

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

CASE NO. 04-12519CF10A  
JUDGE MICHAEL G. KAPLAN

THE STATE OF FLORIDA,

Plaintiff,

vs.

JOHN CUBIC,

Defendant.

COPY

*L. Bandell*

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VOLUME II

The above-entitled cause came on for an in mass hearing before the Honorable PEGGY GEHL, County Court Judge, at 201 Southeast 6th Street, Fort Lauderdale, Florida, on April 13, 2005, commencing at 1:30 p.m.

APPEARANCES:

OFFICE OF THE STATE ATTORNEY  
BY: LANIE BANDELL, ESQUIRE,  
Appearing on behalf of the State.

ESSEN, ESSEN, SUSANECK, CANET & COHEN, P.A.  
BY: CARLOS CANET AND ALBERT CARTENUTO, ESQUIRES,  
Appearing on behalf of all Defendants.

OTHER JUDGES PRESENT:

- JUDGE MICHAEL G. KAPLAN
- JUDGE JEFFREY LEVENSON
- JUDGE JOEL T. LAZARUS
- JUDGE ROBERT S. ZACK
- JUDGE GARY COWART
- JUDGE GINGER LERNER-WREN

STATE ATTORNEY  
17TH JUDICIAL CIRCUIT  
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MS. BANDELL: State will call CSA Patricia Nanz.

THE CLERK: Judge, that evidence was number 6.

Number 5 was conditionally received.

JUDGE GEHL: So that was Exhibit Composite 6.

Thereupon, the witness, having been first duly sworn by the Clerk of Court, was examined and testified as follows:

THE CLERK: I do.

THE CLERK: State your name and spell your last name for the record.

THE CLERK: Patricia Nanz, N-A-N-Z.

JUDGE GEHL: You may proceed, State.

## D I R E C T E X A M I N A T I O N

BY MS. BANDELL:

Q. Good evening. Where are you currently employed?

A. Broward Sheriff's Office.

Q. How long have you been employed there?

A. Since 97.

Q. Are you currently certified through the Department of Law Enforcement as a breath test operator or an agency inspector?

A. Yes, I am.

Q. In which?

A. Both.

1 Q. How long have you held such certifications?

2 A. Breath tech since 97. Inspector since 99.

3 Q. When did you actually begin conducting agency  
4 inspections at the Broward Sheriff's Office?

5 A. It was in the area of January of 2000.

6 Q. When you conducted these agency inspections when  
7 you first started in January of 2000 did you conduct the  
8 annual inspections with anybody else?

9 A. Yes, I did.

10 Q. Who would that be?

11 A. At that time it was Deputy Jay Zager.

12 Q. Just explain logistically how did those  
13 inspections work? Were you both present for the entire  
14 time? How did it work?

15 A. No. Basically Jay would be there to have  
16 everything ready and I would come. And then we would do it  
17 together from that point on.

18 Q. So Deputy Zager would actually set up the  
19 Intoxilyzer in the simulators?

20 A. He would do the simulators and have the  
21 Intoxilyzers out. And then we would do the maintenance  
22 together.

23 Q. Now, were the simulators prepared already at the  
24 time that you would arrive to conduct these annual or  
25 monthly inspections?

1 A. Yes.

2 Q. So did you ever have an opportunity to see what  
3 type of water Deputy Zager was using at the time he prepared  
4 the simulators?

5 A. No.

6 Q. How long did you conduct the monthly inspections  
7 with the now former Deputy Zager?

8 A. From when I started in 2000 to when he left in  
9 2003, which was September of 2003.

10 Q. So for approximately three and a half year period  
11 of time you were doing it with Deputy Zager?

12 A. Yes.

13 Q. On each occasion, let me ask you, did you ever set  
14 up the Intoxilyzer or the simulators for inspection?

15 A. No.

16 Q. When Deputy Zager left in September of 2003 who  
17 conducted the annual inspections?

18 A. I did. The annual?

19 Q. I keep saying annual. The monthly.

20 A. I did.

21 Q. Did you conduct them with anybody else?

22 A. Basically I was by myself for a while. And then  
23 Deputy Buttery came on for a short period of time.

24 MS. BANDELL: And for Your Honors' sake, I believe  
25 defense counsel will stipulate that from September of

1 2003 until August 13th of 2004, tap water was being  
2 used. It's the date prior to that that is in  
3 question.

4 JUDGE GEHL: September 2003 to when?

5 JUDGE LEVENSON: August 13th or December 13th?

6 MR. CANET: August, 2004.

7 JUDGE GEHL: August of 2004?

8 MS. BANDELL: Correct.

9 JUDGE GEHL: So did you say August 31?

10 MS. BANDELL: August 13th of 2004.

11 JUDGE GEHL: And September what?

12 MS. BANDELL: We'll establish that. That's what  
13 we're going to establish is the start date. But from  
14 at least the time you'll stipulate that when she was  
15 doing it alone and with Deputy Buttery tap water was  
16 used?

17 MR. CANET: Yes.

18 MS. BANDELL: If I may approach the witness.

19 JUDGE GEHL: Okay.

20 JUDGE LERNER-WREN: I have a question.

21 JUDGE GEHL: Yes. Judge Wren.

22 JUDGE LERNER-WREN: I'm a little unclear on the  
23 issue of proof. If there's no evidentiary basis, I  
24 mean, is there an evidentiary basis to this witness to  
25 establish the start time or there is not?

1 JUDGE KAPLAN: Before September, 2003.

2 MS. BANDELL: No. The only evidence that she has  
3 offered and I can ask the question again. I don't want  
4 to missummarize. Is she does not know what type of  
5 water Deputy Zager is using. He will take the stand  
6 next. He is here.

7 JUDGE LEVENSON: As a defense expert or State  
8 expert?

9 MS. BANDELL: He's a State expert. Actually, he's  
10 not an expert. He's a fact witness.

11 Q. I'm showing you what's previously marked as  
12 State's G. Do you recognize these documents?

13 A. Yes, I do.

14 Q. What are they?

15 A. These are the inspection documents.

16 Q. For what?

17 A. On the Intoxilyzers. These are department  
18 inspections, and then the rest of them are agency  
19 inspections.

20 Q. When you say department inspection, are you  
21 referring to the annual inspection that's conducted by FDLE?

22 A. That's correct.

23 Q. Are these documents kept in the normal course of  
24 your business at Broward Sheriff's Office?

25 A. Yes, they are.

1 Q. Are they made at or near the time that you  
2 conducted the testing?

3 A. Yes.

4 Q. And are you in fact a records custodian for these  
5 documents?

6 A. Yes.

7 MS. BANDELL: The State would ask to admit into  
8 evidence what's previously marked as State's G as  
9 State's 7.

10 JUDGE GEHL: Any objection, Mr. Canet?

11 MR. CANET: Only in so far, Judge, as the records  
12 that are reflected in there were Jay Zager, I guess is  
13 going to come in and say I was using tap water. You  
14 know, I disagree with that.

15 JUDGE GEHL: Your objection is overruled. Those  
16 will be admitted as State's Composite Exhibit 7.

17 (Thereupon, State's Exhibit No. 7 was admitted  
18 into evidence.)

19 Q. When you had been conducting these monthly  
20 inspections have you ever obtained readings other than  
21 triple zeros when conducting the alcohol free testing with  
22 the simulator?

23 A. No.

24 Q. And that was when you were using tap water and  
25 whatever type of water Jay Zager was using. Correct?



1 A. Correct.

2 Q. Now, if you had obtained results of other than  
3 triple zeros what would you do?

4 A. On just a tap water?

5 Q. No. On any of them. If you're running an alcohol  
6 free test and you obtain a reading of other than triple  
7 zeros, what would you then do?

8 A. Basically first we would have tried another test.  
9 And if it came up other than the zeros again, we would have  
10 notified the State Attorney's Office.

11 Q. Who else would you notify?

12 A. What do you mean who else would we notify?

13 Q. Are you required to notify FDLE?

14 A. Well, we do notify them, yes. But basically we  
15 notify the State Attorney's Office.

16 Q. Did you ever obtain readings other than the triple  
17 zeros on alcohol free with acetone testing?

18 A. Yes.

19 Q. And at what point was that?

20 A. That was in October, I believe, of 2003.

21 Q. Do you recall what the reading was?

22 A. It was a 0.008.

23 Q. Are you aware of why you obtained that reading?

24 A. Consensus was that there was residue left in one  
25 of the tubes doing the acetone reading. And had it been

1 caught at that time I could have just changed the tubing and  
2 done another test. But it was not caught for, I think it  
3 was like three weeks later.

4 Q. So what did you do in response to obtaining that  
5 reading?

6 A. Notified the State Attorney's Office.

7 MS. BANDELL: Thank you.

8 CROSS EXAMINATION

9 BY MR. CANET:

10 Q. Ma'am, the card you were just referring to where  
11 you got a 0.008, that was on an alcohol free?

12 A. That was on the acetone.

13 Q. And you were using tap water at that time?

14 A. Yes.

15 Q. Now, with respect to what Jay Zager was doing, at  
16 no time did you ever see him using distilled water. Is that  
17 right?

18 A. I didn't see it. No.

19 Q. You never saw any jugs of distilled water anywhere  
20 in the testing area. Is that right?

21 A. That's correct.

22 Q. There's a closet, I believe, or there was a closet  
23 where the controlled testing items such as simulators and  
24 other items were stored. Is that right?

25 A. Correct.

1 Q. You never saw any distilled water in that closet?

2 A. No, I did not.

3 Q. Are you saying, Ms. Nanz, that-- I think you have  
4 the exhibits up there, the records.

5 A. She has them.

6 Q. These maintenance document reflect all the  
7 inspections that you did yourself and with Jay. Correct?

8 A. I believe so.

9 Q. And you're saying that in all of these times that  
10 you were doing an inspection with Jay you never showed up  
11 say a few minutes early to watch him mix the simulator?

12 A. Many times I was there and the solutions were  
13 already done. First of all, we don't mix the solutions.

14 Q. I mean put together the simulators.

15 A. To put together the simulators?

16 Q. Well, put the water or the solution in the  
17 simulators. In three and a half years you never showed up  
18 just five or ten minutes early and saw him do that?

19 A. I've seen him put the solutions in. I never saw  
20 him do the acetone or the water.

21 Q. So in three and a half years that you were doing  
22 this with Jay you never showed up just a little bit early  
23 and watched him put water in the simulator. Is that what  
24 you're saying?

25 A. I was never there for that.

1 Q. You had a couple of conversations with respect to  
2 this issue, one with Deputy Buttery and another with?

3 A. I had one with Franca Dicienzo (phonetic).

4 Q. And you had another one with Deputy Buttery. Is  
5 that correct?

6 A. As to?

7 Q. As to the use of tap water?

8 A. Never had that conversation with Deputy Buttery.

9 Q. Are you saying you never indicated to Deputy  
10 Buttery well, this is the way we always did it?

11 A. No.

12 Q. In reference to you and Jay. Is that right?

13 A. Never had the conversation with Deputy Buttery.

14 Q. You did have a conversation with Franca Dicienzo.  
15 Right?

16 A. Yes.

17 Q. You did indicate to her with respect to the use of  
18 tap water this is the way we've always done it. Correct?

19 A. Right.

20 Q. Meaning you and Jay, it's always been done this  
21 way?

22 A. I was meaning more me.

23 Q. But it's always been done this way, as far as you  
24 know distilled water was never used?

25 A. That's what I said.

1 Q. You would have been especially in a position to  
2 know if it was used, right, as like coinspector of this  
3 device?

4 A. During my term that I was doing it by myself, yes.

5 Q. Even when Jay was there?

6 A. No. When Jay was there that was his baby. He did  
7 all that stuff.

8 Q. After using tap water what you did was you ran  
9 controlled tests using the alcohol reference solutions. Is  
10 that right?

11 A. Correct.

12 Q. And you know that those solutions are mixed with  
13 distilled water?

14 A. Correct.

15 Q. So you were testing first contaminated water and  
16 then following it up using distilled water?

17 MS. BANDELL: I'd object to his reference to  
18 contaminated water. It was tap water.

19 JUDGE GEHL: I'll sustain the objection.

20 Q. Is that correct?

21 A. I'm not quite clear on your question.

22 MR. CANET: I have nothing further.

23 JUDGE GEHL: Anything from the State?

24 MS. BANDELL: I have nothing further.

25 JUDGE GEHL: You may step down. Thank you very

1 much. Is the State ready with any further witnesses?

2 MS. BANDELL: Yes. At this time the State calls  
3 former Deputy Jay Zager to the stand.

4 Thereupon, the witness, having been first duly  
5 sworn by the Clerk of Court, was examined and testified as  
6 follows:

7 THE WITNESS: Yes, I do.

8 THE CLERK: State your name and spell your last  
9 name for the record.

10 THE WITNESS: My name is Jay Zager, Z-A-G-E-R.

11 DIRECT EXAMINATION

12 BY MS. BANDELL:

13 Q. Good evening. Were you ever employed by the  
14 Broward Sheriff's Office?

15 A. Yes.

16 Q. Are you currently?

17 A. No.

18 Q. When did you leave the Broward Sheriff's Office?

19 A. I left-- let me tell you the exact date. I'll  
20 have to look on my retirement badge. I left in September of  
21 2003.

22 Q. And when did you begin your employment there?

23 A. Originally I started with the-- well, I started  
24 with the Broward Sheriff's Office back in 1988. Before that  
25 I was with the Dania Police Department.

1 Q. Were you ever certified as a breath test operator  
2 or agency inspector?

3 A. Yes, I was.

4 Q. For both of them?

5 A. Yes. For both.

6 Q. When did you become certified to be an agency  
7 inspector?

8 A. Well, that was the older program that essentially  
9 that was back in 1996. That program allowed for the persons  
10 to be certified in both at the same time. It was later on  
11 that they came up with the dual type of certification one  
12 for breath inspector and another one for just an operator.

13 Q. But you maintained your certification throughout  
14 your employment at the Broward Sheriff's Office?

15 A. I did.

16 Q. As one of your main responsibilities was it not to  
17 perform the monthly inspections on Intoxilyzer 5000  
18 instruments that the Broward Sheriff's Office utilized?

19 A. Yes, it was.

20 Q. When did that become a responsibility of yours?

21 A. I took that over full time in 1996.

22 Q. And when you were conducting the inspections  
23 from-- let me ask it this way. Did you ever use tap water  
24 when using the simulator for the alcohol free or the alcohol  
25 free with acetone testing?

1 A. No.

2 Q. What type of water did you use?

3 A. I used water that was purchased. Distilled water.

4 Q. Now, back in 1996 the rules did not require the  
5 use of deionized or distilled water. Correct?

6 A. I don't recall what the rules were. I know the  
7 training was. Because back then we were making up our own  
8 solutions for the alcohol standards. Instead of them being  
9 premixed and coming in a bottle you just slipped them out.  
10 So back then we were always using distilled water. That was  
11 the training.

12 Q. Is that because back then when you would receive  
13 the premixes you were required to use distilled water with  
14 those?

15 A. It wasn't called premix back then. It was called  
16 stock solution. So you added a certain amount of water to  
17 that to create your alcohol standard.

18 Q. You were required to use distilled water for that?

19 A. You know, I don't recall if the rule actually said  
20 it back then. But I know that was our training.

21 Q. So that's why you used it for the other test in  
22 the simulator?

23 A. Correct.

24 Q. At any point during your employment with the  
25 Broward Sheriff's Office while conducting agency inspections



1 did you ever use tap water?

2 A. No.

3 Q. Why is it that CSA Nanz would testify that she  
4 never saw a jug of distilled water? Do you know?

5 MR. CANET: Judge, I'd object. She's asking him  
6 to speculate about what her motivations are.

7 JUDGE GEHL: If he knows. I really don't like the  
8 witnesses to comment on another person's testimony.  
9 But if you're going to proffer that to him, that that's  
10 what she said.

11 MS. BANDELL: I would proffer that.

12 JUDGE GEHL: All right.

13 MR. CANET: Judge, still I'm going to object on  
14 grounds of relevancy. Why is this relevant why she  
15 would have said it?

16 MS. BANDELL: Judge, actually, it doesn't call for  
17 speculation.

18 JUDGE GEHL: If he knows.

19 Q. If you know, why is it that CSA Nanz may not have  
20 seen a bottle of distilled water?

21 A. You know, I don't know. Other than I kept some in  
22 my car. I kept some in the back, you know. I know that the  
23 CSAs would sometimes even drink that water. And I would  
24 write on it do not drink, because it's distilled. I have no  
25 idea. But the other thing, if I can add--

1 MR. CANET: Objection. Judge, there's no question  
2 pending.

3 MS. BANDELL: That's fine.

4 Q. So throughout the time that you were using  
5 distilled water, again, do you recall when the last agency  
6 inspection that you conducted was prior to your leaving the  
7 Broward Sheriff's Office?

8 A. That would have been a week or two of my  
9 retirement.

10 MS. BANDELL: Thank you. I have nothing further.

11 JUDGE GEHL: Cross-examination, Mr. Canet.

12 CROSS EXAMINATION

13 BY MR. CANET:

14 Q. Mr. Zager, is it your testimony that in the three  
15 and a half years that you did agency inspections along with  
16 CSA Nanz she never actually saw you fill a simulator with  
17 water?

18 A. I have no idea as what she actually saw or didn't  
19 see. It's entirely possible that she saw me prepare the  
20 solutions. I don't recall. Normally I would conduct or  
21 prepare the simulator solutions either before she got  
22 there--

23 Q. You're saying that in three and a half years she  
24 never saw you prepare simulator solutions?

25 A. I just answered. I don't know what she saw. I

1 can't testify as to what she saw. She may or may not have.

2 Q. Do you remember her being there at any time in  
3 three and a half years when you were preparing simulator  
4 solutions?

5 A. She was always there with me.

6 Q. When you were preparing the simulator solutions?

7 A. Again, when I was preparing the simulator  
8 solutions I don't remember if she was there or not. It's  
9 entirely possible she was.

10 Q. In the three and a half years she was. Right?

11 A. It's entirely possible she was there with me.

12 Q. Where did you buy the water from?

13 A. The local stores that sold it.

14 Q. Name one.

15 A. Winn Dixie by my house.

16 Q. And what would you do with the receipts?

17 A. Nothing.

18 Q. You didn't want to be compensated?

19 A. No. It's fairly inexpensive. I only really put  
20 in for petit cash on things that were of a significant  
21 amount.

22 Q. So during all that time you never asked the  
23 Broward Sheriff's Office to pay you back for the water you  
24 bought for the inspections?

25 A. I may have. I don't recall. I did petit cash

1 over the years. I can't recall. I'm sure there will be  
2 maybe some record of it if I did or didn't.

3 Q. So there is some record in existence to show this  
4 much for distilled water?

5 A. If it was in there. I don't recall if I did put  
6 it in because the amount was so small.

7 Q. Although you weren't required, why would you use  
8 distilled water?

9 A. It was the training I received.

10 Q. Okay. Why were you trained to use distilled  
11 water?

12 A. Well, because obviously distilled water is a known  
13 sample. It's a clean sample. I wouldn't want to use the  
14 tap water, because it's an unknown sample.

15 Q. And you're testing to see if there's any  
16 contamination in your measuring system?

17 A. Well, yes. That is in essence what we're checking  
18 for on the zero reference. We want to make sure that zeros  
19 show up.

20 Q. Did you ever see an Intoxilyzer give a positive  
21 response to a blank sample?

22 A. Yes.

23 Q. Yes, you have seen that happen?

24 A. Yes.

25 JUDGE GEHL: Anything more from the State?

1 MR. CANET: I have nothing further.

2 MS. BANDELL: Nothing.

3 JUDGE GEHL: Thank you, Mr. Zager. Nice to see  
4 you again.

5 THE WITNESS: Same here.

6 JUDGE GEHL: Does the State rest?

7 MS. BANDELL: No. One last witness, Judge.

8 JUDGE GEHL: Okay. Fine.

9 MS. BANDELL: State calls CSA Franca Dicienzo.

10 JUDGE LEVENSON: The judges want to discuss an  
11 issue before we go forward. How long is this witness  
12 going to be?

13 MS. BANDELL: Five minutes.

14 JUDGE GEHL: She was quick.

15 JUDGE COWART: Would you be resting after that?

16 MS. BANDELL: I will.

17 JUDGE LEVENSON: So he's also the expert in the  
18 other aspect of the hearing, the schematics?

19 MR. CANET: No.

20 JUDGE GEHL: Do you think your expert is going to  
21 be more than one hour?

22 MR. CANET: No.

23 JUDGE KAPLAN: You have any idea how long it's  
24 going to be?

25 MR. CANET: Probably up to an hour.

1 MS. BANDELL: Then I'll cross.

2 MR. CANET: No. I'm thinking that maybe  
3 together.

4 JUDGE KAPLAN: How long is your direct going to  
5 be?

6 JUDGE GEHL: We sort of had an idea it would end  
7 by 7:00.

8 MR. CANET: I'm going to try to get my direct done  
9 in half an hour.

10 JUDGE LEVENSON: I guess it would be not cost  
11 efficient for us to rest now, because I have to leave.  
12 I didn't realize it was going to be until 7:00. I  
13 would like to see your witness face to face. If not,  
14 I'll read the transcript.

15 JUDGE KAPLAN: Is he local?

16 MR. CANET: He's sitting right here.

17 JUDGE LEVENSON: Dr. Rose. Right?

18 MR. CANET: Yes.

19 JUDGE LEVENSON: He's from Miami. Right?

20 MR. CANET: No. Actually, now he lives in Fort  
21 Pierce. West Palm Beach.

22 JUDGE LERNER-WREN: He's local.

23 JUDGE GEHL: Is he the expert on the RFI case?

24 MR. CANET: No.

25 JUDGE LEVENSON: In any event, I'm happy.

1 JUDGE GEHL: Can you hold on five minutes to hear  
2 the last witness?

3 JUDGE LEVENSON: I'll be happy to.

4 JUDGE GEHL: Let's bring in Franca Dicienzo,  
5 please.

6 MR. CANET: Before she testifies, can we have a  
7 two minute break? Thank you. Be right back.

8 (Thereupon, a short recess was taken.)

9 JUDGE GEHL: Ms. Bandell, are you ready to  
10 proceed?

11 MS. BANDELL: I am, Judge.

12 JUDGE GEHL: Okay. You want to go ahead and swear  
13 the witness in, please.

14 Thereupon, the witness, having been first duly  
15 sworn by the Clerk of Court, was examined and testified as  
16 follows:

17 THE WITNESS: I do.

18 THE CLERK: Please state your name and spell your  
19 last name for the record.

20 THE WITNESS: Franca Dicienzo, Broward Sheriff's  
21 Office, D-I-C-I-E-N-Z-O.

22 DIRECT EXAMINATION

23 BY MS. BANDELL:

24 Q. Ms. Dicienzo, where are you currently employed?

25 A. With Broward Sheriff's Office.

1 Q. How long have you been employed there?

2 A. Since June of 2004, June 21st.

3 Q. And are you currently certified as a breath test  
4 operator and agency inspector?

5 A. Yes, I am.

6 Q. When did you first start working for the Broward  
7 Sheriff's Office?

8 A. The very first time?

9 Q. The very first time.

10 A. March of 1995.

11 Q. Okay. And you then left in 1999. Correct?

12 A. Correct.

13 Q. And when did you come back?

14 A. June 21st of 2004.

15 Q. Okay. Now, from 1995 to 1999 you were an agency  
16 inspector for the Intoxilyzers at Broward Sheriff's Office.  
17 Correct?

18 A. Most of the time, yes.

19 Q. During the time that you conducted the agency  
20 inspections did you have an opportunity at some point to  
21 conduct these inspections with somebody known as Jay Zager?

22 A. Yes.

23 Q. And when you were performing these agency  
24 inspections with Deputy Zager what type of water were you  
25 using during these inspections for the alcohol free and



1 alcohol free with acetone?

2 A. We were using distilled water.

3 MS. BANDELL: Thank you. I have nothing further.

4 JUDGE GEHL: Cross-examination.

5 CROSS EXAMINATION

6 BY MR. CANET:

7 Q. You had a conversation with Patricia Nanz  
8 concerning the use of distilled water. Is that right?

9 A. I did. Yes.

10 Q. She told you at that time that she had never used  
11 distilled water even when she was with Jay?

12 A. She didn't say anything about with Jay. But she  
13 did tell me-- all she told me about was having said  
14 something to you that she didn't use distilled water.  
15 That's as far as I went with that.

16 Q. You asked her about the use of distilled water and  
17 she indicated to you well, we've never done it that way.  
18 Those were her words?

19 A. She didn't say we. She said she never did it that  
20 way.

21 JUDGE GEHL: Do you have a deposition that says  
22 something otherwise?

23 MR. CANET: I'm going to get that right now.  
24 Well, I have a statement that was taken by the state  
25 attorneys.