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

STATE OF FLORIDA,)
)
Plaintiff,)
)
VS.)
)
BRISEBOIS, ADAM)
Defendant.)

CASE NO. 03-004299MM10A
JUDGE- ROSS

ORIGINAL

Proceedings had and taken before the Honorable
DALE A. ROSS, one of the Judges of said Court, at the
Broward County Courthouse, Room 400, commencing at or
about 09:00 o'clock a.m. on August 21, 2003 in the city
of Fort Lauderdale, County of Broward, State of
Florida, and being a MOTION IN LIMINE.

APPEARANCES:

MICHAEL J. SATZ, STATE ATTORNEY,
BY: JUSTIN GRIFFIS, ESQUIRE
ASSISTANT STATE ATTORNEY,
(Appearing on behalf of the Plaintiff.)

ALAN H. SCHREIBER, PUBLIC DEFENDER,
BY: JOSEPH DIRUZZO, ESQUIRE,
ASSISTANT PUBLIC DEFENDER,
(Appearing on behalf of the Defendant.)

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21
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23
24
25

INDEX

08/21/03

WITNESSES

PAGE

DEFENSE'S PRESENTATION

D C RD

LAURA D. BARFIELD

3 6

DEPUTY MERYL NICHOLS

16

DEPUTY JAY ZAGER

19 25 36

MOTION DENIED

39

EXHIBIT

REC'D INTO EVD

A

1

9

1 (Whereupon, the following proceedings were had.)

2 THE COURT: We have the motions.

3 MR. GRIFFIS: They are all the same motion.

4 THE COURT: Glenn Hasetey, Brisebois, Delgado, Hudson,
5 Hayes. Proceed.

6 MR. GRIFFIS: The State moves to strike the motions.
7 There have been no constitutional allegations or
8 constitutional attack, so we ask to reject it to eliminate
9 the admissibility of the breath test.

10 THE COURT: What do you think?

11 MS. DIRRUZO: After talking to Ms. Barfield for the
12 breathalyzer taken after Form 14 went into effect, for me
13 it seems like the legislature snuck in there and did
14 something.

15 Actually I would probably agree with the State on that
16 one.

17 THE COURT: So with the motion withdrawn, we'll proceed
18 with the Motion in Limine.

19 Ready to proceed?

20 MR. GRIFFIS: Now, it is the Defense's burden, Your
21 Honor.

22 MR. DIRUZZO: The Defense would call Ms. Barfield.

23 (Whereupon, the witness was sworn to tell the truth.)

24 DIRECT EXAMINATION

25 BY MR. DIRUZZO:

1 Q. State your full name please.

2 A. Laura Barfield.

3 Q. Spell your last name?

4 A. B-A-R-F-I-E-L-D.

5 Q. Ms. Barfield, with whom are you currently employed?

6 A. Florida Department of Law Enforcement Alcohol Testing
7 Program.

8 Q. For how long?

9 A. I have been with the Alcohol Testing Program --

10 THE COURT: That is impressive, the Department of Law
11 Enforcement, you live in Tallahassee?

12 WITNESS: Yes.

13 (Whereupon, an off the record discussion was had.)

14 (Whereupon, the proceedings were continued.)

15 BY MR. DIRUZZO:

16 Q. I am sorry.

17 A. I have been employed with that Alcohol Testing Program
18 since March of 2000, been employed with Department of Law
19 Enforcement since December, 1994.

20 Q. I will direct your attention to Form 23, you are
21 familiar with Form 23?

22 A. Yes.

23 Q. What is Form 23?

24 A. Now obsolete, the operating procedures checklist.

25 Q. When did it become obsolete?

- 1 A. November, 2002.
- 2 Q. It was replaced?
- 3 A. Incorporated into Form 14, the Breath Test Affidavit.
- 4 Q. How does Form 14 differ from Form 23?
- 5 A. The Form 14 revised Form 23.
- 6 Q. Yes?
- 7 A. The revised form now contains the information
- 8 containing the breath test, a checklist portion, as well as a
- 9 certified statement that gets notarized at the bottom.
- 10 Q. And Form 14 refers to the breathalyzer?
- 11 A. No. It refers to the Intoxilyzer 5000 series breath
- 12 test instrument.
- 13 Q. When one is given a breath test using the Intoxilyzer
- 14 on Form 23, they usually blow until the tone stops?
- 15 A. That's correct.
- 16 Q. And Form 14 says blow until instructed to stop?
- 17 A. Blow until told to stop.
- 18 Q. How long is it or how long does it state on the Form
- 19 14, the amount of time one needs to blow before told to stop?
- 20 A. It doesn't state the time requirement. The breath
- 21 test operator is trained during their breath testing operation
- 22 courses or renewal courses the proper way to conduct that
- 23 portion of the affidavit. There is not a time constraint.
- 24 Q. There is no time constraint?
- 25 A. No.

1 MR. DIRUZZO: Nothing further.

2 THE COURT: Cross?

3 MR. GRIFFIS: Yes.

4 CROSS EXAMINATION

5 BY MR. GRIFFIS:

6 Q. Ms. Barfield, what are your current duties with FDLE?

7 A. As the Program Manager I supervise a team of nine
8 members and I ensure that they perform their duties. Basically,
9 members are field personnel located in various parts throughout
10 the State and a couple of office staff.

11 I approve Alcohol Reference Solution for use in the Breath
12 Test Instruments in the State of Florida. I prepare and
13 distribute the alcohol stock solution for use in breath tests
14 throughout the State, assists in the creation and revision of
15 Chapter 11D-8, Florida Administrative Code and assist in the
16 curricula introduced to test breath and/or blood, certify all
17 breath test agents and blood analysts throughout the State of
18 Florida to perform duties associated with evidence, blood or
19 alcohol testing as assigned by Chapter 11D-8, particularly the
20 blood alcohol proficiency tests to all blood analysts and ensure
21 they are operating under the administrative requirements, and I
22 testify in Court when needed. I am a Deputy Public
23 Records Custodian. And I have several other duties I do.

24 Q. Just briefly could you go into some prior work
25 experience?

1 before in the supervisory position.

2 Q. What's your educational background?

3 A. Bachelor's of Science in Biochemistry, I received from
4 the Florida State University August of '94.

5 Q. I know you went over a lot. Specifically, what
6 training have you had in blood alcohol toxicology and breath and
7 blood alcohol analysis? Were you a teacher first?

8 A. No. My training is, as far as breath alcohol analysis
9 is in college, infrared spectrometry foundation or methodology
10 that the current instrument uses. There was further training
11 received in the crime lab in infrared spectrophometry. I had to
12 as part of the training become permanent. We studied the
13 Intoxilyzer 5000. Even though it was toxicology it was learning
14 the different ways to analyze samples for alcohol.

15 Further education was received in conferences and seminars.
16 I attended a course at Indiana University, a week long course
17 with a final examination which further trained me on infrared
18 breath testing, methods of breath analysis. I attended the
19 intoxilyzer CMI course in Operation, Maintenance, and
20 Calibration required and certified by CMI to perform the duties
21 on the Intoxilyzer.

22 Q. What current certifications do you hold that relate to
23 breath alcohol analysis as well as the Intoxilyzer 5000?

24 A. Certified in Forensic Toxicologist, certified by CMI,
25 manufacturer of the Intoxilyzer in operation operate and

1 maintenance.

2 I used to be certified as a blood analyst. I had to give
3 that up. I no longer perform blood alcohol analysis, which are
4 applied. By rule, I would be certifying myself. I don't hold
5 an agent permit. I would be certifying myself. I write the
6 exams. That seems not a good thing to do. Those are the
7 certifications I currently hold.

8 Q. Are you a member of any professional associations?

9 A. Southern Association of Forensic Scientists, a member
10 of the International Association for Chemical Testing, Chairman,
11 International Association for Chemical Testing Committee on
12 Ethics, Society of Chemical Testing, Member of Florida
13 Association for Chemical Testing. I think that's it.

14 Q. I am showing you what is marked as Exhibit "A", do you
15 recognize what I am showing you?

16 A. A copy of my curriculum vitae.

17 Q. As of October, 2002, does this fairly and accurately
18 represent your training, experience, and education?

19 A. Yes. I have updated it since then. I think I taught
20 a couple of courses and attended a couple more conferences. It
21 accurately reflects my duties and responsibilities.

22 MR. GRIFFIS: At this time the State will offer into
23 evidence State's "A" as State's "1".

24 THE COURT: Laura Barfield, curriculum vitae.

25 MR. DIRUZZO: No objection.

1 BY MR. GRIFFIS:

2 Q. Have you had the prior occasion to testify in court?

3 A. Yes.

4 Q. On prior occasions have you been previously qualified
5 in both breath and blood alcohol analysis?

6 A. In both.

7 MR. DIRUZZO: I will object. I think the new rule,
8 the Court is not qualifying anybody as an expert witness.

9 THE COURT: I think what we do is certify it. Go ahead.
10 Overrule.

11 WITNESS: Yes. I have been qualified as an expert in
12 the categories that you said. In addition to other
13 categories, I have been allowed to render opinions. The
14 true expert qualifications wasn't brought out in court, so,
15 yes.

16 BY MR. GRIFFIS:

17 Q. Approximately how many times have you been qualified
18 or certified as an expert?

19 A. Somewhere over 100 now.

20 MR. GRIFFIS: At this time the State would tender Ms.
21 Laura Barfield as an expert in breath and alcohol analysis
22 as well as the Intoxilyzer 5000?

23 THE COURT: Objection or voir dire?

24 MR. DIRUZZO: No.

25 BY MR. GRIFFIS:

1 Q. Doctor, you are familiar with the Intoxilyzer 5000?

2 A. I am not a doctor, but, yes.

3 Q. All that background was helpful, but I want you to
4 speak in simple terms. Can you explain how the Intoxilyzer 5000
5 functions?

6 A. The Intoxilyzer 5000 uses multiple wave lengths of
7 infrared energy. You have a light force focused into a sample
8 chamber. The breath sample is put into the sample chamber. The
9 light passes through the chamber. If there are alcohol
10 molecules uncovered in the breath it will be absorbed. The
11 infrared light a wave length, light is refocused and passes
12 through a filter. It is filtered out through various wave
13 lengths of light. It reaches a detector. The amount of light
14 is measured and converted into a breath alcohol measurement.

15 Q. There is a minimum sample it is looking to collect?

16 A. It has minimum requirements it is looking for.

17 Q. What is that minimum requirement?

18 A. The slope, time, and pressure. The time is
19 approximately four to six seconds.

20 Q. Go ahead. You were going into time.

21 A. Slope, pressure, time. It is looking for -- depending
22 on what instrument -- it is looking for a minimum of four to six
23 seconds in breath, continuous breath at a minimum looking at the
24 slope to look to make sure there was no mouth alcohol and to
25 ensure proper sample is being delivered; and looking at a

1 pressure, enough pressure, sufficient pressure to get a D-1
2 system.

3 Q. What happens if one of the requirements is not met?

4 A. You would have an invalid sample. You would get an
5 error message from the instrument.

6 Q. What would the error message be?

7 A. It could be low sample volume, mouth alcohol, invalid
8 test, just not person not blowing long enough, things like that.

9 Q. Is there a maximum air sample the intoxilyzer can
10 collect?

11 A. The intoxilyzer will collect as much air as the person
12 can blow.

13 Q. The limitation of the Intoxilyzer, as far as the
14 maximum limit would be the subject blowing --

15 A. Yes, the subject blowing as long as they possibly can
16 is the best sample.

17 Q. I am presuming the subject has alcohol in their
18 system. If they were to expel all the air from the lungs, what
19 would be the result, what would it be in terms of the breath
20 alcohol reading?

21 A. The alcohol will reflect amount of the alcohol
22 circulating in their blood.

23 Q. How close would this be to their breath alcohol
24 content?

25 A. It would be to the true breath alcohol.

1 Q. If we can get out all of the air out of the lungs --
2 is it realistic to blow all the air out of the lung?

3 A. No, they would die.

4 Q. Typically, when someone blows, they blow less than
5 maximum capacity?

6 A. Yes.

7 Q. Does blood alcohol levels continue to rise the longer
8 they blow?

9 A. Until they plateau. It doesn't arbitrarily continue
10 to rise. It rises rapidly and then levels off.

11 MR. GRIFFIS: Madam clerk, do you happen to have a
12 marker handy?

13 BY MR. GRIFFIS:

14 Q. Ms. Barfield, if you would be so inclined, if you
15 could demonstrate for the record the relationship between the
16 length of the blow and what the breath alcohol would be if
17 someone was breathing into the Intoxilyzer?

18 A. What are you talking about, the breath alcohol curve?

19 Q. Yes?

20 A. (Indicating) Basically, it is a graph. On the Y-axis
21 you have breath alcohol concentration, on the X-axis you have
22 time. As a person blows the breath curve most rapidly rises and
23 would begin to plateau off. It never truly reaches horizontal.
24 We can't get to that point. It would be reached horizontally if
25 we had the person completely deflate their lungs and they are no

1 longer living. That's the breath alcohol curve.

2 Q. Typically, a person is giving a sample, how far along
3 that curve is the Intoxilyzer looking before it reaches a valid
4 result? Let me rephrase this. How long a person needs to blow,
5 given this curve, to achieve a minimum sample?

6 A. That instrument is looking for the minimum requirement
7 of the instrument. If you want me to give an example, I could
8 mark six seconds on the X-axis and correspond that to the result
9 on the Y-axis. We would be more toward the lower sample.
10 That's the minimum requirement that the instrument is looking
11 for, not what the rule is looking for.

12 Q. You can put it there unless you have something to add.

13 A. The rule is, you have someone blow until told to stop.
14 The officers are properly trained which it is in the curriculum.
15 You have them blow until you say stop. The operator is trained
16 to have the subject blow until they can't breathe anymore.

17 Then we have (indicating) on 12 seconds, it will be
18 produced to the blood alcohol -- indicates the maximum,
19 reflected to the alcohol results.

20 This (indicating) is what the rule is looking for. This is
21 the minimum requirement of the instrument, the six second mark
22 and that's why the rules are written the way they are.

23 Q. So on any given sample barring interference, mouth
24 alcohol, and you have collected a proper sample, the subject's
25 sample would be between the minimum requirement and essentially

1 the maximum they can blow?

2 A. Yes.

3 Q. What is deep lung air?

4 A. Deep lung air is the portion of the lung where the
5 deepest lung air is, portions of the lung where you are at --
6 It is kind of difficult to explain. If you picture a lung, deep
7 lung air would be the bottom of the lung. If you are deflating
8 it, we would want you to be at the bottom of the lung. It is
9 kind of hard to explain.

10 Q. Why is it significant for breath testing?

11 A. You want deep lung air. It is the air contained in
12 the alveolar, lower sac. It goes to where the blood is
13 circulating. You want that portion because you are getting that
14 concentrated alcohol closest to the circulating blood. That's
15 why you want a deep lung breath sample.

16 Q. Why is deep lung air significant in breath testing?

17 A. It most accurately reflects the concentration of
18 alcohol circulating in the person's blood.

19 Q. What happens if you don't get deep lung air?

20 A. The result would be lower than the alcohol
21 concentration circulating in the subject's blood.

22 Q. Are you familiar with breath alcohol concentration
23 versus blood alcohol?

24 A. Yes.

25 Q. What did they focus on?

1 A. Both were drawn simultaneously. You are looking at
2 the breath versus blood at the same period of time.

3 Q. What was the result of these studies?

4 A. In a post-absorption, the blood was higher than the
5 breath.

6 Q. What do you mean post-absorbption?

7 A. All the alcohol is absorbed in the blood stream.

8 Q. Based upon your knowledge, training, and experience of
9 how the Intoxilyzer functions, what is your opinion as to the
10 reliability and as to the results produced and the accuracy?

11 A. On a properly maintained, 'as maintained with Chapter
12 11D-8, it is highly accurate.

13 MR. GRIFFIS: Nothing further.

14 MR. DIRUZZO: That's it.

15 THE COURT: Next witness on behalf of the Defense?

16 MR. DIRUZZO: Officer Nichols.

17 DIRECT EXAMINATION

18 BY MR. DIRUZZO:

19 Q. Please state your full name and spell your last name
20 for the record.

21 A. Meryl Nichols. N-I-C-H-O-L-S.

22 Q. Where are you current employed?

23 A. Deputy of Broward Sheriffs Office.

24 Q. For how long?

25 A. About a month. Prior to that, CSA/Breath Alcohol

1 Technician for Broward County for about 8 years.

2 Q. In your capacity, did you have an opportunity to give
3 a breathalyzer by using the Intoxilyzer 5000?

4 A. Certainly.

5 Q. Can you describe to the Court the standard way you
6 would give a breathalyzer detainee at the BAT facility?

7 A. I would have them sitting there. I would show them
8 the mouthpiece, say they need to blow into it. I would count to
9 10, somewhere between 8 and 10. I would capture the first
10 sample. I will tell you to stop the instrument. Stop. I take
11 a second sample.

12 Q. You say you count between 8 to 10. You are verbally
13 counting?

14 A. Yes, I will count to them. There is a tone on the
15 thing. The reason for the tone, it is really in my opinion a
16 training aid that helps to understand they are blowing
17 correctly.

18 Q. While the person is continuing to blow into the
19 Intoxilyzer 5000 this tone continues to sound?

20 A. Yes, if it is being done correctly.

21 Q. If they are not doing it correctly, it goes off?

22 A. Yes. We are watching the little screen with three
23 zeroes on it.

24 Q. As long as a person is blowing into the breathalyzer
25 for as long as they can, the tone will continue to go off?

1 A. So long as they didn't stop until I tell them to stop.

2 Q. If the person is blowing into the machine, the
3 instrument, for as long as one possibly can, --

4 A. So long as there is enough air involved and air
5 pressure the person is expending and blowing into the instrument
6 the tone will continue. They probably are falling on the floor
7 at that point. I never let them --

8 Q. You said you would instruct the person to blow into
9 the instrument between 8 and 10?

10 A. Until I count between 8 and 10.

11 Q. Are you counting out loud or to yourself?

12 A. I am counting 1, 2, 3. It is medical requirements, 6
13 seconds. I use 8 to get a good sample.

14 Q. When the counting is up, -- you are not counting via
15 a stop clock?

16 A. No, I am not counting, 1001, 1002, 1003. There are
17 three zeroes. I am looking for the fourth zero to drop over.
18 That fourth zero drops over I got a complete sample, and I tell
19 them to stop.

20 Q. Can the person complete the drop before you reach 8 or
21 10?

22 A. Sure. That's my 8 or 10. It is another aid to help
23 them when they are blowing.

24 Q. Could that fourth zero drop over while the tone is
25 continuing to sound after you have reached 8 or 10?

1 A. I don't understand the question.

2 Q. For example, if a person is blowing into the
3 instrument sufficient with enough pressure, with enough volume
4 that tone is continuing to sound and you are counting at the
5 same time?

6 A. Right.

7 Q. Could the instrument register the fourth zero, turn it
8 over as you said, or drop out after you reached 8 or 10?

9 A. Yes, if I count fast. I don't go 1, 2, 3, 4 so about
10 8, it normally drops out.

11 Q. In other words, the point is the fourth zero dropping
12 not the tone itself?

13 A. Right.

14 MR. DIRUZZO: Nothing further.

15 THE COURT: State?

16 MR. GRIFFIS: No questions.

17 THE COURT: Call your next witness.

18 MR. DIRUZZO: Deputy Zager.

19 (Whereupon, the witness was sworn to tell the truth.)

20 DIRECT EXAMINATION

21 BY MR. DIRUZZO:

22 Q. How are you?

23 A. Fine.

24 Q. State your full name and spell your last name for the
25 record.

1 A. Jay Zager. Z-A-G-E-R. Broward County Sheriffs
2 Office.

3 Q. What capacity are you employed?

4 A. Deputy Sheriff assigned to the DUI unit, responsible
5 for Breath Alcohol Testing.

6 Q. How long?

7 A. Full time since 1996, approximately.

8 Q. When did you become familiar with the Intoxilyzer 5000
9 and its working as a BSO Officer?

10 A. In 1996.

11 Q. You have heard the testimony today and I am sure you
12 are familiar with why we are here?

13 A. Yes.

14 Q. You would agree with me that the Intoxilyzer 5000 --
15 MR. GRIFFIS: Objection. Leading.

16 THE COURT: Overrule.

17 BY MR. DIRUZZO:

18 Q. Go ahead. It requires a minimum volume or minimum
19 time between four and six seconds?

20 A. Yes.

21 Q. And anything over six seconds is more than needed for
22 the instrument to get a reading?

23 A. So long as the other two requirements have been met,
24 the other two requirements the pressure or the slope or the
25 spiograph that was drawn here.

1 Q. Those two requirements, one would be able to tell if
2 these requirements are met by the continuing sound, the
3 Intoxilyzer 5000 would emit the tone?

4 A. Yes.

5 Q. Would it indicate one of the requirements was met --
6 ultimately the determinant would be the fourth unit pops up,
7 that would be an indicator to the breath test technician all the
8 requirements are met?

9 A. The tone operates as a result of the seal being
10 broken, being opened by the air pressure.

11 Q. By air flow.

12 A. Yes. It is a pressure switch that's open by the
13 breath resistance to exhalation opens that pressure.

14 Q. While the person is blowing into the instrument, while
15 they are blowing with specific pressure or volume would the seal
16 remain open?

17 A. Yes.

18 Q. And while it is open the tone continues to go?

19 A. As long as there is alcohol pressure.

20 Q. So as far as you know, there wasn't alcohol present in
21 the first place and the seal was open, would the Intoxilyzer
22 register a tone?

23 A. It would register a tone up to the point all three
24 criteria were met. For example, if alcohol was found in the
25 breath after approximately 6 seconds, the tone would turn off.

1 You would continue blowing, but you would have no tone at the
2 end of 6 seconds.

3 Q. The instrument would come to a sufficient gage of
4 alcohol content?

5 A. Yes.

6 Q. Are you familiar with Form 23?

7 A. Yes.

8 Q. The Form 23 was supplanted by Form 14?

9 A. Yes.

10 Q. How does Form 14 differ in daily practice of BSO?

11 A. If I can explain a little about the form.

12 Q. Please?

13 A. What happened, Judge, the Form 23 essentially was an
14 artifact of the old breathalyzer days. It contains a checklist
15 of all the procedures of what the Intoxilyzer collected to
16 observe. In the old breathalyzer days there were many
17 functions, couplet (phonetic) dials I. It wasn't automated.

18 The Intoxilyzer is an automated instrument. These
19 functions are very much automated. What happened, a request was
20 made to eliminate the form. What was conceded was Form 23 was
21 joined together with Form 14, which is the Breath Test
22 Affidavit, so that these forms are now combined as one. That's
23 a little bit of the history.

24 Q. So in essence the Form 23 still exists?

25 A. No. Form 23 no longer exists, since the rule changed

1 last year.

2 Q. You said Form 14 were joined into 23?

3 A. The rule and criteria still exists albeit a new form
4 and new language. The new language under Form 14 that differs
5 from Form 23 is what language that have been pointed out.
6 Particularly, the language Ms. Barfield have spoke about Form 23
7 spells out to have a person keep blowing until the tone stops.
8 Form 14 essentially says have the person blow until they are
9 told to stop.

10 Q. So the record is clear, the blow until the tone stops
11 is no longer a part of the form 14?

12 A. Right.

13 Q. No longer of use by BSO?

14 A. No.

15 Q. That is the reason it has been eliminated?

16 A. Yes.

17 Q. Is it you just blow until told to stop?

18 A. That's what is on the form. The exact language I
19 would have to see the form. Currently, one is told to blow,
20 instructed to blow until told to stop.

21 Q. What are the current rules or guidelines that BSO has
22 for the length of time?

23 A. The BSO guideline would follow what the FDLE training
24 protocol, which essentially, during training operators are
25 instructed to tell people to blow until told to stop.