

In The Matter Of:
State of Florida VS
Michael Lopez

Rick Swopoe
February 8, 2010

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1 IN THE COUNTY COURT OF THE SIXTH JUDICIAL CIRCUIT
 2 IN AND FOR PINELLAS COUNTY, FLORIDA
 3 CRIMINAL DIVISION
 4
 5 CASE NO. 09-8047XDYASP
 6
 7 STATE OF FLORIDA,
 8 Plaintiff,
 9 vs.
 10 MICHAEL LOPEZ,
 11 Defendant.

12 DEPOSITION OF: RICK SWOPE (via phone).
 13 TAKEN BY: State of Florida.
 14 DATE: February 8, 2010.
 15 PLACE: Victim Witness Office, Rm 1100,
 16 Criminal Justice Center,
 14250 49th Street North,
 Clearwater, FL 34620
 17 REPORTED BY: Phyllis E. Pennington, RPR, CP,
 18 Notary Public,
 State of Florida at large.
 19
 20 (Pages 1 thru 29)

21
 22 KANABAY COURT REPORTERS
 TAMPA AIRPORT MARRIOTT HOTEL (727) 224-9500
 23 ST. PETERSBURG - CLEARWATER (727) 821-3320
 24
 25

1 RICK SWOPE,
 2 the deponent herein appeared by phone, was not sworn by
 3 the court reporter, and was examined and testified as
 4 follows:
 5 DIRECT EXAMINATION
 6 MR. SULLIVAN: Mr. Swopoe, can you hear
 7 me okay?
 8 THE WITNESS: Yes.
 9 MR. SULLIVAN: Okay. This is Tim
 10 Sullivan from the State Attorney's office in
 11 Pinellas County, calling to depose you on
 12 Michael Lopez, Case Number 09-8047XDYASP. Are
 13 you ready to go?
 14 THE WITNESS: Yes, sir.
 15 MR. SULLIVAN: And you're going to
 16 sign an oath form saying that you were under
 17 oath after we're done with this deposition?
 18 THE WITNESS: Yup.
 19 MR. SULLIVAN: Okay.
 20 (To the court reporter:) Are you
 21 ready to go?
 22 THE COURT REPORTER: Yes.
 23 BY MR. SULLIVAN:
 24 Q Okay. If you could, have your credentials
 25 changed at all in the last eight months since we last

1 APPEARANCES:
 2 TIMOTHY SULLIVAN, ESQ.,
 3 and LIZ ZURWESTE, ESQ.,
 4 Assistant State Attorney,
 5 State Attorney's Office,
 6 Criminal Justice Center,
 7 Clearwater, FL,
 8 Counsel for State of Florida.
 9
 10 LARRY SANDEFER, ESQ.,
 11 711 S. Belcher Road,
 12 Clearwater, FL 33764,
 13 Counsel for Defendant.
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1 spoke?
 2 Have you taken any more classes or testified
 3 at all for intoxilyzer cases?
 4 A Oh, I testified a few times. I don't recall,
 5 you know, which. I would have to look and see what
 6 dates I testified, but I've testified a couple of times
 7 since then, yes.
 8 Q A couple of times? Okay.
 9 Have you taken any classes since that last
 10 trial you did here in Pinellas County?
 11 A I don't know the trial you're referring to.
 12 I don't -- I don't know when the last trial was I did
 13 in Pinellas. I would have to look.
 14 And are you saying it was six or seven months
 15 ago?
 16 Q Yeah. Have you taken any classes in the last
 17 year, Mr. Swopoe?
 18 A Yes. But not related to the intoxilyzer.
 19 Q Not related to the intoxilyzer.
 20 Have you taught any classes related to the
 21 intoxilyzer?
 22 A Not classes, no. I've been working with
 23 Dr. Rose with the Intoxilyzer 8000 at FIU. I haven't
 24 taught any, but I -- you know, I'm continually working
 25 with him with the 8000.

1 Q Have you published any papers in the last
2 year related to the 8000?

3 A No.

4 I have one now that probably will be
5 published in the next couple of months.

6 Dr. Rose published a paper recently regarding
7 our research.

8 I'm one of his research test people that he
9 refers to, and I'll publish one and refer to him in my
10 paper.

11 Q And what's his paper related to, the
12 Intoxilyzer 8000 and RFI?

13 A Uh, no. I don't think his deals with RFI.

14 I believe he was dealing with micron issues
15 and some other issues with mouth alcohol and things
16 like that.

17 Q Okay. And how about your paper that you're
18 working on? Is that the RFI paper?

19 A Well, mine is going to deal with radio
20 frequency interference and probably some mouth alcohol
21 testing that we've done as well.

22 Q Okay. And how long has that study been going
23 on?

24 A Probably about two-and-a-half years.

25 We've probably run -- I've run individually

1 correlations on the 5000 at that time. We had the
2 3011ASA and the 4011AS.

3 The 5000 in 1984 was just starting to come
4 into the state and there were two blood/breath
5 correlations done. One was in Dade County and one was
6 in -- I think it was Hillsborough, although I could
7 be -- I would have to go back and look. But I was
8 involved with HRS at that time.

9 There was also another blood/breath
10 correlation done in 1986 by HRS. And I believe that
11 was in Dade County and Monroe County. That
12 information, of course, was all published.

13 Q And what's your knowledge of the results of
14 that testing?

15 A Well, you're asking me to go back now ten
16 years. I don't, you know --

17 Q What was typically --

18 A I don't recall exactly all of the issues. I
19 mean testing was done in various ways. Obviously, the
20 State required certain things at that time and those
21 goals were not.

22 We had some issues initially with the
23 machines because -- and I think that came to the
24 thermistor issue, which was a big issue in the eighties
25 and the early nineties, about the thermistor. And that

1 probably somewhere about six or seven hundred tests
2 over that two-and-a-half year period, and I think
3 Dr. Rose has probably run about as many.

4 Q Okay. And in those six or seven hundred
5 tests that you have done, have you done any
6 breath/blood correlations?

7 A No, I haven't. Dr. Rose did, but I didn't do
8 it myself.

9 Q And what do you know of those results from
10 the Dr. Rose's breath/blood correlations?

11 A I don't know what he has done with those at
12 this time. I haven't done anything with them. I
13 haven't reviewed all of those yet, so --

14 I probably won't, actually. He will probably
15 be doing the blood/breaths, so I'm really not involved
16 too much in that other than -- my job really is to make
17 sure the machine is maintained similar or exactly as
18 the State of Florida requires it to be maintained. For
19 that purpose only.

20 Q Have you ever been -- have you ever
21 participated in any blood and breath studies?

22 A Oh, sure.

23 Q When was that?

24 A Well, I started in 1984 with the State of
25 Florida when HRS was doing the blood/breath

1 came some from the breath/blood correlation studies.

2 Uh, some of the maintenance issues, the
3 different maintenance issues came from -- arising from
4 those blood/breath correlation studies.

5 There were also studies involving doing
6 maintenance similar as they're done on the 8000,
7 meaning that every test would have a similar hook to
8 it. That was decided not to at that time based on the
9 studies and the information we had at that time.

10 And, of course, there were probably another
11 ten or fifteen studies I was involved in, either in
12 criminal cases for the State or post 1990 in cases that
13 were done for the defense.

14 Q All right. And, Mr. Swopoc, do you have a
15 general opinion about the reliability of the
16 Intoxilyzer 8000?

17 A Yes.

18 Q What is that?

19 A I think it's a pretty good machine. I don't
20 think it's as good as the 5000, just because the
21 officers are not familiar with the machine.

22 The unfortunate thing is that the 5000, it
23 took twenty years for the machine to be pretty well
24 efficient, and then they changed machines.

25 I think that if the 8000 is maintained

1 correctly. the officers know what they're doing --
2 which they don't -- but I think officers that do, are
3 familiar with it, know what to look for, know what may
4 occur in testing. If they know that, I think it's a
5 pretty accurate and reliable machine.
6 But, again, the problem is with the rules.
7 If there does come a problem up, as you're aware, with
8 the 8000 now, they do permit there to be errors with
9 the machine and they basically can retest and move on
10 without finding out what the error is.
11 And that wasn't the case with the 5000. With
12 the 5000, you had to know what the error was before you
13 could move on.
14 Now, in other words, they just kind of cover
15 it up and they say, well, let's go to another test.
16 And if it passes, it passes. If it doesn't, we'll move
17 on.
18 Q Okay.
19 A So that's the problem I have with the 8000.
20 Otherwise, I think it does give, in most
21 cases, a fairly good result.
22 Q That's not really a problem with the 8000, is
23 it? That's a problem with the promulgation of the
24 rules. Do you agree with that?
25 A Well, that's probably a legal issue. It's

1 Q Right.
2 A There was a maintenance done, which I have a
3 question about, on February 11, 2009. So the
4 maintenance was done a few days before the test.
5 The Officer 517 runs the test, which shows
6 too much mouth alcohol solution.
7 And I believe in late 08 there also was
8 another episode -- I don't have that document in front
9 of me, but, I wrote a note down that in 08 there was
10 one as well that was too much mouth alcohol.
11 Now, assuming we stick with the to 2-11 of
12 09, there was -- a couple things came to mind.
13 Q Mm-hmm.
14 A Number one was that I don't know what too
15 much mouth alcohol means.
16 I have not been able to get a machine to show
17 too much mouth alcohol.
18 Now, absent pouring it into the machine, I
19 don't see how that can happen. The purpose of the
20 machine is to -- especially the new ones, since you
21 don't have the slope like the old ones. You have more
22 of a volume-based reading now.
23 The purpose of that to be able to tell if you
24 have a person who's regurgitated or unknowingly from
25 the officer took a drink, which I don't think is the

1 certainly not a scientific issue.
2 Q Right.
3 A A scientific issue is that if you have a
4 problem, you deem what the problem is before you take
5 off.
6 In other words, if I provided you with
7 studies I did and I told you I had two or three
8 different errors in the study, you probably would ask
9 me what those errors were.
10 Q Right.
11 A And if I told you I didn't know, you would
12 probably try to make me look foolish in front of a jury
13 by saying, "You don't even know what these errors are."
14 So that's what I'm relating to.
15 Q Okay. Do you have a general or a specific
16 opinion about Michael Lopez's breath results and
17 whether it's reliable?
18 A Yes.
19 Q And what's that opinion?
20 A Well, as far as the machine goes, I do have a
21 question on the machine, which -- let me get my paper
22 here. The machine -- there was an inspection done -- I
23 believe, if I'm correct, the reading by Lopez was done
24 on February 18, 2009. He had two tests. One was .184
25 and one was a .166.

1 case.
2 But, you know, that's the purpose of having a
3 detector on to indicate to you that there's too much
4 mouth alcohol.
5 Well, if that happens during a test phase --
6 which, of course, here it was maintenance phase --
7 well, we would never know that because on a test phase
8 it could actually give an incorrect mouth alcohol. In
9 other words, it could give you a reading, but you
10 wouldn't know that there's mouth alcohol present.
11 And if we look at this reading, you will see
12 that it's a .184 and a .166. So basically it's two
13 thousandths of a percent outside of where a third test
14 would be asked for.
15 Now, I can't certainly prove to you he had
16 mouth alcohol in his system, and I don't think you can
17 -- the officer can prove to me he didn't.
18 But I'm just saying that giving a reading of
19 too much mouth alcohol in the machine should never
20 occur.
21 Q Have you ever tested, done an inspection on
22 two intoxilyzers contemporaneously?
23 A Yes.
24 Q And have you ever -- you go through the
25 cycle, you do an alcohol free test, and then you do a

1 mouth alcohol test, and then gone over to the second
2 intoxilyzer and try to do an alcohol-free test?
3 A Yes.
4 Q And have you ever gotten any anomalies doing
5 that?
6 A No. Well, first of all, let me say this.
7 Number one is you shouldn't be testing two machines at
8 a time. If that's the case, then this guy shouldn't be
9 doing any test. You should not do over one machine at
10 a time.
11 That's not the purpose or intent of any rule.
12 The purpose or the intent of the rule is to
13 do the machine that you're working on. If you're going
14 to do multiple machines, you shouldn't be doing it.
15 Q What rules says that, Mr. Slope?
16 A Well, I'm saying that's not the intent of the
17 rule.
18 There's no rule -- there's no rule that says
19 you can't do it under water either. And there's no
20 rule that says you have to plug the machine into a wall
21 socket. And there's no rule that says you can't drink
22 a beer while you're testing the machine either. But
23 you don't do that.
24 If you want to get a reliable and accurate
25 maintenance on a machine, you should not be doing

1 Q Let me give you a hypothetical, Mr. Swopoe.
2 Let's say hypothetically an agency inspector were
3 testing two instruments at one time, and they did what
4 I just said. They did alcohol-free and then mouth
5 alcohol in instrument number one. And then went to
6 instrument number two and tried to test alcohol-free
7 and still had residual alcohol on his breath and the
8 instrument recognized that there wasn't -- that there
9 was mouth alcohol or some alcohol present.
10 Would you agree with me that that's not the
11 intoxilyzer misreading results? That might be user
12 error, but it's not any malfunction of the intoxilyzer?
13 A Well, that's a possibility.
14 But then my answer would be why didn't the
15 officer write that done on his sheet?
16 In other words, they have no trouble writing
17 down other things, like if they have a loose hose or if
18 they connect something wrong. They always put that in
19 the remarks section.
20 That doesn't say that in the remarks section
21 on this particular test.
22 Q So was that a yes or no or a possibly?
23 A Well, it's a possibly. I guess its a
24 possibility. I mean anything is a possibility.
25 Q Okay. Any other -- what else are you relying

1 multiple machines.
2 Q Okay?
3 A That is, your function is on one machine at a
4 time.
5 Q Have you ever worked for an agency that had
6 multiple instruments?
7 A Yes.
8 Q And you would only test one at a time?
9 A That's right.
10 Q Are you aware of any other agencies in the
11 state that would never do more than one instrument at a
12 time?
13 A Well, first of all, there's a lot of agencies
14 in the state. I can't testify -- I'm not here to
15 testify about what each agency is going to do.
16 I know that agencies, such as Broward
17 County -- the ones that I'm familiar with do test one
18 machine at a time.
19 I know that in Dade County -- I was at a
20 hearing with Ray Delacabada (phonetic), who is a
21 defense attorney, and one of the arguments we made when
22 the state inspector, as you're aware, in Dade, Broward
23 and Palm Beach -- I think it was Viaga (phonetic) --
24 when she was falsifying the results, which she got
25 terminated for -- they were doing multiple machines.

1 on for your opinion. We talked about the mouth alcohol
2 from February 11, the first test?
3 A Right.
4 Q Are you basing your opinion on anything else
5 other than that?
6 A Uh, no. The only other thing I pointed out
7 to Mr. Sandefer -- and I'm really not sure -- I have
8 been trying to get into -- as you're aware, on the FDLE
9 site there is a section for field notes.
10 I have not been able to get into that section
11 for the last ten days and I'm not sure why. It may
12 be -- working on the site or something.
13 The reason I wanted to find out was because,
14 as you're aware, the state inspector did an inspection
15 on January 13 of 09 of the machine.
16 Q Right.
17 A He did another inspection on April 27 of 09,
18 which is only three months later. And I'm wondering
19 why the inspector came back in three months to redo
20 this particular machine.
21 Now, I don't know if the officer said he had
22 some issue with the machine or there might have some
23 conversation about the machine.
24 It's very unusual to do two yearly
25 inspections within three months, unless for some reason

1 the inspector was called back.
2 Now, I don't know that. I have not been able
3 to find or locate any note. Maybe Serrat (phonetic)
4 was just in the area and decided to do it. I don't
5 know.
6 But I was curious to find out why he would
7 have done a inspection again after he cleared the
8 machine for the year in January, and then he comes back
9 and he runs -- three months later he runs the same
10 tests. In fact, he failed one of them, but he re-did
11 the test on the 08.
12 And so I am just curious why he came back
13 again and re-did that.
14 Q Okay. So those are the two things on which
15 you're basing your opinion?
16 A Right.
17 Q Okay. And that opinion is what?
18 A Well, based on the mouth alcohol, I have -- I
19 have some doubts about this machine being in service
20 without knowing what this mouth alcohol solution was or
21 why it actually showed that.
22 Now, if the officer did what you indicated,
23 I'd try to duplicate that.
24 Q Okay.
25 A So now that I know that's what the officer

1 Q What about the requirement of two tests
2 rather than just one? Does that help avoid any mouth
3 alcohol issue?
4 A Well, I think it does. But as I indicated to
5 you here, you know, this test was very close. I mean,
6 as you're aware I was very close to having a third
7 test. As you're aware, most tests are pretty close.
8 You know, they're -- in other words, I think
9 we have a one eight here, is the first one, one eight
10 four, and the second one is one six six. So it's two
11 thousandths of a percent different, they would have
12 required a third test.
13 So, you know, I mean that's -- probably a
14 little alarm bell went off. Because normally I expect
15 the second test to be fairly close.
16 And I think I looked at the volumes between
17 the first and second test, and I think the volumes were
18 pretty close. So that wasn't an issue as far as the
19 blow.
20 Q Is this an approved breath test?
21 A Sure, it's an approved breath test. I am
22 assuming so, yes, sir.
23 Q And what are the three requirements of an
24 approved breath test?
25 A Time, pressure and volume. Time times

1 did --
2 Q I'm not saying he did that. I'm just looking
3 at the documents. And I know from when I took the
4 agency inspector class, I had to -- I did that.
5 A Okay. Well --
6 Q I'm not saying --
7 A -- we haven't replicated that. But since you
8 mentioned that to me, now I will go back and see if can
9 I replicate that. And maybe what you say is correct.
10 Q Okay. What are ways that police agencies try
11 to avoid mouth alcohol being an issue when doing breath
12 testing?
13 A Well, generally, it's observation period.
14 Q Okay.
15 A I mean obviously -- obviously, I would never
16 make a statement to you that the officer gave alcohol
17 to the subject. That's certainly not correct.
18 So, generally, it's the observation period,
19 which is what they look for.
20 Q Okay. So in addition to having this slope
21 detector to detect mouth alcohol, one of the other
22 methods that police use to avoid mouth alcohol being an
23 issue is the deprivation or twenty-minute observation
24 period, is that right?
25 A Yes, sir.

1 (inaudible) volume.
2 Q Okay. And you need two samples, right?
3 A That's right. We have the two samples.
4 They're within a point zero two zero of each other.
5 Q And within fifteen minutes of each other?
6 A Yes, sir.
7 Q And assuming that a twenty-minute observation
8 was conducted, the legislature said this is an approved
9 breath test, right?
10 A That's right.
11 MR. SULLIVAN: I don't have any other
12 questions.
13
14 (OFF THE RECORD.)
15
16 BY MR. SULLIVAN:
17 Q Mr. Swopoe, have you every testified to a
18 retrograde extrapolation of anything like that?
19 A I'm sorry, sir?
20 Q Have you ever testified as an expert to
21 retrograde extrapolation?
22 A Yes, sir.
23 Q And are you planning on doing that
24 calculation for this case?
25 A No, sir.

1 Q Okay. Do you have any other opinions that
 2 you plan on giving relating to this case?
 3 A The only other thing that I looked at was, uh
 4 -- and I'll just read you my notes. I don't know if
 5 I'm -- if Mr. Sandefer is going to ask me to talk about
 6 it, but I'll read you my notes here.
 7 I saw that -- I made an observation that
 8 Mr. Lopez was dressed -- it didn't look like he was
 9 disheveled. He looked like he was dressed
 10 professionally.
 11 The walk-and-turn test. The walk-and-turn
 12 exercise, I could not see the officer demo the test.
 13 I thought that Mr. Lopez maintained his
 14 balance pretty well.
 15 He had difficulty starting the test. He look
 16 ten steps down, eleven steps back. He appeared a
 17 little bit unsteady on a couple of steps, but overall
 18 he looked okay
 19 And that's just my observation.
 20 On the one-leg stand, I put down that he put
 21 his foot down once. He had his vehicle -- he uses his
 22 hands somewhat.
 23 The officer was moving behind him, which is
 24 -- usually the officer is told to stand still and not
 25 distract him. And he didn't do too bad on that test.

1 Q Probably 95 percent of your business is
 2 reconstruction or would you say more than that?
 3 A I would say now probably 98 percent.
 4 Q 98 percent?
 5 A Right.
 6 Q And you testify for the state, defense,
 7 plaintiffs, defendants, a little of everything?
 8 A A little bit of everything, yes, sir.
 9 Q Okay. And these DUI cases, you're one
 10 hundred percent a defense witness nowadays, right?
 11 A Well, yes, with the exception of I did have a
 12 case I was hired on, uh, listed by Monroe County in the
 13 Keys about six months ago but I did not testify.
 14 Q You didn't end up testifying?
 15 A No.
 16 Q And do you know what journal that article
 17 you're currently working on is going to be published
 18 in, or you don't know that yet?
 19 A Actually, I'm not really sure. I think we're
 20 going to publish it through FIU and through the --
 21 there's some kind of science journal. I'm not sure.
 22 Dr. Rose knows where he publishes and I think I'm going
 23 to try to do it through that, through FIU.
 24 Q Okay. Did you say Dr. Rose's article has
 25 already been published or it's getting close?

1 I didn't see an HGN on the video.
 2 Q Okay.
 3 A And that was the only observations that I
 4 made. Now, whether Mr. Sandefer is going to ask me
 5 about that I don't know. But I read you my notes.
 6 Q Do you have an updated CV on your web site?
 7 A No. But I can e-mail Mr. Sandefer one to get
 8 it to you.
 9 MR. SULLIVAN: That's great. I think
 10 the last one I have is dated 2008. So if I
 11 could get an updated --
 12 A Yeah, I'll get you an updated one.
 13 Q Okay. Great. Just remind me. When did you
 14 stop working for the Sheriff's Office?
 15 A July of 1990.
 16 Q And was that retirement or new career path or
 17 how did that end?
 18 A Uh, no, I just went in to start my own
 19 business.
 20 Q Okay. And that's mainly re-construction in
 21 criminal and civil cases and then some of this DUI
 22 stuff on the side?
 23 A Yes. I only do probably about -- I'm
 24 guessing right now -- maybe ten DUI cases a year any
 25 more. I don't know do much any more.

1 A Uh, actually, I think he published the recent
 2 one. So it would be the 8000 study by Dr. Rose. And I
 3 believe that that was published in the last maybe month
 4 or two.
 5 Q Okay.
 6 A If I have a copy, I can give it to
 7 Mr. Sandefer to give to you.
 8 Q Yeah, I would really appreciate that, Mr.
 9 Swopoc.
 10 MR. SULLIVAN: I don't have any
 11 further questions for you.
 12 THE WITNESS: Is that it?
 13 MR. SANDIFER: Yeah, I don't have
 14 anything. That's it.
 15 MR. SULLIVAN: Thank you, Mr. Swopoc.
 16 THE WITNESS: Okay. I'll make sure I
 17 get that paper to you.

18
 19 DEPOSITION CONCLUDED AT 10:33 A.M.
 20
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 25

1 STIPULATION
2
3 It was stipulated and agreed, by and between
4 counsel present for the respective parties and the
5 deponent, that the reading and signing of this
6 deposition was not waived.
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1 REPORTER'S DEPOSITION CERTIFICATE
2
3 STATE OF FLORIDA)
4 COUNTY OF PINELLAS)
5 I, PHYLLIS B. PENNINGTON, Registered
6 Professional Reporter certify that I was authorized to
7 and did stenographically report the deposition of
8 that a review of the transcript was
9 requested; and that the transcript is a true and
10 complete record of my stenographic notes.
11 I further certify that I am not a relative,
12 employee, attorney or counsel of any of the parties,
13 nor am I a relative or employee of any of the parties'
14 attorney or counsel connected with the action, nor am I
15 financially interested in the action.
16
17 DATED this 12th day of February, 2010.
18
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Phyllis B. Pennington, RPR, CP,
Notary Public
State of Florida at Large.

1 DEPONENT'S SIGNATURE PAGE
2 I, RICK SWOPE, hereby declare under penalty
3 of perjury that the foregoing is my deposition under
4 oath; that these are the questions asked of me and my
5 answers thereto; that I have read my deposition and
6 have made the necessary corrections, additions, or
7 changes to my answers that I deem necessary.
8 DATED this day of , 2010
9
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1 ERRATA PAGE
2 INSTRUCTIONS:
3 Please make note of any errors in transcription on this
4 page. Do not mark on original transcript itself. Sign
5 and date this sheet and "Deponent's Signature Page."
6 Thank you.
6 PAGE LINE CORRECTION
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25 DATE RICK SWOPE

IN THE CIRCUIT COURT FOR PINELLAS COUNTY, FLORIDA
CIRCUIT DIVISION
CASE NO. 09-8047XDYASP

STATE OF FLORIDA
vs. NOTICE OF FILING
MICHAEL LOPEZ, OF DEPOSITION
Defendant.

STATE OF FLORIDA)
COUNTY OF PINELLAS)
State Attorney (T. Sullivan & L. Zuroweste)
Larry Sandefer, Esq.

I, PHYLLIS E. PENNINGTON, RPR, do hereby
certify that on the 15th day of February, 2010, I
delivered to the clerk of the above-captioned court at
the Criminal Justice Center, Clearwater, Florida, the
deposition of RICK SWOPE taken before me the 8th day of
February, 2010, for filing in said cause.

I FURTHER CERTIFY that on this 15th day of
February, 2010, I have delivered copies of the above
notice of filing to each of the parties.

PHYLLIS E PENNINGTON, RPR, CSR,
Court Reporter,
Notary Public,
State of Florida at large.