

**THIRD JUDICIAL DISTRICT - SALT LAKE COUNTY DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH**

STATE OF UTAH
Plaintiff,

**MOTION IN LIMINE TO EXCLUDE
INTOXILYZER TEST RESULTS**

v.

PETER GOLUB,
Defendant.

Case No: 235900706
Judge: ELIZABETH A. HRUBY-MILLS
Date: August 22, 2025

Defendant, Peter Golub, appearing pro se, respectfully moves this Court for an order *in limine* excluding the purported breath alcohol concentration (BAC) result obtained from an Intoxilyzer 8000 device on September 6, 2023. This evidence is inadmissible because the State cannot lay the necessary foundation to establish its scientific reliability.

ARGUMENT

For a chemical test result to be admissible in a Utah court, the State bears the burden of proving that the test was administered in strict compliance with the standards established by the Commissioner of Public Safety, as mandated by Utah Code § 41-6a-515 and Utah Administrative Code R714-500. The State must demonstrate a continuous chain of reliability, from the machine's calibration to the operator's actions. In this case, that chain is broken in multiple places.

On December 31, 2024, Corporal Ernstsén testified under oath that “the defendant would not properly blow into the machine, so we had to make several attempts” i.e. there were multiple attempts but the machine was never reset and no second sample was ever gathered. The total test time was 144 seconds, well outside the normative (*Intoxilyzer 8000 Reference Guide*). When an officer admits the test violated protocol (due to defendant and/or officer negligence), the result cannot

establish guilt beyond reasonable doubt. See *Murray City v. Hall*, 663 P.2d 1314 (Utah 1983). Indeed, if there is any issue with the Intoxilyzer 8000, the standard protocol is to take a blood sample, as Intoxilyzer 8000 breath tests have been suppressed due to issues concerning reliability. In *State v. Schmidt*, “The trial court scheduled the motion for a ‘suppression’ and ‘*Daubert*’ hearing, which was continued multiple times. The trial court held an evidentiary hearing that focused solely on the reliability and efficacy of the Intoxilyzer 8000... The court granted both the motion in limine and motion to suppress after concluding that the Intoxilyzer 8000 does not produce scientifically valid and reliable results. ...the trial court found that, specifically in Mr. Schmidt’s case, the Intoxilyzer 8000’s results were invalid and unreliable” (See also *State v. Schmidt*, 2015-Ohio-146; *State v. Mitchell*, Polk Cty. Ct. 2023; *State v. Ilg*, 2014-Ohio-4258. The Defense argues that in Mr. Golub’s, where the officer himself admits to test was outside the normative, and no secondary/corroboratory test of any kind was performed, the single result of the single Intoxilyzer 8000 test “does not produce scientifically valid and reliable results.”

Legally, the standard BAC is a *blood*-alcohol-content test, not a breath test, especially if the result is the only piece of physical evidence submitted by the State against the defendant.

I. The State Has Failed to Establish Foundational Certification for the Device.

The reliability of a scientific instrument is not presumed; it must be proven. The State has produced calibration certificates for the Intoxilyzer 8000 device dated August 16, 2023, and September 19, 2023. The test in question was administered on **September 6, 2023**. The State has produced no evidence that the device was properly certified and calibrated *on the date of the test*. This creates a 21-day evidentiary gap during which the machine’s accuracy is unknown and unverified.

Without a valid certification establishing the operational integrity of the device at the time of the test, the State cannot meet its foundational burden, and the result is inadmissible.

II. The Test Was Administered in Violation of Standardized Scientific Protocol

Even if the machine had been properly certified, the manner in which the test was conducted renders the result scientifically invalid. Video evidence from the officer's bodycam shows the Defendant being forced to blow into the device for approximately **140 seconds**. This is a 700% deviation from the standard 12–20 second duration required for a valid deep-lung air sample. This departure from the protocol outlined in the NHTSA manual and the device's own operational standards constitutes a coercive procedure, not a scientific test. It is a well-established principle that hyperventilation and extended exhalation can artificially inflate BAC readings. A result obtained through such a flawed and coercive procedure is inherently unreliable and inadmissible.

III. The Unreliable Result Creates Unfair Prejudice that Substantially Outweighs Any Probative Value

To admit a numerical BAC result obtained under such compromised conditions would be profoundly prejudicial under Utah Rule of Evidence 403. A number, especially one presented as “scientific,” carries an aura of infallibility with a jury. There is a high risk that the jury will give this unreliable number dispositive weight, ignoring the procedural failures that produced it, denying Mr. Golub his right to a fair trial based on reliable evidence.

WHEREFORE, because the State cannot lay the necessary foundation for the Intoxilyzer result, Defendant respectfully requests that this Court issue an order excluding any and all evidence of the BAC result from trial.

Judge Hruby-Mills Team

3rdhruby-millsteam@utcourts.gov; 801-238-7305

Assistant Attorney General Steve Fredley

sfredley@utcourts.gov

Assistant Attorney General Emily Mabey

emabey@utcourts.gov

Assistant Attorney General Joseph Johnson

jjohnson@utcourts.gov

Judicial Assistant Joseph Ciucci Liuzzi

josephcl@utcourts.gov

Grad Student Lindsay Allen (S.J. Quinney College of Law)

lallan@saltlakecounty.gov

Third District Court 450 South State Street
Salt Lake City, Ut 84114-1860

/s/ Peter Golub

Defendant, Pro Se

Submission Date: October 10, 2025