

CROSS EXAM OF RICK SWOPE

VOIR DIRE:

Has a court ever found you to be NOT QUALIFIED to testify on how the Intoxylizer functions or interpreting the meaning of test results?

Yes: Kierst p.50

No: Hatfield p.11-12

You have never been certified as an instructor in breath testing in Florida.

Kierst p.10

You never even took the breath testing instructor's course in Florida.

Zigarac p.21

You have never been authorized or certified to repair Intoxilyzers

Kierst p.33

You're not an expert in infrared technology

Zigarac p. 99

You were at one time certified as a breath testing technician, only (40 hr course).
The same certification as the arresting officer on this case.

Your first experience with the Intoxylizer 5000 was on an experimental basis in 1986.

The Intoxylizer 5000 was not approved for evidenciary use in Fla. until 1987.

Ciriago p. 13

1987 is when you started your private consulting firm.

Zigarac p.3

After 1988 you did not officially perform any monthly inspections / Dave Fries did

Zigarac p. 43

Prior to 1988 you did perform some monthly inspections, but had the certified maintenance technicians sign off on the reports as doing them.

Zigarac p. 42

You're not an electrical engineer

Kierst p.14

Whenever you do testify re. the Intoxylizer, you always testify that it is not reliable, regardless of what the facts of the case may be.

Zigarac p. 100

You have Intoxylizer instruments at your disposal for experimenting and testing.

When did you test or experiment on the interrelationship between the time/date function and the analytical function of the infrared light absorption.

You surely called the engineers at CMI to see if a dysfunction of one component would effect the function of another compoment?

These functions are on two completely separate boards, aren't they.

You've read treateses or peer reviewed articles regarding this interrelationship.

RE: 1997 RULES:

You do not work for the administrative agency that promulgates the rules.

You are not qualified to interpret what the rule makers meant

Do you have any factual basis to determine whether there has been substantial compliance with the rules here in Manatee County by Sgt. Shoemaker.

MOVE TO REJECT WITNESS AS AN EXPERT IN INTOX. FUNCTIONS OR MEANING OF RESULTS, esp. relationship between date display and analytical function. Also not qualified to interpret the agency's meaning of the rules or substantial compliance. Any opinion re. interpretation 20 minute observation period that is inconsistent with appellate law usurps the authority of the court to determine and would wrongly confuse jury by person not qualified to interpret the rule.

CROSS EXAMINATION:

Repeat some of above

Consulting work has been very, very good to you. Made \$465,000 in 1995
Ciriago p.94 / compare to Deputy Sheriff's pay.

Now agrees that his consulting firm makes over 1/w million \$ per year.
Hatfield trial.

The only training on breath testing that you now do is in a private, non-

governmental setting, i.e. seminars for defense lawyers @ \$6,000 per seminar.
Zigarac p. 30

Never certified to teach breath testing in Florida
Zigarac p. 21

Never even took the instructor's course

When first certified (40 hour course) in 1985, Intoxylizer not even approved.
Zigarac p. 16

90% of business is accident reconstruction.
Kierst p.17

You always testify, whenever asked, that the Intoxylizer is not reliable.
Zigarac p. 100

In fact, you believe that all breath testing is unreliable and should be completely abolished.
Hatfield trial

There are primary reasons why you will get variable readings: If blow harder or longer = higher reading, If blow softer or shorter get a lower reading.
Ciriago p. 21, 24, 33
Contra: means mouth alcohol. Hatfield p. 18

Only publication is DUI Law & Science Journal: A DUI defense lawyer's publication by Richard Essen / not subject to peer review. Ciriago p. 50,52

Keep the instruments at Essen and Essen

You do teach field sobriety testing as it relates to b.a.c.
If a person were 3x the legal limit would that be consistent with the behavior of falling down drunk or passing out.
No need to give SFST's if person can't even safely stand on 2 feet.

Re. the interrelationship between date malfunction and analytical function, there is a field example memorialized that demonstrates that the intoxylizer analysis is accurate even if date is malfunctioning.
Hatfield trial / defense exhibit #7 / #2306 4-9-98 monthly inspection

Authorities cited for impeachment purposes: See Carla Oglo for copies.

State v. Hatfield, Manatee County C# 98-1619M: Suppression Hearing before Honorable Marc Gilner, 10-19-98

State v. Hatfield, Manatee County C# 98-1619: Jury Trial 12-9-98 before Honorable Marc Gilner. (not yet transcribed) (see Inspection of 4-9-98)

State v. Kristopher T. Kierst, Hillsborough County; Case No. 052-6725 D; Jury Trial before Honorable Katherine Essrig; 3-16-95

State v. Joseph F. Ciriago; Palm Beach County Case no 96-250 CF A02; Jury Trial before Honorable Mary E. Lupo; 8-22-96

State v. Jennifer Zigarac; Palm Beach Col Case No. 96-10745 TC A02; Deposition of Rick A. Swope 12-1-97

swope.wpd