IN THE COUNTY COURT OF THE 17th JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA
CASE NO. 11-019892MM10A

STATE OF FLORIDA,

-vs-

ANDREW MARK LISTER,

Defendant.
_____/

ORIGINAL

CONTINUATION OF
DEPOSITION OF
JAY ZAGER

September 7, 2012
1:04 p.m. - 1:56 p.m.

600 South Andrews Avenue
Fort Lauderdale, Florida

APPEARANCES:

On behalf of the State:
MILES McGRANE, ESQ.
ASSISTANT STATE ATTORNEY

On behalf of the Defendant:
BOGENSCHUTZ, DUTKO & KROLL, P.A.
BY: JEREMY J. KROLL, ESQ.

Taken pursuant to the Rules and Notice hereinbefore filed, before GWENDOLYN HOGAN, Stenographic Reporter and Notary Public in and for the State of Florida at Large.

THEREUPON:

JAY ZAGER

having been first duly sworn or affirmed, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. McGRANE:

Q. We are here for the continuation of your deposition. I will try my best -- I have read through the transcript from the first half, I will try my best not to repeat myself. I believe we were discussing the inspection data for Intoxilyzer 8000, serial number 80-001056, dated 8-26, 2011, at 5:20:48. Do you have a copy of that?

A. Let me look through my records. I am certain I do. The one on 8-26, 2011, at 5:20 a.m.?

Q. Yes, sir.

A. Okay, I have that in front of me now.

Q. Okay. We were discussing, I believe, where you say it was not in compliance based on the non-interferent detect.

A. That is correct.

Q. Okay. We may rehash a bit of information, so I apologize. Could you just explain to me based off of --

(Brief recess requested by court reporter.)

Q. Are you refreshed where we are going now?

A. (Gesture.)

Q. Back to the inspection on 8-26 at 5:20 a.m., why do you believe this was not in compliance?

A. As I previously stated, the fact here is that the operator, agency inspector had a duplicate failure of the device and by it not being positive for picking up the interferents, so it happened on one sequence where he had three samples, then it happened again on the repeat. At that point he stated on here that the 8000 was not in compliance.

Q. Now, it says on the bottom, and I think we agreed, that he aborted the test.

A. It does say aborted, but he aborted it because he didn't want it to go through the entire analysis. After the interferent would have come .05 and .08, .000, etc., so he aborted it.

Q. Do you know whether or not he aborted it prior to the instrument doing the repeat interferent detect?

A. By the record that I have, he aborted afterward, because the three repeats are on here.

Q. There are three repeats on there, but there's also -- the .05, the .08, the .20 and the .08 tests are also on there.

A. Right. On there next to it it says the results, referring to the document, it says no, meaning

it wasn't tested. So at that point he got through the alcohol part and then went on to the interferent. That's where he aborted it.

Q. If he had aborted prior to the repeat interferent detect test being done, would the print-out of the test look different, if you know?

A. It should have stopped, yes, it would.

Q. Under the FDLE guidelines for inspections, when a test comes back not in compliance what are you supposed to do?

A. Notify the department inspector of your problem, and ask for advice, corrective action. And then you're supposed to remove the device from evidential service and then see if, contact the state, the FDLE.

Q. Is there anything in the rules regarding the time frame in which you can retest a machine, or an instrument? Excuse me.

A. There's nothing that's spelled out in the rules other than contacting the inspector, contacting the department, as they call it, and leave it at that.

Q. So hypothetically, if you do a test at 5:20 a.m., comes back noncompliant, you call the department. They say okay, retest it. You do it again five minutes later, and it comes back in good working

order, then you have met the requirements to make the machine in compliance?

A. If you can identify what the issue was, whether it be improper solutions that were utilized, improper procedures, machine malfunction, any one of these, then perhaps -- of course if you have a malfunction, which I see here, if you can cure the problem -- machines don't fix themselves, obviously, we know that. So the training always was and still is that you contact the inspector and then you go forward from there. But as far as the time frame, it's not specified, but they do not fix themselves.

Q. We discussed that you do have experience with the Intoxilyzer 8000, correct?

A. I do.

Q. And you have run an agency inspection on Intoxilyzer 8000, correct?

A. I have done an agency inspection of my own, same type as the FDLE, yes.

Q. Did you follow rules and regulations promulgated by the FDLE when conducting that inspection?

A. Absolutely.

Q. How do you test for the interferents?

A. The interferent is tested -- the state requirement, the inspectors, agency inspectors, are

taught to take 500 milliliters of water, distilled or deionized water and add three milliliters of an acetone stock solution into that, to assure that it reads and detects the acetone. That's the method set out by FDLE.

Q. So you take -- is it a jar of water?

A. It's a simulator.

Q. It's a simulator, but it's -- what does a simulator look like?

A. You have never seen one?

Q. I have, but we are in deposition.

A. I understand. A simulator is, for the purpose of the record, it looks like a device that has a jar that's similar to like an old Skippy peanut butter jar. That jar is designed to hold 500 milliliters of liquid solution, roughly about 16 ounces or a pint. So that 500 milliliters is then taken, poured and measured off, placed inside this simulator. The simulator has a rod inside of it that is used to heat the solution inside of it. Also in this jar on the top, there's another rod that has a moving propeller that moves the solution inside to stir it. It's a stirrer. So when this simulator reaches 34 degrees C, then it's suitable for use. At that point the solution in there, in this case we are talking about acetone, when it's heated up, will

create a head space. The head space is then ejected into the Intoxilyzer automatically, and it should give a reading of an interferent. That's the process.

Q. Now the simulator itself is not part of the instrument when it comes to testing an individual, correct?

A. (No response.)

Q. The simulator is only used for inspections?

A. The simulator -- that is correct. Currently the simulator is separate from the evidential test. It's part and parcel of the inspection and quality assurance program, but it is separate. It's not used at the time.

Q. So if something was wrong with the simulator, it doesn't mean that something is wrong with the instrument, correct?

A. That could be an issue. If you have a malfunctioning simulator you can look at, if you're running it on multiple units, then you can start looking at an error associated with the simulator. Because once you run that on multiple units and you get the same failure, then you can start looking for it in that area. But you can certainly have simulator error associated with that.

Q. Could there also be human error associated with

that?

A. Always, of course.

Q. What are some of the human errors that could account for a noninterferent detect?

A. Um --

Q. Excuse me, I said that wrong. When you do not detect an interferent.

A. Well, you simply didn't have the device hooked up at all, if you just had it running plain air, if you had it disconnected, it would come up with zero. If it didn't measure off appropriately the three milliliters in the pipette, not get enough of that in there, perhaps you could get a false negative on there; and --

Q. Couldn't the top of the simulator not have been tightened enough?

A. It is possible. But it is, I might add, it's also procedure that as part of the agency inspection when you're starting that you're supposed to ensure that the simulator does have a proper seal.

Q. But you would agree that human error could have knocked it creating the improper seal?

A. Human error or perhaps somebody not complying with the procedures of checking the simulator. It would have been somebody who didn't go through the proper -- but you should be able to get that sealed, it's quite

simple, but it is possible.

Q. Could you have run the test prior to the acetone solution heating up enough?

A. Yes, that is possible as well. If the person didn't wait the prescribed amount of time, the answer is yes.

Q. Could the acetone that you put in the simulator have gone bad?

A. I have not seen acetone that's gone bad. I still have acetone, expired acetone, many, many years expired, discarded stuff, I can still get a reading on there. The shelf life of that from the stock solution is, from my knowledge and my experience, has been almost, it doesn't expire.

Q. My next question, I am going to try to use the terms correctly and if you don't understand, let me know. Because the interferent was not detected, does that automatically mean that the instrument itself was not working correctly?

A. With regard to the ability to detect interferents, it certainly means in that specific area that there is a problem with this device. Could it be a bigger problem? Becomes a bit of an unknown. Obviously we know that the device did -- did ultimately pass, on the device here, the simulator.

Q. But just to be clear, human errors could account for the fact that there was not an interferent detect on the test at 5:20 a.m., correct?

A. Well, human error would be -- that is correct. Somebody not being in compliance with the rules, somebody not being properly trained certainly can give you problems on the device here.

Q. You did mention that there was another agency inspection done, correct?

A. That's correct.

Q. Again, it was from -- do you have that test done at 6:03 a.m. on 8-26, 2011?

A. I do.

Q. We won't go through it all, but do the serial numbers on the Intoxilyzer 8000 match between those, the 5:20 a.m. and the 6:03 a.m. tests?

A. They do. This is 80-001056.

Q. Looking at the test from 6:03 a.m., does it indicate that the machine is compliant and ready for evidentiary use?

A. Yes, it does.

Q. Do you recall when the breath test of the defendant Mr. Lister was done?

A. Let me refer to that document, I think it's the 4th of September. His test was done on the 4th of

September.

Q. Do you know whether or not another agency inspection was done between the test done on 8-26, 2011, at 6:03 a.m. and the test of Mr. Lister?

A. I have not been, I have not seen one that was done. It indicates on the, on Mr. Lister's test that 8-26 was the date of the inspection though.

Q. So you would agree with me that the agency inspection that was done just prior to Mr. Lister's breath test indicated the machine was quiet and in working order?

A. That is correct.

Q. Have you seen the agency inspection that was done after Mr. Lister's breath test?

A. I don't have a copy of it here, but I am certain I've seen that.

Q. I have a copy, shows the test was done on 9-15, 2011, at 5:38 a.m. for the same Intoxilyzer 8000. Have you seen that before?

A. Again, I reviewed this, I am certain. I just don't have the copy with me.

Q. Would you agree with me that the test that you hold in your hand right now indicates that the machine was compliant and in working order?

A. As per FDLE rules, this test you have given me

is in compliance.

Q. So if after the 5:20 a.m. test they called the department, the department said whatever the department said, and they retested it at 6:03 a.m., would the machine be in compliance with FDLE rules?

A. If there was a trail, if the inspector gave it some sort of blessing to say that he went and did that, it would start to show certainly compliance with the rules.

Q. Now is there a difference between compliant and substantially compliant?

A. Well, when it comes to the breath testing program, when you have a failure of the device I say no. If I had a machine that failed like this, I would want to understand what the problem was. Also the corrective action taken should have been placed on the forms as well. That's another requirement. There has been no indication of that on the subsequent 6:03 inspection. He just went through it again.

Q. I understand that you would agree that it wasn't in compliance, but would it have been substantially compliant?

A. No. It would not substantially comply.

Q. What happens if somebody instead of using ionized free water used tap water, would that be

compliant or noncompliant?

A. It would be noncompliant.

Q. Would it be substantially compliant?

A. I don't know the answer to that one. That's sort of a legal requirement on that. I've never done that. That's a different issue.

Q. Would you agree that this is also legally whether or not it's in substantial compliance?

A. It is with regard to that. But the deionized water versus the distilled water is an issue where so long as the water didn't interfere, perhaps it could have with it showing a result on there, but this goes to the ability for the device not being able to actually record and pick up an interferent, which is to me a basic function of the Intoxilyzer. It should be able to do that. It should be able to differentiate between those. It's a very simple function.

Q. You would also agree with me that at 6:03 a.m. it was able to detect the interferents?

A. How? How was it repaired? What was done? That becomes --

Q. I understand.

A. There is no corrective action.

Q. That was a very artful way to answer my question. But based on the tests that you have seen, it

was able to detect the interferents?

A. As I have answered, yes, it did.

Q. So again, the last agency inspection that was done prior to Mr. Lister's breath test was able to detect the interferent and from the test result was in compliance?

A. Correct.

Q. Do you know Mark Leone?

A. I do not.

Q. I know we briefly discussed your experience with the Intoxilyzer 8000. Was the Intoxilyzer 8000 in service when you were working for, was it BSO, correct?

A. Yes. It was -- I had access to one. It wasn't on line yet. It would be a couple years later after I retired from the Sheriff's Office that it was placed into service. It was an approved device I believe at some point from the Department of Transportation. But as far as it being in evidential use, no.

Q. And you have been able to run tests on the Intoxilyzer 8000, you said?

A. I have.

Q. Is that from one of the instruments that you had access to at BSO, is that from an instrument after you left BSO?

A. Both.

Q. Where did you have access to an instrument after you left BSO?

A. I own one. I own my own Intoxilyzer 8000.

Q. How did you come into possession of an Intoxilyzer 8000?

A. I bought it.

Q. Where did you buy from?

A. I bought it from a defense attorney.

Q. Do you by chance know the serial number off that Intoxilyzer 8000?

A. No, I don't.

Q. When it comes to determining under FDLE rules whether or not an instrument is substantially compliant, do you believe you can determine that?

A. (No response.)

Q. By going through the rules, can you say with any certainty whether or not a machine was substantially in compliance?

A. I can answer like this. If I was still in charge of the program, if this was a Broward Sheriff's Office incident and I had a machine that malfunctioned like this, I would deem the test that it produced as not reliable, and report those to your office. I have had situations where issues, with the Intoxilyzer 5000 where, for instance -- give an example. Radio frequency

interference is not a required test in Florida. However, I used to test my devices. I had a situation where the machine was not able to determine RFI and abort the test, so I found that that device, that particular Intoxilyzer, was noncompliant. I made it noncompliant in the test results. Same thing, I sent over a form that we used at the time that produced a Brady notice, so I have been in the situation before. Certainly that's different, has less of a burden. To me it's about forensic reliability of the device, and they don't cure themselves.

Q. You've testified in court on behalf of the state in regards to the Intoxilyzer 5000, correct?

A. Oh, God -- the 8000?

Q. The 5000.

A. Yes, yes, hundreds of times.

Q. Has there ever been an instance where you said that even though it may not have been 100% compliance the test results were still reliable?

A. I don't recall under the circumstances whether or not I did, or not, whether it was something so minor, I can't recall. We had instances of acetone under the older program as well that would come up where you had to make calculations, because we were adding ethanol plus acetone, the older program. There could have been

some issues with that that occurred over the years, but I can't remember testifying as to substantial compliance. Generally if an operator didn't perform the proper observation period, if something was done incorrectly, it was generally my rule to say that I didn't want to support this in court. I can't independently remember, but it's possible early on, maybe, I don't know.

Q. Would you agree with me that just because a test was not done in 100% compliance it does not mean that the results of a breath test are unreliable?

A. It shows a failure. I wouldn't agree. Because it shows a failure of the device, something improper occurred. The device couldn't differentiate between the two filters and couldn't come up. There has been no showing here of what corrective action was done. It creates a forensic uncertainty that's too great in my opinion to overcome. Certainly with a device like this, this 1056 which also had a pattern of problems in detecting acetone, it certainly influences my opinion as well.

Q. Which device 1056, the Intoxilyzer 8000?

A. This one, yes.

Q. You are saying this has a pattern. Where do you get that pattern from?

A. From the records I supplied. Some of those in there. There's been other instances where the device has had issues.

Q. Is there any way for you to know whether what you call issues are human error or the instrument itself?

A. Let me look through some of the ones I have shown, or I brought. One instance back in March there was a report issued by FDLE that says that the inspector Murphy was notified, the machine failed a .08 interferent. He advised him to use another bottle of .08, to use another bottle. Agency inspector reported failed inspection due to .08 and interferent detectant.

Q. I mean, but again, just so we're clear, the documents which I will attach as State's Exhibit doesn't say .08 and interferent, it says .08 interferent detect, which is very different; correct?

A. I have to go back to the actual document. Right, there is no .08 interferent, so --

Q. But what this shows, looking at the document, during the .08 test it detected interferent, which is different than a .08 fail and an interferent fail.

A. You may be correct on that. I might have to look at the actual document on this one. I don't happen to have that one, for whatever reason. You may be

correct. It does say interferent.

Q. So we are clear, you put an "and" in there. I want to make sure for the record. On the department inspector field notes dated 3-31, 2011, it says, due to .08 interferent detect. There is no "and"; isn't that correct?

A. That is correct. That's correct.

Q. Okay.

A. Let me find one. This may be the controlling one here. I do have it. It did show an interferent on the .08, which should not have been there.

Q. Correct. But that's different than where it doesn't detect interferents.

A. That is correct.

Q. You're using a different solution for .08 versus when you do the interferent detect?

A. Correct. The device should not have shown interferent. It's a false positive result there, where the interferent came from. But again, it goes to my overall opinion the device has had a history of issues with interferents.

Q. The test you're discussing now, wouldn't you agree with me that very well it could have been that something was wrong with the .08 solution?

A. I have never seen in my many years of doing

this a situation where I use a .08 solution where interferent was detected that I can recall. It's an unusual occurrence.

Q. But you're not saying it can't happen?

A. It can happen if you add interferent, if the operator used -- if he added improperly the acetone for the .08, but in this case the FDLE inspector said use a different bottle, so it becomes unclear. All I know is there was an issue with it.

Q. But again, just so the record is clear, we don't know sitting here today whether or not it was an issue with the solution or an issue with the instrument, correct?

A. That is correct, because I don't have the -- let me see. I don't have the one after that to see what corrective action he did take or what the time delay is. What I had was something that was generated nine months later by the state indicating that he had a problem here. It's an unusual time line here, for FDLE to make this and then write this report out, this field note, so many months later. It doesn't appear quite correct as far as the time line is concerned. Doesn't seem timely. That might be a separate issue.

Q. You said, other than that one instance, were there other ones that you found? You were discussing, I

guess, in your words, a history.

A. Yes. There was as well, there was one on 11-29-11, where the same exact scenario occurred. Like on our case where on 11-29 it was mentioned that the same Intoxilyzer 1056 had the same type of problem where it repeated its analysis and was unable to determine interferent both times.

Q. On the test that you just showed me, do you know why it didn't detect the interferent?

A. No interferent detected. Sequence aborted. I do not, I did not see a form that I printed out, whether or not FDLE has updated it, similar to the department field inspector notes.

Q. But could a human error have caused that?

A. It is possible for a human error. But when we start looking at the total amount of failures that are so similar, how many times can human error account for it?

Q. Didn't the same person each time do all these tests?

A. I have to look and see. Once again, Mark Leone, appears to be the same person. He just may not be properly trained. If that's the case, perhaps he made -- if it's human error every time, or is the device not properly taking up?

Q. But again, you have shown me three instances of what you call a history, one being the case we are discussing now and two other inspections; correct?

A. Yes.

Q. So we are talking about three times where human error may have occurred?

A. Well, you're saying human error, one time there is no human error, the .08 showed an interferent for unknown reasons. If he improperly placed it in there, that wasn't recorded in the corrective action on the FDLE field note. The other time there has been no indication of what corrective action was done or that FDLE was even notified. So we have a problem with the device, we have a pattern for this particular device.

Q. Do you have instances of every time that it has passed an inspection without an issue?

A. Yes. Yes.

Q. How many times in a year does an instrument need to have an agency inspection?

A. Well, if it's in evidential use for the entire year there should be a minimum of twelve.

Q. And you have shown me a test from 2012 and two from 2011, correct?

A. I think one was from 2010 and two were from 2011.

Q. Excuse me, correct, 2010. In 2010 if it was in evidentiary use, how many times would an instrument be tested?

A. It would be twelve times, as I mentioned.

Q. So you have shown me, out of the 24 inspections, we have three where a retest had to be done.

A. If those are the correct numbers, I don't have all those documents with me to say whether or not, but 24 if it was in constant use, then that would be 24 tests. Whether or not there's other ones, I don't have those with me. These are the ones that were I think most relevant in time.

Q. Again, we are going off of what you have been able to bring with you today.

A. Correct.

Q. We'll assume that these are the only three that show that there was, that didn't detect the interferents?

A. These are the ones closest in time to the particular test we are here about.

Q. But twenty-eight and three other times during the span of this two year period the tests came back fine?

A. I don't know if each time it was tested,

without pulling those documents, I don't have them with me. But if there was complete ones and they did pass, then the number certainly would be greater, the pass rate would be certainly greater than the failure rate. It doesn't cure the machine.

Q. Correct me if I'm wrong, but agency inspections are not the only inspections that are done on an instrument that is in evidentiary use, correct?

A. There is a department inspection required, yes.

Q. How often is a department inspection done?

A. At least once per year.

Q. What is done in a department inspection?

A. Essentially an agency inspection ad nauseam. Couple extra things are done.

Q. Do you know whether or not the Intoxilyzer 8000 we are discussing today passed its yearly departmental inspection?

A. I believe it did.

Q. Does that in any way weigh on the opinions you're giving today?

A. No, not to the particular case, no.

Q. Other than talking about the interferent detect issue, are you giving any other expert opinions in this matter?

A. My involvement in the case was the

interpretation of these particular tests as it relates to Mr. Lister. I am not talking about, I am not here rendering opinions on field tests or -- I think it's related to the FDLE rules and this particular Intoxilyzer.

Q. Are you or do you plan on giving any expert opinion as to the effect of diabetes on a breath test?

A. To my knowledge, no, I will not be giving any opinions concerning the medical conditions on this particular case.

Q. Are you qualified to give such opinions?

A. I am certainly -- as I mentioned before, I am not a medical doctor. I have testified about individuals who do have diabetes and the impact potentially on the breath test.

Q. During the course of testifying on behalf of the state with the Intoxilyzer 8000, have you ever given testimony as to, in a defendant who has diabetes and a breath test result?

A. I may have. I may have, with a properly working device.

Q. In --

A. But I can't independently recall. It's too many years ago.

Q. Do you recall whether or not you've ever

defended the results of a breath test even in light of a defendant having diabetes?

A. By "defendant," you mean what?

Q. The defendant, the reliability of the results of the breath test.

MR. KROLL: Hold on. I think I know what you're asking. You're asking as a state witness did he ever testify that they were still reliable regardless of the diabetic condition?

MR. McGRANE: Yes. It was a bad question.

MR. KROLL: I just want to make sure we're clear.

A. I can't remember off the top of my head a particular incident, whether or not I did or didn't. I don't recall.

Q. Just so I am not surprised later, what medical experience, training, what-have-you, do you have that would in any way qualify you to testify as to somebody's medical condition and the Intoxilyzer 8000?

A. It's limited to breath alcohol testing. Certainly, once again, I am not a medical doctor. It's related to the instances where people who have diabetes can produce compounds that can be read on an infrared device and mistaken for ethanol, essentially testifying in that area.

Q. Correct me if I'm wrong, but if somebody is in diabetic ketoacidosis there will be a distinct smell coming off their breath, correct?

A. That's another area that I have testified to, certainly as a patrol officer, a DUI task force member, coming into contact with people who have, who might have that odor like that, that is correct.

Q. But again, it's a fruity odor, correct?

A. It's a little different. It certainly is. A properly trained officer may be able to say that they have -- can differentiate between that, but quite difficult.

Q. If somebody is in that state of ketoacidosis they need to be transported to a medical facility; correct --

A. Possibly.

Q. -- before they go into diabetic shock?

A. Possibly. You're entering the medical area there. I can tell you from my experience as a police officer, it is quite possible for the person to get quite ill, to appear impaired.

Q. In all your years of testifying has any court ruled that you're not qualified to testify as an expert?

A. I have had situations where judges didn't allow me to testify, because they didn't want expert

witnesses. Some judges just don't want an expert in there. Many judges don't want any expert testimony whatsoever. So I have been shut out. I think in the areas that I've been attempting to qualify, I believe I have qualified.

Q. Has any judge ever barred you from testifying in a case, not because they didn't want experts, but you particularly?

A. It is possible. It is possible. And it was generally concerning areas as it relates to toxicology, getting a little too deep into the case where the attorneys, defense attorneys may have been asking questions that the Court may have wanted somebody with a Ph.D. in there.

Q. I am not trying to be insulting. It's just you're very artful at answering questions sometimes. Has any judge ever precluded you from testifying in a case?

A. On specific areas, as I mentioned, yes.

Q. Ever in totality?

A. By "totality" --

Q. Said, you're not allowed to testify in this case.

A. There has been judges that said, you cannot testify as an expert in a case, but I then still gave

opinions or I testified into the case as well.

Q. Has Judge Fry ever ruled that you are not allowed to testify in a case in front of him?

A. Judge Fry? Judge Fry over here, I had a case, I testified in his courtroom. I remember rendering an opinion. I don't remember if he was one of those judges who says, I don't allow or I don't want to give the title expert on the case, but I'd have to see exactly what he said. But I certainly recall in a case last year or whenever testifying in Broward County on the Intoxilyzer 8000. So I did render opinions. I think that's fairly typical of the situation for many judges, they would do that.

Q. Are there any other opinions that you plan to give in this case that we have not discussed?

A. At this point, no.

Q. As we sit here today are all your opinions that you have given final?

A. Nothing is final.

Q. As we sit here today --

A. As we sit here today, my opinion as it relates to this case has been reached. Whether or not I am exposed to something else from the case, I don't know.

Q. I understand that, obviously new information can change anything; but as we sit here today, the

opinions you have given at this point are final?

A. They are fixed and final, yes.

MR. McGRANE: I have no further questions.

MR. KROLL: No questions.

THE WITNESS: Read.

MR. McGRANE: And I'll order.

September 17, 2012

Jay Zager
c/o Jeremy J. Kroll, Esq.
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RE: State v. Andrew Mark Lister
Deposition Transcript

Please take notice that on the 7th day of September, 2012, you gave your deposition in the above-referenced matter, of which the transcript is now available.

Please call 954-554-2706 to schedule an appointment to review the transcript. It is not mandatory that you do so, and you may choose to waive the reading.

At page 32 of the transcript you will find an errata sheet. As you read your deposition any changes or corrections that you wish to make should be noted on the errata sheet, citing page and line number of said change. DO NOT write on the transcript itself. Once you have read the transcript and noted any changes, be sure to sign and date the errata sheet and return these pages. You need not return the entire transcript.

If you do not read and sign the deposition transcript within a reasonable time, the original, which has already been forwarded to the ordering attorney, may be filed with the Clerk of the Court. It is not mandatory that you read it.

Very truly yours,

_____
Gwen Hogan, Court Reporter
Debbi Keno, Inc.
(954) 554-2706

E R R A T A S H E E T

IN RE: STATE v ANDREW MARK LISTER

DEPOSITION OF: JAY ZAGER

TAKEN: September 7, 2012

DO NOT WRITE ON TRANSCRIPT - ENTER CHANGES HERE

Page#	Line#	Change	Reason

Please forward the original signed errata sheet to this office so that copies may be distributed to all parties.

Under penalty of perjury, I declare that I have read my deposition and that it is true and correct subject to any changes in form or substance entered here.

_____ DATE

_____ SIGNATURE OF DEPONENT

C E R T I F I C A T E

I, GWENDOLYN E. HOGAN, Court Reporter and Notary Public in and for the State of Florida at Large, do hereby certify that prior to the commencement of the examination Jay Zager personally appeared before me and was duly sworn.

I DO FURTHER CERTIFY that the foregoing pages, numbered 1 through 30, are a true and accurate transcription of the testimony as taken stenographically by and before me at the time, place and on the date herein before set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

The foregoing certification of this transcript does not apply to any reproduction of same by any means unless under direct control of the certifying reporter.

WITNESS my hand and official seal this 17th day of September, 2012. Gwendolyn E. Hogan

_____
GWENDOLYN E. HOGAN
Notary Public, State of Florida
Commission No. EE000051
Expires June 13, 2014