

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

STATE OF FLORIDA,)
)
) Plaintiff,)
)
 vs.)
)
 ROBERT DILLON,)
)
) Defendant.)
 -----)

NO: 95-015062MM10
JUDGE PEGGY GEHL

Fort Lauderdale, Florida
January 12th, 1999

The above-entitled cause came on for Jury Trial before the Honorable PEGGY GEHL, presiding Judge, at the Broward County Courthouse, Fort Lauderdale, Broward County, Florida, on the 12th day of January, 1999, at or about 1:30 p.m.

ORIGINAL

APPEARANCES:

MICHAEL J. SATZ, STATE ATTORNEY'S OFFICE,
BY: DONNA ENG, ASSISTANT STATE ATTORNEY,
NIKKI IPPOLITO, ASSISTANT STATE ATTORNEY,
Appearing on behalf of the State of Florida.

BY: TED HOLLANDER, ESQUIRE,
Appearing on behalf of the Defendant.

EXCERPT OF JURY TRIAL PROCEEDINGS

I N D E X

PAGE NO.

<u>DEFENSE WITNESS:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	
RICK SWOPE	3	59	102	
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1 * * * * *

2 (Whereupon, the following is an excerpt of
3 proceedings.)

4 THE COURT: Okay. Is the Defense ready to
5 proceed with its side of the case?

6 MR. HOLLANDER: Yes, Judge. The Defense would
7 call Mr. Rick Swope to the stand.

8 WHEREUPON:

9 RICK SWOPE,
10 a Witness herein, acknowledged having been duly sworn, and
11 testified as follows:

12 THE WITNESS: I do.

13 THE CLERK: State your name for the record and
14 spell your last name for the court reporter.

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

16 DIRECT EXAMINATION

17 Q. (By Mr. Hollander) Good afternoon, Mr. Swope.

18 A. Good afternoon.

19 Q. I know you have introduced yourself as far as
20 your name. Can you explain to the jury what you do for a
21 living?

22 A. I have my own company. I have a business in
23 Fort Lauderdale and I have one in Atlanta, Georgia and I
24 deal primarily with accident reconstruction. I
25 reconstruct traffic accidents and traffic fatalities. I

1 also consult in the field of the Intoxilyzer and field
2 sobriety exercises or tasks; and I do some teaching around
3 the country and write articles on those subjects.

4 Q. Okay. Of those subjects that you have just
5 mentioned, is it fair to say that you specialize in those
6 subjects?

7 A. Yes.

8 Q. And not formal training, but as far as
9 education, what kind of education do you have?

10 A. Well, as far as degrees go, I have a degree in
11 criminal justice from St. Thomas University. That's a
12 Bachelor's. I have a Master's degree in Technology and
13 Engineering from the University of Miami. I have
14 certificates that I teach in certain areas, field sobriety
15 exercises, also do writing and consulting in the field of
16 the Intoxilyzer.

17 Q. Thank you. And you said that you taught some
18 classes in these subjects as well?

19 A. Yes.

20 Q. Where have you taught?

21 A. Well, from 1985 through about 1994, I taught for
22 the State at the Broward County Police Academy. I taught
23 that as an adjunct instructor and taught field sobriety
24 exercises and breath testing fundamentals during that
25 period of time. And then I taught at the University of

1 North Florida and the University of Louisville and that
2 would be on cite, either through the country or the other
3 parts of the country. I taught officers in all fifty
4 states, not that I went to all fifty states, but officers
5 would come to our meetings and training cites and teach
6 them in those fields and certify them, if necessary.

7 Q. Have you ever worked for the Broward County
8 Sheriff's Office?

9 A. Yes, I have.

10 Q. What years did you work for them?

11 A. I worked for the Sheriff's Office from 1984
12 until July of 1990.

13 Q. And what was some of your responsibilities when
14 you worked for the Broward County Sheriff's Office?

15 A. Well, I was the administrative coordinator in
16 the DUI Task Force and homicide units. My
17 responsibilities were actually numerous. I did the
18 budgeting, selected on a panel that selected people to a
19 unit, meaning to select to the special divisions. I did
20 the training manuals, I wrote the sections for the
21 accreditations for the Sheriff's Department, and I'm
22 talking about in my area, not the whole department, just
23 in my department area.

24 I was responsible for the breath testing for the
25 Intoxilyzer, to make sure the machines were maintained

1 properly. Obviously supplies were ordered, processing the
2 forms that were used at the time. Some of them are still
3 in effect or maybe used a little differently, but I was
4 responsible for making sure that the forms were proper,
5 that the subjects that were arrested or apprehended for
6 DUI were videotaped, cataloged, all the arrest statistics.
7 Really, it was a big responsibility, but at that time, the
8 unit consisted of about twenty-five people and I was
9 basically responsible for that unit.

10 Q. So is it fair to say that as far as DUI
11 investigations, with the breath testing, with the field
12 sobriety exercises, the videotaping, you were heavily
13 involved in that aspect?

14 A. Yes.

15 Q. What type of experience do you have with the
16 pharmacology of alcohol.

17 A. The pharmacology of alcohol basically would mean
18 just as far as knowing how alcohol is absorbed and
19 eliminated. That would be done through experiment testing
20 or classes. What I mean by that is when the initial
21 breathalyzer courses are given, we measure amounts of
22 alcohol to voluntary subjects and they drink that alcohol
23 and we measure how much they have taken in, how long it
24 takes them to eliminate.

25 We do blood and breath testing at the same time,

1 meaning that at the same time a breath test is given, we
2 actually draw blood from them and test them together to
3 see how close they are. We have also used that in field
4 sobriety exercises. I've dosed somewhere over four
5 hundred and something people. I have probably seen
6 another couple hundred that have been dosed with alcohol.
7 The main purpose is to see that the formulas that we use
8 and the machinery that is used in those types of
9 situations, at least come out somewhere within the error
10 rate, and the amount of research conducted, that
11 everything comes out together and the formulas work and
12 what we're doing is proper research, so to speak.

13 Q. Have you been involved in the writing of any
14 papers or any publications in relation to the pharmacology
15 of alcohol or the Breathalyzer, anything to do with DUI
16 detection?

17 A. Yes.

18 Q. Can you please explain some of those?

19 A. Well, every time that you do a paper or that you
20 do a research on the Intoxilyzer, you're basically talking
21 about pharmacology issues, whether they be elimination
22 issues or how long it takes to absorb and eliminate
23 alcohol. They are really tied in. Depending on the type
24 of experience that you do, the pharmacology comes into
25 play and that can be used through, again, drinking

1 exercises, drinking labs, blood labs. It could be used
2 where we assist the Toxicologist.

3 In other words, Toxicologists are used in our
4 testing for blood. We test breath, they test blood. We
5 work in that field together and basically the results are
6 pooled. Some articles I write myself, some I'm in a pool
7 where there is ten people that put different things in the
8 articles and usually written by one individual. We all
9 have something to do with it. One article, I may work on
10 a certain part of the machine; and the next article, I may
11 work on a different part. It all depends.

12 Q. Where are these articles or papers published?

13 A. They are published either in books from the
14 Mishi (phonetic) Corporation. They can be under sections
15 or my name. A lot of sections are under Dr. Nick Jenkins'
16 name. The DUI or Science research are under my name or
17 under other individuals' names where they are the main
18 author and I'm a co-author. I think I have published, on
19 my own, about six or seven now and probably assisted in
20 another six or seven.

21 Q. What experience do you have with the Intoxilyzer
22 5000?

23 A. Well, quite a bit. The Intoxilyzer, actually
24 this type of model, was not brought into the State until
25 1986. It was actually brought in for experimental

1 purposes in 1985, maybe even later. I'm not sure of the
2 exact date. I was familiar with the Intoxilyzer as it was
3 put into service. I have assisted Dave Fries and the
4 Sheriff's Office in purchasing those machines and putting
5 the initial ones in service. We were the first ones, I
6 think, in the county to have them.

7 I went to a factory school that CMI, the builder
8 of the Intoxilyzer, puts on. I went to the plant. At
9 that time, the plant was in Denver or outside Denver,
10 Colorado. Now it's in Kentucky. I've done research on
11 the machine basically since 1985 with probably the most
12 research done from 1992 on.

13 Q. Have you ever been certified as an expert in the
14 area of pharmacology of alcohol?

15 A. Yes. Sometimes specifically and sometimes not
16 and it just depends on -- in other words, when we talk
17 about the Intoxilyzer, some judges include that, some
18 don't. It depends on the Court.

19 Q. And in relation to the Intoxilyzer 5000, have
20 you ever been certified in a court of law as an expert in
21 regard to that machine?

22 A. Yes.

23 Q. And those are Florida courts?

24 A. Yes. I have been outside of Florida, but, yes.

25 Q. Other states in this country and outside of

1 Florida?

2 A. Yes.

3 Q. How many times, approximately, would you
4 estimate that you have been accepted as an expert in
5 regard to those subjects?

6 A. Over seven hundred.

7 Q. And how many times have you testified in any
8 kind of case, alcohol related, with this type of machine
9 or the pharmacology of alcohol?

10 A. Probably six hundred, I would say.

11 Q. Of those six hundred times, how many times did
12 you testify as a State witness?

13 A. Well, obviously from 1985 until I left the
14 Sheriff's Office and then a few times after. I would
15 assume probably over two hundred fifty. I'm just
16 guessing. I don't recall how many trials I was in, but
17 quite a few. I was in trial quite often.

18 Q. Your job back then was to testify as to the
19 maintenance of the machine and things of that nature as
20 other people now do for the State; is that correct?

21 A. It was a little bit different. Things change,
22 obviously, as time goes on, but basically I just testified
23 about the maintenance procedures. That's all.

24 Q. Of the many times that you have testified, a
25 good amount of the times you have been a State witness; is

1 that fair to say?

2 A. Yes.

3 Q. Have you ever been certified as an expert in the
4 admission of the field sobriety exercises that the jury
5 has heard about?

6 A. Yes.

7 MR. HOLLANDER: Your Honor, at this time, I
8 would like to tender Mr. Swope as an expert in the
9 area of pharmacology of alcohol, field sobriety
10 exercises and the use and operation and maintenance
11 of the Intoxilyzer 5000.

12 THE COURT: Do you wish to voir dire, State?

13 MS. ENG: Yes.

14 THE COURT: All right. Go ahead.

15 VOIR DIRE EXAMINATION

16 Q. (By Ms. Eng) Good afternoon, Mr. Swope. I
17 don't think we ever met.

18 A. Really? I thought we have.

19 Q. I have seen you around, but we've never been in
20 trial before. My name is Donna Eng and it's nice to meet
21 you. I would like to ask you some questions about
22 pharmacology.

23 Do you have a degree in pharmacology?

24 A. No, ma'am, I don't.

25 Q. Any medical degrees?

1 A. No.

2 Q. Did you go to medical schooling of any kind?

3 A. No.

4 Q. Did you attend any seminars on medical aspects
5 of pharmacology, anything related to that?

6 A. Sure.

7 Q. What was that?

8 A. Those would be seminars given by the Broward
9 Medical Examiner's Office. I've also been to Robert --
10 Dr. Robert Borkenstein (phonetic), who developed the first
11 breath testing device. I've been to other seminars. We
12 have guest lectures. I don't recall the names of people
13 who were guest lectures on the Intoxilyzer that would come
14 in and do our breath and blood test for us, but I've had
15 quite a bit of training, but I'm certainly not a doctor.

16 Q. Do you belong to any associations relating to
17 pharmacology?

18 A. No.

19 Q. I believe you talked about papers that you said
20 you've helped to write or participated in?

21 A. Right.

22 Q. What papers are those exactly? You didn't give
23 any names or dates of publications.

24 A. The papers that I wrote would be dealing with
25 probably starting about -- I'm just guessing right now --

1 probably about May of 1991 and those papers would deal
2 with the Intoxilyzer, specifically the slope detector, the
3 infrared detector, the radio frequency interference.

4 I also wrote a paper probably in 1993 on the
5 different types of models of those machines, that there is
6 actually three different series of.

7 Q. My question is, how does that relate to
8 pharmacology? Isn't pharmacology related medically to
9 alcohol and how it's processed through the body; is that
10 correct?

11 A. Well, yes. I have used the word "absorption"
12 and "elimination". It's really the same thing.
13 Pharmacology is just a fancy word.

14 Q. You seem to be talking about the instrument
15 itself. How does that relate to pharmacology and your
16 qualifications to speak about pharmacology in the medical
17 aspects?

18 A. I never said anything about medical aspects.
19 What I have testified to or was attempting to was every
20 time you give a breath test, first of all, you have to
21 know if the test is accurate and you have to know, through
22 your observations and through your training, basically
23 what does the number mean. And by doing that, every time
24 you give a test -- and I'm not talking about a criminal
25 test, I'm talking about an experimental test, you have

1 controlled subjects. You give them measured amounts of
2 alcohol. You use formulas that are used in toxicology and
3 pharmacology to make certain, at that moment, if alcohol
4 comes out to what it's supposed to and if it doesn't,
5 that's part of your experiment, to find out why.

6 In other words, I won't guess your weight, but
7 if I give you six ounces of alcohol, I would expect you to
8 be at a certain level in an hour. If you're not, then the
9 question is, why aren't you, number one; and number two
10 is, are you eliminating faster than normal; and number
11 three would be maybe something is wrong with the machine.
12 I have to try to figure that out and I have done that over
13 several hundred times.

14 Q. Okay. I also would like to ask you about the
15 Intoxilyzer 5000. I believe you told Mr. Hollander you
16 went to the factory and worked with Dave Fries?

17 A. Yes, ma'am.

18 Q. Did you testify that you were an agency
19 inspector for the Broward Sheriff's Office to maintain the
20 Intoxilyzer 5000?

21 A. There is no agency inspector at all. I mean,
22 that would be with FDLE. Agency inspectors work for the
23 actual State. The Broward Sheriff's Office never has an
24 inspector.

25 Q. Do you know the difference between the agency

1 and Department within the context of FDLE rules? Agency
2 refers to the particular department, that certain
3 jurisdiction --

4 A. I understand. We were under HRS and at that
5 time, agency inspectors or departments did not refer to
6 us.

7 Q. Okay.

8 A. I understand, now, under the new rules, you're
9 right.

10 Q. My question is, did you have a permit to conduct
11 monthly inspections --

12 A. Yes, it was valid through 1995 or '94.

13 Q. And you actually maintained the Intoxilyzer 5000
14 for evidential use, that is, use in the field?

15 A. Correct.

16 Q. You just didn't do it at Broward Community
17 College in the police academy?

18 A. No, we did it together. In other words, at that
19 time, there were several individuals doing monthly
20 maintenance. My authority, at that time, was to oversee
21 that and to conduct it. In other words, Dave and I may do
22 it together, but Dave would sign it. The reason we do
23 that was for court purposes so that both of us didn't have
24 to come into court all the time. I don't know how it's
25 done now, but I know at that time, that was the reason we

1 did it. Actually, there was three of us doing maintenance
2 at the time.

3 Q. Isn't it true that your name never appears on
4 any of the documents submitted or kept by the Broward
5 Sheriff's Office to show the monthly inspection of the
6 Intoxilyzer 5000?

7 A. As far as on the monthly maintenance documents,
8 I don't know if that's correct. I know on the overall
9 documents submitted on transmittal, my name was on every
10 one of them.

11 Q. You never signed a monthly maintenance
12 inspection document while at the Broward Sheriff's Office?

13 A. I don't know if I did or not. I know I signed
14 the transmittal forms and that was my job, not to sign the
15 maintenance documents because I didn't want to be in court
16 everyday.

17 Q. You also said, you were telling the jury you
18 were in charge of the DUI unit?

19 A. No, the administrative coordinator. I was in
20 charge of budgeting, scheduling, getting the people in the
21 unit, getting people out of the unit, if that was
22 necessary. I signed the majority of the reports in the
23 unit that went out. I was responsible for the rules and
24 regulations. I wrote the SOP. That's what I was
25 responsible for. We always had somebody above us, but no

1 supervisor, in effect, in the unit, except myself and Dave
2 Fries.

3 Q. Where was Sergeant Jones at that time?

4 A. He wasn't with me.

5 Q. He wasn't in charge of the DUI --

6 A. While I was there at the Sheriff's Office, he
7 was not there in charge of the unit because we kept him
8 out of there for a specific reason.

9 Q. Okay. My last question has to do with field
10 sobriety exercises.

11 MS. ENG: First of all, I would object to him
12 testifying at all about field sobriety exercises.
13 Mr. Hollander hasn't qualified him in that area, but
14 for the purposes of voir dire, I would like to go
15 into that.

16 Q. (By Ms. Eng) What articles have you written in
17 the field of field sobriety exercises and their general
18 reliability?

19 A. Again, for the DUI and Science journal, I wrote
20 three articles.

21 Q. When was that?

22 A. Probably in 1993 to 1995.

23 Q. Probably? Do you know for sure?

24 A. I don't know the exact dates, no.

25 Q. Do you know the names of them?

1 A. Yes. I know the first two articles were Field
2 Sobriety Exercises part one of two. Those were the
3 subsequent months. One was one month; one the next. I
4 did another article probably -- and, again, I don't
5 remember the dates, 1995, maybe early 1996. And that was
6 roadside evaluations. That was published in the DUI Law
7 and Science Journal.

8 I also wrote three articles that were used at
9 the police academy in Broward from 1987 through 1992. I
10 wrote the training outline for the Broward Sheriff's
11 Office in 1987 and that was good until 1991.

12 Q. So you haven't done any articles since 1996 or
13 so?

14 A. Probably not.

15 Q. Have you read the case of State vs. Meader
16 (phonetic)?

17 MR. HOLLANDER: I have no idea what we're going
18 into now. I would object.

19 THE COURT: It's proper voir dire. I'll let her
20 go ahead.

21 Q. (By Ms. Eng) Are you familiar with that case?

22 A. I am familiar with some of it. I don't know the
23 legal terms in the case, but I'm familiar with some of it,
24 sure.

25 Q. You're familiar with general scientifics of

1 reliability of the field sobriety exercises, are you not?

2 MR. HOLLANDER: Your Honor, this is in response
3 to the horizontal gaze nystagmus, if I understand
4 Meader.

5 MS. ENG: No, it's not.

6 THE COURT: Go ahead.

7 Q. (By Ms. Eng) You're familiar with the general
8 issue of the overall reliability of field sobriety
9 exercises, correct?

10 A. I don't really now how to answer that question,
11 no. I don't know what you mean by that. I'm sorry.

12 Q. Are you familiar with the case holding that
13 generally, officers --

14 MR. HOLLANDER: Objection to what another Court
15 holds. I don't think that's the proper form to
16 bring, what other Courts -- she can talk about the
17 reliability. It's intended to get into that, but to
18 bring up what another Court has said, I don't
19 think --

20 MS. ENG: Your Honor, I would object to any
21 testimony on field sobriety issues and any
22 reliability and we can go side bar.

23 THE COURT: I will let you ask him your question
24 the way you want to ask.

25 Q. (By Ms. Eng) Are you familiar with the holding

1 of case, State vs. Meader, in that basically, field
2 sobriety exercises don't have a scientific reliability and
3 officers testify as mere lay observations as to what they
4 saw the Defendant doing?

5 A. I'm familiar with that issue as opposed to the
6 other thousand cases I've read, yes.

7 Q. So, in other words, you're familiar with the
8 fact that officers are supposed to just make observations
9 and not give any scientific opinion as to the performance
10 of the exercises, just an observation of what happened,
11 correct?

12 MR. HOLLANDER: Judge, at this point, I don't
13 think there is going to be any testimony about the
14 scientific reliability. We're going to talk about
15 what the exercises -- how they are conducted and his
16 opinion of them, but I haven't asked any questions
17 about the scientific reliability of them. I think
18 it's clear there is none.

19 MS. ENG: The State is submitting that the
20 opinion that Mr. Swope is going to be eliciting, at
21 the request of Mr. Hollander, would be wholly
22 irrelevant. Officers that the State calls to testify
23 don't give their opinion on the fact that the
24 Defendant did A, B and C. There is no specific
25 scientific opinion. It's just simply an observation.

1 Mr. Swope was not present. He cannot give those
2 observations.

3 THE COURT: Okay.

4 MR. HOLLANDER: Do you want a response?

5 THE COURT: No, I want to know if you're done
6 with the voir dire of the witness?

7 MS. ENG: Yes, I'm done.

8 THE COURT: All right. At this time, do you --

9 MS. ENG: State would object to Mr. Swope
10 testifying in any expert capacity in the areas of
11 field sobriety exercises, pharmacology and
12 maintenance of the Intoxilyzer 5000.

13 THE COURT: And I'm going to let him testify in
14 the areas of Intoxilyzer 5000 and absorption, but not
15 in any scientific or expert way with the field
16 sobriety exercises.

17 MR. HOLLANDER: May I inquire a few other
18 questions about his experience with the field
19 sobriety exercises?

20 THE COURT: If you wish.

21 CONTINUED DIRECT EXAMINATION

22 Q. (By Mr. Hollander) Mr. Swope, could you talk
23 about, other than the papers that you have already talked
24 about that you published in response to the field sobriety
25 exercises and the roadside exercises, can you talk about

1 what other experience you had with field sobriety
2 exercises?

3 A. Well, I was certified by the National Highway
4 Traffic Safety Administration as an instructor. I was
5 certified by the Florida Department of Law Enforcement as
6 an instructor in field sobriety tasks, so to speak. I
7 attended over a hundred sixty hours of courses dealing
8 with that and I taught over several thousand students,
9 mainly police officers, in the past fifteen years.

10 Again, as I indicated, I taught in all fifty
11 states, so I know pretty much about them, I think.

12 Q. Have you ever been certified in a court of law
13 as an expert in relation to the field sobriety exercises?

14 A. Yes.

15 Q. In the State of Florida?

16 A. Yes.

17 Q. In other states, other than the State of
18 Florida?

19 A. Yes.

20 MR. HOLLANDER: Judge, at this time, I would
21 tender Mr. Swope as an expert in the field of
22 sobriety.

23 MS. ENG: Same objection. State vs. Meader, no
24 testimony needed.

25 MR. HOLLANDER: We're not going to talk about

1 State vs. Meader. This has nothing to do with --
2 it's not scientific.

3 MS. ENG: Under State vs. Meader, officers are
4 only permitted to give their observations, what
5 happened. Mr. Swope was not there, present, at the
6 scene. He, therefore, cannot give any facts -- any
7 testimony in the form of opinions.

8 MR. HOLLANDER: They're own manuals and books
9 talk about the reliability of what officers use.
10 All I'm trying to do is elicit that testimony which
11 is --

12 THE COURT: I'll let you ask him about the
13 exercises, but slowly.

14 MR. HOLLANDER: Thank you, Judge.

15 MS. ENG: Over State objection, your Honor.

16 Q. (By Mr. Hollander) Mr. Swope, in this
17 particular case, have you had the opportunity to review
18 all of the police reports, review all of the witness
19 lists, everything to do with what's called discovery in
20 this particular case?

21 A. Yes.

22 Q. You had a chance to meet Mr. Dillon?

23 A. Yes, I met him today.

24 Q. In addition to that, you are now testifying as a
25 Defense witness, right?

1 A. Yes. I'm testifying for your office. Yes.

2 Q. We pay you to testify, correct?

3 A. Well, no. I charge you a fee. Nobody pays me
4 to testify.

5 Q. Understood.

6 A. Right.

7 Q. I pay you a fee to review the documents and
8 testify, if necessary?

9 A. That's correct.

10 Q. Okay. Do you feel you are comfortable talking
11 about this case from what you have read in the reports?

12 A. Yes.

13 Q. The first thing I would like to do is talk about
14 the exercises, the field sobriety exercises.

15 A. Okay.

16 Q. Are these exercises a one hundred percent
17 accurate indicator of whether somebody might be impaired?

18 A. No.

19 Q. You have been trained and you have trained
20 others that some people can do them better than others,
21 correct?

22 A. Yes.

23 Q. In your training, and from what you have learned
24 and taught other people, what is the reliability of these
25 exercises individually?

1 MS. ENG: Your Honor, objection, State vs.
2 Meader. He's directly asking about reliability.

3 MR. HOLLANDER: The scientific nature of Meader
4 talks about breath levels and how that's related to
5 exercises. I don't think that we're talking about
6 scientific. I'm asking -- he's been trained and what
7 he tells officers is the number of people that can do
8 this. Some people --

9 MS. ENG: Your Honor, reliability goes to
10 scientific reliability. It's specifically not
11 allowed to be testified to under State vs. Meader.
12 It's a controlling case in this jurisdiction.

13 THE COURT: I tend to agree with the State
14 somewhat on this issue. Let's move on to something
15 else, aside of the roadsides.

16 MR. HOLLANDER: I have a few other non
17 scientific --

18 THE COURT: Okay.

19 Q. (By Mr. Hollander) Without talking about
20 numbers and reliability, what's your opinion of the way in
21 which these exercises are set up for people when they are
22 to perform them?

23 A. Well, some of them are failure designed.

24 Q. What do you mean by that?

25 A. That most people are going to fail it.