

NOT QUALIFIED AS AN INTOXILYZER EXPERT

1. State v. Kierst, March 16, 1995: Hillsborough County (Expert on exercises, not Intox.) Pg. 50. JUDGE ESSRIG

2. State v. Beuthin, March 23, 1999: Marion County. Pg. 85. JUDGE FUTCH

3. state v. Rich, Oct 26, 1999: Broward County. Page

Judge Lerner-Wien

- I'VE GOT ~~THE~~ TRANSCRIPTS IF YOU NEED THEM.

- Failure to show for deposition (state) - Fugon - 99-13023CF10A
Judge Gold

- Vaughn 00-8011CF19A
Judge DeMoorien

Cat, Put w/Swope stuff

MTC - Lee Cohen

From: Robin Upchurch [upchurchr@sao7.com]
Sent: Monday, February 02, 2004 11:34 AM
To: 'Carla Oglo'; 'William Ezzell'; 'Wayne Wooten'; 'Warren Sanger'; 'Walter Green'; 'Valerie Towery'; 'Tony Guarisco'; 'Tom Coleman'; 'Tom Bakkedahl'; 'Toby Hunt'; 'Tiffany Eggers Sims'; 'Ted Booras'; 'Steve Talpins'; 'Stephen Neff'; 'Sparkman, Paula'; 'Sigrid Tejo'; 'Sherri Collins'; 'Sheila Loizos'; 'Shane Vann'; 'Daly, Sean'; 'Sarah Ritterhoff-Williams'; 'Roger Skipper'; 'Roger Doherty'; 'Upchurch, Robin'; 'Robin Arnold'; 'Roberta Getzan'; 'Rich Simpson'; 'Reuben Hamlin'; 'Rafael Madrigal'; 'Peter Stoumbelis'; 'Paul Poland'; 'Pat Siracusa'; 'Mike Tabor'; 'Michelle Jackson'; 'Michael Manning'; 'Michael Becker'; 'Matthew Malhiot'; 'Mary Ann Klein'; 'Mark Borello'; 'Mark Ahlbrand'; 'Lon Scott Arend'; 'Leslie Carl Herold'; 'MTC - Lee Cohen'; 'Laura Barfield'; 'Larry Justham'; 'Lara Penn'; 'KrisAnne Hall'; 'Kirstin Stinson'; 'Kim Sedor'; 'Kendall Davidson'; 'Kathy Jimenez'; 'Kathleen Roberts'; 'FTU - Julie Vogel'; 'Jon Whitney'; 'Jimmy Branch'; 'Jim Shoemaker'; 'Jason Helfant'; 'Jason Berger'; 'Jack Campbell'; 'Heather Rose Cramer'; 'Greg Marcille'; 'Gino Feliciani'; 'Erica Arend'; 'Ellen Roberts'; 'Elizabeth Parker'; 'Elida Landry'; 'Weiss, Ed'; 'Ed Taylor'; 'Earl Varn'; 'Dwite Hackney'; 'Donald Suereth'; 'Donald Hartery'; 'Dean Plattner'; 'David Stamey'; 'David Phelps'; 'David Haenel'; 'David Folsom'; 'Danny Watford'; 'Danielle Desilet'; 'Dan Buie'; 'Crystal Marsh'; 'Courtemanche, Rick'; 'Cindy Lightbourne'; 'Christine Greider'; 'Christina Martyak'; 'Walker, Christopher'; 'MTC - Catalina Avalos'; 'Carlos Raurell'; 'Bryan Pugh'; 'Bo Samargya'; 'Fox, Ben'; 'Bart Schneider'; 'TRU - Barbara Mitchell'; 'Anthony Kunasek'; 'Andrea Ricker Wolfson'; 'Alex Prins'; 'Aleksandr Boksner'; 'Alan Richard'; 'George Venturi'; 'John Dorland'; 'Blake Lee'; 'Bob Jacob'; 'Bobby Shaw'; 'Brett Railey'; 'Charlene Gornto'; 'Chuck Kelly'; 'Claude Leslie'; 'Darrell Addison'; 'David Pius'; 'Dick Jensma'; 'Dioquino, Teresa'; 'Dorman, Rick'; 'Fla. Police Chfs. Assn.'; 'Gary Peaden'; 'Harold Pool'; 'James Drzymala'; 'Jayson Levy'; 'John Pregony'; 'Jon Wilkinson'; 'Joseph Raulerson'; 'Keith Betham'; 'Keith Chamblee'; 'Keith Touchberry'; 'Kyle Clark'; 'Lloyd O'Quinn'; 'Lt. Honeywell'; 'Mark Buckley'; 'Michael Preshur'; 'Mike Flora'; 'Rick Holland'; 'Terry Byrd'; 'Terry Hensley'; 'Wayne King'
Subject: RE: Rick Swope

Mr. Swope's c.v. includes training law enforcement re FST's and intoxilizer certification. Mr. Swope gave expert testimony at a DUI trial here in St. Augustine several years ago indicating 60% of sober people cannot perform FST's and signs of impairment are actually signs of nervousness. We will be seeing him again for a March 2004 trial.

-----Original Message-----

From: Carla Oglo [mailto:coglo@myfpaa.org]
Sent: Monday, February 02, 2004 9:11 AM
To: William Ezzell; Wayne Wooten; Warren Sanger; Walter Green; Valerie Towery; Tony Guarisco; Tom Coleman; Tom Bakkedahl; Toby Hunt; Tiffany Eggers Sims; Ted Booras; Steve Talpins; Stephen Neff; Sparkman, Paula; Sigrid Tejo; Sherri Collins; Sheila Loizos; Shane Vann; Daly, Sean; Sarah Ritterhoff-Williams; Roger Skipper; Roger Doherty; Upchurch, Robin; Robin Arnold; Roberta Getzan; Rich Simpson; Reuben Hamlin; Rafael Madrigal; Peter Stoumbelis; Paul Poland; Pat Siracusa; Mike Tabor; Michelle Jackson; Michael Manning; Michael Becker; Matthew Malhiot; Mary Ann Klein; Mark Borello; Mark Ahlbrand; Lon Scott Arend; Leslie Carl Herold; Lee Cohen; Laura Barfield; Larry Justham; Lara Penn; KrisAnne Hall; Kirstin Stinson; Kim Sedor; Kendall Davidson; Kathy Jimenez; Kathleen Roberts; Julie Vogel; Jon Whitney; Jimmy Branch; Jim Shoemaker; Jason Helfant; Jason Berger; Jack Campbell; Heather Rose Cramer; Greg Marcille; Gino Feliciani; Erica Arend; Ellen Roberts; Elizabeth Parker; Elida Landry; Weiss, Ed; Ed Taylor; Earl Varn; Dwite Hackney; Donald Suereth; Donald Hartery; Dean Plattner; David Stamey; David Phelps; David Haenel; David Folsom; Danny Watford; Danielle Desilet; Dan Buie; Crystal Marsh; Courtemanche, Rick; Cindy Lightbourne; Christine Greider; Christina Martyak; Walker, Christopher; Catalina Avalos; Carlos Raurell; Bryan Pugh; Bo Samargya; Fox, Ben; Bart Schneider; Barbara Mitchell; Anthony Kunasek; Andrea Ricker Wolfson; Alex Prins; Aleksandr

Boksner; Alan Richard; George Venturi; John Dorland; Blake Lee; Bob Jacob; Bobby Shaw; Brett Railey; Charlene Gornto; Chuck Kelly; Claude Leslie; Darrell Addison; David Pius; Dick Jensma; Dioquino, Teresa; Dorman, Rick; Fla. Police Chfs. Assn.; Gary Peaden; Harold Pool; James Drzymala; Jayson Levy; John Pregony; Jon Wilkinson; Joseph Raulerson; Keith Betham; Keith Chamblee; Keith Touchberry; Kyle Clark; Lloyd O'Quinn; Lt. Honeywell; Mark Buckley; Michael Preshur; Mike Flora; Rick Holland; Terry Byrd; Terry Hensley; Wayne King
Subject: Fw: Rick Swope

Greg Groger, ASA, Clearwater, is asking for any recent information on Rick Swope or any helpful advise you would like to share. See the message below for more details.

----- Original Message -----

From: <ggroger@verizon.net>
To: <coglo@myfpaa.org>
Sent: Monday, February 02, 2004 8:52 AM
Subject: Rick Swope

> Hello Carla,
> We spoke a while ago about Rick Swope, and you sent me some
> transcripts
from previous trials (thank you.) My trial with him is set for Feb. 26, and I wanted to know if you had anymore information about him. Also, could you please circulate an email for anyone who may have some good information to give me a call at 727-464-6731.
> Thank you,
> Greg Groger
> ASA, 6th Circuit-Pinellas
>
>
>

Swope

Can't call Δ an expert
Can only give opinion @ field
Sobriety Exercises

Field Sobriety Exercises

Taught Academy Classes St. Thomas Univ.
1985-1995

1500 arrests

Did Field Sobriety Exercises on The Road

A \rightarrow NO Scientific Validity to FSE

\rightarrow Studies Conducted by witness:

\rightarrow # of subjects to perform exercises

\rightarrow gave exercises to Academy recruits

\rightarrow 1987-1990

\rightarrow results \rightarrow 35% did not perform well
the first time. Did better 2nd time.

\rightarrow Purpose Scientifically \rightarrow

\rightarrow Purpose? To assist officer if a Δ
is impaired.

If admin properly \rightarrow they can be indicators

\rightarrow Dep. until 1990

\rightarrow Witness states if admin. properly they can
be an indicator

\rightarrow Look at driving pattern

\rightarrow check for indicators

As an offer. you would have to look at Totality of Circumstances

Walk + Turn

- Tool to measure Δ 's normal faculties
- Designed to measure distance / instruction

→ 9 instead of 12 ⇒ Impaired to follow instructions

→ Maintain Balance + Instructions

→ If Δ can't follow instructions

Δ can't follow or understand

⇒ Something you would have looked for.

Stumble → look for that indicator

→ what are the correct instructions to be given? ⇒

1987-1991 Papers

◦ Was anyone given 3 glasses of whiskey

✱ Unfamiliar Rental Car

→ Something during investigation

⇒ Activating Siren

→ Normally video tape audio starts once
ofcr. is following a suspect.

→ if Dep. does not ask @ why no lights then
not living up to obligation.

→ Normal way to walk → normal faculties
then not tested.

◦ Balance ◦

◦ ~~Why would~~

Anything the ofcr. does is an indicator.

① Impairment ② overweight ③ does

royal Goldberg

TRIAL NOTES

expert witness

SWOPE

- taught officers in all 50 states.

- object to being qualified as to scientific reliability of FSE's.

Writter articles on FSE's - after 1996

familiar w/ Meador. issues regarding scientific

reliability? literature regarding scientific reliability

after 1996? Authority? what do you know? what articles

have you read? Do you have any article with you?

no testing on FSE's since 1996?

taken information back to lab. & done testing?

Observed people after 1996 regarding data

you've tested since 1996.

did not sketch

(instrument, stock solution, screw went in, rubber tabs)

EXISTENCE since 1985

Intoxilyzer 5000 → requirements for valid sample

to blow
five 6 seconds - 4 lbs. per square inch pressure

Slope detector - mouth alcohol detector - looks for rapid

rise/fall in mouth alcohol - lets operator know invalid sample.

machine looks for deep lung air - most accurate for reading what's in blood.

alcohol in blood/lungs/mouth at same time → wet burp, dentures, plates.

alcohol in mouth & system - machine would not pick it up.

Retrograde - highest reading / body weight

Videotape tells whether A is impaired do not let expert

witness testify whether or not A is impaired. Expert A to

be impaired. let jury decide.

Ken G Assume calculations are correct you are using highest calculation.

Stop drinking 7/2 beer, 4 hours later = consistency w/ 13-14 beers.

Normal for person to drink 13-14 beers or 80 proof - toxic - 80 we

know he didn't have that # of drinks

Person stops drunk for — hours. person a lot higher
than when he stopped drinking.

Absorption 30-90 minutes

Breath test at
4:57

12:00 am — higher than reading
at 1:00 am — higher
2:00 am — higher than reading
3:00 am — higher than
4:00 am — higher than
4:30 am — .109/.113 higher than reading

from time of stop drinking to test — reading is higher.
over .08 — now going down.

~~Partition ratio~~ .08/ 11:00 pm — 4:57 no way
possible Δ under .08.

Partition ratio — 2100 to one \rightarrow 2300 to one \rightarrow Dr. Smith
Dr. Allan Jones Dr. Kirk Dembauski — drinking during class
to 2300 to 1 than 2100 to one

1200 to 1 \rightarrow is partition ratio for a frog.

with ratio ~~1300~~ 1300 to 1 \rightarrow never did partition ratio study.

Relevancy net wet of alcohol molecule to blood alcohol level.
Breath underestimates blood alcohol level because it would
be venous blood. Yes if person going down. not if its going
up. Blood alcohol reading. ~~higher~~ (breath reading more
accurate? (what's in blood effects you not in brain)

Swire Participated in new breath testing done — accuracy.
200 proof & swished in mouth. \rightarrow XXX — detects breath alcohol
No (XXX) — no indications of mouth alcohol.

Ever ethanol Δ . Don't know his normal faculties and

average ratio 2100 to 1
could have been 21 - 2600 ^{Swope} Don't know.

- documents month prior / month after - anything wrong ^{repeatedly by FDLE implied w/ in few cases}
- ~~Department~~ inspection checklist - FDLE required complied with anything wrong w/ document?
- FDLE requires maintenance operator have a permit familiar w _____, familiar with her/his permit, she/he certified - nothing wrong with machine appreciate it?
- Mouth / breath alcohol at same time - will there be an overestimation.

Hypothetically breath test administered

— arrested 4:00^{am} no drinks from 4:00^{pm} 4:57 what we calculations of amount had to drink.
(7 - 7.5 ounces of alcohol)
.113 / calculate he didn't stop drinking at 11:00^{am} couldn't have been below .08 been 11^{am} / 4:57
(Is there anything to indicate accuracy/reliability.
.02 gives benefit of the doubt. With results entered into evidence.
.113 / ^{could have been} .133 - (11^{am} pm - 5^{pm} pm) .093 - ~~stayed~~ above .08
correct!
1:30 pm - return

my Instructions (Boss Instruction) (Hehl allowed)
Expertness 2.04(a)

(Any questions with regard to the law) knock on the door and

Inquiry of judge.

readings alone enough to find A guilty of DWI.

Legislature determined that level - however everyone performs differently at .08

* ability to make judgments and act in emergencies.

actions → poor judgement

Accountable & responsible for the acts you commit. - poor judgement
true.

3 of you may say not guilty - 3 guilty - look at - Dr, lawyer,
assist state
attorneys are
not behind
judges

documents evidence.
find him above .08 but not impaired.

were they using right machine to test blood alcohol
correct testing breath alcohol

Does D need to examine every DWI suspect before a
breath test? Might as well throw out every cke in Broward
county. DEAL WITH THE EVIDENCE (NOT THE IMPLANTS)

Drive a car have "wits" about you to deal with
operating that machine. If alcohol is affecting
your abilities it's against the law.

Swope

- Swope Reconstruction
- P.O. 15 yrs byrs BSO; OVI Task Force
- Testify in OVI trials
- U.S. Attys office
- Charging & Ans. Absolutely
- B.A. Crim Justice - any biology
- Master in Science
- Permit from MTTB
- BAT 1974.
- Intox 5000
- works for private; study on Intox 5000 at

- 6 published articles

- Absorption Ratio?
over 200
over an hour or 2

Physical Testing also
Brain affected 1st by alcohol
- Level Testing for
- Absorption
130-140 min.

- Someone
- Stages of absorption
- Experience
actions/behavior correspond
- no biology training
- how many hours - bosses know

So why out
scientific training
you know. 121

- Lawyers; Judges; P.O.'s
- Post Absorption
- not in stomach but in system
- Affect rate of anterior blood v. Venous blood
↳ reading of breath can be directly
proportional to each other.

- Lawyers

- Some 2 beers + 1 shot
Qualifications
of our Police Officers.
11 beers + 1 shot?

* Are you a Physician?
- Are you an expert on
how the body works?
- Any medical training?

↳ Did you refer to him
on this case

- Borkenstein
- Dick Jensen
- Kurt Dubovsky, M.D.
Fed Register for Breath
Testing in U.S.

- Rate of Exchange
- B.A.L. at time of driving
- Extrapolations
- BAL \rightarrow .04
- Mechanics of Intox 5000
- Time of observation \rightarrow 20 minutes

what info have you been provided with?

- \rightarrow you don't know what happened that night?
- \rightarrow you were not there?
- \rightarrow you have gone through the same academy/training as of a Swedkin to w/ relation to Intox 5000.

Possibility/Probability

Weight x 454 grams

A = period in which the longer it took someone to eat all at once - one over an hour?

(Weight) (.129)

+ everyday? Standard Whitmark formula
 Variations
 $A = \frac{W R C T}{.088}$

- Go through Maintenance?
- Are you stating based on your testimony have you ever helped convict someone in B.C.?
- Used the same series Intox?
- Problems?
- AT BAT
- AT BAT since you left BSO?
- Have you ever turned down a job?
- Hired by Δ \$125/hour
- Why did you leave BSO?
- Hired to testify by attys

NHTSA

(202) 366-2759

Sandy Richardson

(202) 366-4294 or 4295

do not certify anyone
only get certificate of training

sending letter

&
affidavit

11-18-99

1

11

Fla. Dept of Education

850/487-1785

Bureau of Teacher Certification
850/488-2319

800/445-6739 Certification Line

not certified since

held occasional part time certificate
'86' - '91

substitute '89 - '94

Vivonne Gibson 850/488-6159
ext 69

" 11/19/99 Director will call me

Kathy ~~Hebda~~ Hebda
FAX 850/488-3352

R. Swope
instructor file

MR. MANOT,

3-3-94

RICK SWOPE WISHES TO TEACH
IN THE NEXT (168) ACADEMY & THOUGHT
HE WAS SCHEDULED. HE WAS ONLY
SCHEDULED TO FINISH THE 167 OUT
AND I WOULD BE TAKING OVER STARTING
WITH THE 168. I WISH TO TEACH
THE DWI CLASSES + TOLD HIM HE
WOULD NOT BE SCHEDULED TO TEACH.
HE SAID HE WOULD TALK WITH
YOU. I WOULD PREFER TO TEACH
THOSE CLASSES FROM NOW ON + FEEL
I CAN DO JUST AS GOOD IF NOT
BETTER JOB THAN MR. SWOPE.

Chris / Mike

I verified that Mr.
Swope is using
his instructional activity
here as part of a
research project. To
that end, it may
serve our interest to
schedule Mr. Swope
to continue to instruct
DWI topics with the
understanding that 1) his
services will be pro bono,
and 2) the attendance
pattern which has proved
problematic in the past is
unacceptable.

THANK YOU

RESPECTFULLY,

CHRIS.

M

MTS - KEVIN FREIN

From: MTC - LEE COHEN
Sent: Monday, May 03, 1999 3:55 PM
To: MTS - KEVIN FREIN
Subject: FW: Rick Swope

Kevin, you've got to see this from Dade via Monica. Did we get the Ocala transcript yet?

-----Original Message-----

From: ADM2 - MONICA HOFHEINZ
Sent: Monday, May 03, 1999 3:23 PM
To: 'Don Nelson'
Cc: MTC - LEE COHEN
Subject: RE: Rick Swope

We have files and files. Apparently in Georgia recently he represented something about being retained as an expert by the Prosecutors. We are awaiting a transcript. I am forwarding your e-mail to our CCT Assistant in Charge so he can communicate with your people. Thanks.

From: Don Nelson[SMTP:nelsond@sa11.state.fl.us]
Sent: Monday, May 03, 1999 2:36 PM
To: 'Monica Hofheinz'
Subject: FW: Rick Swope

Do you guys know all about this Swope guy?

> -----
> ~~From: Charles Reynolds~~ 324 - 2900 305-547-0100
> Sent: Monday, May 03, 1999 11:30 AM
> To: Don Nelson 547-0100 ~~Florida~~ Unit
> Subject: RE: Rick Swope Criminal Investigation

> I spoke to my contact with the SAO in Ocala. She is FedExing the
> transcript. She also informed me that the next day something similar
> happened in Gainesville and a few days later something in Georgia. The
> FPAA supposedly has all this information. Do you have a contact with the
> FPAA?

> -----
> From: Don Nelson
> Sent: Monday, May 03, 1999 9:23 AM
> To: Charles Reynolds; Mary Cagle
> Cc: Katherine Fernandez Rundle
> Subject: RE: Rick Swope

> Chuck, please do add this to your file. Mary, do you think we
> should put out an "APB" (All Users) bulletin on Swope?

> -----
> From: Mary Cagle
> Sent: Friday, April 30, 1999 10:33 AM
> To: Don Nelson; Charles Reynolds
> Subject: FW: Rick Swope

> In case you didn't receive this e-mail, it is an update on Rick
> Swope. If we have a Rick Swope file, Chuck maybe you can add this to it.

S/S LM
with
secretary

> -----
> From: ~~Quanda Marick~~
> Sent: Wednesday, April 28, 1999 2:46 PM
> To: !All ASAs GRM
> Subject: Rick Swope
>
> Two weeks ago Rick Swope was challenged on the accuracy of his CV by
> a prosecutor in Ocala. The challenge was so effective that he was
> disqualified as an expert in the Intoxilyzer 5000.
>
> Although most of us deal with Swope as an expert in accident
> reconstruction, much of what was elicited is completely relevant as to
> his credibility.
>
> Here are just a few of the highlights:
>
> * Two of the "published" articles he lists do not exist in
> published form. His response was that he was told by the publisher they
> were published.
> * He is not a lead instructor for IPTM nor is he an instructor
> for Broward Community College. His response to these errors was that he
> hired someone to do his CV and did not check it for accuracy.
> * Another of the published articles is listed twice under a
> different title.
> * He was fired from the Broward Sheriff's Office. He claims
> to have done DUI's as an MP in the Military. Although he was an MP, he
> was a prison guard, and there is no record of him ever doing a DUI.
> * His masters in "engineering" is actually a masters of
> technology. This degree prepares you on how to run a business in the year
> 2000. It is a technical business degree. (Be careful on this one,
> another SAO filed perjury for this but could not sustain the prosecution.)
> Take away this "engineering" degree and you've got a highly trained former
> cop
> * Two days ago he testified under oath (I don't have the
> location yet) that he did not recall ever being disqualified as an
> expert!!!!
> * (His ex-wife put a restraining order on him - inadmissible
> but highly amusing.) :
>
> I should have the transcript of the Ocala trial by Monday.
>
> DUI TRIVIA: The bill to criminalize refusals has been approved
> unanimously by committee to go to the Senate floor for vote.
>
>
>
>

MTS - KEVIN FREIN

From: MTC - LEE COHEN

Sent: Monday, May 03, 1999 4:17 PM

To: MTS - KEVIN FREIN

Subject: swope

Kevin,

I got a call last week from Atlanta concerning swope. Apparently he was saying that he is currently a consultant for the Broward County State Attorney's Office. Donna Eng spoke to him for a while and ordered the transcript. Please give him a call: Raud Csehy 404-658-7278 x18. Also, did you ever call Sherri Tate for info on that Ocala transcript (as per last E-mail I just forwarded you)? You might want to talk to Donna and see if you have everything she has. Let me know.

Lee

515 spoke with Donna

1. City of Atlanta Attorney
2. ordered transcript
3. web site - Broward County
State Attorney
A. consultant and / on web-site
4. leave information on Donna's
chair

MTC - Lee Cohen

From: MTC - Rebecca Sanvi
Sent: Tuesday, June 25, 2002 1:02 PM
To: MTC - Lee Cohen
Subject: phone message

Please call Elizabeth Parker, ASA Palm Beach, Traffic Homicide,
561 355 7404

4