

2/10/97

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

STATE OF FLORIDA,

vs.

CASE NO.: 96-000952MM10
JUDGE GINGER LERNER-WREN

JOHN THOMAS TRANTHEM,

Defendant.

_____ /

Fort Lauderdale, Florida
Courtroom 510
1:30 p.m.

The above-entitled case came on for hearing
before the Honorable GINGER LERNER-WREN, Presiding
Judge, at Broward County Courthouse, Fort Lauderdale,
Broward County, Florida, on the 10th day of February,
1997, at 1:30 p.m.

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APPEARANCES:

OFFICE OF THE STATE ATTORNEY
By: STACY OLETSKY, Assistant State Attorney,
appearing on behalf of the State.

DALE CURTIS COHEN, Esq,
appearing on behalf of the Defendant.

- I N D E X -

| <u>WITNESS</u> | <u>DIRECT</u> | <u>CROSS</u> | <u>REDIRECT</u> | <u>RECROSS</u> |
|--------------------------------|---------------|--------------|-----------------|----------------|
| Richard Swope by: Mr. Cohen | 3 | | | |
| Voir Dire by: Ms. Oletsky | 9 | | | |
| | - - - - - | | | |

EXHIBITS FOR IDENTIFICATION: None.

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Whereupon,

The following proceedings were had:

THE COURT: Defense, call your first witness.

MR. COHEN: Yes. We would call Richard Swope.

Thereupon,

RICHARD SWOPE

was called as a witness and having been first duly sworn by the Court, stated as follows:

THE WITNESS: I do.

THE CLERK: Please state your entire name, and spell the last name for the record.

THE WITNESS: Richard Swope.
S-W-O-P-E.

DIRECT EXAMINATION

Q (BY MR. COHEN) Mr. Swope, if you can just tell us who you are, and what you do for a living?

And tell us about your background and training?

A. I do primarily accident reconstruction. I have two offices. One here in Fort Lauderdale, and one in Atlanta, Georgia.

1 About ninety percent of my business
2 deals with accident reconstruction.

3 The other ten percent of my business
4 encompasses dealing with either giving classes on
5 impaired operators, dealing with different types of
6 breath machines. Primarily, the Five Thousand
7 series. There are several different models of that
8 particular series.

9 I write articles which are published
10 involving the breath machines.

11 Q. Where have you written articles?

12 How many articles have you written?

13 The content of the articles.

14 A. I have written about three articles.

15 Most recently in about the past year
16 and a half those articles encompass how the breath
17 machine operates.

18 The good points, the bad points of the
19 machine. What works. What does not work. How the
20 machine operates. What type of maintenance features
21 are on the machine.

22 What type of operator error can be
23 detected on the machine. How the machine should be
24 tested. How simulator samples should be tested on a
25 monthly basis, et cetera.

1 I teach at -- I have been teaching at
2 the Broward County police academy for the past twelve
3 years.

4 I teach on a contractual basis out
5 there. That means that when I do teach a class it is
6 through a contract, or a seminar, or as a guest
7 lecturer. I am asked to lecture there quite
8 frequently.

9 I also taught recently at Emory
10 University in Georgia.

11 I teach in North Florida as an adjunct
12 in Jacksonville.

13 I teach at the University of
14 Louisville in Kentucky.

15 I taught at Harvard Law School last
16 summer more than three days.

17 THE COURT: Sir, with regards to your
18 teaching can you be more specific in what
19 specifically you were teaching at this
20 particular university.

21 THE WITNESS: My teaching is twofold.
22 I teach in the area of field sobriety
23 testing or field sobriety exercises.

24 And I also teach in the operation of
25 the Intoxilyzer Five Thousand. And

1 primarily what that encompasses is taking
2 all three different models of the machine,
3 during that three-day period I have machines
4 taken apart by the students.

5 We run drinking classes. And what that
6 means is that individuals come in, we give
7 them measured amounts of alcohol, and they
8 consume that alcohol.

9 We have everyone broken down into
10 groups by sex, by race, by weight, and by
11 drinking history, that some individuals come
12 in and tell us, well I drink a case a day.
13 Some people tell us I have one drink a
14 month.

15 So we break those down as best we can
16 into groups, and separate what we can
17 consider a moderate drinker from the heavy
18 drinker, and see if that causes any
19 difference in fluctuations in the readings.

20 We then introduce possibly other
21 substances into the machine to see if it can
22 affect the machine, if the machine can pick
23 up what it is supposed to pick up.

24 Finally, what we do is what is known as
25 a blood breath correlation. Because the

1 machine encompasses a breath sample, we have
2 individuals not only blow into the machine,
3 but we actually take blood from them at the
4 same time.

5 So Some individuals that volunteer we
6 stick them as many as six or seven times in
7 a one hour period to get blood from them.
8 We do not have a lot of volunteers for that,
9 but we manage to get a few.

10 We get that tested by a toxicologist,
11 and we take the results of that blood and
12 put it next to the breath, and see if the
13 breath machine is right on the money.

14 And if it is a little high or a little
15 low and we take those time factors and put
16 them together. That is what each class is
17 about.

18 Q (BY MR. COHEN) And as part of your lectures
19 do you teach about the absorption and elimination of
20 alcohol in the body?

21 A. Well, yes.

22 That encompasses every time we do one
23 of those classes when I was talking about the testing
24 that encompasses absorption meaning the amount of
25 time it takes alcohol to get into your system after

1 you drink it.

2 And then also the amount of time it
3 takes the alcohol to dissipate from your body as
4 well. And that is known as absorption. We use
5 different formulas for that.

6 It could be retrograde extrapolation.
7 It could be Widmark's. There are a few formulas that
8 we can use.

9 Q. And when we talk about elimination, we are
10 really talking about sobering up?

11 A. Correct. How long it is going to take
12 somebody to get back to their so called normal state.

13 Q. And the absorption is the phase where the
14 alcohol affects the body?

15 MS. OLETSKY: Objection to leading.

16 THE WITNESS: That is right.

17 THE COURT: Sustained.

18 Q (BY MR. COHEN) Okay. Are you familiar with
19 the Intoxilyzer Five Thousand?

20 Specifically, I am going to draw your
21 attention to model number 64-002866?

22 THE COURT: Counsel, I do not know that
23 we qualified this witness as an expert yet.

24 Q (BY MR. COHEN) Have you testified in a
25 court of law, prior to coming in here today?

1 A. Yes.

2 Q. How many times?

3 A. Over five hundred times I have been
4 qualified.

5 Q. Have you been qualified in a court of law
6 in this area?

7 A. Yes.

8 Q. Judge -- about how many times?

9 A. Probably over three hundred fifty.
10 Somewhere in that area.

11 MR. COHEN: Judge, I would move that
12 the Court declare him an expert witness in
13 this area.

14 MS. OLETSKY: The State would object.
15 At this time there has been no indication
16 that he is an expert.

17 All that testimony relates to his
18 teaching. What he has taught.

19 MR. COHEN: Do you have any voir dire
20 of this expert that you want to make at this
21 time.

22 MS. OLETSKY: Okay.

23 THE COURT: Proceed.

24 VOIR DIRE

25 Q (BY MS. OLETSKY) Mr. Swope, what training

1 have you received in order to conduct such
2 experiments in these classrooms?

3 A. Well, the training I received initially
4 would be either through the State of Florida HRS.
5 That was initially where I was certified to become a
6 technician and instructor.

7 Initially when the Five Thousand was
8 brought into service, that is when I initially began
9 testing that machine.

10 I guess the 4011 that was the first
11 time I actually conducted the test.

12 Blood breath correlations were held by
13 the state at that time, and we were one of the
14 centers where the blood breath correlations was done
15 in 1984, 1985, 1987.

16 And either 1988 or 1989 I'm not sure
17 which, that was the beginning of it.

18 I also have a Bachelor's Degree in
19 Criminal Justice, and a Masters in engineering.

20 And part of the engineering -- the
21 Master's Degree in Engineering encompasses doing
22 experiments on basically anything that you want to.

23 Q. Before you actually began to operate the
24 intoxilyzer, who trained you?

25 What training did you learn in order

1 to operate this machine?

2 A. That would be through the state of Florida
3 initially. Initially I received no training on it.

4 The machine was given to the agency.
5 I was with the Broward Sheriff's Office at the time.
6 There were two machines and those were test machines.

7 At that time HRS gave the department
8 those two machines. Myself and another individual
9 tested those for six, I believe a six-month period.

10 We took the results of those tests and
11 sent those to HRS. Now it is FDLE but at the time it
12 was HRS. And we gave our results to them. And then
13 we actually got training on the machine after that
14 period.

15 Q. And what training did you receive?

16 A. That would be the forty hour course in the
17 operation of the machine. That was the first
18 training I got in that area.

19 Q. Was this training in order to be an
20 operator, or to conduct the maintenance on it?

21 A. That was -- at the time it was both. I
22 think now the requirements are probably a separate
23 class, if I recall.

24 But as far as the maintenance, at that
25 time, that was included in the forty hour course.

1 And then I went to Midturn, Colorado. At that time
2 the factory was in Midturn, Colorado.

3 I went out there for a three day
4 course, and now the company is in Kentucky, but at
5 that time I went to Colorado for the three day
6 course.

7 I think the course now is five days.
8 At that time it was three.

9 Q. When you did your own experiments, when
10 they gave you the original machine, the original
11 instrument, whose supervision were you under at that
12 time?

13 A. Well, originally I was under no one at that
14 time.

15 It was Dave Fryes and myself we were
16 basically in charge of the DUI task force and traffic
17 homicide unit on a rotating basis.

18 We had no supervisor. The first line
19 supervisor we had at that time was I believe Captain
20 Mize.

21 And we reported our findings to him,
22 and that was forwarded via letter to FDLE or HRS.

23 THE COURT: Counsel, are you going to
24 renew your objection.

25 MS. OLETSKY: Yes, Your Honor.

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THE COURT: For the record I will note
your objection. The Court finds this
witness will be qualified to testify.

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STATE OF FLORIDA)
)
COUNTY OF BROWARD)

I, EVELIN SIERRA, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 24th day of August, 1997.



EVELIN SIERRA, Court Reporter
and Notary Public, State of
Florida at Large.

