

IN THE COUNTY COURT OF THE 17th
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA.

CRIMINAL DIVISION

CASE NO.: 02016865MM10A

Murphy
1/23/03

STATE OF FLORIDA,

Plaintiff,

vs.

LUIS M. FERNANDEZ,

Defendant.

AFFIDAVIT OF RICK A. SWOPE

STATE OF *FLORIDA*)
COUNTY OF *BROWARD*) ss:

BEFORE ME, the undersigned authority personally appeared RICK A. SWOPE, who, is personally known to me and after being duly sworn, deposes and states:

1. My name is Rick A. Swope and I am an accident reconstruction and DUI consultant whose place of business is located at 8211 SW 28th Street, Davie, Florida 33328. As indicated by the attached Curriculum Vitae, I have extensive experience and training in traffic police operations and DUI processes and procedures including the Breathalyzer test specifically including the Intoxilyzer 5000 Series. My testimony has been accepted numerous times in Broward County courts and elsewhere both in the State of Florida and other states in the matters pertaining to highway procedures and traffic infractions.

2. I have reviewed Mr. Fernandez' affidavit and the discovery package transmitted to Mr. Fernandez' counsel from the Broward State's Attorney's Office including the affidavits and reports relating to the breath tests.

3. The breath tests performed on July 19, 2002 by Mr. Fernandez were performed on the Intoxilyzer 5000 Series, Serial No. 66-005192. The first test was initiated at approximately 8:10 p.m. and completed at approximately 8:12 p.m. The second series of tests were initiated at 8:34 p.m. and completed at approximately 8:36 p.m. The computerized print-out of the Intoxilyzer 5000 for both series of tests results were as follows: "INVALID SAMPLE--MOUTH ALCOHOL."

4. A "mouth alcohol" testing device was added to the breathalyzer machines because

defendants would claim that their high read out occurred not because they were intoxicated, but rather because they had just taken a drink of alcohol immediately prior to the breathalyzer test. In most situations, this was a false pre-text in that a defendant was in custody and would not have had access to alcohol. In a response acquittals arising from this excuse, the breathalyzer machines, including the Intoxilyzer 5000 were fitted with devices that would test for recently ingested or regurgitated alcohol. The Intoxilyzer 5000 contains a device which goes off at approximately 4.2 seconds of the total of 6 seconds of blowing which is required and stays on and registers mouth alcohol, should the test find it.

5. Mr. Fernandez' affidavit swears that he had no alcohol since some time prior to leaving the restaurant at approximately 4:30 p.m., nearly four hours before the tests.

6. In addition to reviewing Mr. Fernandez' affidavit, I have reviewed Officer Diaz' affidavit and there is no indication that Mr. Fernandez was given or otherwise ingested any form of alcohol or alternatively, regurgitated his stomach contents (which is unlikely after that many hours there would be sufficient unabsorbed alcohol to trigger a mouth alcohol result) before the first series of tests. Additionally, Officer Diaz' affidavit indicated that he was present during the 20 minute observation period between tests and there is no indication of either ingestion of alcohol or regurgitation prior to the second series of tests.

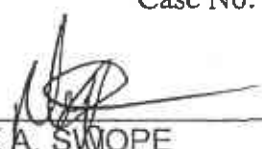
7. Under those circumstances, it would be virtually impossible for a properly functioning Intoxilyzer 5000 to produce a test result of "MOUTH ALCOHOL."

8. If Mr. Fernandez was not blowing properly either by not blowing long enough or hard enough for their to be a sufficient air going into the Intoxilyzer 5000 for a sample, the test results print out would have read, "low value" or alternatively, "deficient sample."

9. The Intoxilyzer 5000 result print out contradicts the stated reason of "insufficient samples" by Officer Swadkin in his dialogue on the video tape with Mr. Fernandez.

10. In my expert opinion, the Intoxilyzer 5000 was not functioning correctly. Because I have not spoken to the operator, nor examined the machine and was not present, I cannot say with reasonable certainty why the machine was not functioning. However, there may have been either a software glitch or alternatively, there may have been interference from a radio transmitter.

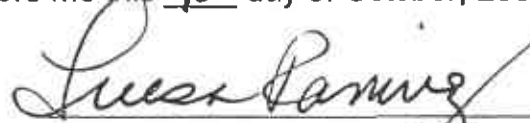
FURTHER AFFIANT SAITH NAUGHT.



RICK A. SWOPE

SWORN TO AND SUBSCRIBED before me this 12 day of ~~October~~ ^{November}, 2002.





NOTARY PUBLIC, STATE OF FLORIDA
Print Name: TERESA RAMIREZ
My Commission Expires:

BROWARD COUNTY SHERIFF T-671
FDLE IMPLIED CONSENT PROGRAM
CHI INC INTOXILYZER
5000 SERIES SH 66-005192
07/28/02

TEST	G/210L	TIME
AIR BLANK	.000	20:34
INVALID SAMPLE	.XXX	20:35
AIR BLANK	.000	20:36

INVALID SAMPLE - MOUTH ALCOHOL

BROWARD COUNTY SHERIFF T-671
FDLE IMPLIED CONSENT PROGRAM
CHI INC INTOXILYZER
5000 SERIES SH 66-005192
07/29/02

TEST	G/210L	TIME
AIR BLANK	.000	20:10
INVALID SAMPLE	.XXX	20:12
AIR BLANK	.000	20:12

INVALID SAMPLE - MOUTH ALCOHOL

SUBJECT'S NAME Fernandez Luis

2013 T-671
TIME FIRST OBSERVED INSTRUMENT LOCATION

OPERATOR R. Shordkin

COMMENTS Refused
to blow properly
(2)

SUBJECT'S NAME Fernandez Luis

1950 T-671
TIME FIRST OBSERVED INSTRUMENT LOCATION

OPERATOR R. Shordkin

COMMENTS
(1)