

October 11, 2018

Re: Commonwealth v Ananias, and others, Docket 1248CR001075, Concord District Court  
Notice of Hearing

Dear Massachusetts Attorney,

You are receiving this communication because you represent one of the consolidated defendants in the above captioned matter.

The Ananias matter originally challenged the scientific reliability of breath-test results produced by the Draeger Alcotest 9510 breath-test device. The Court issued a decision on February 16, 2017 presumptively excluding breath-test results that were produced from a device calibrated and last certified by OAT between June, 2011 and September 14, 2014.

After the Court made this ruling, it was subsequently discovered that the Office of Alcohol Testing had withheld court ordered discovery and exculpatory evidence. Based on this discovery, the defense filed a motion to compel and impose sanctions against the Commonwealth on August 19, 2017.

As a result of this motion, and at the direction of the court, the prosecutors and defense counsel have been negotiating proposed sanctions to be imposed by the Court as a remedy, and have submitted an a Joint Agreement to the Court with respect to these sanctions. The Joint Agreement sets forth stipulated facts and obligations in the form of an agreement, supported through judicial estoppel. You might benefit from this agreement, but you are not committed in any way by the agreement.

The Court will be holding a hearing on October 22, 2018 at 9:00a.m. at Salem District Court on one unresolved issue -- the date before which certain breath-tests shall be excluded. The Commonwealth proposes breath-tests prior to August 31, 2017 should be presumptively excluded, while the defense proposes that breath-tests that depend on a calibration performed prior to the date of accreditation (not yet achieved) of the Office of Alcohol Testing should be excluded. The Court will decide this issue and include the exclusion criteria in its order.

The agreement has been approved by each of the elected district attorneys, and by counsel for the defense. The Court will consider the agreement when it issues an order that resolves the pending motions. The next step in the process is a period of comment, where Massachusetts attorneys will have an opportunity to read and study the agreement. Attorneys can submit written comments to the Court, in order to assist the Court in writing the order based upon the agreement. Where an attorney objects to a provision, it is helpful if suggested language to replace it is provided to the Court. The Court may decide to hold a hearing for those who have submitted written comments,

and if this occurs, all attorneys who have submitted written comments will be notified of the time and place of such a hearing.

Your written comments should be submitted to the following, either delivered, or mailed and postmarked within 14 days of the receipt of this email. Mail should be addressed to:

Ann Dawley, First Assistant Clerk Magistrate  
Peabody District Court  
One Lowell Street, Peabody, MA 01960  
Re: Ananias Feedback

The agreement is attached without the exhibits. The exhibits can be found on the website [www.9510.info](http://www.9510.info), under menu item "Press Release."

Enclosure: Joint Agreement