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IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR DADE
COUNTY, FLORIDA

TRAFFIC DIVISION

Case No. 084653J
Judge Kevin Emas

STATE OF FLORIDA,

Plaintiff,

vs.

RICHARD KOZAK,

Defendant (s).

COPY

Richard E. Gerstein Building
1351 N.W. Twelfth Avenue
Miami, Florida
November 3, 1998
4:00 p.m. to 5:15 p.m.

Proceedings held before the Honorable Kevin Emas that
being a Excerpt of Jury Trial in the above-styled cause.

JACK BESONER & ASSOCIATES

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APPEARANCES:

Katherine Fernandez-Rundle, State Attorney
By: DAVID DONET,
PEDRO FERNANDEZ,
Assistant State Attorneys
On behalf of the Plaintiff.

MICHAEL, BRAXTON, ESQ.,
JOE FERNANDEZ, ESQ.
On behalf of the Defendant.

I N D E X

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Redir.</u>	<u>Recross</u>
RICK SWOPE				
By Mr. Braxton	3	--	68	--
By Mr. Donet	--	38	--	--

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[Thereupon, the jury was brought back in.]

THE COURT: Mr. Donet?

MR. DONET: Your Honor, at this time the state rests.

THE COURT: All right.

Reserving all previous motion and objections?

MR. BRAXTON: Yes.

THE COURT: Mr. Braxton?

MR. BRAXTON: Judge, we'll call Rick Swope to the stand.

THE COURT: Mr. Swope, if you'll come forward, please, sir. Raise your right hand, please, to be sworn.

[Thereupon, RICK SWOPE was duly sworn as a witness and testified as follows:]

THE COURT: If you'll have a seat in the witness box.

DIRECT EXAMINATION

BY MR. BRAXTON:

Q Could you tell us your name.

A My name is Rick Swope, S-W-O-P-E.

Q Mr. Swope, what type of work do you do?

A I do primarily accident reconstruction. My business primarily reconstructs fatal traffic accidents for court situations. And also about ten percent of my business encompasses dealing with cases involving the breathalyzer or field sobriety exercises.

1 Q Are there particular breathalyzers that you deal
2 with?

3 A Yes.

4 Q Which ones?

5 A I deal with what's known as the Intoxilyzer 5,000
6 series. There are actually three different models in the
7 series, and I deal with all three of them.

8 Q And what are those three models?

9 A There is the Model 64, the Model 66, and the Model
10 68.

11 Q Which model do we use in the state of Florida?

12 A We're authorized to use the 64 and the 66.

13 Q Which model did we use in this particular case? The
14 66?

15 A I have to see the card. I think it was the 66.

16 MR. BRAXTON: Can we have the breath card?

17 THE COURT: It's right on top.

18 A Yes, it's the 66 model.

19 Q Is this the 5,000 or 5,000R?

20 A It should be the 5,000R.

21 Q Mr. Swope, what is your educational background?

22 A I was a police officer for 15 years. The last six
23 years I was an officer. Four of those six years, I was with
24 the Broward Sheriff's Office. I was the Administrative
25 Coordinator of the DUI Task Force and Traffic Homicide Unit.

1 For a period of time I was a breath operator. I had been a
2 breath operator since 1974. I also have a bachelor's degree
3 in criminal justice from Saint Thomas University. I have a
4 master of science and technology degree in engineering from
5 the University of Miami. I'm a National Highway and Safety
6 Instructor, and I'm on staff at a couple of private businesses
7 that conduct breath testing experiments throughout the
8 country. I teach at seminars and I do lectures and field
9 testing, and I also currently maintain machines. I maintain
10 two machines for private individuals or private firms. I also
11 maintain a machine for Florida International University. They
12 have a grant on doing experiments in breath testing, and my
13 job is to ensure that the machine meets the test of scientific
14 reliability prior to any breath test being given as far as for
15 experimental purposes.

16 Q Mr. Swope, how many hours would you say you have in
17 training, as far as DUI cases go, as far as field sobriety
18 exercises?

19 A The initial training period was 40 hours to be
20 certified and then it was an additional 40. Actually there
21 were two 40-hour courses when it was started back in '85. And
22 then subsequently there was an instructor course that was 80
23 hours, and then there was an additional instructor course that
24 the federal government put on. So it was over probably 250
25 hours or somewhere in that ballpark.

1 Q Do you currently teach other police officers about
2 field sobriety exercises?

3 A Well I currently do lectures. I do lectures for
4 police agencies. I also do some lecturing for private
5 individuals, law firms, judges. I do it for the Florida Bars
6 and other Bar groups and throughout the country. But as to
7 specifically teaching anymore, I don't do too much of that
8 anymore. I did my ten years at the academy and that was fine.

9 Q How many hours would you say you have with breath
10 testing equipment such as the model in this case, the
11 Intoxilyzer 5,000R?

12 A Well I have probably about -- I'm just guessing --
13 maybe 250 some hours of training from the state when I was a
14 police officer. I've had probably in excess of 1,000 hours of
15 experimentation and training with the breathalyzer since I
16 went into private practice.

17 Q You said experimentation. Could you tell us a little
18 bit about that.

19 A Well the group that I work with out of Minnesota, we
20 have all three models of Intoxilyzers and we do what's known
21 as correlation experiments, meaning that we use the machines
22 for blood and breath testing. In other words, we take
23 individuals who are volunteers, and we give them certain
24 amounts of alcohol. They consume it, and then over periods of
25 time we do blood tests from them and breath tests. We do that

1 simultaneously. We then analyze those results. We also take
2 the machine apart and we check the machine for any type of
3 defects, diagnostic problems which may occur.

4 So what we try to do is we try and find out what the
5 good and bad points of the machine are. We try to find out
6 what operators should look for in the machine that they may
7 not see or that may not come up on the print cards. We do
8 experimentations on different types of samples and chemicals,
9 and we frequently blow up the machine, really, and test
10 different types of chemicals.

11 Q How many times would you say you've taken apart this
12 machine and examined its components?

13 A I don't know. Probably a couple of hundred, easily,
14 I suppose.

15 Q You said you run experiments on the Intoxilyzer?

16 A Yes.

17 Q Could you tell a little bit about that. How many
18 experiments that you run personally on this Intoxilyzer?

19 A Well, the experiments that I run myself deal with
20 what's called everyday problems or problems that occur such as
21 mouth alcohol. That's always an issue. I do experimentations
22 with people that come in with dentures and people who retain
23 alcohol in the mouth. I also do experiments on radio
24 frequency interference using beepers, cell phones, and things
25 like that. Things people carry with them everyday normally

1 like regular phones. We do it on lighting conditions in rooms
2 to see what kind of frequency may trip an Intoxilyzer into
3 giving a false or fake reading and the operator wouldn't know
4 it.

5 We do diagnostic testing. In other words, the
6 machine, every time it runs a test or makes a test, it prints
7 out -- at the start of the machine cycle when it first gets
8 started for the day, it will print out that the diagnostic are
9 okay, meaning it checks several different components. We
10 unplug those components to see which ones it will still show
11 as working even though we've unplugged them inside the
12 machine. Those are things operators may not know. We do
13 experimentations on disconnecting the RFI, seeing what works
14 and what doesn't work on the machine. We do sample chamber
15 testing as to what may be in the sample chamber and what isn't
16 pumped out. We do all -- I mean, there is a myriad of things
17 we do in testing that I get involved with.

18 Q How many experiments would you say? Over hundreds or
19 thousands?

20 Q Well certainly hundreds. I've assisted in probably
21 well over several hundred experiments. But you have to
22 understand when an experiment is done, there are generally six
23 to eight people involved and each of us have a mission that we
24 do. In other words, I may be looking at one part of the
25 machine and somebody is looking at another part. And the

1 purpose of that is so that we don't miss anything and that
2 when we all get together at the end of the week or the end of
3 the day, we can sit down and decide this is what we did wrong
4 and this is what we did right. We try to make sure that when
5 the article is written, we know, at least basically, what
6 we're doing.

7 Q When you were a police officer did you actually put
8 people on the Intoxilyzer, put the card in, and run the test
9 on people?

10 A Sure.

11 Q How many times would you say you have done that when
12 you were a police officer?

13 A I'd given several hundred breath tests to people
14 brought in under arrest. I really couldn't tell you how many,
15 but our unit did an awful lot.

16 Q You said you did about -- where you put people on the
17 machine and then you take the blood, is that a blood to breath
18 correlation study?

19 A Yes.

20 Q How many of those would you say you've done?

21 A I've probably observed maybe 25 to 35 that the state
22 did while I was an employee with the sheriff's office. I also
23 observed -- we actually were ordered, myself and another
24 individual, Dave Frieze, were actually ordered to do court
25 experiments. Defense attorneys would come in and file

1 motions, and we had to actually do blood/breath correlations
2 on their clients. We did that probably maybe six or seven
3 times.

4 I also observed the last period of testing that the
5 state did, I think, in '92 or '93. I could be off on the
6 year. I went down to Dade County at the college and they ran
7 some tests there. I think Majudsky (phonetic) was present
8 from FDLE. And then I've been involved in probably another,
9 maybe, 40 or 50 individuals outside of that, meaning most of
10 the experimentations I do are in Georgia. I have an office in
11 Georgia.

12 Q Who is in Minnesota?

13 A Dick Jensen.

14 Q And who is he?

15 A He's a doctor, a pharmacologist, a toxicologist. He
16 basically is -- I shouldn't say a pioneer, so to speak, but he
17 does a lot of work in breath testing. And basically he does
18 things involving the blood and breath correlation. And
19 because of my background, I do more of the machine-type
20 engineering activities with the machine and physical analysis.
21 And then the other people do whatever they're doing.

22 Q Have you ever been published?

23 A Yes, I've been published. Myself and then also the
24 experiments we run have been published by Dr. Jensen or others
25 that work with him.

1 Q What type of magazines or articles do you get
2 published in?

3 A Well originally I was published in the state of
4 Florida in training outlines and manuals used by the state.
5 Then I became published in the DUI law and science journals.
6 And then also other magazines pick up on that and they call
7 and ask to use those articles in certain other states. In
8 other words, the state of Florida has certain manuals that
9 they put out, and other states call and ask to use the
10 articles and I give permission to do that.

11 Q Are you familiar with the Florida Department of Law
12 Enforcement Regulations and Guidelines for Breath Testing in
13 the State of Florida?

14 A Yes, I am.

15 Q How so?

16 A Well I was a certified operator up until 1995. Five
17 years after I left the sheriff's office, I elected not to
18 keep renewing because nobody was coming to me for criminal --

19 Q Do you keep up to date on all the changes in the laws
20 and stuff like that?

21 A Sure, I try to. I might not keep up on every one,
22 but I try to keep up on most of them.

23 Q As far as field sobriety exercises, are you trained
24 to administer and observe people specifically?

25 A Yes.

1 Q Have you been involved in any type of experiments
2 where people have drank and done these field sobriety
3 exercises?

4 A Yes.

5 Q Can you tell us a little bit about that?

6 A Well, again, it's some of the same ones that we use
7 for the breath experiments. We also use these people. In
8 some cases we use them for both. We use them for field
9 exercises as well. And what they do is, they drink -- we
10 separate them first of all into groups, and then we separate
11 them by sex, and then we separate them by weight, and then
12 they're kind of like separated into little groups. And there
13 are people who drink frequently, people who drink maybe one
14 drink a month, and we separate them as to how they drink. And
15 then we give them whatever they feel comfortable in drinking.
16 Some people feel comfortable in drinking ten beers and some
17 one beer. We wait about a half hour and start testing them to
18 see how they do, and we do it every half hour to see how they
19 perform. And we try to correlate. In other words, what does
20 somebody who is .10 look like versus somebody who is an .05,
21 and we try to correlate that, if we can.

22 Q Have you ever testified about the Intoxilyzer 5,000
23 or 5,000R in the state of Florida?

24 A Yes.

25 Q How many times?

1 A In the state of Florida? Probably about 400 or 500
2 hundred times, easily.

3 Q What about on field sobriety exercises? Have you
4 testified on field sobriety exercises?

5 A Yes.

6 Q How many times?

7 A Probably about as many times, probably about 500
8 times.

9 Q Are you familiar with all the scientific theories
10 behind the Intoxilyzer 5,000?

11 A I think most of them.

12 Q And how are you familiar with all of those?

13 A Well that's from reading articles, going to classes,
14 working with people who did the articles. I try to stay in
15 touch with most everything that is printed on the machine
16 because a lot of states do use the machines. So, ~~some of the~~
17 states right now, and I try to keep up on the machines.

18 Q How many times would you say you have testified about
19 these Intoxilyzers in other states other than Florida?

20 A Quite a bit. I probably leave town once a week to
21 testify, so -- and I do it in -- right now, my last count was
22 22 states over the past six years. I have cases pending right
23 now in about 11 states. So whenever they come up for trial, I
24 go.

25 Q Are you familiar with the scientific theory of

1 absorption and elimination and how it relates to metabolism in
2 the human body as far as alcohol is concerned?

3 A Yes.

4 Q How so?

5 A Well that's again through experimentation and through
6 classes and training, but mainly through conducting
7 experiments on articles that I've read or whatever.

8 Q And this stuff we've been talking about, this has
9 been going on for the last 15 years or so?

10 A Yes, basically. Well actually more than that. I
11 mean that was 15 years in police work, and I've been out now
12 eight years.

13 Q So that's over 20 years?

14 A Yes. That's a long time.

15 Q When you testify, do you testify on behalf of only
16 defendants in cases?

17 A No.

18 Q Who else do you testify on behalf of?

19 A Well I used to do some cases for the Broward State
20 Attorney's Office up until about the last couple of years.
21 They have their own witness basically on staff. Now mainly
22 the work that I do is civil. In other words, I do a lot of
23 testifying where officers and others in governmental agencies
24 have been accused of operating their vehicles while on duty.
25 I also testify in civil cases where officers have been under

1 the influence and been involved in a wreck, and that's
2 defending the cities or the states or whatever. So most of my
3 work, in that respect, is civil in nature. I don't really do
4 much criminal for the state.

5 Q Are you being paid for being here today?

6 A I get billed hourly, absolutely.

7 Q Is your fee \$750 for being here today?

8 A I think that's my fee, yes. I have to look, but I
9 think it is in this case. Yes. That's my charge.

10 Q Mr. Swope, if you were coming in here on behalf of
11 the State Attorney's Office would your testimony change as far
12 as anything you are going to testify to?

13 A No, not that I'm aware of.

14 Q Mr. Swope, did you ever speak with the defendant in
15 this case, Mr. Kozak?

16 A No. I've never met him. I've never spoke with him.
17 I wouldn't know that that's him unless you told me.

18 Q To come in and testify about the Intoxilyzer 5,000,
19 do you need to speak to Mr. Kozak?

20 A No. I generally make it a point not to speak with
21 the defendant in most cases. I mean there are cases I do. I
22 mean every case is different. But normally my procedure is I
23 do not speak with the defendant unless I have some specific
24 reason.

25 Q Have you had occasion to review the police reports?

1 A Yes.

2 Q Mr. Swope, what are the three requirements to get a
3 reading on the Intoxilyzer 5,000?

4 A Well, the requirements are time, pressure, and slope.
5 Those are the three things that you need to, so-called, get an
6 accurate reading.

7 Q And what is the time requirement?

8 A The time requirement is a minimum of six seconds.
9 Now although the Intoxilyzer would give a reading less than
10 that, to have a valid reading it would have to be at least six
11 seconds.

12 Q And what is the pressure requirement?

13 A There is a pressure requirement that the Intoxilyzer
14 actually has three different settings. I haven't seen the
15 maintenance document, but most everybody uses four pounds per
16 square inch. So you must have enough pressure, breath
17 pressure, to open the hose. In other word, there is a little
18 trip switch in there, kind of like blowing up a balloon. Once
19 you start to blow in it, it's easier to blow. It's the same
20 type of theory.

21 Q And what is the third, the slope requirement?

22 A The slope requirement is that the machine has to see,
23 so to speak, a rise in a breath reading and a leveling off of
24 the breath reading. If the reading is too fast and goes to
25 high in too short of time, the machine will flag the reading,

1 saying that it has mouth alcohol or some type of interference
2 that affected the reading or that the Intoxilyzers sees, so to
3 speak, inside the reading.

4 Q Is that a very important component in the machine?

5 A Sure, absolutely.

6 Q Can you tell the jury basically -- since we're all
7 not scientists -- how basically this machine works. When you
8 blow into it, how do you get a reading? Can you tell the
9 jury how that works.

10 A The machine works very simply. What's proportional
11 in one's blood is proportional in your breath, meaning that
12 the machine is actually converting what you place in the
13 Intoxilyzer, which is a breath reading, into blood even though
14 the card says that it's a breath alcohol concentration. What
15 the machine does, in other words, to give you an easy example,
16 really what it does is the machine sucks in room air like
17 we're breathing now, and, assuming the air is clean, which it
18 is, the machine will read that air as .000. It will then take
19 a sample. The person will blow into the machine, and the
20 breath will end up in a sample chamber. And there's an
21 infrared light that goes through a filter. And really to give
22 you an easy analogy of what it would be is when you drive your
23 car at night, your headlights see a certain distance down the
24 road and usually you can see clearly for 150 or 200 feet,
25 depending on what kind of situation you have. But assuming

1 your lights can see down the road, if you could measure the
2 amount of light and how far that light went, you'd get a
3 reading, whatever that might be, in a numerical value.

4 Now when you're using your same car, maybe you're
5 coming back home, now there's fog or rain or something, well
6 your headlights don't see as far because the fog is cutting
7 out some of your light. If you could measure the difference
8 between when it was nice outside and when it was foggy
9 outside, you would get two different numbers. And that's
10 exactly what the Intoxilyzer does. It takes clean air, gives
11 the zero reading, it then references itself with whatever goes
12 in the Intoxilyzer, which is ethanol or alcohol. It then
13 gives a reading between the two. And that's really how it
14 works in a nutshell.

15 Q You said you were familiar with the theory behind
16 absorption and elimination of alcohol released into the human
17 body, is that correct?

18 A Yes.

19 Q In Florida, when someone blows into the machine, do
20 we want a deep lung air sample?

21 A Yes.

22 Q Why do we want a deep lung air sample?

23 A The deeper the sample, the closer you'll get to the
24 true value.

25 Q And what is it, the deep lung air sample?

1 A Deep lung is, in other words, the deepest air in your
2 lungs is the closest to your blood. In other words, if you
3 could collapse a lung, so to speak, if you could blow
4 everything you had, you would be almost close to what you had
5 in your blood at the time. Because after the alcohol gets
6 into your system, it ends up going into your blood stream and
7 it goes through your lungs. And that's part of what gives you
8 a breath reading, actually.

9 Q Why is it important to get a deep lung air sample?

10 A Well because you want to get a sample as close as you
11 can to the true reading in someone's system at a particular
12 time, and that's the easiest way to do it.

13 Q Why do we want to get a reading closest to the blood?
14 Why do we want that?

15 A Because the machine is a conversion unit. Really all
16 it does is convert. It takes a breath sample, it converts it
17 actually to a blood alcohol sample, but it prints back out in
18 a breath alcohol sample in grams. So you're going from liter
19 to grams and grams to liters, and that's really all you're
20 doing.

21 Q And why is the machine doing that? Does alcohol in
22 your breath impair you?

23 A No. It's not what's in your breath that impairs you.
24 It's what's in your blood stream. You can use the same
25 analogy. If I took alcohol right now and I took it in my

1 mouth, but didn't swallow it, I just kind of swished it around
2 and spit it out, I'd have an alcohol odor in my breath. But I
3 wouldn't be impaired because it's not in my blood stream.
4 It's not truly in my system. It's just in my mouth.

5 Q What is that process that it goes through when you
6 take a drink? Basically what is the process that it goes
7 through while you're absorbing to get to the lungs? What is
8 that called?

9 A Actually you go through absorption and then you go
10 through elimination. In other words, you need a peak, and
11 that could take anywhere from 30 to 114 minutes to get fully
12 into your system. You'll absorb all -- the alcohol will be
13 absorbed into your system and then it will begin to be
14 eliminated.

15 Q What does that mean when you absorb? Does that mean
16 you're going up?

17 A Well as your absorbing alcohol, your blood alcohol
18 level is rising. In other words, if you have four or five
19 beers, it's going to take a while to rise because the beer has
20 to get into your system. It has to go through your bodily
21 functions before it actually gets totally into your blood
22 stream. And it's going to get higher and higher. Of course
23 the more beers you drink, the higher you're going to get. If
24 you have one beer, it will just reach a small peak and come
25 back down. So that's the way it works.

1 Q So when you take a drink and you swallow it, where
2 does it go first to get to your lungs?

3 A It goes to your stomach. Obviously it's going to sit
4 there. If there's some food, it will take a while to get out
5 of your stomach. It then goes to your portal vein and it ends
6 up in your intestines. It goes into your blood stream. It
7 effects the brain, vision, judgment, and those kinds of things
8 depending on how much you have.

9 Q So when you first take a drink, there's a process
10 that it has to go through before it gets to your brain to
11 impair you?

12 A Sure.

13 Q In other words, you go up and that's where it impairs
14 you, effects your brain, and then you end up coming down?

15 A That's correct.

16 Q When someone is blowing into the machine, do you know
17 whether they're going up or coming down at any time?

18 A No. You don't know, not without other facts, no.

19 Q You talked about the time of absorption to
20 elimination, a certain amount of minutes. Can you explain
21 that and is that after your last drink? How does that work?

22 A In other words, whatever time you start drinking, it
23 will take a period of time for the alcohol to get into your
24 system. Again, that's 30 to 114 minutes. Now let's say you
25 had one drink, it could take as much as -- although that would

1 be sort of unusual -- as much of 114 minutes for that drink to
2 be fully involved into your system, and it's actually in your
3 blood stream and it has reached the highest level that it's
4 going to.

5 If you drink continually, in other words, if you have
6 a drink and then you wait like a half hour and you have a
7 second drink and you keep doing that, your system cannot
8 eliminate alcohol that quick. In other words, your system
9 will actually eliminate about an ounce or alcohol per hour,
10 remembering that in a 12 ounce beer there's one ounce of
11 alcohol. So normally your system will eliminate a bottle of
12 beer not quite every hour. So if you drink one beer an hour,
13 after the time it gets into your system, it will probably
14 pretty much stay down, in other words, your alcohol level.
15 But if you surpass that, you're going to start building.
16 You're going to become more and more and more impaired
17 depending on what you have consumed.

18 Q Mr. Swope, you have the breath card in front of you
19 there, right?

20 A Right.

21 Q What time is first breath on that card?

22 A It's 2303, which is 11:03 p.m.

23 Q And what time is the second breath on that card?

24 A 11:06 p.m.

25 Q Mr. Swope, you've had a chance to review the police

1 reports. The time of the top in this case is 10:01. Do
2 recall reading that in the police reports?

3 A Yes.

4 Q Mr. Swope, are you able to tell us, is that breath
5 alcohol content on that breath card his breath alcohol content
6 at the time of the stop, at the time of driving? Do you know?

7 A No. Well it's not obviously the time of driving
8 because the time of the stop is in the police report.

9 Q Do you know what his breath alcohol level would have
10 been at the time of driving?

11 A No.

12 Q Based on the information that you have, this breath
13 card, and the police reports?

14 A No.

15 Q You talked about this machine does a conversion from
16 a breath to a blood, right?

17 A Right.

18 Q How does the machine do that conversion?

19 A Well it just simply does it by, again, taking--again,
20 as I indicated, it's proportional to what exists in one's
21 blood and it's also proportional to what's in one's breath.
22 And it does it by what's known as an average ratio of 2,100
23 to 1, meaning 2,100 liters of air is equal to 1 cc of blood.
24 And that's what we work with.

25 Q Is that a number fixed into this Intoxilyzer 5,000?

1 A Yes, it is.

2 Q Is that number called a partition ratio?

3 A Correct.

4 Q Is that number fixed in human beings?

5 A No.

6 Q Does that number fluctuate in human beings who have
7 maybe been drinking?

8 A Yes.

9 Q Does it fluctuate in people that haven't been
10 drinking?

11 A Some, but not as much.

12 Q Do you know what Mr. Kozak's partition ration was?

13 A No.

14 Q Do you know whether if it was equal to that machine
15 or was higher than 2,100 to 1 or lower than 2,100 to 1?

16 A I have no idea.

17 Q In other words, people's numbers goes higher or lower
18 than that 2,100 to 1?

19 A Yes, sir, correct.

20 Q So that's just a fixed average that they took and
21 put into this machine?

22 A It's an average that's been used for probably about
23 30 years and maybe longer than that. And that average was
24 used based on studies done on groups of individuals, but those
25 individuals had not consumed alcohol.

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1 Q And how did they come up with that number, do you
2 know?

3 A Well they came up with that through studies and
4 through doing blood and breath correlations, but again those
5 were mainly done on studies. The 2,100 had come up from
6 people who were non-drinkers, and later studies indicated a
7 fluctuation in the ratio because of people drinking, depending
8 on how much they had to drink.

9 Q So this is a fixed number for doing this conversion
10 because it's the alcohol in your blood, not your breath, that
11 impairs you?

12 A That's correct. But also because the machine was not
13 really designed for a numerical purpose, but that's another
14 story.

15 Q What are the ranges in human beings that this goes to
16 on this number as far as the low end and the high end?

17 A Well individuals who are consuming, meaning
18 individuals that are drinking alcohol, their ratios go from a
19 low of 1,300 to a high of 2,600. And again, that's an
20 average. I mean, that's where most of them fall. Some people
21 fall lower while some people fall higher, but the majority of
22 people fall in that range.

23 Q Is there any way to know whether he was higher or
24 lower than 2,100 to 1 on the machine?

25 A No, I wouldn't know.