

IN THE COUNTY COURT OF THE SEVENTEENTH
JUDICIAL CIRCUIT IN AND FOR BROWARD
COUNTY FLORIDA

MISDEMEANOR DIVISION

CASE NO. 03-003554MM10A

JUDGE BERMAN

STATE OF FLORIDA,)
Plaintiff,)
vs.)
JULIAN GARCIA,)
Defendant.)

COPY

Broward County Courthouse, Room 354
201 Southeast 6th Street
Fort Lauderdale, Florida
March 7, 2006

Excerpts of proceedings in the above-entitled
cause which came on for hearing for hearing before the Honorable
FRED J. BERMAN, Presiding Judge.

APPEARANCES: MICHAEL J. SATZ, State Attorney, by
ALYSSA HONICKMAN,
Assistant State Attorney,
Appearing on behalf of the State.

ORLANDO BUCH, ESQ.,
Appearing on behalf of the Defendant.

I N D E X

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1 WHEREUPON:

2 The following proceedings were had:

3 * * * * *

4 THE COURT: Let the record reflect the
5 presence of the jury, both counsel, Defendant, are
6 present in court.

7 State having rested, Defense may proceed.

8 MR. BUCH: Yes, Your Honor.

9 We would call Mr. Rick Swope to testify.

10 (Witness enters.)

11 WHEREUPON:

12 RICK SWOPE

13 was called as a witness on behalf of the Defense, and
14 being first duly sworn, was examined and testified on
15 his oath as follows:

16 THE CLERK: Please state your name for the
17 record.

18 THE WITNESS: My name is Rick Swope,
19 S-W-O-P-E.

20 MS. HONICKMAN: Your Honor, may I have my
21 witness come in during his testimony?

22 MR. BUCH: Could we sidebar, Judge?

23 THE WITNESS: Can I sit down, Judge?

24 THE COURT: Sure. Have a seat, please.

25 (Side-bar begins.)

1 THE COURT: Yes?

2 MR. BUCH: Judge, I'm going to object to her
3 being here. She hasn't been declared an expert,
4 yet she's (inaudible) --

5 THE COURT: They've been trying to use them
6 now. If they don't call her as an expert, they
7 can't (inaudible).

8 MR. BUCH: In that case they're going to use
9 her as a rebuttal.

10 MS. HONICKMAN: No. I am, but you already
11 ruled that she couldn't be here to witness the
12 testimony.

13 THE COURT: Yeah, she can be in.

14 (Side-bar ends.)

15 MS. HONICKMAN: May I get her at this time,
16 Your Honor?

17 THE COURT: That's fine.

18 Well, Frank -- He's not here.

19 Counsel, you may proceed. Sorry.

20 MR. BUCH: Yes, Your Honor.

21 DIRECT EXAMINATION

22 BY MR. BUCH:

23 Q Mr. Swope, how long have you been in law
24 enforcement?

25 A Well, I was in law enforcement from 1974

1 through 1990. I was actually a certified police officer
2 during that period of time. And then I continued to do
3 work in law enforcement at the police academy, those
4 kind of things, teaching through 1997. And that would
5 be the active time, really, that I was involved.

6 Q And when you were in law enforcement, who did
7 you work for?

8 A Well, I started out in the military police in
9 the U.S. Army. I was in the traffic division, an S1
10 division.

11 I then went to my hometown of Monroe,
12 Michigan. I was an officer there for six years.

13 After that, I came to Florida for six years
14 and worked from 1984 to 1990 at the Broward County
15 Sheriff's Office in Fort Lauderdale.

16 Q What were your duties at the Broward Sheriff's
17 Office?

18 A My duties were traffic enforcement, the
19 traffic homicide division, and also the DUI traffic
20 enforcement unit. Four of the six years I was the
21 administrative coordinator of the DUI task force in the
22 traffic homicide unit.

23 Q And how many men and women did you supervise
24 there?

25 A Well, that could vary. That could be anywhere

1 from three to as many as fifteen or sixteen, depending
2 on the night. I mean, sometimes more on holidays, those
3 kinds of things.

4 Q How many arrests did you make as a DUI
5 officer?

6 A I made approximately 1500 arrests that I made
7 during my career.

8 Q And how many DUI arrests were you involved
9 with the unit?

10 A Well, that's really always tough to say, but
11 several thousand. The unit itself made several thousand
12 arrests during the course of a year.

13 I would sometimes administer breath tests. I
14 would oversee breath tests. I would make sure that the
15 processing was going correctly and that could be as
16 simple as, you know, reviewing paperwork, making sure
17 people got transported from point A to point B. I made
18 sure videotapes were cataloged and budgeting and it
19 amounted to a bunch of things that I had to check, but
20 several thousand, that would be for sure.

21 Of course, we did other agencies as well.

22 Q What other agencies did you do?

23 A Well, at that time I don't -- I don't exactly
24 know what the sheriff is doing right now, but at that
25 time we assisted Davie - we did their breath tests -

1 Lighthouse Point, Pembroke Pines, Pembroke Park,
2 Miramar, pretty much anybody who -- who asked or that
3 did not have their own DUI equipment at that time.

4 Q Now, since you've left the police department
5 you've been involved -- You're still involved in law
6 enforcement; is that correct?

7 A Yes, I do some train (phonetic) outlines. I
8 still do train outlines for the Miami-Dade Criminal
9 Justice Institute, for the traffic coordinator out
10 there. His name is John Toussaint (phonetic). And I do
11 some work with him as far as assisting with outlines and
12 those kind of things and -- and training. I keep my
13 finger on it a little bit. Not as much as I used to,
14 but somewhat.

15 Q How many states have you testified about law
16 enforcement procedure and DUI arrests?

17 A Twenty-six.

18 Q And do you do extensive work here, Broward
19 County?

20 A Yes. I do mostly engineering activities
21 related to my business, but I do -- I do a sufficient
22 amount of work involving, you know, breath testing,
23 those kinds of things.

24 Q Do you testify for both the State Attorney's
25 Office sometimes and Defense?

1 A Well, yeah, I have testified. I haven't
2 testified for the State in sometime in misdemeanors. I
3 testify in civil cases for the U.S. Attorney's Office
4 and police agencies involving motor vehicle accidents,
5 those kind of things. But for misdemeanors, such as
6 this, I -- I do not testify for the State. At least I
7 haven't been asked recently, in probably three, four,
8 five years; something like that.

9 Q Now, when you were working with the DUI task
10 force, where you said that you were involved in at least
11 1500 arrests personally, did you have an opportunity to
12 become familiar with the different breath instruments
13 that were being used at the time?

14 A Yes.

15 Q And what were those instruments?

16 A Well, I mean, initially, there was (sic) many
17 machines over the years. I mean, some of them -- they
18 start out with the 900 series, the Smith and Wesson.
19 Then the -- there was the 1000 and 3000 series. Then
20 the 4000 series of Intoxilyzer, Intoximeters, depending
21 on the model used.

22 And then, of course, the Intoxilyzer series
23 which Florida uses today that -- that came out in 1984,
24 but it really wasn't prevalent in use much until maybe
25 '86, where it actually became the sole testing device

1 for Florida. It either was '86 or '87. I'm off a
2 little bit, but somewhere around there.

3 Q Are you familiar with the Intoxilyzer 5000?

4 A Yes, very familiar.

5 Q Have you taken courses in how to administer
6 the Intoxilyzer 5000?

7 A Yes.

8 Q How many courses and hours have you taken for
9 the Intoxilyzer 5000?

10 A Hourswise is probably a little tough. I've --
11 The first course that I took -- Again, when the machine
12 came out in '84, I began taking courses in Florida,
13 added hours with the machine as the years went, at least
14 until it got into effect. I think our first course that
15 I took was maybe two days. And then it went to a
16 five-day, which was called a -- I believe it was called
17 a technician course and that -- It was a three-day
18 course, but then a two-day extension, if -- if you were
19 allowed to do maintenance and repairs. So --

20 Q And -- And were you allowed to do maintenance
21 and repairs --

22 A Yes.

23 Q -- after you took that course?

24 A That's correct. I was allowed to do repairs.
25 And then I went to the factory school, which,

1 at that time, was in Colorado. And I went to the
2 factory school. And I went to that school and I think
3 that was three days. It may have been three and a half,
4 but it was approximately that time. I took that course.

5 And then the state had requirements each year
6 and, again, I'm kind of hazy, but I think there was an
7 eight-hour minimum requirement each year that you had to
8 take. And then you had to take a test and successfully
9 -- I think you had to get 70 or 75, whatever it was, to
10 get that. And then, of course, I took all of those
11 through the years.

12 Q And did you maintain the Intoxilyzer 5000,
13 when you were a Broward Sheriff's officer?

14 A Well, yes and no. I mean, I did. I oversaw
15 the maintenance of -- of the machines. I didn't
16 necessarily do each individual test.

17 At that time, we were allowed -- or -- or I
18 was allowed to oversee, by not physically doing it
19 myself. Other individuals in the unit that were under
20 us would do the test. We would make sure they were done
21 properly. Those individuals would sign the maintenance
22 documents and we would just oversee it. And that was
23 primarily for court purposes because we were getting
24 six, seven hundred subpoenas a week. So we -- we kind
25 of took the officers out of that and we put civilian

1 employees into those positions.

2 Q At that time, when you were studying about the
3 Intoxilyzer 5000, did you have an opportunity and the
4 ability, because of your certification, to take an
5 Intoxilyzer 5000 apart?

6 A Yes.

7 Q Is that still being done today, as far as you
8 know?

9 A Well -- Well, not from officers, no.
10 Obviously private individuals do it, but -- or people in
11 training, but, no, officers do not repair or take them
12 apart anymore.

13 Q But you -- you did those, correct?

14 A Yes. That's correct. Officers did that until
15 maybe '91 or something. I'm not sure, '92.

16 Q Do you still -- Do you still maintain
17 Intoxilyzer machines, not for the Broward Sheriff's
18 Office or the police? Are you still familiar with the
19 Intoxilyzer 5000?

20 A Yes. I -- I maintain private machines. Yes.

21 Q And what do you do in the course of
22 maintaining those machines?

23 A Well, again, it depends on what the machines
24 are being used for. Some private machines are used to
25 test employees at companies. Some private machines are

1 used at either a university level for students who are
2 possibly in electronics or software programs, those kind
3 of things.

4 And then there are testing of individuals that
5 do similar things, such as myself, but there could be
6 doctors or -- or medical personnel or software people
7 involved that are running their own tests on these
8 machines. And my purpose would be to either assist or
9 to make sure that the machine is running properly, so
10 that when they do do a test on the machine, that the
11 results they're getting are correct, that they're just
12 not getting some number, so that the machine is kept up
13 to what's called a "scientific standard."

14 Q And what is this "scientific standard?"

15 A Basically it just deals with reliability,
16 meaning that the machine is working at its peak
17 capability and that you've taken the so-called errors or
18 so-called problems that can occur during breath testing
19 or a test, that you've taken that out and attempted to
20 eliminate that particular fact so that radio frequency
21 or something else doesn't occur with the machine that
22 would affect somebody who's running an -- an actual
23 scientific experiment.

24 Q Now when you were a police officer in Broward
25 County, a BSO deputy, were you certified by the police

1 department, by the FDLE, to maintain the Intoxilyzer
2 5000?

3 A Yes, except at that time it was HRS. Actually
4 the Department of HRS ran that division until -- and
5 again, I'm off on the dates, but it was probably '89,
6 '90, somewhere in there. And then the Florida
7 Department of Law Enforcement took that -- that part
8 over and they just gave us another card, but it said
9 FDLE, rather than HRS.

10 Q Now you were certified until what year?

11 A In Florida, I was certified from 1984 until
12 1997.

13 Q Why didn't you renew your certification at
14 that point, after 1997?

15 A The rules changed in 1995 and individuals who
16 left law enforcement or were not currently working in
17 law enforcement had to give up their permit. And at
18 that time your permits were good for two years. So in
19 '95 they came out with that rule, so my permit was good
20 until '97 and then I could not renew it.

21 Q If you're a police officer today and you're
22 certified to maintain the Intoxilyzer 5000, if you were
23 to quit being either a deputy or a civilian technician,
24 would you still be certified by the FDLE?

25 A No. You'd have to turn in your permit when

1 you retire or leave.

2 Q So even though you -- you would've been able
3 to testify or -- or to maintain the machines a day
4 before, when you were employed by the police agency, you
5 couldn't do so the following day when you were not?

6 A Right. If you retired --

7 Q Your -- Your certificate would just expire.

8 A That's -- You have to turn it in and FDLE
9 would take your permit, yes.

10 Q But the principles of the machine don't
11 change, correct?

12 A No.

13 Q Have you read any articles on breath testing?

14 A Yes.

15 Q How many have -- How many articles
16 approximately and -- and books on breath testing have
17 you written about?

18 A Well, I've written articles. I've written
19 three involving breath testing in one form or another,
20 either dealing with the mouth alcohol detector on the
21 machine, or maintenance of the machine, or reviewing
22 maintenance that was done by an agency on the machine.
23 So, it encompassed, basically, just the operation and
24 smoke detector or mouth alcohol detector of the machine.

25 Q Have you trained police cadets in breath

1 testing?

2 A Again, yes, but they're not certified. In
3 other words, police cadets would be given classes on the
4 Intoxilyzer and how it works, but they would have to be
5 certified by FDLE at some other point because you don't
6 know if everybody's going to become a breath tester in
7 your class or not.

8 So, eventually all the officers are given the
9 initial, you know, class and then they go back to their
10 agencies and if they're selected, then they go to FDLE
11 school.

12 Q Could you tell the ladies and gentlemen of the
13 jury, so they can understand the workings of the
14 Intoxilyzer 5000 -- can you tell them what the use of
15 the Intoxilyzer 5000 is for?

16 A Yes. It's to -- Obviously the use is -- is to
17 give a numerical value of how much alcohol is in one's
18 system at a particular point in time, meaning at the
19 time you blow. It is meant to give a percentage in
20 grams of the amount of alcohol that is in your system at
21 the time the test is given.

22 And there are two tests -- actually two
23 samples. It's one test, but there are two samples that
24 are given within a few minutes of each other. And --
25 And it's printed out numerically on the card for the

1 officer. The officer can look at it on a card or he can
2 look at it numerically on the screen -- digital, LED
3 screen.

4 Q Now is the machine infallible in your opinion?

5 A No.

6 Q Does the machine have a margin of error?

7 A Yes.

8 Q And what -- what is that margin of error?

9 MS. HONICKMAN: Your Honor, I'm going to
10 object at this time. I believe you already ruled
11 on this issue.

12 THE COURT: I'm sorry?

13 MS. HONICKMAN: I believe you've already ruled
14 on this issue.

15 MR. BUCH: (Inaudible.)

16 THE COURT: Well, let's have a side-bar.

17 (Side-bar begins.)

18 MS. HONICKMAN: He's getting into the margin
19 of error. And I believe you said that (inaudible)
20 he cannot testify about the margin of error.

21 THE COURT: No. I never said anything about
22 margin of error.

23 MR. BUCH: Pardon me.

24 THE COURT: I don't think I ever limited his
25 testimony on margin of error. We already know it's

1 .02. That's what he's going to say.

2 MS. HONICKMAN: Oh, okay.

3 THE COURT: It doesn't hurt your case.

4 MS. HONICKMAN: I thought that's what you said
5 earlier. I apologize for my misunderstanding.

6 THE COURT: Why would you object to the error?

7 Point 02 helps you. (Inaudible.)

8 (Side-bar ends.)

9 Q (By Mr. Buch) Incidentally, the Intoxilyzer
10 5000 measures the breath, not at the time of the stop
11 when the person is actually driving, correct?

12 A That's correct.

13 Q It measures it later in time, when it's given.

14 A That's correct. What -- Whatever the time is
15 on the card, is the time that it measures the ethanol in
16 the system.

17 Q From law -- your law enforcement experience,
18 is that a problem?

19 A It can be, yes, depending on the times.

20 Q And why is that?

21 A Well, it depends on one thing -- two things,
22 actually, the time and the amount of ethanol in one's
23 system. In other words, if somebody blows extremely
24 high --

25 MS. HONICKMAN: I'm going to object at this

1 time, Your Honor.

2 THE COURT: I'll sustain the objection.

3 MR. BUCH: All right.

4 Q (By Mr. Buch) Now I'm going to give you a
5 hypothetical. You've -- You've observed a subject for
6 20 minutes - okay - that is in custody and he's asked by
7 the Intoxilyzer operator to blow into the machine. And
8 he blows --

9 MS. HONICKMAN: Your Honor, may I reposition
10 myself to see the board?

11 THE COURT: You may.

12 "And he blows..." Go ahead, Counsel.

13 MR. BUCH: Thank you.

14 Q (By Mr. Buch) He blows a point zero -- a
15 .085.

16 A Okay.

17 Q He blows three minutes later and then he blows
18 a .065. That's the second reading in the Intoxilyzer.

19 A Okay.

20 Q Would that be within the acceptable --

21 THE COURT: I'm sorry you said a .06?

22 Q (By Mr. Buch) The first time he blows, after
23 the first initial observation of 20 minutes, the
24 Intoxilyzer operator asks him to blow into the machine.
25 And he blows into the machine and it comes out .085.

1 A Okay.

2 Q Clearly -- Clearly, what -- what would appear
3 to be over the legal limit.

4 A Right.

5 Q The second time, three minutes later, he blows
6 a second time and he blows a .065, arguably, below the
7 legal limit. Would this still be a valid reading from
8 the Intoxilyzer?

9 A Yes.

10 Q And why is that?

11 A The -- The state is allowed to have -- two
12 consecutives blows within a .020 of each other to be
13 acceptable. And -- And the machine would take it as
14 acceptable.

15 Q Well, that's a big difference because one puts
16 them, a hypothetical person -- one puts above and the
17 other one puts them below. Correct?

18 A That's correct. Yes.

19 Q And it's perfectly normal and acceptable to
20 accept that? That's -- That machine would be in
21 substantial compliance?

22 A Yes. If -- That's correct.

23 Q Does the Intoxilyzer 5000 also have higher
24 error skew, .025? Is that a possibility?

25 A Well, it -- it could, depending on what occurs

1 at the particular time in a reading. There are various
2 things, obviously, that can effect the reading but, yes,
3 they can. Yes.

4 Q And the most pernicious aspect of it is -- is
5 that in close reading, it's pretty tough to argue the
6 fact that the machine could've rendered another reading
7 that would've been lower. Is that correct?

8 A That's correct. Yes.

9 Q I'm going to show you here (indicating) the
10 Florida Department of Law Enforcement testing program
11 for machine serial No. 66-005079, which has previously
12 been marked as State's Exhibit 4 and 5.

13 Let me show you 4 and I'm going to ask you
14 some questions about that.

15 Can you tell the ladies and gentlemen of the
16 jury what those -- what the agency inspection report is?

17 A The agency inspection report is a report that
18 is required to be done by a particular department that
19 has custody of the machine, once per calendar month,
20 meaning they must do it -- a check of the machine
21 every month. And the State requires that they -- they
22 test it at certain levels. The officer is provided with
23 the materials, the simulator solutions, and things like
24 that, to do that. And they run that particular test and
25 results once per calendar month.

1 Q Now, the -- the solution as provided by the
2 State, that's constant? That doesn't change, correct?

3 A I really don't quite follow that because there
4 -- there is a little bit of a difference, obviously. I
5 mean, it's at a certain level, but it -- it can be --
6 the value can be between a certain rate. So, the
7 solution is not constant. As long as it falls within
8 the required departmental rules, it's okay.

9 Q Why is it -- Why doesn't it stay the same?

10 A Well, the -- the further testing you get, as
11 far as numerical values go, into the thousandths or the
12 millionths, the finer the results of the reading become.

13 So the solution is -- is based on a two-digit
14 reading, but the machine reads a three-digit reading.
15 And -- But it must fall within a .005, plus or minus of
16 the value.

17 Q But if it were a perfect machine though, the
18 values would all be the same. Is that correct?

19 A If it read to the thousandth, that is correct.
20 If the solution was to the thousandth, that is correct.

21 Q Now as -- as you look at the agency inspection
22 report, is there anything missing from that document?

23 A Yes.

24 Q What's missing?

25 A The test cards.

1 Q And can you tell the ladies and gentlemen of
2 the jury what the test cards are?

3 A Well, test cards are when the officer runs a
4 particular solution, whether it be an 08 or a 10 or a
5 20, whatever the officer does is printed out on a card,
6 just -- just like the breath test card. The same kind
7 of card. And it lists exactly what time the test was
8 done. It lists the machine number that it was done on
9 and it prints out the result.

10 And then the officer transfers, normally, the
11 results onto this (indicating) sheet, Exhibit 4. And
12 the cards are basically attached to the sheet, so that
13 you could see exactly what time it was run and that the
14 results are the same, as you see on the sheet.

15 And it sometimes can give you an anomaly, if
16 there's something with the machine. It could be just a
17 printer anomaly or something, but that's what you would
18 look for when you look at the card. So each test would
19 have -- each test sequence would have one card.

20 Q And are the top -- test cards attached there
21 to that (indicating) report?

22 A No, not -- not to this. No sir.

23 Q The -- Does Florida Administrative Rule 11 (D)
24 8 require the test cards to be attached?

25 A Yes. Well, the test cards must be part of the

1 agency inspection report. Yes. And they must be
2 maintained for three or four years, something like that.

3 Q Based on that, in your opinion, is this agency
4 inspection report, would it put this particular machine
5 in compliance?

6 A I can't say that. I don't have the cards. I
7 mean, I have the form, but it -- you know, I need to see
8 the cards to see if it passed, actually. But the form
9 is filled out correctly, but there are no cards attached
10 to it.

11 Q You can't really certify that this machine was
12 in compliance --

13 A No.

14 Q -- for the period. And what would be that
15 period?

16 A Well, this particular inspection would be
17 January 24th of '03. So this period would encompass --
18 whenever the inspection was in December of '02, it would
19 encompass that period until February of '03. So
20 whatever those dates are, that would encompass those --
21 that period of time.

22 Q I'm going to show you what's been marked as
23 State's Exhibit 5 and I want you to take a look at -- at
24 that document.

25 What is the time period for the Intoxilyzer

1 5000?

2 A This is March 21st of '03, which encompasses
3 the month of March of '03.

4 Q Do you see the individual cards there?

5 A No.

6 Q Can you say that that machine, in your
7 training and experience, is in substantial compliance --

8 A No.

9 Q -- with Florida Administrative Rule --

10 MS. HONICKMAN: Judge, I'm going to object.

11 This is outside this witnesses expertise.

12 THE COURT: And I'll sustain it.

13 MS. HONICKMAN: And he's speculating at this
14 point.

15 MR. BUCH: If I were to voir dire the witness,
16 then she can voir dire the witness.

17 THE COURT: Pardon?

18 MR. BUCH: If -- If I may -- If I may voir
19 dire, I may ask some another question.

20 THE COURT: Well, I think he's already
21 indicated the importance of the card, if it's there
22 or not. The Jury has enough visual acuity to
23 notice if it's there.

24 MR. BUCH: Okay.

25 THE COURT: So, lets move along.

1 Q (By Mr. Buch) If someone -- If someone were
2 to -- from a police agency -- Would a Intoxilyzer
3 operator, at this point, from a police agency be able to
4 repair an Intoxilyzer 5000?

5 A No. Well, they wouldn't be certified to open
6 the machine, no.

7 Q Does that present a problem?

8 A It can. I mean, it can, depending on what may
9 or may not happen with the machine during a period of
10 time, yes.

11 Q Are there some problems in the machine, for
12 example, in the chamber of the machine? There's a
13 chamber that's -- that has, I believe, 81 milliliters --

14 THE COURT: Lets do a sidebar conference here,
15 please.

16 (Side-bar begins.)

17 THE COURT: Just in the interest of time, Mr.
18 Buch, does this have anything to do with this case?
19 Or is this machine -- is he going to testify the
20 machine is broken?

21 MR. BUCH: No, Judge. Just that it's, I think
22 (inaudible).

23 THE COURT: You can't talk about just mere
24 possibilities of a Martian coming in and doing
25 something or (inaudible) or something like that.

1 MR. BUCH: All right, Judge.

2 THE COURT: We're way off. Okay?

3 I'm not going to bother you anymore. If the
4 State doesn't object and they want to let all this
5 in, that's fine.

6 MR. BUCH: Okay.

7 (Side-bar ends.)

8 Q (By Mr. Buch) Mr. Swope, would radio
9 frequencies affect the machine?

10 A Yes, it can. Yes.

11 Q Would the temperature of a person's body, the
12 higher the temperature, the higher the breath reading?
13 Is that a general rule?

14 A Yes.

15 Q What about a person that has, for example,
16 Diabetes? Would that affect the results of the machine?

17 A It can, if there's acetone, yes.

18 Q So a whole host of things could interfere with
19 the readings. Is that fair to say?

20 A That's correct. Yes, sir.

21 Q Are these machines in scientific compliance?

22 MS. HONICKMAN: I'm going to object, Your
23 Honor. This witness would be speculating.

24 THE COURT: I'm going to sustain to the form
25 of the question, the objection.

1 MR. BUCH: I don't have any more questions.

2 THE COURT: Thank you, sir.

3 THE WITNESS: Thank you, sir.

4 CROSS-EXAMINATION

5 BY MS. HONICKMAN:

6 Q Good afternoon, Mr. Swope.

7 A Good afternoon, ma'am.

8 Q You're hear to testify for the Defense; is
9 that correct?

10 A Mr. Buch asked me to testify in this case.
11 I'm not here specifically for anybody but, obviously,
12 Mr. Buch asked me to come here.

13 Q Is it true that you're being paid today to be
14 here?

15 A I'm billing for my time. Absolutely.

16 Q Can you tell the jury how much you're making
17 today, just for being here to testify?

18 A Well, I'd bill 150 per hour on this type of
19 work (unintelligible).

20 Q And how many hours have you worked on this
21 particular case?

22 A Well, before today I would probably estimate I
23 spent maybe an hour and half looking at the discovery
24 information. No more than that.

25 Q Okay. Have you ever met the defendant in this

1 case, Julian Garcia?

2 A Until today, no, ma'am.

3 Q Have you ever had a opportunity to speak with
4 him before today?

5 A Not before today. No, ma'am.

6 Q You said when you were preparing for this case
7 you spent about an hour and half to two hours preparing
8 for this case? Is that correct?

9 A Yes, roughly. Reviewing the discovery, yes.

10 Q And what -- what have you done to review for
11 this case today?

12 A Well, I've reviewed whatever the maintenance
13 -- I'm sorry, whatever the documents were in discovery
14 from the State, which included the arrest report from
15 Officer Kraynack (phonetic), the breath test card, I
16 believe whatever exhibits that Mr. Buch handed me. I
17 think it was Exhibit 4. I'm not sure what the other
18 exhibit was. I spoke with Mr. Buch briefly on the file.
19 That's probably about it.

20 Q Is it true, Mr. Swope, that you were not with
21 the defendant when he was arrested?

22 A That is true?

23 Q Is it also true that you are not with the
24 defendant when he was taking his breath test?

25 A That is correct.