

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CRIMINAL DIVISION

CASE 01-2401 TC A02

STATE OF FLORIDA,

vs.

DONALD TAYLOR,

Defendant.

informed

PRESIDING: HONORABLE CORY CIKLIN

APPEARANCES:

ON BEHALF OF THE STATE:

BARRY KRISCHER, ESQ.
STATE ATTORNEY
401 NORTH DIXIE HIGHWAY
WEST PALM BEACH, FL 33401
BY: THOMAS SCHNIEDERS, ESQ.
ASSISTANT STATE ATTORNEY

ON BEHALF OF THE DEFENDANT:

CAREY HAUGHWOUT, ESQ.
PUBLIC DEFENDER
421 3RD STREET
WEST PALM BEACH, FL 33401
BY: SHELDON GRAVES, ESQ.
ASSISTANT PUBLIC DEFENDNER

July 25, 2001
Palm Beach County Courthouse
205 North Dixie Highway
West Palm Beach, FL 33401

Carla Copeland
Official Court Tanscriptionist

I N D E X

WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS
Rick Swope	3	19	40	43

Carla Copeland
Official Court Tanscriptionist

1 BE IT REMEMBERED, that the following
 2 proceedings were had in the above-entitled cause,
 3 before the HONORABLE CORY CIKLIN, one of the judges
 4 of the aforesaid Court, at the Palm Beach County
 5 Courthouse, located in the city of West Palm Beach,
 6 State of Florida, on the 25th day of July, 2001, with
 7 appearances as hereinbefore noted, to wit:

8 * * * * *

9 CLERK: Do you solemnly swear or affirm the
 10 testimony you are about to give should be the truth,
 11 the whole truth, and nothing but the truth?

12 MR. SWOPE: I do.

13 THE COURT: Okay, good afternoon sir.

14 MR. SWOPE: Good afternoon.

15 THE COURT: All right you may inquire Mr.
 16 Graves.

17 DIRECT EXAMINATION

18 MR. GRAVES: Ah, would you please state your
 19 full name for the record please.

20 MR. SWOPE: Ah, my name is Rick Swope. S-W-O-P-
 21 E.

22 MR. GRAVES: And what is your occupation?

23 MR. SWOPE: I do primarily accident
 24 reconstruction, that's, ah, majority of my business.
 25 I also do some consulting, ah, and research on

1 breath testing devices. Um, there's currently, um,
2 five different types of, um, machines that we're
3 working with. Ah, I work with a group of
4 individuals who, ah, perform inspections and do
5 research on machines. I'm also working with Florida
6 International University, ah, they're doing some
7 experimentations on the intoxilizer series and my
8 job is basically to make sure the machine is
9 maintained and those kinds of things.

10 MR. GRAVES: Mr. Swope are you, ah, charging for
11 your services today?

12 MR. SWOPE: Yes I am.

13 MR. GRAVES: Will that effect your testimony in
14 any way?

15 MR. SWOPE: No.

16 MR. GRAVES: Ah, could you quickly tell us a
17 little bit about your educational background.

18 MR. SWOPE: Um, I was a police officer for
19 fifteen years. The last six years I was with the
20 Broward County Sheriff's Office in Ft. Lauderdale.
21 Um, for those six years I was the administrative
22 coordinator of the traffic homicide and DUI unit.
23 Ah, my job was basically do the budgeting, make sure
24 that the machines and the breath testing devices,
25 um, were kept up to standards, those kinds of

1 things. Ah, I have a bachelor's, ah, degree in
2 criminal justice from St. Thomas University. I have
3 a master's of science degree in technology and
4 engineering from the University of Miami. I also
5 have a permit to teach from the, ah, Criminal
6 Justice Standards of Training Commission in the
7 State of Florida. Ah, I also have a certificate to
8 teach, ah, for the National Highway Traffic Safety
9 Administration. I have written several articles on
10 breath testing devices. Um, I've done research on
11 it, ah, I have- and I've taught over four thousand
12 police officers in either field sobriety exercises
13 or breath testing.

14 MR. GRAVES: My next question is have you ever
15 taught before?

16 MR. SWOPE: Yes I have, I've taught in Florida,
17 ah, for approximately ten years. Ah, I taught
18 police officers from, ah, all fifty states. Ah,
19 I've also taught and done seminars at, ah, Harvard
20 Law School, Emory University, and I've also done
21 seminars for different types of educational
22 facilities, lawmen education, things like that
23 around the country.

24 MR. GRAVES: Do you p- what professional
25 organizations do you belong to if any?

1 MR. SWOPE: Um, well primarily I belong to the,
2 ah, ah, International Association of Management of
3 Technologists, which is basically an engineering
4 type group. I belong to the Society of Automotive
5 Engineers and, ah, a couple of different types of
6 reconstructive organizations and just some other
7 personal ones that I belong to that I, um, either
8 donate to or work with.

9 MR. GRAVES: Do you t- attend seminars as part
10 of, um, your training?

11 MR. SWOPE: Yes.

12 MR. GRAVES: How often do you attend?

13 MR. SWOPE: I generally . . .

14 MR. GRAVES: Do you know?

15 MR. SWOPE: I generally attend about two
16 seminars a year, ah, it depends on the year but, ah,
17 I usually attend two and I teach anywhere from four
18 to six depending on the year. Um, I just taught one
19 last week actually.

20 MR. GRAVES: Sir have you ever spoken at any of
21 these seminars?

22 MR. SWOPE: Yes.

23 MR. GRAVES: Do you recall what you have spoken
24 about at some of the seminars?

25 MR. SWOPE: Well normally, ah, I speak on the

1 breathalyzer. Ah, at a lot of different seminars it
2 depends on which one it is but I normally speak
3 about the breathalyzer, um, I've also, ah, taught,
4 um, people from around the country on breath
5 testing, actually how the machine works, how to take
6 it apart, what effects it, those kinds of things.
7 Um, I've taught for the state many times and again
8 that's been on either the breath testing device or
9 when it was certified and brought into the state and
10 I think that was in '84, '85, somewhere in that ball
11 park. And, ah, that's generally what I do when I,
12 when I teach.

13 MR. GRAVES: Mr. Swope, um, what articles if any
14 have you ever published?

15 MR. SWOPE: Um, I've, ah, published articles
16 with the Mishi, ah, Company and those are basically
17 in, in books. Ah, I wrote a couple chapters in, in
18 accident reconstruction books. I've, ah, written I
19 believe five articles myself two, I think two of
20 those dealt specifically with the, ah, intoxilyzer
21 and then some of the, ah, articles have been
22 published by other people. Ah, basically I'm part
23 of a research group and our studies go into them and
24 they actually publish the actual article.

25 MR. GRAVES: Have you ever testified as a

1 witness in court before?

2 MR. SWOPE: Yes.

3 MR. GRAVES: I mean as an expert in court
4 before?

5 MR. SWOPE: Yes sir I have.

6 MR. GRAVES: And, um, in what areas have you
7 testified as an expert?

8 MR. SWOPE: Well as indicated primarily accident
9 reconstruction from an engineering standpoint but
10 I've testified, um, hundreds of times with the
11 breathalyzer, ah, or intoxilyzer type machine and
12 also on field sobriety exercises.

13 MR. GRAVES: Now when you testified, did you
14 testify only for the defense?

15 MR. SWOPE: No I've, I've done oh probably, I
16 still have two cases with the Broward State
17 Attorney's Office which are current. But primarily
18 now I do testify for the defense because the state
19 has their own people that, that work for them that
20 are government employees and, and basically people
21 like myself occasionally get called by the defense
22 to testify if, if we can help them.

23 MR. GRAVES: Have you ever testified for the
24 state?

25 MR. SWOPE: Sure.

1 MR. GRAVES: Okay. Now are you- you are
2 familiar with the intoxilyzer 5000 correct?

3 MR. SWOPE: Yes sir.

4 MR. GRAVES: Are you int- familiar with
5 intoxilyzer 5000R?

6 MR. SWOPE: Yes it's roughly the same machine.
7 The State of Florida just kind of put a designation
8 on it but it's the same machine.

9 MR. GRAVES: Do you know how many times you've
10 testified in court regarding these machines?

11 MR. SWOPE: Um, probably over, close to six
12 hundred by now.

13 MR. GRAVES: Do you recall what details you
14 testified about regarding those machines?

15 MR. SWOPE: Well just basically the operation,
16 what works on them, what possibly may fail on them.
17 Um, I've testified in about how the machine is
18 checked for calibration, ah, how the machine can be
19 calibrated. Different types of models. What can
20 effect the machine under certain circumstances, um,
21 basically some things on research such as radio
22 frequency interference those types of things.

23 MR. GRAVES: Do you have any, yourself do you
24 have knowledge on how certain chemicals might effect
25 the intoxilyzer 5000?

1 MR. SWOPE: Yes.

2 MR. GRAVES: And how did you, what research did
3 you do regarding that?

4 MR. SWOPE: Well initially, um, I was taught by
5 the State of Florida, um, and I'm kind of referring
6 this to the intoxilyzer there, I was taught earlier
7 on other types of devices but, um, the State of
8 Florida initially when the machine came into the
9 state, ah, ah, myself and others who, that were
10 initially certified were taught about acetone, um,
11 and other types of chemicals which could effect the
12 reading, ah, of the machine and, and how to look for
13 that and what it may or may not do depending on the
14 type of interferent. Um, that was initially when
15 the machine was brought in. There was then
16 somewhere in 1985 there were, um, what's known as
17 correlation studies meaning that the machine was
18 actually in use but actually wasn't in use as a
19 full-time machine. There were, I think at that time
20 there was five different machines in use in the
21 State of Florida. So the state wanted to narrow it
22 down and they actually narrowed it down to that
23 machine and I assisted in some studies that were
24 done in Broward, ah, County, ah, as far as those are
25 known as correlation studies where, ah, blood and

1 breath was taken simultaneously and analyzed and
2 chemicals, ah, were put into the machine, acetone
3 those types of things to show how it could be
4 effected or how it would effect the reading if it
5 picked it up or if it failed to pick it up. And
6 that was initially where I got it and then I also
7 had some training with the factory, I went to the
8 CMI factory. At that time they were in Colorado and
9 I think I spent two and a half days out there. And
10 again that kind of covered the same things. That's
11 initially where I got into it.

12 MR. GRAVES: I see. Judge at this time I'd ask
13 the Court to declare Mr. Swope an expert in the
14 intoxilyzer 5000.

15 THE COURT: Yea. I really don't think we need
16 to do that, you can just proceed though, you know,
17 with the, asking him questions.

18 MR. GRAVES: Mr. Swope, ah, have you ever done
19 any experiments on how certain chemicals effect the
20 intoxilyzer 5000 and what the experiments are that
21 you've done?

22 MR. SWOPE: Yes I have.

23 MR. GRAVES: Okay what experiments have you done
24 and . . .

25 MR. SWOPE: Um . . .

1 MR. GRAVES: using what compounds?

2 MR. SWOPE: Well, ah, experiments are done, ah,
3 primarily several different ways and, and primarily
4 all the experiments are done through what's known as
5 a simulator. And the reason that a simulator is
6 used is because you don't want to ask people to
7 start taking chemicals that could kill them so you
8 have to, you have to, ah, use a simulator which is
9 what the, ah, state uses actually to check the
10 calibration of the machine. And what you do is you
11 mix a solution of alcohol and it's in a sealed jar
12 which is heated, um, you then introduce chemicals
13 into that liquid substance and the chemicals rise
14 into the vapor and, ah, actually are placed into the
15 machine. That's kind of in a lay term on how you do
16 that but, the chemicals that, ah, normally I've been
17 involved in are, are paint chemicals such as
18 toluene, acahedolide. Those are chemicals where
19 people work with paints, ah, paint thinners, people
20 who work in body shops, ah, people who work in the
21 medical fields, um, those types of things. We also
22 check, ah, many additional chemicals with people,
23 ah, tell us that they had in other words they, they
24 get arrested and say that I was siphoning gas from
25 my neighbor's car and then we, we test things like

1 gasoline and those types of things, chemicals. So
2 we test that and we, and we want to find out if the
3 machine actually can pick that chemical up. If it
4 does pick it up will it trigger the interferent and
5 if it doesn't pick it up will it effect the actual
6 reading and the purpose of doing that is because
7 there are a lot of, ah, chemicals made up you're
8 aware of, of alcohol products which is in certain
9 chemicals and we're trying to find out if the
10 machine can discern between the two.

11 MR. GRAVES: In, in, in doing some of these
12 experiments, um, what were some of your findings on
13 how the intoxilyzer 5000 is, is effected by some of
14 these chemicals?

15 MR. SWOPE: Well as I indicated certain
16 chemicals the machine does pick up. It does pick
17 up, ah, ah, acetone, people who are diabetic. If
18 it's in a, a large amount, in other words if
19 somebody's had, has a diabetic attack so to speak
20 and, and their a, their acetone levels are rising in
21 their bloodstream and breath, and the machine
22 normally will pick that up. Ah, but there are
23 chemicals such as paint thinners and those types of
24 things which the machine will not pick up, ah,
25 because they're basically on the same wavelength as

1 alcohol and, ah, meaning that the machine looks for
2 a certain wavelength of chemical and if it, to the
3 machine many chemicals appear the same. So if the
4 machine can't discern what that chemical is, it, it
5 may add it to the reading. Not it only happens in
6 certain cases but it can, it can actually add to the
7 actual alcohol reading.

8 MR. GRAVES: So the intoxilyzer 5000 can not
9 differentiate between the alcohol in certain types
10 of chemicals?

11 MR. SCHNIEDERS: Objection leading.

12 THE COURT: Sustained.

13 MR. GRAVES: The effect of these chemicals on
14 the intoxilyzer 5000, um, what, wher- how are they
15 different from alcohol or are they different?

16 MR. SWOPE: Well the chemical itself is
17 different but it has alcohol in, um, it would be I
18 guess maybe to give you an easy example would be
19 that if someone takes a drink of beer and let's say
20 they spit it out on the ground and then they blow
21 into the machine, obviously the machine will give a
22 reading. If they take a bunch of mouthwash, which,
23 ah, mouthwashes such as Listerine contain about
24 forty-two percent alcohol. If they take the
25 Listerine in their mouth and rinse it out and then

1 spit and blow into the machine, the machine will
2 also show positive but the machine doesn't know the
3 difference between actual beer or Listerine. It
4 just knows that it picks up alcohol, and the machine
5 does what it's suppose to do, its just not able to
6 say yes I know this was Listerine and, or, or Scope,
7 and I know that this was beer. It's not able to do
8 that, but it does pick up what it's suppose to. It
9 just doesn't know what form it's in.

10 MR. GRAVES: So it can't tell the difference?

11 MR. SWOPE: Right. Correct. It can't tell the
12 difference.

13 MR. GRAVES: Have you ever heard of a compound
14 called diethyl benzene?

15 MR. SWOPE: Yes.

16 MR. GRAVES: Do you know if that has any effect
17 on the intoxilyzer 5000 machine?

18 MR. SWOPE: It can because it does, again it's
19 on the same wavelength of an ethanol substance, it's
20 near that wavelength and therefore it could be
21 interpreted as alcohol to the machine.

22 MR. GRAVES: What about ethyl benzene, would
23 that have any effect?

24 MR. SWOPE: Yes and that again that's another
25 chemical that, ah, that could be, ah, located by the

1 machine as an ethyl compound, ethyl actually by
2 itself means alcohol, so . . .

3 MR. GRAVES: Right.

4 MR. SWOPE: it actually has alcohol in the
5 title.

6 MR. GRAVES: What about trimethyl benzene, would
7 that have any effect on, ah, intoxilyzer 5000?

8 MR. SWOPE: Yes again it could, again that's
9 another alcoholic subject, although, although that's
10 methyl alcohol which again the machine detects
11 alcohol but can't tell you the difference between
12 methyl or ethyl. And methyl alcohol is something
13 that people use to make like moonshiners and things
14 like that, that was normally methyl alcohol.

15 MR. GRAVES: Do- if you know, do you know the
16 longer a person is exposed to those three chemicals
17 would have more of an effect on the intoxilyzer
18 5000, do you know?

19 MR. SWOPE: Well, if, if pe . . .

20 MR. SCHNIEDERS: Judge I'm gonna object . . .

21 MR. SWOPE: Sorry.

22 MR. SCHNIEDERS: to that. That's, ah, he's not
23 a medical doctor.

24 THE COURT: Do you- can you answer that
25 question, do you know, ah, other than what you've

1 read in scientific literature do you know yourself
2 from your own studies about that?

3 MR. SWOPE: No.

4 THE COURT: Okay. I'll sustain the objection.

5 MR. GRAVES: Okay. In your experience is, is
6 exposure to these chemicals something that law
7 enforcement counts for when they give these tests,
8 these breath tests with the intoxilyzer 5000?

9 MR. SWOPE: No they don't.

10 MR. GRAVES: Do you know why they don't do that?

11 MR. SWOPE: Well . . .

12 MR. SCHNIEDERS: Judge I'm gonna object he's not
13 law enforcement anymore he's, are you testifying as
14 today?

15 THE COURT: Well, but yea, but . . .

16 MR. GRAVES: He was a police officer for
17 seventeen years.

18 THE COURT: but he was I'll, I'll overrule the
19 objection.

20 MR. SCHNIEDERS: Okay.

21 MR. SWOPE: Well the machine technically doesn't
22 have the ability, this series of machine doesn't
23 have the ability to flag the officer so to speak
24 and, and tell the officer hey there's some kind of
25 chemical in there, ah, a chemical that's common, um,

1 again paint chemicals and those types of things with .
2 ethanol, or ethyl in them are common substances, so
3 the officer wouldn't know generally.

4 MR. GRAVES: In your opinion is the intoxilyzer
5 5000, is it a good machine, is it reliable in your
6 opinion?

7 MR. SWOPE: It's a good machine. I think it
8 does a lot of things good. It's not as reliable as
9 far as scientific reliable goes, but it does pick
10 up, ah, alcohol and ethanol in most cases. But as
11 far as reliability, as far a, an exact numerical
12 reading no.

13 MR. GRAVES: And the reason for the
14 unreliability is what again?

15 MR. SWOPE: Well because again, ah, there are a
16 lot of whether it be a chemical or whether it be
17 radio frequency, whatever it is, the intoxilyzer,
18 there's a lot of things it does not filter out and
19 therefore it would not trigger the operator or
20 whoever is performing the function on the machine
21 that, that something may be amiss.

22 MR. GRAVES: Do you know why law enforcement
23 continues to use that particular machine in Florida?

24 MR. SCHNIEDERS: Same objection Judge, he's not
25 law enforcement.

1

2 THE COURT: I'll sustain that objection.

3 MR. GRAVES: Okay. No further questions.

4 THE COURT: Okay. Cross.

5 MR. SWOPE: Thank you sir.

6

CROSS EXAMINATION

7 MR. SCHNIEDERS: Good afternoon Mr. Swope.

8 MR. SWOPE: Good afternoon.

9 MR. SCHNIEDERS: Give me just one second I'm
10 getting a little organized here. I just want to
11 clarify a few things. Your expertise in, is in the
12 intoxilyzer 5000?

13 MR. SWOPE: Yes.

14 MR. SCHNIEDERS: Is that correct?

15 MR. SWOPE: Correct.

16 MR. SCHNIEDERS: Okay, and you obtained your
17 expertise basically because you've used the
18 instrument for a long period of time, correct?

19 MR. SWOPE: That's correct. That's one of the
20 reasons yes.

21 MR. SCHNIEDERS: All right. Is it, can I
22 characterize this instrument as an instrument, not a
23 machine?

24 MR. SWOPE: No, no actually it's technically
25 engineering wise it's a machine.

1 MR. SCHNIEDERS: It's a machine?

2 MR. SWOPE: Yes.

3 MR. SCHNIEDERS: It is an instrument though as
4 well?

5 MR. SWOPE: Well the parts, some of the parts
6 inside make up an instrument but technically,
7 engineering wise it's considered a machine.

8 MR. SCHNIEDERS: Okay. Previously you worked
9 for the Broward Sheriff's Office right?

10 MR. SWOPE: Yes sir.

11 MR. SCHNIEDERS: How many years?

12 MR. SWOPE: Um, six.

13 MR. SCHNIEDERS: And in those six years how many
14 cases did you work, and you worked for the state
15 correct?

16 MR. SWOPE: That's correct.

17 MR. SCHNIEDERS: Okay and you were testifying on
18 behalf of like where I am now, the prosecutors
19 correct?

20 MR. SWOPE: Yes when I was called yes.

21 MR. SCHNIEDERS: So you were a cop testifying
22 concerning the breathalyzer correct?

23 MR. SWOPE: Yes well from the time when it came
24 into effect that would be correct.

25 MR. SCHNIEDERS: Okay well when it came into

1 effect . . .

2 MR. SWOPE: Yes sir.

3 MR. SCHNIEDERS: you were testing about the
4 breathalyzer?

5 MR. SWOPE: Well we had different machines
6 before that but that would be correct.

7 MR. SCHNIEDERS: And you would testify that the
8 machine is accurate correct?

9 MR. SWOPE: Sure.

10 MR. SCHNIEDERS: On behalf of the state?

11 MR. SWOPE: Sure.

12 MR. SCHNIEDERS: Okay. And that instrument is
13 used to put people in jail for DUI correct?

14 MR. SWOPE: It is yes, correct. That's correct.

15 MR. SCHNIEDERS: And you no longer work for the
16 Broward Sheriff's Office?

17 MR. SWOPE: No.

18 MR. SCHNIEDERS: Okay and you're out on your own
19 now correct?

20 MR. SWOPE: I left in 1990 correct.

21 MR. SCHNIEDERS: And you have your own private
22 firm?

23 MR. SWOPE: Yes sir.

24 MR. SCHNIEDERS: And now what's fair to
25 characterize is your expertise is mostly accident

1 reconstruction?

2 MR. SWOPE: That's most of it yes sir.

3 MR. SCHNIEDERS: How much of that?

4 MR. SWOPE: Approximately about ninety percent
5 of my time and business is devoted to accident
6 reconstruction. The other ten percent goes into
7 breath testing and teaching, those kinds of things.

8 MR. SCHNIEDERS: So about ten percent of the
9 time?

10 MR. SWOPE: That would be correct yes sir.

11 MR. SCHNIEDERS: Okay. You have to enlighten me
12 here ju- because I want to know, your degree, it's
13 master's sci- it's master's in science and
14 management of technology?

15 MR. SWOPE: That's the official program correct.
16 It's a dual degree in, ah, in actually, ah,
17 industrial engineering and management.

18 MR. SCHNIEDERS: Okay, what I'm trying to find
19 out is exactly what is that. Is that, are you
20 primarily dealing with systems and that type of
21 thing? Do you understand what I mean by that?

22 MR. SWOPE: Oh, primarily mostly it's actually
23 it's statistics, in other words it's mostly
24 mathematics and mathematical analysis and those
25 kinds of things.

1 MR. SCHNIEDERS: Okay can you give the jury an
2 example of, for instance what your degree, I mean
3 can you give us just an example of something you
4 would have been doing to get that degree?

5 MR. SWOPE: Well one of the classes which a,
6 which was a statistical analysis class, um, we were
7 able to perform basically whatever function we
8 wanted on, on this particular course and, ah, mine
9 was in mathematics and mine was to present, ah, a
10 corporation on how to, ah, prepare something
11 scientifically, in other words, um, I used, ah,
12 accident reconstruction, I used a vehicle actually,
13 as to figure out the dynamics of the vehicle,
14 mathematically how the company produces the
15 vehicles, um, what could be a mathematically
16 incorrect way of let's say to produce a car, um, how
17 the systems and the engineerings are produced, how
18 the computers are produced on the car, um, most
19 people aren't aware I'll tell you that most cars
20 have computer systems in that the company can
21 actually download, um, which people don't know, and
22 obtain information from your automobile about your
23 driving habits. Most people don't realize that and
24 that was one of the papers.

25 MR. SCHNIEDERS: My question to you sir is that

1 your degree then isn't a specific, you said
2 mathematics but it's not a specific science degree,
3 are you an expert as far as being a chemist?

4 MR. SWOPE: Oh no sir I'm not a chemist or a
5 toxicologist no that is not my field.

6 MR. SCHNIEDERS: Okay and a toxicologist deals,
7 that's a person who deals with poisons and that type
8 of thing correct?

9 MR. SWOPE: They deal with fluids yes.

10 MR. SCHNIEDERS: Fluids?

11 MR. SWOPE: Yes.

12 MR. SCHNIEDERS: Including poisons?

13 MR. SWOPE: Sure.

14 MR. SCHNIEDERS: I mean 'cause it's possible
15 that whatever the defendant is claiming that he
16 inhaled could be toxic correct?

17 MR. SWOPE: Sure. Absolutely.

18 MR. SCHNIEDERS: And you're not testifying here
19 today that you're a toxicologist correct?

20 MR. SWOPE: No I am certainly not trying to say
21 that no.

22 MR. SCHNIEDERS: Okay. Let's talk about the
23 articles and you've written several articles
24 regarding DUI and the intoxilyzer right?

25 MR. SWOPE: Yes.

1 MR. SCHNIEDERS: And would it be fair to say the
2 majority of those are dealing with the, the Journal
3 of DUI, Law and Science Journal?

4 MR. SWOPE: That's correct. Well that's where I
5 think four or five of them were published yes.

6 MR. SCHNIEDERS: Okay. Can you tell us have any
7 of those articles ever been under peer review?

8 MR. SWOPE: Yes all of them.

9 MR. SCHNIEDERS: Peer review?

10 MR. SWOPE: Yes.

11 MR. SCHNIEDERS: Can you tell us who, well let
12 me just put this, are you aware of Richard Essin?

13 MR. SWOPE: Yes.

14 MR. SCHNIEDERS: Is he on the Board of
15 Directors?

16 MR. SWOPE: He is, that's correct.

17 MR. SCHNIEDERS: Is Mr. Essin a criminal defense
18 lawyer in Miami-Dade County?

19 MR. SWOPE: Yes he is.

20 MR. SCHNIEDERS: And how many times have you
21 worked for his firm?

22 MR. SWOPE: Well over the past ten years I
23 probably, I'm just guessing I've probably looked at
24 maybe a hundred cases over the past ten years and
25 probably took maybe thirty, thirty-five of those

1 cases, something like that, that I thought I could
2 be of help, the other ones I couldn't. And I'm just
3 giving you ball park, it could be a few more it
4 could be a few less.

5 MR. SCHNIEDERS: So you consider that being
6 under peer review?

7 MR. SWOPE: No that wasn't the question.

8 MR. SCHNIEDERS: Well I'm asking now.

9 MR. SWOPE: No peer review would be by people,
10 members of the Board, not Mr. Essin. In other words
11 there are scientists that- scientific people on the
12 Board, Mary Marie is on the Board . . .

13 MR. SCHNIEDERS: Mm hm.

14 MR. SWOPE: I believe Dr. Jensen was at one- at
15 that time I don't know if he is now.

16 MR. SCHNIEDERS: I gotcha, I gotcha.

17 MR. SWOPE: There's a whole list.

18 MR. SCHNIEDERS: Okay. And you've actually
19 breath- you have actually tested a breathalyzer
20 instrument in, in his office correct?

21 MR. SWOPE: Oh sure. I've tested them in his
22 office as well as others yes.

23 MR. SCHNIEDERS: Okay. I want to ask you about
24 one of your articles. Did you publish an article in
25 May of 1998 same journal entitled "It's Okay to Lie

1 as Long as You're the State"?

2 MR. SWOPE: Yes that's correct.

3 MR. SCHNIEDERS: Do you remember test- that's
4 correct?

5 MR. SWOPE: Yes it is.

6 MR. SCHNIEDERS: Let's go into some of the
7 specifics you talked about. You mentioned radio
8 frequency interference.

9 MR. SWOPE: Yes.

10 MR. SCHNIEDERS: Are you an expert on
11 (unintelligible)? Well let me ask . . .

12 MR. SWOPE: No.

13 MR. SCHNIEDERS: this are you an expert on radio
14 spectrography, am I saying that correctly?

15 MR. SWOPE: Well no that's not really what we're
16 looking for with our find but no.

17 MR. SCHNIEDERS: No, I'm, those are two
18 different questions you're right I'm, let me, let me
19 rephrase. Are you an expert on ^{I intend} radio spectrography?

20 MR. SWOPE: No.

21 MR. SCHNIEDERS: Okay. And that is what we were
22 talking about as far as the intoxilyzer instrument,
23 when somebody breaths or blows into that instrument
24 there is a light correct that picks up what chemical
25 is going through?