

**SUMMARY STATEMENT**  
*State of Idaho v. Betty Sue Black*  
Docket No. 51663

Betty Sue Black drove to the probation office to meet her probation officer, and the probation officer smelled the odor of alcohol emitting from Black. After being questioned by the probation officer, Black admitted that she drank the previous evening and the probation officer, following proper breath-testing procedures, collected two breath samples from Black. Black's breath alcohol concentration (BAC) was 0.091 and 0.087 at 8:57 a.m., both over the legal limit. When law enforcement arrived, the police officer took two more samples from Black resulting in 0.081 at 9:35 a.m. and 0.075 at 9:37 a.m. The State charged Black with misdemeanor driving under the influence (DUI), Idaho Code § 18-8004. Black filed a motion in limine and a motion to dismiss, arguing that, because one of her samples was below the legal limit of 0.08, dismissal was required under *State v. Mills*, 128 Idaho, 426, 913 P.2d 1196 (Ct. App. 1996). The magistrate court denied both motions, finding that the State was allowed to rely on the probation officer's testing rather than samples provided by the police officer as evidence to support the DUI charge. A jury found Black guilty, and the magistrate court entered a judgment of conviction for misdemeanor DUI. On intermediate appeal, the district court affirmed the magistrate court's judgment of conviction and denial of Black's motion in limine and motion to dismiss.

On appeal, Black claimed the district court erred in affirming the magistrate court's judgment of conviction and the denial of Black's motion in limine and to dismiss. The Court of Appeals held that the district court did not err in affirming the magistrate court on intermediate appeal because neither I.C. § 18-8004(2) nor *Mills* dictate that a test in the second set of samples below the legal limit precludes prosecution of Black based on the first set of samples. Idaho Code § 18-8004(2) was not intended to preclude prosecution of an individual where testing conducted at a later time showed a lower BAC than a previous, valid sample. Accordingly, the Court affirmed the decision of the district court affirming the magistrate court's judgment of conviction and the denial of Black's motion in limine and motion to dismiss by the magistrate court.

*This summary constitutes no part of the opinion of the Court, but has been prepared by  
court staff for the convenience of the public*