WSP Lab can detect the presence of an interferent in blood. Beginning approximately 2019, the toxicologists began to detect the presence of Delta-8 THC in blood samples. When this occurred, the WSP Lab was unable to report out a level of Delta-9 THC because their current methods do not provide a means to separate the substances to account

for each substance separately. In those cases, the WSP Lab would send the sample to a different lab, which employed a procedure that enabled them to report Delta-9 and Delta-8 levels accurately. Eventually, secondary testing was only done when the WSP lab clients requested the same for a particular sample. However, in all cases where Delta-8 was detected in blood samples, the WSP Lab disclosed the presence of the interferent to the agency who requested the initial test and no quantitative test result was reported out.

Prior to reporting out any test result for Delta-9, the WSP lab reviews both the sample chromatography and retention time. Beyond that, multiple additional layers of review are employed to ensure accuracy in the reported result. While Delta-9 and Delta-8 are almost identically structured chemically, the WSP lab has been able to distinguish the two when present alone. While the chromatography of Delta-9 and Delt-8 are similar, their retention times are different. The WSP lab was not faced with the problem of inaccurately reporting Delta-8 for Delta-9. Instead the issue was the inability to accurately report the level of Delta-9 when Delta-8 and Delta-9 were present in the same sample.

II. FRYE ANALYSIS

Under Washington law, expert testimony should only be presented to the trier of fact when the scientific community has accepted the reliability of the underlying principles. State v. Copeland, 130 Wn.2d 244, 255 (1996); Frye v. United States, 293 F. 1013 (DC Cir. 1923). The Frye analysis may require a court to consider whether testimony is based on an accepted theory and a valid technique to implement that theory. State v. Cauthron, 120 Wn.2d 879, 889 (1993).

The defendants in these cases acknowledge that LC-MS/MS is generally accepted in the relevant scientific community as a means of analyzing blood samples for the presence of Delta-9

THC. They argue that the technique employed by WSP Lab for detecting the presence of an interferent such as Delta-8 is not accepted by the relevant scientific community.

The City presented the testimony of four forensic toxicologists with years of work experience in toxicology labs who all testified that the visual inspection of chromatographs, coupled with evaluation of retention times, and comparison to internal standards, is generally accepted as a means of analyzing blood samples for THC. The primary defense witnesses, both chemists who lack actual work experience in forensic toxicology labs, challenge the methods employed by the WSP Lab and primarily suggested that there were alternate, better methods that could be used to evaluate chromatographs (such as quantifying the shape of the peaks). The defense witnesses pointed to other labs that have developed procedures for separating Delta-8 and Delta-9 peaks as evidence that WSP Lab's procedures were not sufficient.

Based on the testimony presented, this court rejects the Frye challenge to the methods used by the WSP Lab and finds that the procedures employed meet industry standards for analysis and are generally accepted by the relevant scientific community of forensic toxicologists.

III. ER 702 ANALYSIS

ER 702 provides that scientific, technical or other specialized knowledge may be admitted when it will assist the trier of fact. The defendants argue that the methods used by the WSP Lab to report Delta-9 THC results are so unreliable that the results should not be admitted into evidence. However, the testimony presented at the *en banc* hearing demonstrated that the procedures used by the WSP lab are reliable and accurate. Any challenge to the accuracy of the testing goes to the weight, not the admissibility, of the test results.

Once a scientific process passes a Frye inquiry, any challenges to the results of a particular test - due to error in the forensic laboratory processes or other factors – should be decided by the jury. State v. Kalakosky, 121 Wn2d 525, 541-42 (1993). The defendants argue in this case that the possibility of co-elution of Delta-8 and Delta-9 results could produce inaccurate quantitative reporting of Delta-9 results. However, the testimony presented at the hearing in this case demonstrates that the theoretical possibility of this type of error is extremely remote.

The State v. King County Dist. Court West Div. case is illustrative here. 175 Wn. App. 630 (2013). In that case, a panel of district court judges imposed a blanket exclusion of breath test results because the State failed to provide confidence intervals or uncertainty measurements with each breath test. The appellate court ruled that the blanket exclusion of results was inappropriate, because it essentially imposed an additional foundational requirement beyond what the State Toxicologist had approved. 175 Wn. App. At 640. Rather, the appellate court held that any lack of certainty regarding a particular test result should be assessed on a case-by-case basis. Only when error rates are so serious as to be unhelpful to the trier of fact should a court consider suppressing a particular result. 175 Wn. App. At 641.

In this case, the defense argues that the state toxicologist's methodology could produce an inaccurate result due to the complete co-elution of Delta-8 and Delta-9 chromatography. However, the testimony presented during the hearing convincingly proves that this possibility is both remote and highly theoretical. Additionally, the retrospective review conducted by Amanda Black demonstrates that the WSP Lab's methodology was extremely accurate and reliable. Of the thousands of cases reviewed, only one case was discovered where the results should not have been reported out. In that case, corrective action was appropriately taken.

A blanket exclusion of THC test results is not warranted by ER 702. Rather, the trial courts should conduct a case-by-case analysis when any challenge to the reliability of a particular test result is raised.

IV. BRADY

Suppression by the prosecution of evidence that is favorable to an accused upon the defense's request violates due process where the evidence is material to guilt or punishment. Brady v Maryland, 373 U.S. 83, 87 (1963), State v Davila, 184 Wash 2d 55, 69 (2015). In order to establish a Brady violation, a defendant must establish 1) the evidence at issue must be favorable to the accused because it is exculpatory or impeaching, 2) the evidence was suppressed by the prosecution either willfully or inadvertently, and 3) the evidence must be material. Id.

The WSP lab is unable to produce an accurate test result from a blood sample that contains both Delta-8 and Delta-9. Defendants' position is that this inability to produce an accurate test result is farther reaching. It asserts that the testing process is exculpatory and/or impeaching because of the risk that a blood sample where only Delta-8, or another isomer, EXO-THC, are present could be mistakenly reported out as Delta-9.

Each case in this motion involves a Delta-9 THC reported test result. Evidence and testimony indicate that there is an extremely low likelihood of a pure Delta-8 sample being mistakenly reported out as Delta-9. City witnesses testified that although Delta-8 and Delta-9 are similar isomers, the WSP Lab was, and is, able to distinguish pure Delta-8 from pure Delta-9. City witnesses testified that the two isomers have consistently different retention times. Additionally, the reporting out of a test result is more complicated than a simple visual inspection of the resulting chromatography. Retention time, batch performance, the presence or lack of the expected metabolite and having multiple data reviewers are layers of the screening

process that must pass muster before any test result is reported out. The WSP Lab was able to further confirm its ability to distinguish the two isomers through the retrospective studies. No evidence was presented that the WSP Lab mistakenly reported out pure Delta-8 test results as Delta-9.

Another isomer, EXO-THC, that is synthesized from hemp was also addressed during testimony as a possible interferant. However, none of the witnesses called by either the City or defense provided an example of EXO-THC appearing in whole blood samples. It remains only a theoretical interferant in Delta-9 testing.

For these reasons, the Court does not find the WSP testing process exculpatory or impeaching in the cases at bar. Because of this finding, it is not necessary to address the other prongs of the Brady test. The Court denies the motion suppress the blood test results under Brady.

V. CRLJ 4.7

Defense seeks dismissal of the charges based on CrRLJ 4.7. The rule requires the city to disclose discoverable materials within its possession and control within 21 days of arraignment or demand, a duty to attempt to make material held by a third party available and a continuing duty to disclose additional information received.

State v Blackwell, 120 Wash.2d 822 (1993) is clear that that discoverable materials held by the WSP Lab are not in the possession or control of the City. The Court finds that the WSP Lab materials were not under the possession or control of the City so had no duty to disclose under CrRLJ 4.7 (a)(1).

Defense also asserts that the City had a duty to disclose information about the WSP Lab testing procedures under CrRLJ 4.7 (a)(3) which states the City "shall disclose to defendant's lawyer any material or information within the prosecuting authority's knowledge that tends to negate defendant's guilt as to the offense charged." As discussed above, it is highly unlikely that the WSP lab reported out false positives of Delta-9 or false concentrations of Delta-9.

For these reasons, the court denies the motion to dismiss under CrRLJ 4.7.

VI. CrRLJ 8.3

Defense seeks dismissal of the case at bar based on CrRLJ 8.3(b) which allows the court to dismiss criminal action if the city violates its discovery obligations. Salgado-Mendoza, 189 Wn.2d at 428. "Even if the State fails to live up to its discovery obligation, however, relief under CrRLJ 8.3(b) is available only if the trial court finds prejudicial governmental misconduct or arbitrary action." Id. at 428-29. Dismissal under this rule is an extraordinary remedy and is improper absent prejudice to the rights of the accused. State v. Blackwell 120 Wn.2d 822, 830, 845 P2d 1017 (1993).

The Court found above that the City did not violate CrRLJ 4.7 by not disclosing information regarding the WSP Lab testing procedures of THC, and therefore, does not find arbitrary action or governmental misconduct. No prejudice to the defendants in this matter has been shown. For these reasons, the Court denies the motion to dismiss under CrRLJ 8.3(b).

VII. RESPONSE TO SHADID CONCURRENCE

Judge Shadid has filed a separate concurring opinion. In that opinion, Judge Shadid states his opinion that a Brady and CrRLJ 4.7 violation occurred because of the WSP Lab's failure to disclose the detection of Delta-8 interference in October 2020. He characterizes this evidence as "wholly exculpatory" but ultimately concurs with the *en banc* panel that neither dismissal nor suppression of Delta-9 THC results is warranted because "it does not appear any of the pending cases can be proven to have the 'indisinguishability' issue." (Conclusion A.9).

Judges McDowall and Chin disagree with the concurrence as to many of its findings and conclusions. The WSP Lab's discovery of the presence of Delta-8 as an interferent demonstrates that the WSP Lab's procedures were operating exactly as intended. In any case where an interferent of any kind was detected, the WSP Lab would not report out quantitative results. Rather, the WSP Lab would disclose to the requesting agency that an interferent was detected and the WSP Lab could not report with confidence the Delta-9 levels of a particular sample. This process was not unique to THC testing. If an interferent was detected while testing a methamphetamine, or fentanyl, or any other intoxicating drug, the WSP Lab would similarly decline to report a quantitative level of any of those drugs.

The testimony during the *en banc* hearing credibly demonstrates that the WSP Lab's procedures were effectively identifying when an interferant was present. There was no need to "disclose" the fact that the WSP Lab was detecting Delta-8 interference in samples with increasing frequency. As long as the WSP Lab disclosed the detection of Delta-8 (or any other interferent) on a case-by-case basis whenever it was present in a sample, the WSP Lab's (and therefore the City's) obligations under Brady and CrRLJ 4.7 were satisfied and no violation occurred.

Judge Shadid further describes the "indistinguishability" problem as both "wholly exculpatory" while acknowledging that the retrospective analysis demonstrates that the perceived Brady/CrRLJ 4.7 violations "did not meaningfully prejudice the defense." These conclusions are inconsistent and confusing.

In Judge McDowall and Chin's view, the retrospective analysis provides strong evidence that the "indistinguishability" problem did not, in fact, exist. The testimony during the *en banc* hearing overwhelmingly established that the theoretical possibility of complete co-elution of Delta-8 behind a Delta-9 chromatograph was infinitesimally small. Only one case was discovered where the WSP Lab erroneously reported out a Delta-9 result where Delta-8 was also present.

Furthermore, the possibility that a "pure" Delta-8 sample could be reported out as a pure Delta-9 sample is highly unlikely, especially in the real world testing of blood samples. The testing conducted by the WSP lab is more complicated and layered than a simple visual inspection of the chromatography. For example, retention times for Delta-8 and Delta-9 are different. If a sample retention time is consistent with Delta-8, the lab would know that Delta-8 was present as an interferant. Also, the presence of some form of Delta-9 can nearly always be confirmed by the presence of Delta-9 Carboxy-THC (which is only produced when the body metabolizes Delta-9). The absence of Delta-9 Carboxy-THC in a blood sample would indicate to the lab that no Delta-9 was present. Each of these safeguards would prevent a mistaken report out of pure Delta-8 as pure Delta-9. As stated previously, retention time, batch performance, the presence or lack of the expected metabolite and having multiple data reviewers are layers of the screening process that must pass muster before any test result is reported out.

VIII. CONCLUSION

The defense motions to suppress evidence based on Frye and ER 702 are denied. Any challenges to a particular test result go to the weight of the evidence not the admissibility, and can be decided by the trial court on a case-by-case basis.

The defense motion to dismiss the cases is denied. No government mismanagement occurred, there were no Brady or CrRLJ 4.7 violations, and therefore there is no basis to dismiss the cases under CrRLJ 8.3, CrRLJ 4.7, or Brady.[3]

IX. ORDER

The clerk is directed to set all of the remaining consolidated cases to a pretrial hearing and send notice to the defendants. The commencement date will be the date of the next hearing.

DATED: July 21, 2026

Judge Catherine McDowall

Judge Andrea Chin

Judge Damon Shadid

[3] Judge Shadid has filed a concurring opinion that disagrees with this conclusion, but concurs in the denial of the motion to dismiss for the reasons stated in his opinion.

IN THE MUNICIPAL COURT OF THE STATE OF WASHINGTON
IN AND FOR THE CITY OF SEATTLE

In Re: Delta-9 Testing and Analysis	NO. 4250004976 SUPPLEMENTAL FINDINGS OF FACT AND CONCLUSIONS OF LAW CONCURRANCE TO MAJORITY RULING BRADY, CRRLJ 4.7 AND CRRLJ 8.3(B)

Judge Damon Shadid concurs with the conclusion of the majority in not suppressing Delta-9 THC blood results under *Brady*, CrRLJ 4.7 and CrRLJ 8.3(b), but differs strongly in the majority's ruling on their analysis of the issues.

I. SUPPLEMENTAL FINDINGS OF FACT[1]

1. The federal Agriculture Improvement Act of 2018 (the "2018 Farm Bill") legalized hemp cultivation on the condition that the plant produce no more than 0.3% Delta-9 THC relative to its dry weight. Hemp cultivated within that limit has no intoxicating effect if an individual attempts to use it as a recreational drug.[2]

2. Shortly after passage of the 2018 Farm Bill, legal hemp producers developed methods to synthesize intoxicating isomers of THC from the Delta-9-free hemp plant. One such isomer is Delta-8 THC.[3]

3. Delta-8 THC has approximately 60% of the psychoactive (intoxicating) effects of Delta-9 THC.[4]

[1] In all instances in which these Findings of Facts differ from the majority decision, the author adopts these contrary and supplemental Findings of Fact.
[2] Def. Ex. C at 1, *see also* Ex. D, E and F among others.
[3]Def. Ex. N.
[4] Def. Ex. F at 2.

4. Delta-8 THC is not criminalized under federal or state law. States have begun to regulate Delta-8 THC, but that progress has been slow. For years, Delta-8 THC could be sold nationwide as an unregulated but legal intoxicating substance, alongside Delta-9 THC.[5]

5. The popularity of Delta-8 THC grew rapidly nationwide, including in Washington State, notwithstanding Washington's legalization of recreational Delta-9 THC products.

6. The Washington State Toxicology Laboratory (the "Tox Lab") employes liquid chromatography-mass spectrometry (LC-MS) to analyze blood samples. In 2019 the Tox Lab began observing an interferent while testing for Delta-9 THC. It suspected the interferent was Delta-8 THC.

7. On October 21, 2020, the Tox Lab's internal testing confirmed that the interferent was Delta-8 THC. The Delta-8 THC testing revealed two specific instances in which Delta-8 THC can affect the result of Delta-9 testing. The most obvious interference comes when there is a mixture of Delta-8 THC and Delta-9 THC. In those instances, the LC-MS chromatography has obvious flaws. This opinion does not address these instances because, according to testimony from the Tox Lab, in every case, tests revealing bad chromatography were sent to a third-party lab that could differentiate Delta-8 THC from Delta-9 TCH in a mixed sample.[6]

8. The issue of concern to this opinion is when Delta-8 THC is present in the blood sample in the absence of Delta-9 THC. In these instance, the testing established that, under the Tox Lab's Standard Operating Procedures ("SOPs") in effect from October 21, 2020 through June 10, 2025, a sample containing Delta-8 THC with the absence of Delta-9 THC was indistinguishable from Delta-9 THC (the "indistinguishability problem").[7] *See Table A below for a visual representation of the Tox Lab's testing of Delta 8 THC on October 21, 2020 showing that each sample containing Delta-8 THC in the absence of Delta-9 THC would pass review as Delta 9 THC using the Tox Lab's Standard Operating Procedure in effect from October 21, 2020 until June 10, 2025.*[8]

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[5] See, for example, Def. Ex. C, D, E and F.
[6] This point is disputed by defense expert Heldenbrand of Medusa Analytical who notes discrepancies in the Tox Labs testing in his follow up declaration dated June 11, 2026.
[7] Def. Ex. Y.
[8] Def. Ex. AA Tox Lab SOPs in effect until 6/6/2025.

9. Despite discovering the indistinguishability problem, the Tox Lab did not inform the public at the time. Amanda Black, the head of the Tox Lab during all relevant periods, testified that she did call the Washington Association of Prosecuting Attorneys ("WAPA"), to notify them of the problem and to ask what to do. She testified that WAPA told her not to disclose the issue to the public.[9]

10. The Seattle City Attorney's Office was likewise aware of the Delta-8 interference. The Assistant City Attorney serving as Traffic Safety Resource Prosecutor, Miriam Norman, stated that she had spoken with the Tox Lab about the Delta-8 interference issue "about a year ago." That email was written on March 2, 2021.[10]

11. The Tox Lab continued to use SOPs that could not distinguish pure Delta-8 THC from pure Delta-9 THC for approximately five years (four years and eight months) without informing the public and without revising its SOPs to account for the possibility that a reported Delta-9 THC finding was in fact Delta-8 THC with the absence of Delta-9THC.

12. On June 9, 2025, in a "Technical Communication," the Tox Lab disclosed to the public for the first time the issues that could arise from isomers of THC, including Delta-8 THC. That Technical Communication addressed only mixed samples of Delta-8 and Delta-9 THC. **It did not disclose the possibility that a Delta-8 THC sample with the absence of Delta-9 THC was indistinguishable from a pure Delta-9 THC sample under the SOPs in effect from October 2020 through June 2025.**[11]

13. The day after the Technical Communication, the Tox Lab revised its SOPs, replacing the prior retention-time tolerance of plus or minus 2% of the internal standard with a tolerance of within +0.03 minutes after the internal standard. This revision enabled the Tox Lab to differentiate Delta-8 THC in the absence of Delta-9 THC from Delta-9 THC.[12]

14. The Tox Lab then conducted a retrospective study of its prior Delta-9 THC findings to determine whether it may have misidentified Delta-8 THC as Delta-9 THC. The Tox Lab

[9]Testimony of Amanda Black.
[10]Def. Ex. O.
[11] Def. Ex. N.
[12]Def. Ex. A.

identified a single case in which such a misidentification may have occurred and undertook corrective action in that case.[13]

II. SUPPLEMENTAL CONCLUSIONS OF LAW

A. Brady Analysis

1. RCW 46.04.586 defines "THC concentration" as Delta-9 THC. The statute does not address Delta-8 THC.

2. RCW 46.61.502(1)(b) criminalizes operating a motor vehicle with a Delta-9 THC concentration of 5.00 ng/mL or greater. This is a "per se" limit, analogous to the 0.08 per se blood-alcohol limit, and imposes strict liability: if the State proves a THC concentration of 5.00 ng/mL or greater, it need not prove that the defendant's driving was affected by the Delta-9 THC.

3. The State has a constitutional duty to disclose to the defense any evidence favorable or exonerating to the accused, or that could be used to impeach the government's witnesses (*Brady* evidence).[14]

4. To establish a *Brady* violation, the defense must show: (1) the evidence is favorable to the accused, because it is either exculpatory or impeaching; (2) the evidence was suppressed by the State, either willfully or inadvertently; and (3) the evidence is material.[15]

5. The Delta-8 interference "indistinguishability" problem— the inability of the Tox Lab's SOPs in effect from October 2020 through June 2025 to distinguish Delta-8 THC in the absence of Delta-9 THC from Delta-9 THC — is powerful evidence favorable to the defense. Such evidence could be potentially wholly exculpatory. It would also serve as powerful impeachment of any state toxicologist testifying to the accuracy and reliability of a blood test that reported Delta-9 THC.

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[13] Testimony of Amanda Black.
[14] *Brady v. Maryland*, 373 U.S. 83 (1963).
[15] *State v. Davila*, 184 Wn.2d 55, 69 (2015) (citing *Strickler v. Greene*, 527 U.S. 263, 281–82 (1999)).

6. The Tox Lab willfully suppressed its October 21, 2020, findings until June 2025. Amanda Black confirmed on the stand that the Tox Lab notified WAPA, and that WAPA advised the Tox Lab it need not disclose the findings to the public.[16]

7. The Seattle City Attorney's Office has a duty to learn of any favorable evidence known to others acting on the government's behalf in the case, including the police and the toxicology laboratory.[17]

8. The Delta-8 interference is material to a defendant's guilt or innocence in a THC DUI prosecution, particularly in a per se case. This is a 'per se' limit... that establishes a statutory alternative means of committing the offense: if the State proves a Delta-9 THC concentration of 5.00 ng/mL or greater within two hours of driving, it need not prove that the defendant's driving was impaired. Therefore, accurately identifying Delta-9 is the entire crime.

9. The prosecuting authority breached its disclosure obligations under *Brady* from the discovery of the indistinguishability problem on October 21, 2020, until the Tox Lab notified the public on June 9, 2025, and revised its SOPs on June 10, 2025. However, the materiality prong of *Brady* is a closer question because it does not appear any of the pending cases can be proven to have the "indistinguishability" issue.

B. CrRLJ 4.7 and 8.3(b) Analysis

10. CrRLJ 4.7 operates independently of *Brady* and must be analyzed on its own terms.

11. CrRLJ 4.7(a)(1)(iii) requires the prosecuting authority to disclose "any reports or statements of experts made in connection with the particular case, including results of . . . scientific tests, experiments, or comparisons." The October 21, 2020, testing results fall squarely within this provision.

12. CrRLJ 4.7(a)(3) requires the State to disclose "any material or information within the prosecuting authority's knowledge that tends to negate the defendant's guilt as to the offense charged." The October 21, 2020 testing results fall squarely within this provision.

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[16]Testimony of Amanda Black.
[17] See *Kyles v. Whitley,* 514 U.S. 419 (1995).

13. CrRLJ 8.3(b) provides that the court "may dismiss any criminal prosecution due to . . . governmental misconduct."

14. The Tox Lab's failure to disclose the October 21, 2020 testing results, together with WAPA's direction that the Tox Lab need not disclose them, constitutes governmental misconduct and mismanagement.

15. The Seattle City Attorney's Office was aware of the Delta-8 interference and failed to disclose it to the defense, constituting violations of both CrRLJ 4.7 and CrRLJ 8.3(b).

III. DISCUSSION

For nearly five years, the Washington State Toxicology Laboratory, the Washington Association of Prosecuting Attorneys, and the Seattle City Attorney's Office each knew that the Tox Lab's Standard Operating Procedures could not distinguish Delta-8 THC that does not contain Delta-9 THC from Delta-9 THC. The Tox Lab did not adopt SOPs capable of making that distinction until June 10, 2025.

An important distinction frames the court's analysis. The City's witnesses testified repeatedly that, throughout the relevant period, they could recognize "bad chromatography" when Delta-9 THC was mixed with Delta-8 THC — manifested in double peaks, shouldering, and similar irregularities. In those mixed-sample cases, the Tox Lab appropriately referred the sample to a third-party laboratory capable of differentiating the two isomers. No case before the court in this en banc motion contests the findings of any third-party laboratory. The *Brady*, CrRLJ 4.7, and CrRLJ 8.3(b) violations arose instead where the Tox Lab observed no chromatographic interference yet could not say whether that "good chromatography" reflected Delta-8 THC in the absence of Delta-9 THC, rather than the reported Delta-9 THC.

This information would be powerful impeachment evidence, permitting the defense to show a jury that the blood testing was neither accurate nor reliable. It would be equally powerful in a per se case, where a reported finding of 5 ng/mL of Delta-9 THC might in fact have been 5 ng/mL of Delta-8 THC — a substance the per se statute, RCW 46.61.502(1)(b), does not reach. A concentration of 5 ng/mL of Delta-8 THC cannot establish per se liability, because Delta-8 THC is not criminalized under that statute and has less intoxicating properties.

The Tox Lab did, however, undertake meaningful mitigation by conducting a retrospective study of its prior findings and taking appropriate corrective action in the single case identified as falling outside its revised testing procedure. For that reason, the court is satisfied that the State's substantial violations of its duties under *Brady*, CrRLJ 4.7, and CrRLJ 8.3(b), though established, did not meaningfully prejudice the defense. Furthermore, suppressing 5 years of THC Delta-9 blood test results would significantly affect community safety. The court therefore rules that the misconduct does not rise to the level required to suppress the blood results. Had the Tox Lab not performed the retrospective study, this court would have suppressed all THC testing performed exclusively by the Tox Lab between October 21, 2020 and June 10, 2025 and would take under consideration dismissing the cases outright.

IV. RESPONSE TO MAJORITY OPINION

A. The Majority Mischaracterizes the Indistinguishability Issue

Judges McDowall and Chin's discussion of my concurrence completely misconstrue the issues analyzed in this concurrence, and misconstrues the law of both Brady and CrRLJ 4.7. Their position is that the Washington State Toxicology Lab was authorized to hide crucial information about interferants in their testing for almost 5 years when the Tox Lab did not know whether these interferants would affect their testing. For almost 5 years defendants could have attacked these blood test results showing, by the Tox Lab's own testing, that Delta-8 THC was indistinguishable from Delta-9 THC using the SOPs in effect at the Tox Lab during those years. Such testimony would be highly likely to create reasonable doubt in a juror's mind about the accuracy and reliability of the test in any individual case.

It is concerning that both the lab and the majority in these cases have decided to substitute their opinions on what constitutes a valid defense in a DUI blood case over what a defendant and their attorney might want to present when it comes the accuracy and reliability of testing. And to justify the government's position that is inconsistent with ethical norms, the majority states because, almost 5 years later, there appeared to be no harm, that it was proper to hide this information from the public. This analysis is unsound and unsupported. In fact, had the indistinguishability issue been made public when it was first discovered in 2020, it is likely that the issue would have been resolved much earlier than 2025 through litigation. But the majority, states that the Tox Lab did nothing wrong by hiding information from the public as long as, in the

end, it is shown that the issue *probably* did not happen during the almost five years the Tox Lab was searching for a solution to a known interferant and hiding it from the public.

To be clear, the Tox Labs own testing in 2020 showed that Delta-8 THC was indistinguishable from Delta-9 THC under the SOPs in use at that time. They hid this information for 5 years until they were able to produce new SOPs that could differentiate between the two. Had they been unable to produce these new SOPs, I would have suppressed every single Delta-9 THC test during the period of concealment.

The Tox Lab was able to show ***in retrospect*** that they ***probably*** did not report out a Delta-8 THC finding as Delta-9 THC. But since the retrospective study did not address the indistinguishability issue, the public is still unsure about the true cost of the Tox Lab's concealment.

B. The Majority Misunderstands Brady and CrRLJ's Prospective Duty to Disclose

In short, courts and government actors are not authorized to hide crucial information from the public just because, at the time, they were not sure how to address the issue, and then to later resolve the issue before they make the issue public. Brady and 4.7 are *prospective* rules. They mandate that the government produce *all* information that could be exculpatory or impeaching. It is not a rule that we allow the government to wait to comply with for almost 5 years until they are sure that the information was actually *not* impeaching or exculpatory.

If the majority were to be believed, it would destroy the public's confidence in all governmental institutions. The public would believe, rightly, that they would never know what facts and issues were being hidden from them until the government retrospectively finds that the information would not affect the case after all.

C. Why Blanket Suppression is Not Appropriate

I am therefore in the position of either flat out punishing the government for these blatant violations of Brady and CrRLJ 4.7 and suppressing *all* Delta-9 THC blood results, even while knowing that, under the revised SOPs, these blood findings were probably accurate in their finding of Delta-9 THC. This is an unacceptable result. These cases should be addressed on a case-by-case basis. Public policy demands that, in the absence of real prejudice to a defendant in any given case, these blood results should be admissible.

D. The Consequences of Government Concealment

The court does not reach this conclusion lightly. The court would be well within its discretion to suppress the results of the Tox Lab's testing. The court could also impose other sanctions, including monetary sanctions or suppression of testimony. The culture of "hiding the ball" from the defense — shared in this instance by the Seattle City Attorney's Office, WAPA, and the Tox Lab — could be viewed as improper, unethical, and dangerous by the public. The correct response to the October 21, 2020 findings was the simplest one: **when in doubt, disclose**. When the government instead conceals, the public is left to ask what else it is hiding, and public confidence in the criminal legal system erodes — a harm CrRLJ 8.3(b) exists in part to prevent. By these actions, these institutions run the very real risk of further eroding the public's confidence in the criminal legal system.

This is not the first time the Tox Lab has pushed the limits of ethical conduct or outright acted unethically. From 2023-2025, Komo News reported that the testing backlog of the Tox Lab was taking up to 2 years to return blood results, creating a backlog of over 1000 DUI cases in Seattle alone, and 17,000 cases statewide.[18] In 2021 the Tox lab was exposed to have been testing blood samples in a room that tested positive for methamphetamine contamination. Despite knowing about the contamination since 2018, the lab failed to notify attorneys for nearly two and a half years. This court held the Tox Lab committed governmental mismanagement leading to suppression of many blood results.[19] From 2022-2025 the Tox Lab continued to use blood vials for testing blood that had expired long before testing took place.[20] In 2008 the Tox Lab was exposed to have been lying under oath about testing breath alcohol simulator solutions used to calibrate the state's breath analyzers. The Seattle Times reported that a "panel of King County District Court judges found that the lab and its leadership created a 'culture of compromise' with so many 'ethical lapses, systemic inaccuracy, negligence and violations of scientific principles' that the breath tests should not be used as evidence in pending DUI cases."[21]

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[18] KOMO News: "Washington law aims to cut toxicology lab delays in DUI cases, clear months-long backlog" March 26, 2026.
[19] "In re Washington State Tox Lab Motion" Seattle Municipal Court Case No. 660276.
[20] "In Re Expired Blood Vials" Seattle Municipal Court Case No. 4240001602.
[21] Seattle Times: "WSP lab explains DUI goofs," February 8, 2008, citing "State of Washington v. Ahmach, et al" King County District Court case number C00627921.

This ruling adds yet another controversy that could make the public further lose faith in governmental institutions. Therefore, it is with extreme reluctance that the court finds the Tox Lab's retrospective study of its prior Delta-9 THC findings under the June 10, 2025 SOPs constituted sufficient remedial action to avoid sanctions in these cases. The retrospective study shows that very little actual harm was caused to defendants during this time, and all cases reviewed in this consolidated action stand in a pre-trial setting. Every defendant will be able to use this information in their defense.

The exception to this ruling is that any pending case in which the tox results do not meet the June 10, 2025, or subsequent SOPs will be suppressed. The Tox Lab has claimed that no such cases exist.

The government should take this ruling as a warning, not a victory. As shown above, this ruling may be relied upon in future cases in which it is shown that the government actively concealed exonerating evidence from the public. While the evidence does not warrant structural, blanket suppression across all consolidated cases, the information regarding the "indistinguishability" problem and the willful hiding of evidence is admissible as case-specific impeachment evidence for individual trials. In all trial courts adopting this ruling, defense will be given wide latitude to cross-examine Tox Lab employees regarding the Tox Lab's actions during this time, as it pertains to both the credibility of the witnesses and the accuracy and reliability of the blood test.

IV. CONCLUSION

It is therefore with strong reservations that this court concurs with the conclusion of the majority to not suppress the blood results while disagreeing with the majority's findings that there were no *Brady*, CrRLJ 4.7 or 8.3(b) violations.

DATED: 7/21/2026

Judge Damon Shadid
Seattle Municipal Court

Table A: The "Indistinguishability Problem"

Washington State Toxicology Laboratory Testing Delta 8 THC Samples Against a Delta-9 THC Internal Standard

(Def. Ex. Y)

RT within +/- 2% of internal standard compliant with 10/21/2020-6/10/2025 Tox Lab SOPs.

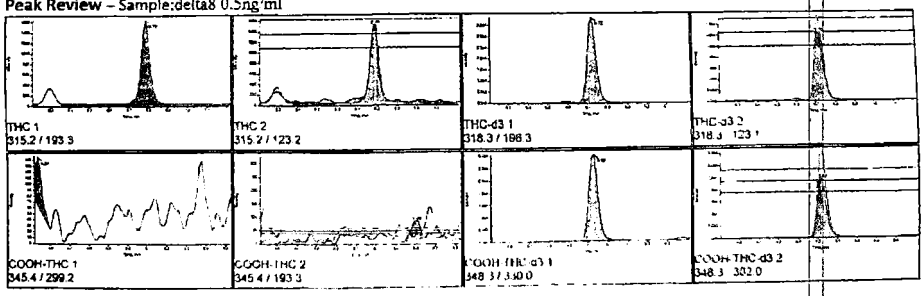
Perfect chromatography showing no interference, indistinguishable from Delta-9 THC

Sample Name	delta8 0.5ng/ml	Sample Position	44
Sample Type	Unknown	Injection Volume	10.00
Acquisition Date	2020-10-21T22:11:33	Operator	Instruments Tox User
Acquisition Method	THC.dam	Instrument ID	LCMS-MS 3
Result Table	20102108	Result Table Date	10/22/2020 8:30:57 AM
Comments	Op: Rebecca Flaherty		

Results Summary

Analyte Peak Name	Calculated Concentration (ng/mL)	ISTD	Analyte RT	Transition	Area	Qualifier Area	MRM Ratio (%)	Ratio Range (%)
THC 1	0.50	THC-d3 1	6.79	315.2 / 193.3	5027	4523	90.0	67.7 - 101.5
THC-d3 1			6.72	318.3 / 196.3	118732	98983	81.7	54.1 - 96.1
COOH-THC 1	0.57	COOH-THC-d3 1	4.54 RT Fail	345.4 / 299.2	155	240	154.9Rabc Fail	46.3 - 69.5
COOH-THC-d3 1			5.02	348.3 / 330.0	113525	76967	67.8	51.9 - 77.9

Peak Review – Sample:delta8 0.5ng/ml



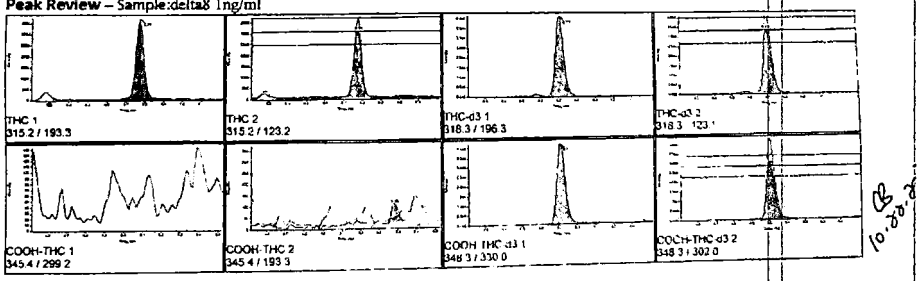
Washington State Patrol Forensic Laboratory — Analysis Confirmation by LCMS-MS

Sample Name	delta8 1ng/ml	Sample Position	45
Sample Type	Unknown	Injection Volume	10.00
Acquisition Date	2020-10-21T22:31:48	Operator	Instruments Tox User
Acquisition Method	THC.dam	Instrument ID	LCMS-MS 3
Result Table	20102108	Result Table Date	10/22/2020 8:30:57 AM
Comments	Op: Rebecca Flaherty		

Results Summary

Analyte Peak Name	Calculated Concentration (ng/mL)	ISTD	Analyte RT	Transition	Area	Qualifier Area	MRM Ratio (%)	Ratio Range (%)
THC 1	0.91	THC-d3 1	6.77	315.2 / 193.3	10699	8456	79.0	67.7 - 101.5
THC-d3 1			6.71	318.3 / 196.3	129039	104793	81.2	54.1 - 96.1
COOH-THC 1	N/A	COOH-THC-d3 1	N/A RT Fail	345.4 / 299.2	N/A	211	0.0Rabc Fail	46.3 - 69.5
COOH-THC-d3 1			5.01	348.3 / 330.0	133739	90310	67.5	51.9 - 77.9

Peak Review – Sample:delta8 1ng/ml



CONCUR

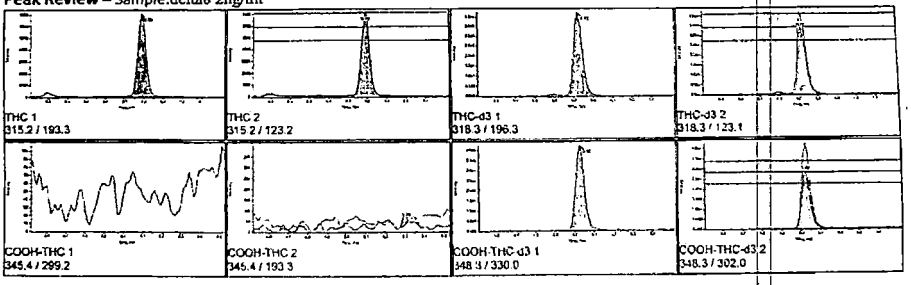
Washington State Patrol Toxicology Laboratory — Analysis Confirmation by LCMS-MS

Sample Name	delta8 2ng/ml	**Sample Position**	46
Sample Type	Unknown	**Injection Volume**	10.00
Acquisition Date	2020-10-21T22:38:04	**Operator**	Instruments: Tox User
Acquisition Method	THC.dam	**Instrument ID**	LCMS-MS 3
Result Table	201021d8	**Result Table Date**	10/22/2020 8:30:57 AM
Comments	Op: Rebecca Flaherty		

Results Summary

Analyte Peak Name	Calculated Concentration (ng/mL)	ISTD	Analyte RT	Transition	Area	Qualifier Area	MRM Ratio (%)	Ratio Range (%)
THC 1	1.73	THC-d3 1	6.79	315.2 / 193.3	20993	18235	86.9	67.7 - 101.5
THC-d3 1			6.72	318.3 / 196.3	128388	103977	81.0	64.1 - 96.1
COOH-THC 1	N/A	COOH-THC-d3 1	N/A RT Fail	345.4 / 299.2	N/A	86	0.0Ratio Fail	46.3 - 69.5
COOH-THC-d3 1			5.03	348.3 / 330.0	130782	88709	67.8	51.9 - 77.9

Peak Review – Sample:delta8 2ng/ml



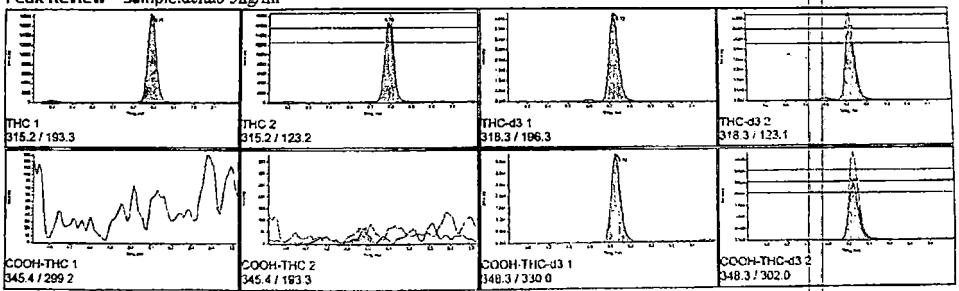
Washington State Patrol Toxicology Laboratory — Analysis Confirmation by LCMS-MS

Sample Name	delta8 5ng/ml	**Sample Position**	47
Sample Type	Unknown	**Injection Volume**	10.00
Acquisition Date	2020-10-21T22:51:16	**Operator**	Instruments: Tox User
Acquisition Method	THC.dam	**Instrument ID**	LCMS-MS 3
Result Table	201021d8	**Result Table Date**	10/22/2020 8:30:57 AM
Comments	Op: Rebecca Flaherty		

Results Summary

Analyte Peak Name	Calculated Concentration (ng/mL)	ISTD	Analyte RT	Transition	Area	Qualifier Area	MRM Ratio (%)	Ratio Range (%)
THC 1	4.28	THC-d3 1	6.79	315.2 / 193.3	54231	48582	89.6	67.7 - 101.5
THC-d3 1			6.72	318.3 / 196.3	130837	104667	80.0	64.1 - 96.1
COOH-THC 1	N/A	COOH-THC-d3 1	N/A RT Fail	345.4 / 299.2	N/A	207	0.0Ratio Fail	46.3 - 69.5
COOH-THC-d3 1			5.03	348.3 / 330.0	118513	78390	66.8	51.9 - 77.9

Peak Review – Sample:delta8 5ng/ml



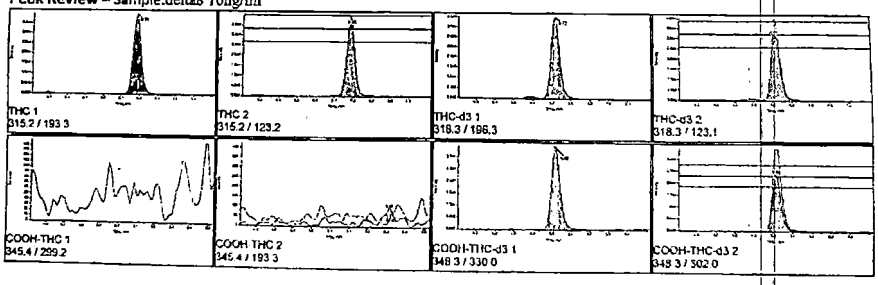
Washington State Patrol Toxicology Laboratory — Analysis Confirmation by LCMS-MS

Sample Name	delta8 10ng/ml	Sample Position	48
Sample Type	Unknown	Injection Volume	10.00
Acquisition Date	2020-10-21T23:04:33	Operator	Instruments: Tox User
Acquisition Method	THC.dem	Instrument ID	LCMS-MS 3
Result Table	201021d8	Result Table Date	10/22/2020 8:30:57 AM
Comments	Op: Rebecca Flaherty		

Results Summary

Analyte Peak Name	Calculated Concentration (ng/mL)	Analyte / ISTD	Analyte RT	Transition	Area	Qualifier Area	MRM Ratio (%)	Ratio Range (%)
THC 1	9.46	THC-d3 1	6.79	315.2 / 193.3	114819	102621	89.4	67.7 - 101.5
THC-d3 1			6.72	318.3 / 196.3	124048	100636	81.1	64.1 - 96.1
COOH-THC 1	N/A	COOH-THC-d3 1	N/A RT Fail	345.4 / 299.2	N/A	237	0.0Ratio Fail	46.3 - 69.5
COOH-THC-d3 1			6.02	348.3 / 330.0	111049	74219	66.8	51.9 - 77.9

Peak Review – Sample:delta8 10ng/ml



Data File:D \Analyst Data\Projects\2020 Data\THC\Data\201021RF.wiff — Page 1 of 1

In all WSP Tox Lab Testing using Delta-8 THC against a Delta-9 THC internal standard, the results were the same. Delta 8 THC passes SOP guidelines for retention time within plus/minus 2% of Delta-9 THC internal standard retention time and showing a perfect chromatography peak with no interference. Delta 8 THC samples that do not contain Delta-9 THC were indistinguishable from Delta 9 THC under the SOPs in effect from 10/21/2020 until 6/10/2025.