

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

CERTIFIED COPY

STATE OF FLORIDA,)
)
Plaintiff,)
)
v.)
)
CARY GROFF,)
)
Defendant.)

CASE NO. 04-9960MM10A
JUDGE LAZARUS

Fort Lauderdale, Florida
November 2nd, 2006
10:45 a.m.

APPEARANCES:

MICHAEL J. SATZ, STATE ATTORNEY
By: MELISSA STEINBERG, ESQUIRE,
ASSISTANT STATE ATTORNEY,
Appearing on behalf of the Plaintiff.

MICHAEL J. SATZ, STATE ATTORNEY
By: CATHY BERKOWITZ, ESQUIRE,
ASSISTANT STATE ATTORNEY,
Appearing on behalf of the Plaintiff.

MICHAEL SHINE, ESQUIRE,
Appearing on behalf of the Defendant.

MICHAEL A. MERMER, ESQUIRE,
Appearing on behalf of the Deponent.

DEPOSITION
OF
JAY ZAGER

I N D E X

WITNESS

DIRECT

CROSS

JAY ZAGER

BY MS. STEINBERG

3

BY MR. SHINE

53

CERTIFIED QUESTIONS

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1 Deposition of JAY ZAGER, a witness of lawful age,
2 taken by the Plaintiff, for the purpose of discovery and
3 for the use as evidence in the above-entitled matter,
4 wherein STATE OF FLORIDA is the Plaintiff and CARY GROFF
5 is the Defendant, pending in the Circuit Court of the 17th
6 Judicial Circuit, in and for Broward County Florida,
7 pursuant to notice heretofore filed, before KERRY LYNN
8 LAMMIE, a Notary Public in and for the State of Florida at
9 Large, taken at Broward County State Attorney's Office,
10 201 Southeast 6th Street, Room 730, Fort Lauderdale,
11 County of Broward, State of Florida, on the 2nd day of
12 November, 2006, commencing at 10:45 o'clock p.m.

13 * * *

14 Thereupon:

15 JAY ZAGER

16 a witness of lawful age, being called as a witness by the
17 Defendant, having been first duly sworn, testified under
18 oath as follows:

19 DIRECT EXAMINATION

20 BY MS. STEINBERG:

21 Q. Would you please state your name for the record.

22 A. Jay Zager.

23 Q. And where are you currently employed?

24 A. I work for myself.

25 Q. And in what capacity do you work for yourself?

1 A. I work as a consultant.

2 Q. What kind of consultant?

3 A. A consultant on DUI related cases.

4 Q. Since when?

5 A. Since sometime after I retired from the Sheriff's
6 Office in 2003.

7 Q. Okay.

8 And do you have any other type of employment at this
9 time?

10 A. I worked from time to time as a private
11 investigator as well.

12 Q. For whom do you work for as a private
13 investigator?

14 A. I work for an individual by the name of Wakeem
15 Medina (phonetic).

16 Q. Could you please spell that for the record?

17 A. I have no idea how to spell Wakeem.

18 Q. And who is Wakeem Medina?

19 A. He owns a private investigative agency.

20 Q. What's the name of that agency?

21 A. International Detective Bureau.

22 Q. And how often do you work for him?

23 A. Infrequently, it's from time to time.

24 Q. When was the last time you worked for him?

25 A. Sometime in the last month.

1 Q. And what type of work did you do for him?

2 A. Investigative work.

3 Q. On what kind of cases?

4 A. All types of different cases, from civil cases to
5 criminal cases.

6 Q. Well this last month, which kind of case did you
7 work on?

8 A. A homicide case.

9 Q. Here in Broward County?

10 A. Yes.

11 Q. Okay.

12 And how much money do you earn from the International
13 Detective Bureau?

14 MR. MERMER: I think there's an issue with that
15 question, I really do. I was reading it this
16 morning. I was going over the statute, what you're
17 allowed to ask him. His percentage doesn't pertain to
18 this case.

19 MS. STEINBERG: I'm allowed to figure out where
20 he's earning income from and the percentages he's --

21 MR. MERMER: Percentage.

22 MS. STEINBERG: And his other type of income,
23 where he derives his income from.

24 MR. MERMER: You don't have any problem answering
25 that, do you?

1 THE WITNESS: Not really.

2 The question was how much have I made from them?

3 BY MS. STEINBERG:

4 Q. Yes.

5 A. On that particular case or just in general?

6 Q. In general, for the tax year of 2005. How much
7 money would you say that you earned from the International
8 Detective Bureau?

9 A. I don't know the exact figure offhand, but I
10 would say between 2- and \$5,000.

11 Q. Okay.

12 And you said that you're self-employed; is that
13 correct?

14 A. That is correct.

15 Q. Do you have a company that you've incorporated?

16 A. Yes.

17 Q. What's the name of that?

18 A. Jay Zager Forensics Inc., I believe is the actual
19 company, but I'd have to double check.

20 Q. And when was that company formed?

21 A. This year.

22 Q. Okay.

23 Is that 2006 or 2005?

24 A. This year is 2006.

25 Q. Okay.

1 So for 2005, did you earn any money as an independent
2 consultant on DUI cases?

3 A. I did.

4 Q. How much money did you earn?

5 MR. MERMER: You know, I'm going to object to
6 that question as to last year. I am going to give you
7 the statute on that.

8 MS. STEINBERG: Okay.

9 What would be the statute on that?

10 MR. MERMER: It's actually covered under the
11 civil rules, which the criminal rules are supposed to
12 follow. It says: "An approximation of the portion of
13 the expert's involvement as an expert witness, which
14 may be based on the number of hours, the percentage of
15 hours, and the percentage of earned income derived
16 when serving as an expert witness. However, the
17 expert shall not be required to disclose his or her
18 earnings as an expert witness or income derived from
19 other sources."

20 MS. STEINBERG: Okay.

21 You realize that I can impeach him with his tax
22 returns if I wanted to right now?

23 MR. MERMER: You could impeach him if you like.

24 MS. STEINBERG: All right.

25 So you're going to allow me to ask him a

1 question, how much of a percent of his income was
2 earned from testifying in DUI cases?

3 MR. MERMER: That's what the statute says.

4 BY MS. STEINBERG:

5 Q. What was your percent of income earned.

6 A. I'd have to guess. I've never actually
7 calculated, but the majority of it I would say was from
8 the DUI consulting business.

9 Q. And that would be testifying for the Defense or
10 the State?

11 A. For the Defense. I get called to depositions
12 like this from time to time that I get income off of.

13 Q. And when did you become involved the case of Cary
14 Groff?

15 A. I believe that was sometime this year.

16 Q. Okay.

17 And how are you being paid for this particular case?

18 A. I'm being paid \$1,000 for my involvement.

19 Q. And that's from start to finish?

20 A. That's correct.

21 Q. Okay.

22 And have you prepared any charts, graphs or any other
23 documentation regarding this case?

24 A. Correct -- I'm sorry.

25 Q. Have you?

1 A. Have I? I'm sorry.

2 Q. Yes.

3 A. I have not, no.

4 Q. Okay.

5 And have you ever met Mr. Groff?

6 A. No, I have not.

7 Q. Okay.

8 And who retained you?

9 A. I was retained by Mr. Shine's firm.

10 Q. Have you worked for Mr. Shine in the past?

11 A. I have.

12 Q. How many times in the past?

13 A. Maybe half a dozen cases or so.

14 Q. Similarly situated DUI cases?

15 A. I believe all of them are DUI cases.

16 Q. And has Mr. Shine ever represented you personally
17 for any matters?

18 A. No, not to my knowledge.

19 Q. Okay.

20 Now, did you sign a formal agreement with Mr. Shine to
21 represent the Defendant in this case or is this one of
22 your lease agreements?

23 A. No, I haven't signed any forms that I can recall
24 in this case.

25 Q. Okay.

1 And so again, you get paid \$1,000 whether you testify
2 in trial or not?

3 A. That's correct.

4 Q. Okay.

5 And have you already billed to work on this case?

6 A. I have.

7 Q. And have you already been paid to work on this
8 case?

9 A. Yes.

10 Q. And what documents did you review in preparing
11 for this case?

12 A. I reviewed the State's Discovery documents, which
13 include the PC and Alcohol Influence Report, breath test
14 cards, things of that nature.

15 Q. Have you had an opportunity to look at the
16 videotape in this case?

17 A. I have not.

18 Q. Don't you think it's important when you're
19 looking at a DUI case to review a videotape?

20 A. It is important, yes.

21 Q. Why didn't you do it in this case?

22 A. I haven't been provided it.

23 Q. Do you plan on reviewing the videotape before
24 testifying?

25 A. I imagine at some point I will.

1 MS. STEINBERG: And at that point, Mr. Shine,
2 when Mr. Zager reviews that videotape, we'll have to
3 redepose him. I just want you to be aware of that if
4 you're going to be testifying about that.

5 BY MS. STEINBERG:

6 Q. When you read the report in this case, what if
7 any conclusions did you come to?

8 A. Well, with regard to which portion of it?

9 Q. The Probable Cause Affidavit filled out by Deputy
10 Phillips?

11 A. I can just give you my general understanding of
12 it. My conclusion was a gentleman was stopped and he was
13 not -- he was started to give some field sobriety
14 exercises and then they were not completed because the
15 deputy said that he felt that he was a safety concern
16 or -- I'd have the look at the PC again.

17 Q. Would you like to look at the PC?

18 A. Sure. I was just going to quote what he said.

19 Q. The fact that he was falling down on the --

20 A. Yeah, extreme unsteadiness, no further exercises
21 were conducted.

22 Q. And if the videotape matches what's in that
23 report, do you have any reason to doubt that?

24 A. No.

25 Q. Okay.

1 And if the report says that the Defendant smelled of
2 alcohol, do you have any reason to doubt that?

3 A. No.

4 Q. Okay.

5 And did you read the report filled out by CSA Lisa
6 Figerra?

7 A. I did.

8 Q. And what about that report?

9 A. If I could review that one again because -- yeah,
10 she also states that he was unsteady while walking into
11 the BAT facility room for a breath test. Very slurred
12 speech, flushed face, bloodshot eyes, odor of alcohol.

13 Q. Okay.

14 And do you have any reason to doubt the validity of
15 that report filed out by CSA Lisa Figerra?

16 A. No.

17 Q. Now let's get this straight, you said that you've
18 just reviewed the reports in this case, correct?

19 A. That's correct.

20 Q. You never went to the scene?

21 A. No.

22 Q. Never spoke with the Defendant?

23 A. No.

24 Q. Never interviewed any of the witnesses that the
25 State intends to call?

1 A. No.

2 Q. Okay.

3 A. Well I mean, I spoke to Phillips many, many
4 times.

5 Q. About this particular case?

6 A. I doubt I spoke to him about this case, no.

7 Q. Okay.

8 And you've worked with Deputy Phillips for a long
9 time, correct?

10 A. Absolutely.

11 Q. And do you have reason to doubt his veracity to
12 tell truth?

13 A. Not at all.

14 Q. What about CSA Figerra, did you have the
15 opportunity to work with her?

16 A. For a short period of time.

17 Q. And would you have any reason to doubt her
18 veracity?

19 A. No.

20 Q. And in this case, do you plan to talk about field
21 sobriety exercises?

22 A. There is none to talk about, so no.

23 Q. And do you think that Deputy Phillips did
24 anything wrong with his investigation in this case?

25 A. Not that I can see. If the video matches what he

1 wrote down, if he felt it was a safety concern then, no.

2 Q. And have you met Deputy Mets (phonetic) from the
3 Broward County Sheriff's Office?

4 A. I'm not sure. I know a Mets as an attorney but I
5 don't know. I may or may not have. I met so many over
6 the years.

7 Q. But you don't have anything that you know about a
8 Deputy Mets in this particular instance?

9 A. No.

10 Q. So you have no reason to doubt his veracity
11 either; is that correct?

12 A. Not at this point, no.

13 Q. Now, the Defendant gave a breath alcohol reading
14 of a 0.213 and point 0.229; is that correct?

15 A. Correct.

16 Q. Okay.

17 And that would indicate what to you?

18 A. That the results are 0.213 and 0.219 grams per
19 two ten liters.

20 Q. And do you know what the legal limit in the State
21 of Florida is?

22 A. Well, of course. The unlawful limit is 0.080.

23 Q. Okay.

24 And this is well over that, correct?

25 A. Yes.

1 Q. And you're familiar with the Intoxilyzer 5000
2 serial number 664883?

3 A. Yes.

4 Q. And you've testified in the past about this
5 particular Intoxilyzer; is that correct?

6 A. I have.

7 Q. Do you have anything to doubt the validity of
8 this reading on May 9th, 2004?

9 A. I don't have enough facts yet, but I couldn't see
10 anything other than the machine being exposed to tap
11 water. That leads me to believe that the machine was
12 recording inaccurately.

13 Q. Now, what about tap water would cause this
14 machine to read inaccurately?

15 A. That's an unknown. I've read the studies by FDLE
16 where they concluded it had no impact. It appears that
17 the tap water issue had no impact on the machine.

18 I don't know what the long-term effect of it is, since
19 I never actually exposed it to the tap water, but from
20 what I understand from reading this, it appeared not to
21 have a problem with it, other than it being a major rule
22 violation to do that.

23 Q. And although FDLE does not believe it's a major
24 rule violation, is that your understanding of FDLE's
25 position on this?

1 A. It's a rule violation. Take it for what it is.
2 You're supposed to use specific water. It certainly is a
3 violation. I consider it a major rule violation.

4 Q. You don't work for FDLE, correct?

5 A. No.

6 Q. You don't hold a permit to even operate an
7 Intoxilyzer; is that correct?

8 A. No

9 MS. BERKOWITZ: Is it correct that you do not
10 hold a permit?

11 MR. SHINE: I'm going to object. There's one
12 person asking questions at a time here. This is not
13 an ambush, it's not professional. So if she's going
14 to ask the questions, so be it. But he shouldn't be
15 expected to go back and forth like a ping-pong ball.

16 MS. BERKOWITZ: I just thought the question and
17 answer was a little misleading.

18 Do you hold a permit?

19 THE WITNESS: I don't have an active permit, no.

20 BY MS. STEINBERG:

21 Q. Okay.

22 And you haven't had one since 2003, correct?

23 A. From FDLE, that's correct.

24 Q. Is there some other agency that issues people
25 permits to operate the Intoxilyzer in the State of

1 Florida?

2 A. Well, you can be -- from the Florida government?

3 No, there is not.

4 Q. Do you hold a permit from anyone to operate an
5 Intoxilyzer?

6 A. Yes.

7 Q. Who?

8 A. The manufacturer.

9 Q. Okay.

10 But you're not allowed to give breath tests on any
11 Intoxilyzer that you have, correct?

12 A. Well, sure. If you're saying can I give one for
13 an individual who was arrested and have that be considered
14 valid in the rules, no. I don't work for a government
15 agency anymore, so I don't have that.

16 Q. And when was the last time that the manufacturer
17 issued you a permit to give a breath test?

18 A. My permit -- well, for -- I have one for the
19 Intoxilyzer 8000. The last time I received that would
20 have been 2003.

21 Q. While you still worked for the Broward County
22 Sheriff's Office?

23 A. That's right.

24 Q. And have you administered a breath test? I
25 should say, when was the last time you administered a

1 breath test?

2 A. I just want to clarify, are we talking
3 evidential, one with an individual who is arrested?

4 Q. I'm talking any kind of breath test.

5 A. Any? Definitely within the last couple of weeks,
6 perhaps a month or so.

7 Q. In what capacity was that done?

8 A. Training.

9 Q. Where?

10 A. That would have been done in New Orleans.

11 Q. And who's Intoxilyzer were you using?

12 A. I was using several different Intoxilyzers. I
13 had my own Intoxilyzer 8000 and others.

14 Q. And where was this breath test administered
15 besides New Orleans? In what capacity was this issued?

16 A. It was issued as part of a training class for
17 breath testing, to train others on the Intoxilyzer 8000.

18 Q. What "others" are you referring to?

19 A. They were attorneys.

20 Q. Were they defense attorneys?

21 A. They were defense attorneys, yes. They were all
22 -- I don't know if some of them work as prosecutors as
23 well, because in some states they have dual roles.

24 Q. Was this some sort soft seminar?

25 A. Yes.

1 Q. What was the name of it?

2 A. It was an Intoxilyzer 8000 class. As far as the
3 exact name, I don't know. Something along those line.

4 Q. Who was the sponsor of this class?

5 A. An attorney by the name of Victor Carmady
6 (phonetic).

7 Q. Okay.

8 And why would defense attorneys know how to administer
9 a breath test?

10 A. Well, for understanding of the machine.

11 Q. Okay.

12 And so you're saying that New Orleans uses the
13 Intoxilyzer 8000?

14 A. No, actually Louisiana still uses the 5000.

15 Q. Why did they need to be trained on the 8000?

16 A. It was just a location that was chosen. It was a
17 national seminar, there was lawyers from all over the
18 country.

19 Q. And where exactly was the seminar held?

20 A. You mean the name of the hotel?

21 Q. Yes.

22 A. I'd have to get back to you on that one, I don't
23 really recall.

24 Q. And the dates of that?

25 A. It was about a month or so ago. The exact dates,

1 I would have to check my book.

2 Q. Okay.

3 How often do you teach at these defense seminars?

4 A. A few times a year.

5 Q. Now, you said that you have your own Intoxilyzer;
6 is that correct?

7 A. That's correct.

8 Q. Have you ever exposed it to tap water?

9 A. No.

10 Q. Have you ever done any studies with tap water?

11 A. No.

12 Q. So the only studies you're familiar with
13 regarding tap water were conducted by FDLE?

14 A. That's correct.

15 Q. Is there any other study that you're familiar
16 with that was in reference to tap water?

17 A. Not that I know of.

18 Q. Did you ever receive or look at a study that was
19 provided by the defense expert in the tap water hearings?

20 A. No, I never actually saw that.

21 Q. And have you ever drunk tap water?

22 A. Of course.

23 Q. Does tap water contain any alcohol in it?

24 A. Not that I could taste alcohol in it.

25 Q. Now, what if any effect would tap water have on

1 the Intoxilyzer?

2 A. Well again, I've answered that before, you asked
3 me that. I can only go off the study by FDLE where it
4 showed using different tap waters had no reading on the
5 Intoxilyzer.

6 Q. So how did the tap water affect this particular
7 breath test?

8 A. I never said it did. I said it's rule violation
9 for that to have occurred.

10 Q. And what if any, if there was a minor rule
11 violation, would that have an effect on this breath test?

12 A. Well, the rules are put there to protect the
13 integrity of the breath test, obviously. And the rationale
14 behind the tap water is that you don't want to use that
15 because you want to use a clean source, clean water.

16 Q. So tap water is not clean?

17 A. It's nowhere as pure as distilled water, that's
18 for certain.

19 Q. But again, you're familiar with FDLE's results
20 when they tested tap water in the Intoxilyzer, correct?

21 A. Yes.

22 Q. Where there was no noticeable affect on the
23 Intoxilyzer or any breath readings, correct?

24 A. Yes.

25 Q. Okay.

1 Now, you've testified in the past many times about the
2 validity of the Intoxilyzer 5000; is that correct?

3 A. As far as it being a valid test, sure.

4 Q. And besides tap water, is there anything else
5 wrong the breath test that was administered to the
6 Defendant, Cary Groff, on this date?

7 A. Not that I can see at this point, no.

8 Q. Okay.

9 And are you familiar with the tolerance level of the
10 Intoxilyzer 5000?

11 A. Sure.

12 Q. What is the tolerance level of the Intoxilyzer
13 5000?

14 A. Well, it's 0.005 or 5 percent.

15 Q. So in essence, the tolerance for this particular
16 breath would be 0.213 and 0.229 plus or minus 0.005; is
17 that correct?

18 A. Well actually, it's a little bit more. It would
19 be about a 0.010 at that level. The 5 percent would kick
20 in at that point. Same as we do when we check at a point
21 0.20, we allow 0.010 either way.

22 Q. Okay.

23 So his breath could be 0.010 higher or lower?

24 A. As far as the standard tolerance for this
25 Intoxilyzer, yes.

1 Q. And what is the 0.02 differentiation?

2 A. That's the margin of acceptability that's
3 permitted between two samples?

4 Q. And these samples are within 0.02 of each other;
5 is that correct.

6 A. Yes.

7 Q. At best or at worst, Mr. Groff's breath alcohol
8 level was on the low side of 0.203 and 0.219; is that
9 correct?

10 A. That's correct. Applying that standard
11 tolerance, yes.

12 Q. And that is still well above the legal limit here
13 in the State of Florida?

14 A. Yes.

15 Q. And that's well above the legal limit of the
16 enhanced DUI statutes here in State of Florida; is that
17 correct?

18 A. You're talking about the 0.20?

19 Q. 0.20.

20 A. It certainly is, yes.

21 Q. Okay.

22 And what, if anything, are you prepared to testify
23 about this particular breath test?

24 A. That's a good question. I really haven't
25 discussed much about what we're actually going to testify

1 to, other than being listed on the case.

2 Q. Well, this case, if I am correct, is set to go to
3 trial on Monday. Are you unaware of this?

4 A. No.

5 Q. Okay. When were --

6 A. Actually, Mr. Shine did advise me it was still
7 going to trial.

8 Q. When were you preparing to discuss what you were
9 going to be testifying about?

10 A. I really can't say. I don't know whether or not
11 I'll be called on this case as an expert witness. I don't
12 know.

13 Q. So part of your expert preparation includes you
14 just getting up on the stand and just being asked
15 questions?

16 A. Well, that's not so. But as far as my working
17 with the attorney on the case and working the issues on
18 it, that has still not been done.

19 Q. And when do you plan on doing this?

20 A. Whenever I'm called by Mr. Shine to do so.

21 Q. Again, once this is done we get to redepose you.
22 I would assume that this would have been done before this
23 deposition took place?

24 A. Nobody asked me before the depo if I had formed
25 my opinions, so I'm just here today because of your

1 request.

2 Q. So you have no opinions about this particular
3 breath test in this case?

4 A. Well, other than what I've testified to already
5 or stated here already about the questions that you asked
6 me, I don't have any other further information at this
7 point.

8 Q. Do you plan on talking to the Defendant before
9 you take the witness stand?

10 A. That's a decision that's not mine. Whether or
11 not Mr. Shine wants me to or not -- interview him, that's
12 not my decision.

13 Q. Would that be an important part to determine
14 whether or not this was a valid breath sample or what the
15 Defendant's true and accurate blood alcohol was at the
16 time of the offense?

17 A. Well, certainly if the Defendant has information
18 that would assist in my investigation, whether it be
19 related directly from the Defendant or from Mr. Shine, it
20 has no difference as far as weight that I would give it.

21 Q. Well, it would be important to find out certain
22 things from him like, what he was drinking that night,
23 correct?

24 A. Certainly.

25 Q. Why is that important?

1 A. Well, it goes into the overall investigation of
2 whether or not the result is actual for what was his
3 breath test result.

4 Q. And what about when he was drinking?

5 A. Yes, same answer.

6 Q. What about if he was drinking by a glass or a
7 shot, is that important?

8 A. Well, whether it's in a glass or shot as you're
9 saying, the volume is what matters.

10 Q. So that is all important to know?

11 A. Absolutely.

12 Q. What about what he ate?

13 A. That's important.

14 Q. Now, you don't any of those facts, right?

15 A. I don't have those yet, no.

16 Q. And you don't know if you're going to get any of
17 those facts?

18 A. I do not.

19 Q. Now, do you know what this defense partition
20 ratio is?

21 A. No.

22 Q. What is the standard partition ratio?

23 A. Well, the Intoxilyzers are set at 2,100.

24 Q. Okay.

25 And are you comfortable with the Intoxilyzer being set

1 at 2,100 or do you think that that's an improper standard
2 for the Intoxilyzer to be set at?

3 A. It's a good guess. It's unknown whether an
4 individual is 2,100 to 1 or whether they're 1700,
5 23-2,500. The variability associated with that runs those
6 kind of gaps.

7 Q. So he could be higher than 2,100 to 1, correct?

8 A. It's possible.

9 Q. Now, he's not a frog, he is a human being,
10 correct?

11 A. Well, I don't know where he's a from, but I
12 believe so, yes.

13 Q. So even if he was a little less than 2,100 to 1,
14 he's not as low as 1,200 to 1 or anything like that,
15 correct?

16 A. Probably not.

17 Q. Okay.

18 Let's just suppose that he was even 1,700 to 1, what
19 would the differentiation in his breath result?

20 A. You would take off roughly about 0.020.

21 Q. A 0.020?

22 A. That's right.

23 Q. So it still would mean that this breath result
24 was still well above a 0.20, correct?

25 A. If you're using the higher result, the 0.223.

1 Q. 0.229?

2 A. Yes, that's correct. He would still be over a
3 0.20.

4 Q. Okay.

5 Now, do you know anything about the way this Defendant
6 was absorbing alcohol?

7 A. Not at this point, no.

8 Q. Do you plan on learning any of this information?

9 A. I may.

10 Q. When do you plan on learning this information?

11 A. If it's released to me.

12 Q. What information would you need to know to see if
13 this Defendant was still absorbing?

14 A. Well, I would need to know the time of last
15 drink.

16 Q. If the Defendant fell out of his car at the
17 scene, and that would be at 4:26 in the morning, and then
18 gave a breath test at 5:22, would that still be consistent
19 of someone -- well, I should say, is that consistent if
20 they're that impaired at the scene and still be that
21 impaired at the breath alcohol testing facility?

22 A. I don't quite understand.

23 Q. Is falling out of the car part of someone's
24 normal faculties? Would you say that if they fell out of
25 the car, that would be an indication that someone's normal

1 faculties are impaired?

2 A. I guess it depends on the person. But for
3 average person, I totally agree, that's not normal
4 faculties.

5 Q. And if they blew a 0.213 and 0.229 less than or
6 about an hour later, is that consistent with someone's
7 normal faculties being impaired at the scene and also at
8 the Breath Alcohol Testing facility?

9 A. Are you saying also factoring in the fact that he
10 fell out of the car?

11 Q. Correct.

12 A. Could I reasonably draw a conclusion that falling
13 out the car and 0.20 match?

14 Q. Yes.

15 A. Yeah, I could.

16 Q. Okay.

17 So there's nothing inconsistent between what the
18 deputies observed at the scene and then at the BAT testing
19 facility, correct?

20 A. Well, if the result -- if I'm to presume the
21 result is correct, an individual with a 0.20 is a fall-
22 down drunk at this point, there's nothing inconclusive
23 with that.

24 Q. Now, let's just say that no alcohol was found in
25 the car and the Defendant wasn't given any alcohol by the

1 transporting deputy or didn't receive any alcohol when he
2 arrived at the Breath Alcohol Testing facility, could you
3 say one way or the other whether he was going up or down?

4 A. No, not without more facts.

5 Q. What facts would you need?

6 A. Those that we went over just before.

7 Q. If he had just recently ate?

8 A. Recent consumption, type, design, etcetera.

9 Q. What difference would it make if he had drank an
10 hour before getting in the car?

11 A. There's a possibility that he could still be on
12 the rise. His blood alcohol level could not have started
13 to go uniformly down, total absorption.

14 Q. So an hour after the Defendant is given a breath
15 test, he could still be rising, correct?

16 A. It's possible.

17 Q. Could he also be coming down?

18 A. It's possible.

19 Q. And you can't tell us without any other
20 information?

21 A. That's correct. Nobody can.

22 Q. Did you have an opportunity to review the
23 maintenance documents for the Intoxilyzer 5000 in this
24 time period that we're referring to?

25 A. I've seen them before.

1 Q. Is there any problem with the maintenance, other
2 than tap water?

3 A. No.

4 Q. So you have no reason to doubt that the
5 Intoxilyzer was properly working on this date, correct?

6 A. Correct.

7 Q. Okay.

8 Now, you've done numerous studies with Intoxilyzer,
9 correct?

10 A. Yes.

11 Q. Have you done any studies on what happens when
12 you take prescribed medication and alcohol?

13 A. No, I have not. There's been many that have been
14 done but, no.

15 Q. Are you familiar with any of the studies that's
16 been done regarding prescribed medication and alcohol?

17 A. Yes.

18 Q. What's the general consensus? Do doctors think
19 that it's a good idea to take prescribed medication and --

20 A. It depends on the medication.

21 Q. Let's just say for instance, Prozac, Ambien and
22 Ritalin. If the doctors or manufacturer had advised the
23 Defendant not to consume alcohol while taking the drugs,
24 is this going to effect the results of the Intoxilyzer?

25 A. I couldn't see how it could affect the results on

1 the Intoxilyzer.

2 Q. And based on your knowledge of impairment, would
3 this impair someone's abilities further if they're taking
4 prescribed medication and have a breath alcohol level of
5 0.213 and 0.229?

6 A. I don't know the answer to that question with
7 regard to the individual drugs and interaction with
8 alcohol.

9 Q. Okay.

10 So if a doctor says that you shouldn't take these
11 prescribed medications and alcohol, you have no reason to
12 doubt him, correct?

13 A. It depends. If it's two out of three doctors --

14 Q. No, one good one.

15 A. Yeah, I guess it would matter what the
16 toxicologists have determined, the drug companies,
17 etcetera.

18 Q. Okay.

19 Now, is there any indication in this case that mouth
20 alcohol was detected?

21 A. Not that I saw, no.

22 Q. What other factors would come into play regarding
23 this Defendant's breath alcohol test?

24 A. That's kind of a vague question. What do you
25 mean, what others things would come into play?

1 Q. Is there anything particular about this
2 Defendant? Does he have a different temperature in the
3 mouth?

4 A. That's unknown.

5 Q. Is his lung capacity any different than anybody
6 else's?

7 A. I don't know.

8 Q. Okay.

9 Have you done any kind of testing on this Defendant to
10 determine if his mouth temperature is different than
11 anybody else's?

12 A. No.

13 Q. Do you plan on doing this?

14 A. No, not unless I'm asked.

15 Q. And when again would you be asked to do this?

16 MR. MERMER: I have to step out.

17 MS. STEINBERG: Can we continue?

18 MR. MERMER: Yes.

19 MS. STEINBERG: Okay.

20 (Whereupon, Mr. Mermer exited the room.)

21 BY MS. STEINBERG:

22 Q. What, based the literature, is the average breath
23 alcohol temperature that someone presents when giving a
24 breath test?

25 A. 35.

1 Q. Do you have anything to contradict that
2 Mr. Groff's breath alcohol or his mouth temperature was
3 35?

4 A. No. The Intoxilyzer doesn't have the capability
5 of showing that.

6 Q. And that's Centigrade not Fahrenheit?

7 A. That's right.

8 Q. Now, do you think -- there's no indication that
9 he was running a fever or had any other kinds of illness
10 that you're aware of?

11 A. Not that I'm aware of.

12 Q. Okay.

13 Now, what's the Intoxilyzer set at, in terms of mouth
14 temperature?

15 A. 34.

16 Q. Is it a difference that the average mouth
17 temperature might be 35 and the Intoxilyzer is set at 34?

18 A. What do you mean, is there a difference?

19 Q. Is it going to make a difference in the breath
20 alcohol reading?

21 A. Yes.

22 Q. What would be the difference?

23 A. The difference is 7 percent of the result. If
24 you have a 34 degrees C instrument and a person presents a
25 35, you would see a 7 percent -- roughly 7 percent

1 increase.

2 Q. 7 percent increase?

3 A. That's right.

4 Q. So if he is -- I'm sorry if he's at a 35 and the
5 Intoxilyzer is at 34 or is it the other way around?

6 A. The Intoxilyzer is set at 34, if he presented at
7 35, he would have a higher reading.

8 Q. Okay.

9 So in fact, the Defendant's breath alcohol reading
10 could be 7 percent higher than this?

11 A. Or he could have been 7 percent lower.

12 Q. Or 7 percent lower, and that would be 0.07 lower?

13 A. Right.

14 Q. Okay.

15 A. Well no, no, it would be 7 percent of whatever
16 the result. We have a 0.22, so take off roughly about a
17 0.15, more or less.

18 Q. So you're saying, although you have no belief
19 that this defendant is at a 35, since the Intoxilyzer is
20 set at 34, your knock of 0.15 percent of his mouth alcohol
21 reading?

22 A. It's whatever the end result is. What I am
23 saying is, that based upon the review of the literature
24 concerning breath alcohol temperatures, the average person
25 has been found to be 35 degrees, on average. And these

1 breath testing devices are set at 34.

2 Q. And you're saying this is going to make a 0.15
3 difference in their breath alcohol?

4 A. No, I said it's going to make roughly a 7 percent
5 difference on the high side if an individual had 35
6 degrees C.

7 Q. And you have no idea what his mouth alcohol --
8 his mouth temperature was on the night in question?

9 A. No, it's not recorded on there.

10 Q. What study are we referring to that talks about
11 this?

12 A. There's quite a few actually. In fact, last time
13 I was in here, you asked me about these too. There's one
14 from Alabama by -- it's done out of the State of Alabama,
15 I forgot to the name of the author, Bertram (phonetic) and
16 I forgot. There's another one done by Wayne Jones.
17 There's quite a few.

18 Q. When did Wayne Jones do his study?

19 A. I don't know the exact year, but they're
20 available. They're pretty easy to find out.

21 Q. When did you become familiar with these studies?

22 A. Years ago.

23 Q. Did you ever testify about these studies when you
24 worked for the State?

25 A. I'm not sure anybody asked me about a mouth

1 temperature issue on the stand. I don't recall if I did
2 or not. I don't know the answer.

3 Q. And these studies conclude that there would be a
4 7 percent differentiation in an alcohol reading if
5 someone's mouth temperature was 35 or above?

6 A. That's correct. It equals out roughly at about 7
7 percent.

8 Q. Now, let's just say the Defendant's mouth
9 temperature was below 34 --

10 A. That's right.

11 Q. -- what would happen then at that point?

12 A. Then he would get a result that would be lower,
13 same effect.

14 Q. And what if his was higher than 35?

15 A. Well, I answered that, it would be higher.

16 Q. Why is it, if you know, that the Intoxilyzer is
17 programmed that the average person being 35 degrees
18 Celsius?

19 A. Why hasn't it --

20 Q. Why is it that it's programmed at 35?

21 A. Some of the older studies showed 34 degrees to be
22 roughly the average temperature. More modern technology
23 has showed it to be higher.

24 Q. What's the Intoxilyzer 8000 set at?

25 A. 34.

1 Q. Now, do you have anything about what the
2 Defendant's core temperature was on May 9th, 2004?

3 A. No.

4 Q. Do you have any way to find that out?

5 A. No.

6 Q. And is someone's core temperature higher than
7 their mouth temperature?

8 A. Typically.

9 Q. Why is that, if you know?

10 A. Well, you're talking about the actual body
11 temperature versus the breath temperature, which is cooled
12 by the air.

13 Q. Okay.

14 So if someone is not sick and they're just normal,
15 walking around without a fever or anything like that, what
16 would their normal temperature be? What's the standard
17 for a normal temperature?

18 A. You're asking a medical question about -- you're
19 saying what's an average individual's body temperature?

20 Q. Right.

21 A. My understanding is that 98.6 is the standard.

22 Q. Now, is that considered their core temperature or
23 their mouth temperature?

24 A. Well, you know, the mouth temperature that I'm
25 referring to, so we don't get confused, is a breath

1 temperature. That's of the expired air that's coming
2 out.

3 My understanding is the temperature when you stick a
4 probe in there in a person's mouth, or if they put one in
5 another area, is going to be on average 98.6.

6 Q. So if someone's normal temperature 98.6 what
7 would make their mouth temperature of the air they're
8 expelling?

9 A. You mean why would it be --

10 Q. No, what would their temperature be in terms
11 Celsius?

12 A. 98.6 is equal to 37 degrees Centigrade, so you
13 can see it's higher than 34.

14 Q. Right.

15 But the mouth temperature is lower than their core
16 temperature?

17 A. The breath.

18 Q. Right.

19 A. The breath is lower but the mouth -- if you do an
20 oral thermometer your looking at an average of 98.6.

21 Q. But what they expel is goes into the Intoxilyzer,
22 correct?

23 A. Right, that's cooled.

24 Q. And how much does that cool by?

25 A. Well, the average is found to be 35 degrees C, so

1 you're looking at about a two point drop in Centigrade.

2 Q. What percentage of population has this 35 percent
3 breath temperature?

4 A. I'd have to look at the study, but it's upward of
5 80 to 90 percent that actually have it, according to the
6 Alabama study.

7 Q. And you don't remember the last time or you don't
8 know when this study was done?

9 A. It was done either late 1999-2000, somewhere
10 around then.

11 Q. Have there been other studies this came out
12 afterwards?

13 A. I don't know of one since then.

14 Q. You haven't read any of them? You haven't been
15 exposed to them? You don't know if they exist?

16 A. Well, I keep up with the journals. I haven't
17 seen one that has come out with regard to that issue.
18 This one was fairly comprehensive.

19 Q. Now, you testified a little earlier that you
20 don't know anything about the Defendant's partition ratio,
21 correct?

22 A. That's correct.

23 Q. And the Intoxilyzer is set up to be at 2,100 to
24 1; is that correct?

25 A. Yes.

1 Q. What's average partition ratio for people in the
2 United States, if you know?

3 A. Well, the average is determined to be roughly
4 about 2,300 to 1.

5 Q. 2,300 to 1?

6 A. That's right.

7 Q. And how would that affect someone's breath test
8 if the average for the Intoxilyzer is set up at 2,100 to 1
9 and you're saying that some studies show that it may be
10 2,300 to 1?

11 A. Right, it would give an overall reduction,
12 roughly, on an average person.

13 Q. And how much would it be reduced by?

14 A. On average, it depends on the overall result.
15 But if we were to use a 0.01 for example, we would be
16 looking at reduction of about a 0.01.

17 Q. Okay.

18 Now, isn't 2,300 to 1 the very highest range of a
19 partition ratio that someone can have?

20 A. No.

21 Q. What's the highest?

22 A. I've seen studies over 3,000 to 1.

23 Q. How many people have over 3,000 to 1 as a
24 partition ratio?

25 A. I'd have to look at the study but it depends on

1 where you catch the person on the curve.

2 Q. And 2,100 to 1 is a fair estimate of what
3 someone's partition ratio is; is that correct?

4 A. It could be a fair one, assuming they're post-
5 absorptive, yes.

6 Q. You have no idea about this Defendant though,
7 right?

8 A. Right, I've already answered that.

9 Q. If the Defendant admitted to drinking eight
10 drinks -- are you familiar with the Widmark Theory?

11 A. Of course.

12 Q. What would his breath alcohol be if he drink
13 eight drinks, weighed -- well, let me back up. Is a 0.213
14 and 0.229 consistent with a male, a white male who is six
15 foot and weighs 165 pounds? Is that a consistent
16 estimation of how much someone drank?

17 A. You're saying, do eight drinks -- eight standard
18 drinks equal 0.20?

19 Q. 0.213 or 0.229.

20 A. At 160 pounds?

21 Q. Right.

22 A. I would say on average that it's going to take
23 more than eight drinks.

24 Q. How many more?

25 A. I haven't done any calculations.

1 Q. Would you like to?

2 A. No.

3 Q. I'm going to hand you a calculator.

4 A. I don't do calculations here.

5 Q. You don't do calculations?

6 A. No, not for the purposes of a deposition.

7 Q. Do you plan on doing them on the witness stand?

8 A. I may.

9 Q. Okay.

10 So I'm going to ask you to do a Widmark Theory
11 calculation if you're familiar with the theory.

12 A. I'm sorry, I don't do those.

13 MS. STEINBERG: I'm going to certify that for the
14 Judge.

15 THE WITNESS: I haven't even done those for
16 Mr. Shine at this point.

17 BY MS. STEINBERG:

18 Q. Well, this is my deposition. I'm asking you to
19 do it.

20 A. I know.

21 Q. You say you do as you're told? I'm asking you to

22 --

23 A. But you haven't retained me on a case. If you
24 would like to retain me on a case --

25 Q. If you're going to be testifying for the Defense

1 and we have the right to cross-examine you, we will be
2 able to ask you these questions?

3 A. Well, it's my policy that I don't do
4 calculations.

5 MS. STEINBERG: Okay. Certify for the Judge.

6 BY MS. STEINBERG:

7 Q. Again, you testified that it would be well over
8 eight drinks that would make someone who is a male, who is
9 six foot and 165 blow these results that were obtained in
10 this case, correct?

11 A. It seems as though, just doing it in my head,
12 that it should be more than eight drinks.

13 Q. Now, you used to work for the Broward County
14 Sheriff's Office; is that correct?

15 A. Yes.

16 Q. Did you ever have any IA investigations while you
17 worked for the Sheriff's Office?

18 A. Sure.

19 Q. Were you under an IA investigation when you left
20 the Sheriff's Office?

21 A. There was one that was still active at the time.

22 Q. And prior to leaving the Sheriff's Office, had
23 you filed for bankruptcy?

24 A. (No response.)

25 Q. Do you want to just certify that question as

1 well?

2 MR. SHINE: Let me get your attorney to advise
3 you how to answer that.

4 (Whereupon, a discussion was held off record.)

5 THE WITNESS: I'll answer that.

6 Yes.

7 BY MS. STEINBERG:

8 Q. Are you still in bankruptcy proceedings?

9 A. No.

10 Q. When did those conclude?

11 A. Over two years ago.

12 Q. Okay.

13 And what were your reasons for leaving BSO?

14 A. Well, I had enough time to leave and I thought it
15 was a good time to go.

16 Q. Do you have any ill-will towards BSO?

17 A. No.

18 Q. Have you in fact protested against Sheriff Ken
19 Jenne and members of my office, the State Attorney's
20 Office?

21 A. Yes.

22 Q. And you don't have any ill-will even though you
23 protested against the Sheriff and the State Attorney's
24 Office?

25 A. Well, I thought that in that situation that the

1 deputies were being treated unfairly.

2 Q. And you weren't a deputy at the time, correct?

3 A. No.

4 Q. Okay.

5 And have you in fact threatened lawsuits against the
6 State Attorney's Office for your dealings with my office?

7 A. My attorney, Mr. McGee, did file a complaint
8 based upon a sign that was hung here that had my name,
9 that said "Zager Loser" in big red letters. And the State
10 Attorney did call and personally apologize and ensure that
11 would never happen again.

12 Q. And you filed other complaints with the State
13 Attorney's Office, correct?

14 A. Not that I can recall another complaint.

15 Q. Okay.

16 A. Just for perhaps unpaid bills here. But I never
17 filed a complaint.

18 Q. Okay.

19 And do you remember that you've, in the past, given
20 different reasons for wanting to leave the Sheriff's
21 Office?

22 A. No, my reasons remain the same. You can't change
23 the reasons I left.

24 Q. In fact, do you remember in the past you gave a
25 deposition in the State versus Bob Hogan when you were in

1 my office August 2nd, 2006?

2 A. Yes.

3 Q. And you indicated that you didn't like the work
4 duties that you were being presented with the Sheriff's
5 Office?

6 A. There was a lot of work that was being presented
7 to me, yes, I do recall that.

8 Q. At any point in time were you not getting paid
9 overtime for your work that exceeded your work hours?

10 A. Not that I can recall, no.

11 Q. Okay.

12 And what exactly were they asking you to do that you
13 considered too much work?

14 A. Well, like I answered in that deposition. I
15 could read from there and give you the same answer.

16 Q. No, I want you to tell me.

17 A. It was a matter of just occupying my time with
18 projects that took up a majority of my time.

19 Q. What kind of projects were these?

20 A. I was writing grants, I was doing presentations
21 at virtually every school in Broward County at that point,
22 things of this nature.

23 Q. So speaking to the school children about drinking
24 and driving was too much of an infringement on your work?

25 A. I was doing it actually for elementary schools

1 where nobody is actually driving.

2 Q. Really? I guess you didn't see the news where a
3 seven-year-old was accused of driving the other day?

4 A. Well, that would be the odd seven-year-old.
5 There's no licensed drivers that I know of at seven years
6 old.

7 Q. No licensed drivers, but you think it's too --
8 it's not a good thing to talk to school-age children about
9 the perils of drinking and driving?

10 A. No. I continue to give presentations and have
11 since I left to children about that. And it was not
12 that -- what I was doing, it was the amount that I was
13 doing that was -- it was a workload that was extremely
14 difficult to keep up with.

15 Q. But these were done during your working hours,
16 correct?

17 A. That's correct.

18 Q. How many times did you have to go overtime
19 because you were giving lectures?

20 A. I'd have to check the records. I did make
21 overtime from time to time for doing things in.

22 Q. But you weren't happy because you were given more
23 duties to fill up your day; is that correct?

24 A. My work had substantially changed to the point of
25 occupying, as I mentioned, the majority of my time.

1 Q. Now, when you used to testify for the State, how
2 many times would you say you testified for the State in
3 your course -- in your career at the Broward County
4 Sheriff's Office?

5 A. 100s and 100s of times. Total of well over a
6 thousand times in different proceedings. I couldn't even
7 put a number on it.

8 Q. And all of those times, how many times would you
9 say that you talked about this breath temperature making
10 such a noticeable difference on someone's breath alcohol
11 reading?

12 A. That's unknown. I never tracked that. I have no
13 idea.

14 Q. Would you say you did it once?

15 A. I really don't know. Whether a defense attorney
16 asked me the question or not, I don't recall.

17 Q. You believe that some defense attorney and you
18 testified -- while you were testifying for the State said
19 there was 7 percent difference in someone's breath alcohol
20 reading because of the possibility that their breath was
21 at 35 degrees Celsius?

22 A. What's your question?

23 Q. You're saying there's one time that you did that?

24 A. I said I have no idea how many times, if at all,
25 I was asked that. I don't recall. I was asked so many

1 different things as a State expert, who knows.

2 Q. And when you testified for the State, you
3 consistently testified that 2,100 was a fair and accurate
4 representation of the population as far as partition
5 ratio, correct?

6 A. Same answer I gave you today.

7 Q. Today you testified that most people here in the
8 United States are 2,300 to 1?

9 A. That is correct, 21 to 23. Modern studies have
10 shown 23, and 21 is what's used in the United States.

11 Q. And you testified in the past that 2,100 to 1 was
12 a good representation of the average individual, correct?

13 A. Sure. I agree with that as post-absorptive
14 person, absolutely.

15 Q. And you're saying that you don't know if he's
16 pre-absorbed or post-absorbed at this point?

17 A. I don't know.

18 Q. And what difference would it make if he was
19 pre-absorbed?

20 A. Well, there's a great possibility that the
21 alcohol level would have been overstated.

22 Q. But if over an hour has passed and the Defendant
23 didn't drink let's say for an hour before he was stopped,
24 is there any way he could still be absorbing?

25 A. You're saying one hour from the time of stop to

1 the time of breath?

2 Q. No, two hours.

3 A. Two hours?

4 Q. If he stopped one hour before he was stopped and
5 then there was an hour between the stop and the breath,
6 would he still be absorbing?

7 A. You're saying it's two hours in total since the
8 time of the last drink to the time of the breath?

9 Q. Right.

10 A. He would be on the outer limits of the time. It
11 could go longer. There's many published papers that go a
12 160 minutes, etcetera. But when average, using 30 to 90
13 minutes, I would presume in most cases that he was
14 post-absorptive. But there's other things could affect
15 it.

16 Q. What would affect it?

17 A. The same answers from before, food, how recently
18 they drank, the type of drink, etcetera, etcetera.

19 Q. Are you familiar with the forensic studies
20 regarding alcohol testing in general?

21 A. Well, that's a pretty --

22 Q. You said that you keep up to date with all
23 forensic studies regarding breath alcohol; is that
24 correct?

25 A. I do read the journals, yes.

1 Q. Are you familiar with any studies that have shown
2 that about 90 percent of drivers whose breath alcohol is
3 tested, that they're actually going down?

4 A. Yes, absolutely.

5 Q. Do you have any reason to dispute any of those
6 studies?

7 A. No.

8 Q. Do you agree with those studies?

9 A. Absolutely.

10 Q. Do you have anything to give counsel or the jury,
11 if you do testify, that Mr. Groff was one of that small 10
12 percent that was not going down at the time of his breath
13 test?

14 A. Not at this point. I don't have any other
15 information that would lead me to believe otherwise.

16 Q. Do you plan on getting any of this evidence?

17 A. I may, if it's released to me.

18 Q. And again, since this case is set to go -- just
19 for the record, today is Thursday the 2nd and this case is
20 set to go on Monday, the 6th of November. When are you
21 planning on getting any of this evidence?

22 A. Well, I already stated that. It's an unknown to
23 me whether or not it's going to be released or not,
24 whether I will actually be called. I don't know at this
25 point.

1 MS. STEINBERG: Mr. Shine, do you plan on giving
2 Mr. Zager any of this information?

3 MR. SHINE: I'm not in the deposition ma'am.

4 MS. STEINBERG: Okay. Then we're going to all
5 the questions that you couldn't answer because you
6 don't have the information and have no idea whether
7 you're going to be provided of this information to the
8 Judge and he can make that determination.

9 I don't have any anything else. Do you have
10 anything else Ms. Berkowitz?

11 MS. BERKOWITZ: I don't have anything.

12 MR. SHINE: I have a couple of follow-ups.

13 CROSS-EXAMINATION

14 BY MR. SHINE:

15 Q. Ms. Steinberg had asked you ask if you had any
16 reason to doubt any of the different findings, whether it
17 was the breath machine, whether it was the findings of the
18 police officers and so forth.

19 That doesn't mean that you agree with any of their
20 findings, that just means that you don't have anything
21 that you know of that would prove that they were lying,
22 correct?

23 A. Right. I don't have any other information at
24 this point concerning the officers. If you're talking
25 about the question about do I doubt their veracity --

1 Q. Right.

2 A. No, I do not at this point.

3 Q. So in other words, you're not agreeing with what
4 any of the officers have stated in they're police reports,
5 correct?

6 A. I have no reason at this point to disagree with
7 it unless I'm given further information to show it or
8 something that would lead me to believe that something
9 wasn't exactly right.

10 Q. What I'm saying is, just because the police
11 officers wrote it, you're not agreeing to what they said,
12 correct?

13 A. That's correct. I presuming it to be correct.
14 I'm relying on it at this point, unless further
15 investigation reveals differently.

16 Q. And the same thing the with breath, it's not that
17 your agreeing that those breath results are correct,
18 you're just saying, at this point, you don't have any
19 reason other than what you've already stated to doubt
20 them?

21 A. Correct.

22 Q. Is there anything else that you want to get out
23 or that she didn't let you answer your questions
24 completely?

25 A. No. Just one unpaid invoice from three months

1 ago.

2 MS. STEINBERG: I have no ability to pay any
3 bill. You can submit them to administration and
4 Ms. --

5 THE WITNESS: Monica?

6 MS. STEINBERG: Yes. She will be more than happy
7 to help you.

8 Thank you.

9 You have the ability to read or waive.

10 THE WITNESS: Read.

11 (Whereupon, the deposition was concluded at
12 12:05 p.m.)

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CERTIFICATE

STATE OF FLORIDA)
) SS
COUNTY OF BROWARD)

I, KERRY LYNN LAMMIE, a Notary Public in and for the State of Florida at Large:

DO HEREBY CERTIFY that the foregoing deposition was taken before me at the time and place therein designated; that the deponent was by me duly sworn; that my shorthand notes were thereafter reduced to typewriting under my supervision; and the foregoing pages 1 through 56 inclusive, are a true and correct record of the testimony given by the witness.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties, nor relative or employee of such an attorney or counsel, or financially interested in the foregoing action.

WITNESS MY HAND AND SEAL this 3rd day of November, 2006 in the City of Fort Lauderdale, County of Broward, State of Florida.



Kerry Lynn Lammie
KERRY LYNN LAMMIE
Notary Public,
State of Florida at Large

MY COMMISSION EXPIRES: JUNE 28, 2009