

1 IN THE COUNTY COURT OF THE FIFTH JUDICIAL CIRCUIT OF THE
2 STATE OF FLORIDA, IN AND FOR CITRUS COUNTY

3 STATE OF FLORIDA,

4 VS. CASE NO. 2013-CT-144
2013-CT-052

5 BRANDON L. PALOMINO
6 GEORGE ZAJACK,
_____ X

7 **TRANSCRIPT OF ELECTRONICALLY RECORDED MATERIAL**

9 PROCEEDINGS: EXCERPT of Motion hearing before the
10 Honorable Mark Yeman, County Court
11 Judge & Richard Howard, Circuit
Judge

12 DATE: August 2, 2013

13 LOCATION: Citrus County Courthouse
14 110 N Apopka Avenue
15 Inverness, FL 34450

16 **TRANSCRIBED** BY: Tiffany Treffeisen, RPR, FPR
17 Notary Public at Large
State of Florida

18 APPEARANCES: JULIA METTS, ESQUIRE
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25

1 **THE FOLLOWING EXCERPT OF PROCEEDINGS WERE**
2 **TRANSCRIBED FROM AN ELECTRONIC RECORDING:**

3 MS. VANNESS: At this time I would call
4 Matthew Malhiot.

5 JUDGE YERMAN: All right. So we'll receive
6 those exhibits into evidence?

7 MS. VANNESS: Your Honor, we also agreed --
8 just because the Court -- both Your Honors who are
9 present are abundantly familiar with this issue, and we
10 both agreed to waive opening statement in deference to
11 the Courts' familiarity with the knowledge in these
12 issues.

13 JUDGE YERMAN: All right. And, sir, if you'll
14 raise your right hand, please. Do you swear or affirm
15 --

16 Actually, I'll have the clerk do this,
17 this time. Madame Clerk, if you'll please swear in the
18 witnesses.

19 Matthew Malhiot,
20 the witness herein, being first duly sworn, was examined
21 and testified as follows:

22 THE WITNESS: Yes, I do.

23 Thank you.

24 MS. METTS: Your Honor, additionally, I am
25 familiar with Mr. Malhiot's testimony, as well as the

1 CV. I have no objection to him being considered an
2 expert in this particular venue as he has been qualified
3 many, many times before and he actually worked with FDLE
4 for quite some time. So, he's qualified to give expert
5 opinions as to the breath test analysis and the
6 Intoxilyzer 8000. And if there is any other predicate
7 they need to lay, then certainly they can do that.

8 Additionally, Your Honor, I have been
9 provided several documents from Ms. VanNess that have
10 come from the FDLE website. I don't object to any
11 issues with regard to authenticity as he is not the
12 controller of the website, he wouldn't have made the
13 data or anything like that. I think we agree in this
14 particular circumstance everything is going to come into
15 evidence and everything is going to be there for you to
16 decide what's reliable and what's not reliable.

17 So, I have no objection to these
18 documents admitted as they are.

19 JUDGE YERMAN: All right. Thank you.

20 MS. VANNESS: With that said, maybe we can go
21 ahead and at this time move Defendant's Exhibits 1
22 through 6 that I have marked into evidence at this time.

23 MS. METTS: I have four -- let me just double
24 check and make sure I have everything.

25 I would have no objection to that, Your

1 Honor, so long as they are the documents that I have.

2 MS. VANNESS: That way we won't have to go
3 through with each one what they are and the predicate.
4 It will save us some time.

5 MS. METTS: Your Honor, with regard to all
6 exhibits except for the document that says "Alachua
7 County Sheriff's Office," the State would agree to the
8 admissibility. I believe those documents have been
9 represented to me to pertain to Citrus County.

10 The document that is entitled "Alachua
11 County," it was represented to me that we were going to
12 be dealing with Citrus County; that's the jurisdiction
13 that we are in. I was unaware this document was going
14 to be used, so I'll make the necessary objections
15 whenever it becomes relevant.

16 MS. VANNESS: Okay. That's Exhibit 6?

17 MS. METTS: Correct.

18 MS. VANNESS: So, for record purposes,
19 exhibits one through five are admitted into evidence per
20 stipulation.

21 MS. METTS: That is correct.

22 (Defense's Exhibits 1 - 5 marked and received
23 in evidence.)

24 JUDGE YERMAN: All right. Exhibits one
25 through five are received. Are they marked in yet?

1 MS. VANNESS: They are marked --

2 THE CLERK: Premarked, Your Honor.

3 MS. VANNESS: Premarked. Let me hand them to
4 the Clark and she can go ahead and mark these in with
5 the exception of six.

6 Judge, if I can go ahead and start and
7 just have Mr. Malhiot state his name and do some of the
8 preliminary background with him.

9 JUDGE YERMAN: Sure.

10 DIRECT EXAMINATION

11 BY MS. VANNESS

12 Q State your name for the --

13 A Certainly. Matthew E. Malhiot, and it is
14 spelled M-A-L-H-I-O-T. And it is pronounced
15 phonetically M-Y-I-T, "My-it."

16 Q Would you give the Court, both judges, the
17 benefit of your educational background, training and
18 experience, please?

19 A Certainly. Presently, I am the proprietor of
20 Forensic Alcohol Consulting and Training, which is a
21 limited liability corporation based in Canton, Georgia.
22 I have been providing that service since August 2010.

23 From 2002 through 2010 I was with the Florida
24 Department of Law Enforcement's alcohol testing program;
25 responsible for Intoxilyzer 5000 and 8000 instrument

1 inspection, department inspections. I was part of the
2 team that developed -- helped develop the 8000 for use
3 in the state. I was present during the approval
4 evaluations -- the evaluations done on the 8000.

5 I have completed course work with the
6 manufacture CMI Incorporated on the 8000. I have spent
7 time in Owensboro, Kentucky with the engineering
8 division and other members of the alcohol testing
9 program staff and hardware, software development of the
10 8000.

11 Prior to my work in Florida I was with the
12 Cascade County Sheriff's Office in Montana, responsible
13 for breath test instrumentation and certified in the
14 State of Montana by Montana Division of Forensic Science
15 in breath testing as a technician, operator, inspector.

16 Prior to that, I retired from the Air Force
17 and law enforcement for 20 years from '79 to '99. It
18 was in the Air Force I was first exposed to DUI
19 enforcement and breath testing.

20 I hold a bachelors of science in criminal
21 justice administration with course work in
22 criminalistics, forensics, basic sciences. I have
23 completed numerous courses with the Florida Department
24 of Law Enforcement, including the Borkestein course at
25 Indiana University, which is a course dedicated to

1 highway traffic safety and forensic breath and blood
2 testing.

3 I have completed course work with the Southern
4 Association of Forensic Scientists entitled Ethanol
5 Measurement and its Interpretation. And my first nine
6 months employed with the Florida Department of Law
7 Enforcement were a training period where we had specific
8 training on instrumentation, forensic toxicology of
9 alcohol, pharmacology of alcohol, infrared spectroscopy,
10 which is the science behind the Intoxilyzer; just
11 numerous different subjects in the area of forensic
12 breath and blood testing during that time.

13 That's a very brief synopsis. And since there
14 was a stipulation and they have the CV, I didn't know
15 how detailed you wanted me to go.

16 Q Do you hold any certifications?

17 A Presently I do not. One of the prerequisites
18 to be a breath test operator in the state is to be
19 employed by a law enforcement agency. Obviously, I'm
20 not employed. So my permits all went inactive when I
21 resigned Florida Department of Law Enforcement.

22 Q When you were active did you hold
23 certifications?

24 A Yes, when I was a member of the Florida
25 Department of Law Enforcement I held an active agency

1 inspector permit and an active breath test operator
2 permit in the state of Florida and was a department
3 inspector certified by the Florida Department of Law
4 Enforcement.

5 Q Did those certifications deal with calibration
6 of instruments?

7 A Part of the duties of a department inspector
8 was instrument calibrations on the Intoxilyzer 8000,
9 yes.

10 Q Did you have any training prior to working for
11 Florida Department of Law Enforcement in breath test
12 instrumentation?

13 A Well, yes, Montana Division of Forensic
14 Science at that time used the Intoxilyzer 5000. I was a
15 breath test operator, a breath test senior operator, and
16 a breath test technician, which is basically one who can
17 do a breath test, one who inspects the instrument, and
18 one who can repair the instruments.

19 I'm also certified by the manufacturer, CMI,
20 Incorporated, on the 5000 for those tasks and the
21 Intoxilyzer 8000.

22 Q Have you examined the subject test data for
23 George Zajack and Brandon Palomino?

24 A Yes, along with many others.

25 Q Okay. Have you audited the data from FDLE's

1 alcohol testing program Intoxilyzer 8000-0817?

2 A Yes.

3 Q Okay. Can you explain what you found when you
4 audited that particular machine?

5 A What I do when I am retained to conduct an
6 instrument audit is I look at the breath tests and I
7 look six months prior, six months after at a starting
8 point to look at instrument operation, performance,
9 calibration, use trends, and analysis and statistical
10 configuring of the instruments results.

11 Recently I have started to go back all the way
12 to the instrument's registration to look at statistical
13 performance of the instrument compared to other
14 instruments in the state and the state averages.

15 So on this particular one I looked at all the
16 agency inspections completed, which is the monthly
17 inspection that the agency does. I have looked at the
18 department inspections and all the associated documents
19 with those.

20 I have also looked at all the breath tests, at
21 least all of them in 2013 through June when the data was
22 available.

23 Q Okay. In addition to doing that, you are
24 also -- you also have some familiarity with a hole being
25 drilled in this particular intoxilyzer or all

1 intoxilyzers; is that correct?

2 A All intoxilyzers. Back in 2004 during the
3 research and development phase for Florida's use of the
4 instrument, Mr. Skipper and I were dispatched, for lack
5 of a better term, to Owensboro, Kentucky, the
6 manufacturer.

7 And while we were there we were -- the purpose
8 was to develop the Florida unique requirements. For
9 instance, Florida has a breath test affidavit that's
10 produced that other state's would obviously not use the
11 Florida affidavit.

12 Florida has a routine for the inspection
13 process that's very software driven and has many
14 different unique things in Florida that other customers
15 of CMI, other states that purchased the instrument may
16 not have.

17 So the purpose of our visit that week was to
18 help develop those Florida unique things of the
19 instrument and work through debugging of these unique
20 things.

21 So we were there for a week in August 2004 to
22 work specifically on those debugging and development
23 with the intent of implementation in the state.

24 Q When was the Intoxilyzer 8000 certified or
25 approved in the State of Florida?

1 A The approval evaluation first started in May
2 of -- or April and May of 2002. In April, two
3 instruments were evaluated. Neither completed the
4 evaluation because of physical and software problems.

5 Then in May, one of the instruments
6 successfully completed the evaluation process, thus
7 being allowed to be incorporated in rule and approved
8 for use in the State.

9 So 2002, May, physically, is when the
10 evaluation was done for approval in the state.

11 Q Are you familiar with the rule requirements at
12 the time, being 2002, of what was required of FDLE to
13 allow that -- the use of that machine in the State of
14 Florida?

15 A Well, there was a lot of requirements.
16 Instruments had to be registered, inspected. If there
17 was any changes made by the manufacturer, they had to
18 notify FDLE. There was a lot of rule requirements that
19 had to be complied before use of the instrument.

20 Q What specifically was required in terms of
21 notification to FDLE before any changes were made of the
22 rule? Was it required to be made to FDLE in writing?

23 A Yes, the manufacturer at the time -- synopsis
24 of the rule language at the time was that if the
25 manufacturer made any changes to the instrument they had

1 to notify FDLE in writing, and FDLE had to evaluate that
2 change; whether it affected the analytical reliability
3 or analytical methodology prior to it being changed in
4 an approved instrument in the state.

5 Q When you went -- you and Mr. Skipper went to
6 CMI in 2004 was a change made to the Intoxilyzer 8000?

7 A Yes.

8 Q And was that the hole that you referenced?

9 A Yes.

10 Q Okay. Did that change the analytical process
11 of the machine?

12 A It still was an infrared light absorption and
13 what it changed is the flow of vapors when a simulator
14 was used. It didn't change the analytical methodology,
15 it didn't change the analytical theory, it didn't change
16 the software. It changed the flow of air when
17 simulators were used. And simulators are used during
18 calibration and inspection only. They are not used as
19 part of a breath test.

20 Q Was it a change or alteration to the machine
21 or instrument under the rule; under 11D-8.003?

22 A Yes, it was a modification -- I think is a
23 good term to explain what was done.

24 Q At that time was FDLE notified in writing as
25 required by the rule?

1 A It was not in writing. We were present so we
2 had knowledge but there was no written notification to
3 my knowledge.

4 Q There was verbal notification because you were
5 present?

6 A Yes. Yes.

7 Q Did you and/or Mr. Skipper notify the alcohol
8 testing program manager?

9 A Roger Skipper who was the program manager made
10 a phone call to Laura Barfield who was the program
11 manager at the time and a verbal notification was made
12 at that time.

13 Q And then the hole was placed in the exhaust
14 valve?

15 A It was.

16 Q Okay.

17 A And I don't know if the times was -- the call
18 was first or after. But within hours of the problem --
19 within the same day -- the problem was discovered,
20 consultation with the engineers, the solution, and the
21 notification were all within the same day, within a
22 couple of hours.

23 Q Do you have an opinion about whether or not
24 that was in compliance with the rules at the time?

25 A No, it was not in strict compliance with the

1 rules. The rule was written that the written
2 notification and evaluation had to be done before it was
3 made part of the instrument.

4 Q After that change was made to the exhaust
5 valve, was there an evaluation of the Intoxilyzer 8000
6 by FDLE before that machine was approved to be used in
7 Florida?

8 A Well, it is kind of -- "yes" until you said
9 the statement "to be approved for use." Yes the
10 instrument was evaluated again. But it is already
11 approved. So the philosophy was you can't approve
12 something -- you can't reapprove it. So you do a
13 research study or an evaluation on an already approved
14 instrument. So it wasn't reapproved. But, yes, it was
15 evaluated again and continues to be evaluated as late as
16 last year that I know of.

17 Q But back at the time, going back to the rules
18 that were in effect at the time, it wasn't done at that
19 time.

20 A No, it wasn't done in accordance with the
21 notification and the purpose statement of evaluating the
22 hole drilling, no.

23 Q Okay. Now coming forward to the time frame of
24 Mr. Zajack and Mr. Palomino's breath test and your audit
25 and your time frame that you specifically audited,

1 what's going on with this Intoxilyzer 8000 used in
2 Citrus County; specifically we'll call it 817,
3 Intoxilyzer 817.

4 The Court has the records that you have in
5 front of you that you pulled from FDLE. Is that
6 correct -- exhibits one through six?

7 A You haven't given me -- I have my own copies.
8 You haven't given me --

9 Q We are going to let the judge look at what's
10 been marked.

11 If you'll turn, first, to -- you reviewed some
12 January 21, 2013 records?

13 A Yes. What -- if I could lay an understanding
14 to explain --

15 MS. METTS: Your Honor, I'm going to object
16 that it is unresponsive.

17 A Yes, I have evaluated --

18 JUDGE YERMAN: Sustained.

19 A -- the January 21st document.

20 Q Okay. Is there background that we need to
21 understand prior to you explaining the January 21, 2013
22 records?

23 A It can be helpful, yes.

24 Q Would you explain that, please?

25 A Certainly.

1 January 21st document is --

2 MS. VANNESS: That's Exhibit 2, Your Honor.

3 It is Composite Exhibit 2.

4 A The January 21st document is a breath test
5 completed at 2:26 in the morning, 2:26 a.m. And during
6 that breath test the first sample the person gave was a
7 "volume not met," meaning they did not meet the 1.1
8 liter threshold minimum standard for the instrument.

9 The second subject sample they started to
10 blow, for whatever reason -- and it would be speculative
11 for me to say the reason -- the breath test operator
12 pushed the "R" key on the keyboard and terminated that
13 sample.

14 The individual blew a little bit, may have
15 refused, maybe didn't want to, I don't know. But the
16 officer -- breath test operator determined it to be a
17 refusal and pressed the "R" key on the keyboard.

18 Then the instrument does a control test. The
19 control test is a measurement against a known standard.
20 During the breath test, that known standard is an
21 ethanol vapor in a dry gas canister. It looks like a
22 little fire extinguisher but painted blue. It is a
23 compressed gas; ethanol and nitrogen is the mixture.

24 And the intent and purpose of that is to check
25 two things. The entire running of the instrument and

1 the calibration. Does it measure alcohol properly?

2 And what happened in this one is the standard
3 is it must be within .005 of the target, the target
4 being an 0.80.

5 So anything between 0.75 and 0.85 is
6 acceptable in the objective standard; 5 percent below,
7 5 percent above. This particular one said .074, out
8 side the tolerances. So, we are starting to see that
9 the target value of 0.80 is not being achieved in this
10 breath test.

11 So I started looking at inspections; how is it
12 performing during inspections? Because during the
13 inspection process it looks at the dry gas, but it also
14 looks at the same standard in wet bath. It is kind of
15 an analogy that it is taking two separate 8-pound
16 weights and putting them on the same scale. Does it see
17 them the same? They are the same standard, it should be
18 relatively close to each other.

19 So I looked at the inspection test done on
20 January 30th --

21 MS. VANNESS: Which is, for the Courts, it is
22 the next page of Composite Exhibit 2.

23 A And if we the look on the right hand column it
24 says .08/210L test one and two lines down it says
25 .08/210L dry gas standard test one. Both of those have

1 a target value of .08, so they should be relatively
2 close, within a few thousandths of each other. The wet
3 bath is coming in .08. Oh, the dry gas is coming in
4 .075. So they are 5,000ths apart from each other on
5 that first sample. The next one they are 6,000ths apart
6 and the next one they are back to 4,000ths.

7 So, you are taking two standards that are the
8 same, they are .08. They should be the same. But the
9 dry gas is reading things low and the wet bath is
10 reading them closer to target.

11 There could be numerous causes for that. If
12 it is only one inspection, one time, it could be an
13 anomaly, could be environmental, could be the room. But
14 I continued to look at documents throughout the history
15 of the instrument this year.

16 Q Did you look at a 2-27-13 agency inspection?

17 A I did, but I also looked at breath tests, too.
18 But 2-27 agency inspection .080 .075. So, you are still
19 seeing that spread between the two mediums; wet bath and
20 dry gas. And you are seeing control out side tolerances
21 pop up every once in a while. And sometimes there is an
22 environmental cause of a control out side tolerance.

23 It is kind of a complicated scenario but if
24 the room where the breath test is being run is alcohol
25 saturated and an individual goes to give a breath test,

1 and they are exhaling and blowing alcohol while the
2 instrument is trying to establish a zero, it is pumping
3 air trying to get fresh air but there is no fresh air in
4 the room, what happens is the zero reference is raised
5 slightly. So now you are not starting at zero, you are
6 starting slightly above zero. So when you measure the
7 breath or the control you are starting above zero so the
8 control is still an .08 but the bottom is not a zero, it
9 may be a .006. So that means the measurement is going
10 to be lower. That dry gas is going to come back as an
11 .074. That is one of the causes of a control out side
12 tolerance. It happens.

13 Another cause is instrument calibration.
14 Well, if we look at this and we look and we see the wet
15 bath is pretty close to target value, the dry gas is
16 not. So what's the difference between the two? And
17 they are software driven. Dry gas is not necessarily
18 pure measurement. It doesn't give you .08, here it is.
19 There is two specific compensations made for dry gas.
20 One is altitude or barometric pressure. Because it is a
21 pressurized gas it is adjusted for the environmental
22 pressure. So as it is released the instrument has an
23 internal barometric pressure and it adjusts the results
24 based on barometric pressure. So that can affect the
25 results of dry gas.

1 The other thing is dry gas is dry. It sounds
2 unusual, but it is dry. It is not humid like human
3 breath or a simulator where it is a hundred percent
4 humidity. So the instrument software makes those two
5 adjustments. So we don't know if it is instrument
6 calibration, we don't know if it is the barometric
7 pressure sensor, we don't know why this big difference
8 between the two that shouldn't be.

9 Q Whatever the difference is, is it internal in
10 the machine?

11 MS. METTS: Objection, speculation, Your
12 Honor.

13 BY MS. VANNESS

14 Q You are saying that there is --

15 MS. METTS: Judge, can I get --

16 JUDGE YERMAN: All right, well, he hasn't
17 answered the question. I don't think he's going to
18 answer the question. I think you should move on to
19 another one.

20 MS. VANNESS: I'm going to rephrase the
21 question.

22 JUDGE YERMAN: Okay. Because it is -- he said
23 he doesn't know, so...

24 BY MS. VANNESS

25 Q If there is something going on and we don't

1 know -- and you are saying it could be pressure, it
2 could be all those things that you just explained --
3 those are things -- a sensor -- those are internal
4 things that could be going on within the machine; is
5 that correct?

6 MS. METTS: Objection, leading.

7 A That's correct. Those are internal functions
8 of the instrument.

9 Q Okay. Did you look at -- going back, and I
10 know it is not what you have in front of you, but you
11 also looked at an agency inspection report dated
12 March 15, 2013; correct, which is the next number of
13 Composite Exhibit 1 -- or Composite Exhibit 2, I'm
14 sorry.

15 To continue with the comparison of the dry gas
16 to the wet bath?

17 A Which date, I'm sorry, was the inspection?

18 Q March 15, 2013.

19 A I don't believe I have that one in front of
20 me.

21 Q If you don't have it, I have it here.

22 A Please. March 13th -- I may have it but...

23 Yes, the March 15th one was also examined and,
24 again, the wet baths were coming in .082, .082, the dry
25 gas .076, .076, .077. So, again, you have this

1 difference between what should be the same.

2 Q And, again, we are looking at the same time
3 frame here that Mr. Zajack and Mr. Palomino took their
4 breath test, correct?

5 A Correct.

6 Q Then did you turn and look at the next page
7 of -- Your Honor, of Composite Exhibit 2 -- is entitled
8 subject's last name Bargeal (phonetic).

9 A What date was that, ma'am?

10 Q It is dated March 12, 2013.

11 A Yes.

12 Q And there were actually two Bargeals as
13 subject tests electronic data, correct?

14 A Correct.

15 Q Can you explain that analysis that you did on
16 those subject tests to the Court?

17 A Certainly. Mr. Bargeal -- there is confusing
18 information here because I think there is some improper
19 information. They have him listed as -- the violation
20 code as being "zero tolerance." I think they made a
21 mistake, and it is not really a zero tolerance arrest.
22 That code, zero tolerance, is intended for persons under
23 21 over .02 alcohol concentration. That was what the
24 code was intended for. I think what they used it for in
25 this case is employee testing --

1 MS. METTS: Objection, speculation, Your
2 Honor.

3 JUDGE YERMAN: All right. Sustained.

4 BY MS. VANNESS

5 Q What does -- on subject test electronic data
6 dated March 12, 2013, what does the violation code say?

7 A It says "zero tolerance violation."

8 Q Under arresting officer what is listed?

9 A None, "N/A".

10 Q What do the test results show and indicate to
11 you?

12 A The individual -- two things. One, there is
13 another corrupt data with uploading to Tallahassee,
14 again, with this document. And, two, that the
15 individual in this breath test gave two adequate breath
16 samples and was alcohol free. They had no alcohol in
17 their system. They blew twice and blew 0000. It is
18 significant because the environmental cause of an
19 intoxicated person saturating the environment causing
20 the calibration to go, that dry gas standard to drop
21 below an .075, is absent. This individual's alcohol
22 free.

23 So the cause of the .074 control test result
24 can't be the subject. They are alcohol free. So it's
25 got to be an instrumentation issue. It can't be an

1 environmental issue.

2 Q That's --

3 A So then, immediately following that breath
4 test, they ran another breath test on the same
5 individual. And, again, two adequate samples were
6 provided. Both showed the individual to be alcohol
7 free. And, again, the control was out of tolerance.
8 And it could not have been caused by the individual's
9 proximity to the instrument. He was alcohol free. So
10 it's caused by some other issue.

11 Q And there is also -- did you review a subject
12 test electronic data dated March 13, 2013, subject's
13 last name is Grant?

14 A Correct. It was the very next test conducted
15 on that instrument.

16 Q And what did that indicate?

17 A This individual had alcohol in their system
18 and, again, a control test out of tolerance. So you are
19 having sequential control tests out of tolerance, not
20 just sporadic now.

21 Q And also on Mr. Grant's subject test
22 electronic data, did you have some corrupt data on that
23 as well?

24 A Yes, the data information in Tallahassee's
25 computer is producing corrupt reports, for lack of a

1 better term.

2 Q So just based on exhibit -- Composite Exhibit
3 1 (sic), which is the subject test electronic data,
4 which starts January 21st and includes the two agency
5 inspections and then ends with Mr. Grant on March 13,
6 2013, just from auditing those records in that time
7 frame, what conclusion did you arrive at regarding the
8 reliability of Intoxilyzer 817 during that time period?

9 A My conclusion was not based limited on that,
10 it went through April, because there is more control out
11 of tolerance. My conclusion is based on the totality of
12 all of the information I looked at.

13 Q Based on your review of Exhibit 1, which is
14 all we have reviewed right now --

15 JUDGE YERMAN: Okay, this is listed as ID 2,
16 Exhibit B --

17 MS. VANNESS: I'm sorry, Exhibit 2.

18 JUDGE YERMAN: -- just for purposes of the
19 record.

20 MS. VANNESS: Yes, his CV was Exhibit 1. I
21 apologize, Your Honor.

22 BY MS. VANNESS

23 Q Based on Exhibit 2, did that cause you concern
24 and you reviewed further records?

25 A It did.

1 Q Okay. What other records did you review?

2 A Well, I continued on looking at breath test
3 data and inspection data and documents and saw the
4 continuation of the control out of tolerance. It did
5 not stop there. March 19th, March 20th, April 14th,
6 April 14th. So the control out of tolerance continued.

7 MS. METTS: Your Honor, I'm going to object at
8 this point. He's actually referring to documents. If
9 he can cite the Court and the State back to the
10 documents he's referring to where it is control out of
11 tolerance so we can all be on the same page and the
12 record will be abundantly clear.

13 MS. VANNESS: Sure. Please do that. I didn't
14 mark them but he can refer to them in his testimony.

15 JUDGE YERMAN: I don't think they are in
16 evidence. Is that correct?

17 MS. VANNESS: They are not in evidence, but
18 he's referred to them so he can certainly --

19 MS. METTS: Judge, I would like to see copies
20 of them.

21 MS. VANNESS: Sure.

22 MS. METTS: At least.

23 JUDGE YERMAN: Sure.

24 MS. VANNESS: Sure, please feel free.

25 MS. METTS: I'm assuming we don't have an

1 extra copy?

2 MS. VANNESS: He didn't, but I'm sure he'll
3 hand them to you.

4 THE WITNESS: All of them -- these are all the
5 breath tests. But the ones with the green stickies are
6 the controls out of tolerance.

7 MS. VANNESS: Actually, I'm sure he won't
8 mind -- do you mind if we mark those and move them into
9 evidence?

10 THE WITNESS: I don't have --

11 MS. VANNESS: Your Honor, at this time we
12 would actually move what he was just referring to in as
13 Defense Exhibit marked for ID as number seven.

14 We would actually move it into evidence
15 at this time.

16 MS. METTS: Your Honor, for purposes of
17 this -- two things. Number one, I was never provided
18 those documents. I have never seen the documents except
19 for today.

20 I understand Ms. VanNess's argument that
21 they are available on our website, therefore, I was
22 somehow on notice that she intended to argue them today.

23 I spoke with her yesterday and she gave
24 me a time frame. She said -- well, actually she refused
25 to give me a time frame. She said it would be

1 consistent with establishing breath tests. I assumed it
2 is the month before, the month of, and the month after.

3 However, I have shown documents similar
4 to this to our experts and they have assured me that it
5 doesn't change their opinion or testimony as to what
6 they intend to testify to, so I have no objection for
7 purposes of this that it comes in for you to see it; so
8 long as when it is my opportunity to argue, I may have
9 to provide additional documents to rebut those documents
10 as well that I have not provided.

11 JUDGE YERMAN: All right. Shouldn't be a
12 problem.

13 MS. VANNESS: Not as long as they are
14 documents that are on FDLE website.

15 MS. METTS: And that's not accurate, Your
16 Honor, because I have access to other documents.

17 JUDGE YERMAN: Well documents that would be
18 relevant to that new document that you are putting in.
19 Not necessarily on the website, but they would be
20 something to address --

21 MS. VANNESS: Sure.

22 JUDGE YERMAN: -- something.

23 MS. VANNESS: If it is for impeachment of a
24 witness.

25 MS. METTS: Or if it is for rebuttal. I mean

1 if it is --

2 MS. VANNESS: Or rebuttal, sure.

3 MS. METTS: I never anticipated getting those.

4 MS. VANNESS: Yeah, I didn't --

5 JUDGE YERMAN: Well, she didn't anticipate him
6 having them admitted, she just was going to have him
7 testify to it.

8 MS. VANNESS: Right, and she wanted to make an
9 issue. I just said we'll move them in.

10 JUDGE YERMAN: That's where we are right now.

11 MS. METTS: I just want the Court to have the
12 benefit of all of the information, Your Honor.

13 JUDGE YERMAN: All right.

14 And just for the record, again, we
15 receive them.

16 BY MS. VANNESS

17 Q In addition to looking at the time period of
18 subject test data that you just talked about, did you
19 also go back in time and look at this comparison of the
20 wet bath to the dry gas issue and look at a trend?

21 A Yes.

22 Q Okay. Let me show you -- I'll show you my
23 copy. It is in evidence as Exhibit 4.

24 A Yes, I have looked at that.

25 Q You have looked at those documents?

1 A I have.

2 Q Can you explain to the Court -- and maybe it
3 might be helpful to understand what the top of those
4 documents are that are paper clipped.

5 A These are electronic test data for agency
6 inspections starting in January 2011, June 2012,
7 September 2012, and December 2012.

8 Q Now what's the significance of going all the
9 way back to January of 2011?

10 A Well, in January of 2011 we see the optimum
11 operation of the instrument. The wet bath .081, the dry
12 gas .080. .082, .080. .082, .080. They are within
13 that 3,000ths within what we expect them to be. Two
14 separate 8-pound weights being measured by the scale
15 about the same. That's the analogy I like to use.

16 Q You said within 3,000ths --

17 A 3,000ths of a gram.

18 Q Where do you get that from?

19 A Well, the manufacturer has a 3,000ths accuracy
20 standard when they produce the instrument and send it
21 out from calibration at the factory. The State has a
22 5 percent but the closer they are to each other the more
23 reliable the instrument. So, 3,000ths is a fair
24 tolerance to allow between the two.

25 And if we look back in 2000, it was right on,

1 right exactly where we expect it to be. Starting in
2 2012 we are getting .05 difference -- .005 difference.
3 The difference is starting to drift as time goes by.
4 And that's a quality assurance indicator that it is time
5 to calibrate or take a look at a potential cause of
6 this.

7 Q Is that what Composite Exhibit 4 indicates to
8 you?

9 A Yes. It is a trend analysis over time of the
10 differences between dry and wet getting farther apart on
11 this particular instrument.

12 Q Let me show you what has been marked but not
13 moved into evidence yet as Exhibit 6. What is that
14 document, first of all?

15 A Well, it is the instrument processing sheet
16 for an Alachua County instrument that was sent to
17 Tallahassee to FDLE for its annual inspection back in
18 April 2012.

19 Q Where did you obtain that document?

20 JUDGE YERMAN: What's the number, again? Six?

21 MS. VANNESS: It is not in evidence yet. This
22 is the one that was objected to.

23 JUDGE YERMAN: All right.

24 A I obtained it from FDLE through a public
25 records request and their website.

1 Q So it is a public record?

2 A Yes.

3 Q And did you rely upon that document in
4 formulating your opinions here today?

5 A It supports my opinion. I didn't rely on it
6 to formulate my opinion, but it supports my opinion and
7 documents to support that opinion.

8 Q And what does that document indicate?

9 A Well it indicates that --

10 MS. METTS: Your Honor, I'm going to object
11 that he's going to testify to the results of this at
12 this time because the document hasn't been moved into
13 evidence, number one, and we have objected and we never
14 received the document in discovery.

15 Number three (sic), that it's irrelevant
16 because it is an Alachua County case and we are
17 dealing -- specifically, the motion alleges that we are
18 dealing with the machine as it pertains to 817. The
19 prong A of the motion alleges that the breath test
20 instrument in the sample is out side of implied consent
21 and it is not reliable. We have talked about general
22 things about that but there is nothing that would have
23 put me on notice that I'm supposed to have an Alachua
24 County Intox. report.

25 JUDGE YERMAN: Okay. Why?

1 MS. VANNESS: It is relevant to the
2 calibration issue that he just talked about being .003
3 out side of calibration and when it is out side of --
4 off .003 they send them to FDLE and FDLE calibrates them
5 and that's what that document shows.

6 MS. METTS: Your Honor, then provide the
7 documents in discovery.

8 MS. VANNESS: It is on the FDLE website. I
9 don't have to provide them with their documents that
10 they have control of. They tell me every day that I
11 have to go the FDLE and get all of the documents, so why
12 do I have to give them to them if they don't have to
13 give them to me?

14 I mean, this is an -- FDLE is a state
15 agency. It is all of their documents that they have.

16 JUDGE YERMAN: I'm not going to let you bring
17 it in, in chief. What I'm going to do is see what
18 happens in this development and I, I assume that there
19 is going to be testimony that the standard is that they
20 send the machine to be recalibrated to .003. And if
21 they come back with somebody and say, no, they don't,
22 then I think that --

23 MS. VANNESS: Then it will come in?

24 MS. METTS: Your Honor, it would have to be an
25 .005 if there is a difference.

1 JUDGE YERMAN: Has to be an .005 if there was
2 a difference?

3 MS. METTS: No, you just said that the
4 standard would be -- to send up would be an .003 but it
5 is not. It would be an .005 (Indiscernible).

6 JUDGE YERMAN: Then I think the representation
7 is -- that Ms. VanNess just made -- was that they
8 generally send it out to be repaired at .003.

9 MS. VANNESS: Correct.

10 JUDGE YERMAN: Wasn't that what you said?

11 MS. VANNESS: That's correct.

12 JUDGE YERMAN: So that's what that document is
13 supposed to support.

14 MS. METTS: Right. But, again, we go back to
15 it's never been provided to me.

16 JUDGE YERMAN: Well, I know, and it is not
17 coming in right now.

18 MS. METTS: Right.

19 JUDGE YERMAN: But if he's telling me that's
20 the standard for FDLE, that's what the evidence is going
21 to be until I get something contrary.

22 And if you bring up something contrary,
23 then that's some evidence that's going to come in to
24 show that, in fact, it is different than what your
25 people say.

1 MS. METTS: That point I understand, Your
2 Honor.

3 JUDGE YERMAN: Okay.

4 BY MS. VANNESS

5 Q When you worked at FDLE did they calibrate
6 instruments that were off a .003?

7 A No, they did a quality assurance of data and
8 cause and effect was determined and it was individual
9 inspector's responsibility to take appropriate action to
10 bring an instrument back to nominal.

11 What happened in the quality assurance at the
12 department inspector level when the 8000 went online is
13 all the data is transmitted to Tallahassee once a month.
14 The last step of the agency inspection is to hook a
15 phone line up and an old modem was used and the data was
16 transferred to Tallahassee. So, as a department
17 inspector it was my responsibility by the 15th of the
18 following month to audit that data; look at the agency
19 inspections, look at the instrument performance.

20 Also, they produced a spreadsheet of messages,
21 all the -- the instrument generates a bunch of different
22 messages. One of those messages being control out of
23 tolerance, refusal, no sample provided, volume not met,
24 many different messages the instrument can generate.

25 And there was a spreadsheet done monthly on

1 those messages, and it was a department inspector's job
2 to look at that spreadsheet and see statistical
3 anomalies. This instrument has a huge message X;
4 investigate, determine why, if it needs to be fixed,
5 let's get it in and fix it.

6 So that was the functionality. When the
7 processing sheet was looked at and started doing
8 calibrations in Tallahassee, they started looking at
9 nominal controls between the target value and the
10 instrument performance and started recalibrating even
11 when they met that 5 percent standard.

12 Q Is there a standard -- there is a standard for
13 the wet bath of .05 (sic) from the standard -- from the
14 test to the standard that you are running, correct?

15 A There is an accuracy standard for the wet bath
16 dry gas control.

17 Q Right. Controls?

18 A Yes.

19 Q But is there a standard or a rule that
20 addresses one control to the other; the wet gas to the
21 dry gas?

22 A There is not. There is an internal procedure
23 that is used at FDLE but there is not a specific
24 standard that says you compare the two and if they are
25 more than X the instrument is broke.

1 Q Right. And in this particular case, this
2 particular instrument, 817 that we are talking about
3 that you are testifying about calibration problems,
4 that's the issue in this case; is that correct?

5 A Correct.

6 Q Okay.

7 A You have -- the analogy -- and I started to
8 use it -- is you have two, 8-pound weights. You are
9 putting them on the same scale and the scale is not
10 reading them both at 8 pounds.

11 Q Right.

12 A They are both 8 pounds. They should both be
13 the same or very close to each other.

14 Q For the Court's benefit, we are not talking
15 about a deviation from the .05 standard --

16 A .005, Counsel.

17 Q .005 standard. We are talking about the
18 difference between the dry gas reading and the wet bath
19 reading?

20 A Yes, we are talking about quality assurance in
21 breath testing not the objective 5 percent standard
22 established by rule.

23 Q Correct. Just so we are all on the same page.

24 A Yes.

25 Q Okay. And there is no rule -- it is only a

1 quality assurance issue and a calibration issue?

2 A Correct.

3 Q Okay.

4 Did you look further at the Florida Department
5 of Law Enforcement's testing program statistical data
6 review?

7 A I did.

8 MS. VANNESS: And for the Courts' benefit,
9 that's Exhibit 3 that's been moved into evidence.

10 BY MS. VANNESS

11 Q Can you explain to the Court, first, what that
12 document is and how it is generated?

13 A Certainly.

14 Q And the purpose of it.

15 A Every month the data that is collected is
16 exported into an excel spreadsheet, and it is usually a
17 15-page document. The purpose of that document, as I
18 briefly mentioned earlier, is to look at the instruments
19 from a statistical standpoint. How is this instrument
20 performing against the state average? How is this
21 instrument performing against itself? How is this
22 instrument performing against itself in past history?
23 Is there trends and analysis and quality assurance that
24 can be looked at in statistical data?

25 Back in 2008 or '9 Mr. Murphy and I -- who is

1 the current program manager, and Ms. Barfield who was
2 the program manager and my supervisor at the time --
3 looked at this data and said -- I made the
4 recommendation that if it is more than double the state
5 average, if any number on this document is more than
6 double the state average, have the spreadsheet flag it
7 for the department inspector. So, it flags it in red in
8 the original document at the time.

9 And the department inspector responsibility
10 for the instruments that they are assigned is to look at
11 that data and then determine cause. Why does this
12 instrument have this statistical anomaly.

13 Some of them are very explainable. For
14 example, Gainesville Police Department does not push the
15 refuse button on any breath testing. That's their
16 policy, procedure. They allow the instrument to time
17 out. So statistically in the spreadsheet you will see a
18 vast number of "no sample provided." And a very low
19 number of refusals. It is not an instrument performance
20 history, it is a policy and procedure that they are
21 doing.

22 When we first started the 8000 we saw high
23 statistical number of "test aborted" because pushing the
24 "start test" button aborts the test on the 5000 -- on
25 the 8000. On the old instrument it used to be a

1 refusal, so it was a training curve. And as time went
2 by we saw less "test aborts," more refusals. We could
3 see that statistically.

4 So on this instrument I specifically looked at
5 control out of tolerance.

6 Q And across the top, looking at this table --
7 on page one you look at control out of tolerance across
8 the top. Is that correct?

9 A Correct. Which month are you looking at?

10 Q March of 2013.

11 Here, we can do it together with this one, if
12 you want.

13 A Across the top of the document you'll see --
14 it will say "CTL out toll" -- out of tolerance. It
15 means control test is out of tolerance. And on the left
16 hand margin all the instruments that are registered
17 as -- well, even all of them, some that aren't
18 registered, are listed by serial number, then who owns
19 that instrument or who the instrument is registered to,
20 and then the number of tests that were performed on that
21 instrument during the month.

22 Q What page is our serial number?

23 A If you look at page two, three quarters of the
24 way down 80-000817 is listed and had 30 breath tests in
25 March with five of those breath tests resulting in a

1 control out of tolerance.

2 Q So five were out of tolerance?

3 A Five control tests were out of tolerance out
4 of 30.

5 Q And then if you go back -- does it summarize
6 the percentage at the last --

7 A On the last page it does. And I'm flipping
8 through to make sure my testimony is accurate when I
9 make this -- the last page, 15 of 15, shows that
10 statewide there was 36 control tests out of tolerance.
11 That's out of over 400 instruments. That's out of over
12 3500 breath tests. Five of them were this instrument in
13 this county; more than any other instrument in the state
14 during that month. That's a statistical red flag to me.

15 Q Did you calculate the percentage that the
16 Citrus County machine was out of control -- control out
17 of tolerance error messages showed up?

18 A Yes.

19 Q What percentage was that?

20 A 16-.66 percent of the breath tests in this
21 county had a control test out of tolerance compared to a
22 a state 1 percent.

23 Q The state average is 1 percent, correct?

24 A Correct. 1.02 percent, I believe.

25 Q And Citrus County, this machine, 817, was

1 16.6 percent control out of tolerance?

2 A Correct.

3 Q The FDLE standard is -- that it shows up red
4 on this report is 2 percent?

5 A No, ma'am.

6 Q Or double, I'm sorry.

7 A Double. Double the state average. So if it
8 was 2.4 percent or greater, it would appear on that
9 document in red.

10 Q Okay. Then what -- per FDLE rules, what
11 should have happened when it showed up higher than
12 2.4 percent?

13 A Whomever the department inspector was assigned
14 to that region or that county or that instrument would
15 investigate the cause and take corrective action to --
16 if the cause was determined to be calibration,
17 procedure, operation, equipment, whatever the cause is,
18 to fix it and get the instrument back in compliance with
19 the quality assurance standards.

20 Q With that percentage control out of tolerance,
21 would that department inspector seeing that number pull
22 that instrument off line?

23 MS. METTS: Speculation.

24 A Well, it is a judgment call. I'm sorry.

25 MS. METTS: The objection was speculation,

1 Your Honor, about whether or not a specific operator
2 would pull it off line at that percentage.

3 JUDGE YERMAN: I think he said it is a
4 judgment call, so it is just what it is. Sometimes they
5 will, sometimes they won't.

6 BY MS. VANNESS

7 Q Would that percentage require FDLE to address
8 it in some manner?

9 A Yes. We require the department inspector to
10 investigate the cause and take corrective action.

11 Q Did you do anything else or review any other
12 documents in formulating your opinions regarding the
13 scientific reliability of breath test instrument 817 in
14 January and February of 2013?

15 A Well, all the breath tests, the inspections
16 that we went over and the statistical data, along with
17 the policies and procedures and curricular for
18 conducting breath tests, along with my knowledge of the
19 procedures of FDLE, and -- based on my knowledge. Not
20 only the documents, but my understanding of the
21 documents, interpretation of the documents.

22 Q Based on these documents and your knowledge,
23 was instrument 817 in substantial compliance with FDLE
24 rules on January 20, 2013 when Mr. Zajack was
25 administered his breath test?

1 A It is my opinion that it was not producing
2 scientifically reliable results at the time of the
3 breath test.

4 Q On both January 20th and February 22nd?

5 A That is correct.

6 MS. VANNESS: I don't have any further
7 questions at this time.

8 JUDGE YERMAN: All right.

9 And Ms. Metts did you want to
10 cross-examine, Mr. Malhiot.

11 MS. METTS: Yes, Your Honor.

12 If I may have just a moment, Your Honor.

13 CROSS-EXAMINATION

14 BY MS. METTS

15 Q Mr. Malhiot -- how do you pronounce your last
16 name?

17 A It is pronounced "My-it", M-Y-I-T, "My-it".

18 Q Malhiot. We'll get that.

19 I want to talk to you first about the last
20 document that you spoke about with Ms. VanNess, this
21 2013 subject test statistical data review from March?

22 A Yes, ma'am.

23 Q Do you have any documents pertaining to
24 January or February?

25 A I do.

1 Q And in January and February what was the
2 statistical percentage that you discussed earlier with
3 regard to Citrus County as far as control out of
4 tolerance?

5 A I'll turn my calculator on real quick for your
6 here, Counselor.

7 January was 5.8 percent. February would be
8 the same thing.

9 Q And you had these documents in your
10 possession, right, to review for your opinions here
11 today?

12 A I did.

13 Q Right. But the one that you specifically
14 discussed was the one in march, which was the 16 percent
15 number, right?

16 A Correct.

17 Q You would agree with me that the breath tests
18 that we are talking about in this case took place in
19 January and February?

20 A Correct.

21 Q And per the rules that govern us in the
22 statutes, whenever we are laying foundations for
23 admissibility, which you have testified to before, we go
24 with the month before and the month of, right?

25 A Sometimes the month of, the month before and

1 the month after, depending on the Court.

2 Q Talking about the 5000. Specifically with the
3 8000 what's required is the month before and the month
4 of?

5 A You are asking for a legal conclusion. Some
6 circuits require the month before, the month of, the
7 month after. Some require, as you say, the month before
8 and the month of depending on when the inspection was
9 done, before or after the breath test.

10 Q So, if we are talking about the validity of
11 the results in this particular case, it would have been
12 important for us to also tell the Court about what
13 happened in January and February since those are the
14 months that these breath tests took place, right?

15 A Well, correct, but you are looking at a
16 totality of the trend and the analysis of the
17 instrument.

18 Q But that's not what you just testified to.
19 You testified to what happened in March. That's what
20 you told this Court, right?

21 A Correct. I told the Court the statistics in
22 March showed that --

23 Q And let me stop you right -- I don't need an
24 explanation. But when you testified as an expert --

25 MS. VANNESS: Can he finish his answer? She

1 cut him off and didn't let him finish his answer.

2 MS. METTS: It is "yes" or "no".

3 JUDGE YERMAN: I don't think that there was a
4 question there. I think he was just volunteering
5 something.

6 Go ahead, Ms. Metts.

7 BY MS. METTS

8 Q Let's go back to the time, Mr. Malhiot, when
9 you testified for the state of Florida.

10 A Certainly.

11 Q All right. And as late as 2011 you took the
12 stand as an expert -- and that was in Bridwell
13 (phonetic) -- and testified that these machines, the
14 8000 is accurate and it is reliable?

15 A It is capable of giving accurate and reliable
16 result, yes, ma'am.

17 Q Not that it was capable but that it was?

18 A Well, I, I would have to review the case you
19 are speaking of. In that particular case, the facts of
20 that particular case, very true, I may have said that.
21 I'm not familiar with the exact specifics of the case
22 you are speaking of.

23 Q Now, during the times that you were testifying
24 on behalf of the State of Florida, being paid by the
25 State of Florida, it was okay for you at that time that

1 it was a 5,000ths tolerance range, right?

2 A Correct. 5,000ths or 5 percent, whichever was
3 greater is the state objective standard by rule.

4 Q Today you want it to be less than that.

5 A Not under the objective standard of rule, no.
6 What I'm saying is that it is less than that for the
7 instruments to be recalibrated by FDLE.

8 They can meet the objective standards but FDLE
9 will still recalibrate them if their nominal numbers are
10 drifting toward the ranges.

11 Q But it is not required.

12 A There is not a requirement by rule.

13 Q And in every document you reviewed pertaining
14 to the 817, the instrument that we are talking about in
15 this specific case --

16 A Yes, ma'am.

17 Q -- it was within the substantial compliance,
18 which was the 5,000ths.

19 A No. The inspections were. The breath tests
20 were not all. Many of them had control out of
21 tolerance. But, yes, the inspections were. Many of the
22 breath tests were not.

23 Q Well, let's talk about that.

24 A Certainly.

25 Q If it is out of tolerance then the machine is

1 telling us that there is a problem, right?

2 A Correct.

3 Q And then I can't use that affidavit against
4 the Defendant in Court, right?

5 A That depends. I have seen some try and get it
6 in under a Brady -- not Brady, I'm sorry --

7 Q Bender?

8 A A bender predicate.

9 Q Yeah:

10 A But generally that is a true statement.

11 Q Right. So there is a mechanism and a safety
12 mechanism. If it is not getting accurate results -- and
13 "it" being the Intoxilyzer 9000 (sic) -- then it is
14 telling us, because it gives us that out of range.

15 A For that particular breath test and -- I don't
16 mean to be picky but the Intoxilyzer 8000 -- you said it
17 was a 9000 just then.

18 Q Oh, excuse me. That's right. That's the new
19 class you are offering on the 9000, I'm sorry.

20 A I am teaching on the 9,000.

21 Q Yeah. But everything that you reviewed in
22 this particular case shows that it is within substantial
23 compliance.

24 A No. Many breath tests were showing that the
25 tolerances of that five percent or .005 were not met and

1 generated out of control tolerances.

2 Q But the machine told us --

3 A Yes, it did. All of these --

4 Q Which is -- let me stop you right there.

5 Which is the machine's job. If it is not coming in
6 within that range, we are not generating false reports,
7 it is telling us there is a problem.

8 A Correct.

9 Q Right. And the machine did that in each and
10 every one of these scenarios?

11 A It generated the message "control out of
12 tolerance" in each and every one of those breath tests,
13 yes.

14 Q Now, you testified earlier about a hole being
15 drilled and about general issues with regard to when the
16 machine was approved and when it was not approved?

17 A General, yes.

18 Q Okay. I want to be sure. In 2004, whenever
19 you were in Kentucky and the hole was drilled at that
20 time, you were actually still in your training stage
21 with FDLE?

22 A No.

23 Q That wasn't in your nine-month training stage?

24 A No, I started in 2002.

25 Q Okay.

1 A When I went to the approval evaluations in
2 Tampa in April/May of 2002, that was part of my training
3 stage.

4 Q You weren't training for a new position with
5 Mr. Skipper during the time of 2004 when you actually
6 went to Kentucky?

7 A No.

8 Q Okay.

9 A In fact, there is no other position. You are
10 either a department inspector -- there is no advanced --
11 that's --

12 Q Right. And that's one of the reasons you
13 left, right, because you wanted to advance?

14 A Yes. There was no further advancement and the
15 State was cutting salaries and my daughter graduated
16 college, so it was time to move on.

17 Q And I want to talk to you specifically about
18 the written notice required by the rules that you
19 discussed earlier.

20 A Okay.

21 Q All right. And that written notice had not
22 been provided whenever the hole was drilled, right?

23 A Not to my knowledge. And I have heard and
24 seen and I have never seen a document, but yes.

25 Q Well, I didn't ask you everything what you

1 have heard and everything what you have seen.

2 A Well --

3 Q It is just a very specific question.

4 And so you have already testified that it
5 wasn't?

6 A It was not.

7 Q Right. But Laura Barfield, to your knowledge,
8 was immediately contacted and notified?

9 A She was. When we say "immediately," within
10 hours, same day, so I would consider that immediate,
11 yes.

12 Q And you told us that that was not in strict
13 compliance?

14 A Correct.

15 Q Right. You would agree with me that that is
16 in substantial compliance if the idea is we are supposed
17 to know about changes so we can test it, and we
18 absolutely learned about the change the same day it took
19 place?

20 A No. And the reason why is because you have an
21 objective standard written in rule -- writing -- in
22 writing. So the objective standard is not met. So it
23 can't be substantial.

24 If the rule said "make a notification," then I
25 would agree. But when a specific task is required by

1 rule I don't think you can have substantial when it is
2 in direct violation of the wording of the rule. But the
3 spirit and the intent, yes, they -- FDLE was notified.

4 Q So the spirit and intent was substantially
5 complied with?

6 A For the notification portion.

7 Q Right.

8 A Yes.

9 Q And from that day on, whenever the Intoxilyzer
10 8000 came online in Florida in 2006 --

11 A Okay.

12 Q -- you actually testified that it was accurate
13 an reliable, right?

14 A Well, your question kind of can't be answered.
15 I didn't testify between 2004 and 2006 that it was
16 accurate.

17 Q No, I said from the time it came online in
18 2006 until the time you left FDLE, you testified that
19 the machine is reliable?

20 A In cases, I did.

21 Q Right. At no point did you look at the Judge
22 when they were placing you under oath and said, "I can't
23 testify to this because the rules weren't complied
24 with"?

25 A I did not.

1 Q Right. And you were placed under oath to tell
2 the truth, right?

3 A Correct.

4 Q And at no point in time did you look at the
5 judge and say, "I can't testify to this because they
6 drilled a hole in it and it was a modification and they
7 didn't fill out the right forms"?

8 A I did not.

9 Q You never said that?

10 A I never said that.

11 Q But today you believe it to be a problem?

12 A I believe we violated the rule at the time,
13 yes.

14 Q And you never once, from 2004 until you
15 started working for defendants, took a position under
16 oath to tell us that we violated rules?

17 A Not in my opinion at the time, no, I did not.

18 Q Okay. Even though you were sworn to tell the
19 truth?

20 A Yes.

21 Q Now, you have told us that the hole being
22 drilled didn't change the analytical methodology.

23 A Correct.

24 Q You would agree with me that the hole was
25 drilled in the exhaust area?

1 A The exhaust block valve, yes.

2 Q Right. And that the testing comes actually
3 before that?

4 A The analytical portion of the vapors prior to
5 that exhaust valve, yes.

6 Q Okay. So naturally what comes after the
7 testing can't impact the testing?

8 A Not necessarily.

9 Q And what do you base that on?

10 A We have to understand that the only time that
11 valve is in use is with a simulator and recirculation.
12 So the vapor that goes through and is evaluated comes
13 through that valve and is sent back around again, so it
14 is a loop. It is not blown through there and exits and
15 not used again. It is a closed system.

16 With a simulator hooked up, the air that is
17 measured goes -- exits back into the simulator and back
18 into the instrument. So it is a closed system and it
19 recirculates.

20 Q So your testimony today is that what runs
21 through the exhaust block that was drilled in cycles
22 back through the system to be tested and be part of the
23 results?

24 A During a simulator test only. Not during a
25 dry gas or a subject test.

1 Q Right. And as a matter of fact in 2004, it
2 was only the simulator test that had problems, right?

3 A I'm not sure I understand your question.

4 Q Well you said it was a simulator issue?

5 A Correct.

6 Q Right. Whenever the machine was tested by
7 Mr. Skipper and you hooked up the actual tube device and
8 blew into it or you put other samples in it, it worked.

9 A Well, when we blew into it, we weren't under
10 the influence and drinking. We had zero alcohol
11 concentration, so I'm not sure I'm understanding what
12 you are asking.

13 Q The only problem --

14 A Dry gas --

15 Q There was not a problem with the dry gas?

16 A There was not a problem with the dry gas, that
17 is correct.

18 Q The only issue was with the simulator?

19 A Correct, because dry gas and subject tests do
20 not go through that valve.

21 Q And so you are saying that substantially
22 changes the results?

23 A I didn't say that.

24 Q Then what are you saying?

25 A I'm saying that it is changed -- or modified

1 the instrument. That's all I'm saying. It was a
2 modification of the instrument.

3 Q So, therefore, the instrument is not reliable?

4 A I didn't say that.

5 Q So the instrument is reliable?

6 A It can be a reliable instrument as I have
7 testified to many times.

8 Q Okay. And the way we know it is reliable is
9 by how it tests itself; isn't that right?

10 A Partially, yes.

11 Q Right. So when it is out side of range it
12 tells us that it is out side of control range?

13 A That's one of the functions of the dry gas
14 control test is to test --

15 Q And you would agree with me that this machine
16 in this case did exactly that? It told us whenever it
17 was out side of control range?

18 A It generated the appropriate message when the
19 control standard was out side the target value, yes.

20 Q Now, let's go back to the hole being drilled
21 and the things that happened in 2004. That wasn't the
22 only thing that was changed at that time, correct?

23 A There was about 18 modifications to the
24 instrument between the time of the approval -- or the
25 evaluation that was done for approval and it placed into

1 evidential use.

2 Q Okay. Specifically in 2004 whenever you were
3 in Kentucky and the hole was drilled, the shore locks
4 were also changed at that time?

5 A There are different types of connectors for
6 the simulators and dry gas that were tried and yes.

7 Q As a matter of fact, they were all done at the
8 same time; the hole was drilled, the shore locks were
9 replaced, and the machine was taken apart and tightened
10 back down.

11 A When you say "at the same time," they were all
12 done the same day, yes.

13 Q Right. Whenever it was taken out of your
14 presence and taken away by CMI?

15 A I don't think it ever left our presence. We
16 were in the engineering division the whole time.

17 Q You previously testified it left your presence
18 for approximately 15 minutes.

19 A Well, it may have. I, I don't remember the --
20 it leaving our presence, but it very well may have.

21 Q But regardless in 2004, after those changes
22 take place, the machine isn't actually approved for
23 evidentiary value until 2006, right?

24 A I don't agree with that statement.

25 Q Well please tell us why.

1 A Because the evaluation done in May 2002, the
2 purpose was to approve the instrument for use as an
3 evidential instrument in Florida. It didn't go into
4 evidential service until 2006. Once it was approved in
5 2002, you don't reapprove the instrument.

6 Q So it is your testimony here today in 2002 it
7 was approved for evidentiary use?

8 A Whatever date the rule -- it was incorporated
9 in the rule. The evaluation for the approval that it
10 successfully completed was in May 2002.

11 Q So we couldn't change something that had
12 already been approved is your testimony today?

13 A No, that's not my testimony at all.

14 Q We couldn't test it?

15 A I'm sorry?

16 Q We couldn't test it?

17 A Test what?

18 Q The machine.

19 A Certainly you can test it.

20 Q Well we have done that, right, Mr. Malhiot?

21 A I'm not disagreeing that it's been done.

22 Q And it was done after 2004 and wasn't approved
23 for evidentiary use until 2006; that's whenever we
24 started using it?

25 A It went into service in March of 2006.

1 Q Right. And from the time in 2004 to 2006
2 there were other software issues that were addressed
3 with it?

4 A There was.

5 Q Specific to the State of Florida?

6 A Yes, absolutely.

7 Q And then there were other tests that were run
8 on it?

9 A There was.

10 Q Right. And then from 2006 until you left the
11 agency, you've testified, in general, that the machine
12 itself is reliable along with the software?

13 A Correct.

14 Q And so that portion hasn't changed in your
15 testimony?

16 A Correct.

17 Q The Intoxilyzer 8000 and the software used in
18 the Intoxilyzer 8000 are reliable?

19 A It can produce reliable results, yes.

20 Q I want to talk to you specifically about the
21 calibration issues that you have discussed with regard
22 to the 817 in this particular case.

23 A Yes, ma'am.

24 Q Okay. You would agree with me that there is
25 not a rule that would require the evidence or that the

1 machine to be retested or calibrated based on the
2 evidence you have presented here today?

3 A In fact, the rule does not address calibration
4 of intoxilyzers at all.

5 Q So you would agree with me that if you had
6 these documents in front of you and you were complying
7 with the rules, this is a document that would be
8 substantially -- or this is a machine that would be
9 substantially in compliance and be reliable?

10 A It met the objective standards. It is not
11 necessarily reliable.

12 Q But the objective standards is what you
13 testified to whenever you worked for the State of
14 Florida, isn't that right?

15 A It is. Partially, yes, and also my opinion or
16 my, my interpretation of instrument results.

17 Q The objective standard is what is required by
18 law for us to show that it is in substantial compliance;
19 isn't that right?

20 A Yes.

21 Q And you would agree with me that based on that
22 requirement alone the 817 is in substantial compliance?

23 A It meets the objective standard of rule.

24 JUDGE HOWARD: Could you say that again?

25 THE WITNESS: It meets the objective standards

1 established by rule.

2 MS. METTS: And, Your Honor, may I have a
3 moment to confer?

4 BY MS. METTS

5 Q Mr. Malhiot, we discussed earlier about the
6 objective standard.

7 A Yes, ma'am.

8 Q And I just want to clarify that. That would
9 be a .05 (sic) either way. So, for example, if the
10 simulator and the dry gas sample is a .05, anything
11 point a .045 and a .055 would be within the objective
12 standards?

13 A That is correct.

14 Q And during your time at FDLE, if you had it
15 within that range, you would have testified that the
16 machine was accurate and reliable?

17 A I may have, yes.

18 Q Right. And if it was a .08 that we were
19 dealing with, with the simulator and the dry gas,
20 anything between a .75 and a .085 would be within that
21 acceptable range?

22 A It is.

23 Q As a matter of fact, when you taught the
24 courses to all the young inspectors and the people who
25 were under you, you taught them that that was absolutely

1 acceptable?

2 A Correct.

3 MS. METTS: Your Honor, I have no further
4 questions.

5 THE WITNESS: Thank you.

6 JUDGE YERMAN: All right. Ms. VanNess?

7 REDIRECT EXAMINATION

8 BY MS. VANNESS

9 Q Is there any way to know if the machine
10 catches every time there is a control out side of
11 tolerance?

12 A Well, you could audit and look at the raw data
13 results compared to the messages generated. I -- You
14 could do that, yes.

15 Q But from --

16 A You could physically go through every breath
17 test generated and every control test generated by the
18 instrument.

19 Q But without doing that, we don't know just by
20 looking at the documents that are produced, correct?

21 A Well, if you audit all the documents you could
22 look and see the results and see if the messages
23 generated associated with those results.

24 Q Isn't that the purpose of quality assurance
25 within FDLE?

1 A Absolutely.

2 Q Okay. Isn't that the purpose of Exhibit 3?

3 A Yes.

4 Q Subject test statistical data review?

5 A Yes.

6 Q Isn't that the purpose of two times the state
7 average when it shows up in red?

8 A That's the intent that -- we designed it to do
9 that so that the inspectors could investigate, determine
10 the cause, and bring it into optimum performance.

11 Q And this machine, 817, was more than two times
12 the state average for January and February and March.
13 Am I understanding your testimony correctly?

14 A It was.

15 Q Okay. So my client that blew in January blew
16 on a machine that was over two times the state average
17 for January, correct?

18 A It did.

19 Q My client that took a breath test in
20 February the 20th (sic) was taking a breath test on an
21 instrument that was over two times the state average for
22 February of 2013?

23 A For that particular message, yes.

24 Q And this particular instrument, both the same
25 instrument January and February, then as a trend, ended

1 up having control out of tolerance for March at the rate
2 of 16.6 percent; is that correct?

3 MS. METTS: Objection, Your Honor, asked and
4 answer on direct examination and it is also --

5 MS. VANNESS: It is rebuttal.

6 MS. METTS: -- (indiscernible) question.

7 MS. VANNESS: It is --

8 MS. METTS: It is still leading.

9 MS. VANNESS: It is redirect.

10 JUDGE YERMAN: I'm going to sustain it because
11 it wasn't really attacked.

12 MS. VANNESS: Okay. She was -- I think she
13 was addressing -- I'll rephrase it if -- I'll rephrase
14 it.

15 BY MS. VANNESS

16 Q Ms. Metts asked you if you have testified that
17 this machine was accurate and reliable. "This machine"
18 being the Intoxilyzer 8000, correct?

19 A Correct.

20 Q Okay. In this particular case, your issue is
21 not specifically with the Intoxilyzer 8000, correct?

22 A As a general instrument, no, not at all.

23 Q Correct. It is with the calibration of 817 on
24 January the 20th and February -- I'm sorry, January --
25 January the 20th and February -- the two dates my client

1 took the breath test; is that correct?

2 A It is the calibration that is displaying this
3 year and the problems with the trends this year.

4 Q "This year" being 2013?

5 A 2013, yes. It started the end of 2012, but it
6 is -- appears to be getting worse.

7 Q And based on the data that you've reviewed and
8 those statistics, you -- are you questioning the
9 scientific reliability of this specific instrument 817?

10 A Yes, if I were the department inspector
11 responsible for this instrument I would have notified
12 the agency to ship it up to have it evaluated and
13 potentially recalibrated.

14 Q Okay. So it is an issue, in your opinion, of
15 calibration as opposed to the questions that the State
16 was asking you about your prior testimony of accuracy
17 and reliability of the Intoxilyzer 8000, correct?

18 A Correct. I -- as I answered, the 8000 is
19 capable of producing scientifically reliable results as
20 a general forensic breath testing measurement
21 instrument.

22 Q And you wouldn't object if you -- if you
23 looked at Exhibit 3, for example, and you went and
24 looked at some of the Intoxilyzer 8000s on this list and
25 if they fall within the range, the policy of FDLE as

1 said of not going higher than two times the average, you
2 would, just from a distance looking at it, without doing
3 a full audit, wouldn't have, necessarily, a problem with
4 those machines?

5 A Not necessarily. The raw number doesn't
6 necessarily mean there is a problem. The raw number
7 means investigate the problem. Some of them we know
8 what the problem is. Like I explained the Gainesville
9 treatment. It is always going to have a high "no sample
10 provided" rate.

11 Q Okay. Ms. Metts asked you that there was --
12 if there was a rule -- there was no rule that addressed
13 this calibration issue. But there is a -- an FDLE
14 policy that addresses this calibration issue, correct?

15 A Correct. There is internal policies and
16 procedures for the alcohol testing program that the
17 department inspectors followed for scientific
18 reliability, yes.

19 Q Can you explain those?

20 A Well, that audit or review that was required
21 by the 15th of the following month is a policy of the
22 alcohol testing program. It is a written policy,
23 procedures produced by the alcohol testing program that
24 are not necessarily in rule, but they are policies and
25 procedures that the department inspectors and program

1 manager follow to help ensure reliability of results.

2 Q And you have, in the past, audited the records
3 on this particular machine, 817; is that correct? Last
4 year, in 2012?

5 A Yes.

6 Q And you found some issues with the machine in
7 2012; is that correct?

8 A I remember there was a lot of data issues;
9 unable to verify instrument performance, yes.

10 Q Do those data issues, the corrupt data issues
11 continue into 2013?

12 A They surfaced again, yes.

13 Q Okay. In addition to the data issues, when
14 you did the audit that I asked you to do for my two
15 clients, you also found the calibration issue, is
16 that --

17 A I did.

18 Q Okay. When you looked at the FDLE records in
19 performing your audit, has the machine been repaired
20 since 2012; the audit you did in 2012?

21 A It has not. To my knowledge. And that's as
22 of yesterday's search.

23 Q So despite all of the red flags that would be
24 showing up at FDLE on this statistical data review for
25 January, February, and March, nobody has apparently

1 contacted Citrus County and had that machine called in
2 for repair?

3 A Not to my knowledge.

4 MS. VANNESS: Thank you. Nothing further.

5 JUDGE YERMAN: All right. Thank you. You can
6 step down.

7 THE WITNESS: Thank you, Your Honor.

8 JUDGE YERMAN: Thank you.

9 MS. METTS: Briefly --

10 JUDGE YERMAN: You got something real quick?

11 MS. METTS: Absolutely.

12 JUDGE YERMAN: Mr. Malhiot, please --

13 RECROSS EXAMINATION

14 BY MS. METTS

15 Q Mr. Malhiot, specifically with the percentages
16 as it pertains to Citrus County, you would agree that if
17 we are comparing it to a larger county that our
18 percentages would be higher simply based on the
19 population?

20 A Yes.

21 Q For example, we are going to run fewer
22 results. We are going to run fewer tests than they do
23 in Miami-Dade?

24 A Correct.

25 Q So --

1 A And statistically when you look at these
2 things -- and the higher number, the more the
3 statistical numbers have value.

4 Q Right.

5 A If you have two tests and one is bad, you have
6 a 50 percent fail rate. But here you don't have that.
7 You have at least 17 -- you have over ten all three
8 months and in March you had 30 breath tests.

9 Q Correct.

10 A Compared to --

11 Q And five of them were control out of
12 tolerance?

13 A Correct.

14 Q Where you testified to earlier that the
15 machine is telling us that there is an issue?

16 A Correct.

17 Q Now you also testified on direct examination
18 that with regard to shipping the machine back to FDLE
19 that that's discretionary?

20 A Sometimes.

21 MS. VANNESS: Objection, out side the scope.

22 MS. METTS: Judge, she just asked him about
23 questioning the reliability and would it be shipped back
24 to FDLE. He said he would ship it back.

25 JUDGE YERMAN: I think he's already testified

1 that's what would happen. So, it is in and answered.
2 We are done. Just move on.

3 BY MS. METTS

4 Q Now, you testified that you would send the
5 machine back?

6 A If I were a department inspector I would ask
7 that the agency return the instrument for calibration,
8 yes.

9 Q But you agree with me that there is nothing in
10 the objective rules in the standards that would require
11 that?

12 A There is not.

13 Q And that as it sits today, based on the
14 objective rules and standards, this machine is in
15 compliance?

16 A Meets the objective standards of rule. Not
17 necessarily of the policies and procedures but yes.

18 Q And when you testified for the State of
19 Florida, based on this data, then it would have in
20 substantial compliance, if you were asked that question?

21 A I wouldn't get to that point.

22 Q Well, let me stop you right there.

23 A But go ahead -- let's --

24 Q But if you were presented with the information
25 that you have testified to from today.

1 A I would tell you that it meets the objective
2 standards and then I would go on to tell you my concerns
3 with these subjective standards.

4 Q But nothing about that changes the actual fact
5 that it meets the objective standards, which is what we
6 are required to do by law.

7 A Nothing changes the objective standards; that
8 is correct, Counselor.

9 Q And the fact that this machine meets those
10 standards?

11 A Correct.

12 Q Now with regard to the corrupt data issues.

13 A Correct.

14 Q You said you viewed information from
15 Tallahassee and that data was corrupt.

16 A Yes.

17 Q Did you ever go back to the specific agency
18 and ask them for their printouts?

19 A No.

20 Q Okay. You would agree with me that if you are
21 evaluating evidence for audits you want the best
22 available evidence?

23 A If it is available, correct.

24 Q Right. And if there is data corruption in
25 Tallahassee, we don't want to rely on corrupt

1 information.

2 A Correct.

3 Q And if there is more accurate information in
4 Citrus, you as an expert would want to seek that out?

5 A Correct, if there is more accurate
6 information.

7 Q But you didn't, right?

8 A Well there is not more accurate information in
9 Citrus.

10 Q How do you know that if you haven't seen it?

11 A Because some data is not transmitted to
12 Tallahassee. Some data doesn't even exist in Citrus
13 County. So the data in the database, even as corrupt,
14 has more than Citrus County's original documents.

15 Q So you don't need to rely on the actual
16 documents from Citrus County to determine whether or not
17 this machine is reliable?

18 A That is correct.

19 Q You can rely on corrupt data from Tallahassee?

20 A The report formats are corrupt. The data is
21 more information in Tallahassee than the original
22 documents will have in Citrus County.

23 Q But you would agree with me it comes from
24 Citrus County?

25 A What comes from Citrus County?

1 Q The original information for this machine.

2 A Correct, came from the instrument.

3 Q The instrument in Citrus County?

4 A Correct.

5 Q And if you --

6 A And the printed --

7 Q And if you wanted to verify that those
8 printouts where you have double feeds on the same
9 printout and there were problems with the data, if you
10 wanted to double check it, you would come back to where
11 the hard copies are stored here?

12 A Not necessarily. The reason being is some of
13 the data that is generated by the instrument and printed
14 on the breath test affidavit is not available on the
15 affidavit, it is only available in the data in
16 Tallahassee. It is not preserved on the affidavit.

17 Q But as an expert you want all the information.

18 A I have all the information.

19 Q And there was no need to look at what we had
20 in Citrus?

21 A No, ma'am.

22 Q You also testified earlier with regard to
23 specific -- or actually what you said is that the
24 machine is not at issue.

25 A I would have to -- refresh my memory on the

1 context in which I said it.

2 Q On redirect examination Ms. VanNess asked you:
3 So, is this a calibration issue? And you said, "yes."

4 And then she said, so, you are not challenging
5 the overall reliability of the Intoxilyzer 8000, you are
6 challenging, specifically, the calibration issue with
7 regard to 817 here in Citrus County?

8 A That is correct.

9 Q Okay. So earlier the comments that you made
10 about there being problems with the rules in 2002, the
11 noncompliance in 2004, and the fact that it came online
12 in 2006, none of that matters, right?

13 A As far as what?

14 Q As far as the reliability of the 8000.

15 A It is a violation of rule --

16 Q I'm asking you if it --

17 A I'm answering your question, Counselor.

18 Q But you are not. Does it effect the
19 reliability of the machine?

20 A The scientific reliability of the instrument
21 is capable of producing reliable results.

22 Q Right.

23 A Even with a hole drilled. The hole drilling
24 is a violation of the rule as it was written at that
25 time and the procedures that were followed when it was

1 drilled. It is not a scientific reliability issue as we
2 sit here today on the instrument.

3 Q Because it's reliable.

4 A Because it can be reliable if all the other
5 things that go to scientific reliability are followed.

6 Q And you would agree with me, as it pertains to
7 this machine, to the objective standard, it complies?

8 A The objective standards are met, yes.

9 MS. METTS: No further questions.

10 THE WITNESS: Thank you, Counselor.

11 JUDGE YERMAN: All right. Mr. Malhiot, I
12 guess at this point you can step down.

13 THE WITNESS: Thank you, Your Honor.

14 JUDGE YERMAN: Thank you.

15 (Whereupon, the requested portion of the
16 hearing transcript is concluded)

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1 CERTIFICATE OF TRANSCRIPTION

2 STATE OF FLORIDA

3 COUNTY OF CITRUS

4 I, Tiffany Treffeisen, hereby certify that I was
5 authorized to and did **transcribe** the foregoing
6 **ELECTRONIC RECORDING**, PAGES 1 - 76; that the pages
7 contained herein are a true and complete record of the
8 proceedings, transcribed to the best of my ability.

9 I FURTHER CERTIFY that I am not a
10 relative, employee, or attorney, or counsel of any of
11 the parties, nor am I a relative or employee of any of
12 the parties' attorney or counsel connected with the
13 action, nor am I financially interested in this action.

14 Dated this 17th day of August, 2013,
15 Inverness, Citrus County, Florida.

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19 _____
Tiffany Treffeisen, RPR, FPR

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