TESTIMONY OF

TERRY ROBINSON

TECHNICAL SUPERVISOR

NOVEMBER 21, 2005

TERRY ROBINSON,

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

DIRECT EXAMINATION

BY MR. BOYD:

[At this time the tape was turned over by the Court.]

Q. (By Mr. Boyd) -- had the same problem, is that correct, as far as the problem that you diagnosed with the Scientific Director as far as the sticking flow valve; is that correct?

A. No, they don't all have the same problem.

Q. They don't? Why not?

A. That's the only one I've ever seen have that problem.

Q. Now, I thought you were able to duplicate the problem in the lab?

A. You can.

Q. Okay.

A. You can duplicate the problem. That doesn't mean it always exists or it ever existed in the other instruments.

Q. Okay. But, now, I thought the Scientific Director checked out some different instruments, other than the ones that were involved here at SWIFS in March,

and was able to make the flow valve stick and do it again and again?

A. They did it with the instrument that we took to them, the two instruments from the Dallas Police Department, and they were able to take the one that did stick and make it stick at will.

Q. Okay. And that particular instrument, did you replace that flow valve?

A. We took it out.

Q. You just took it out?

A. Yes.

Q. How does it work without it?

A. There's another valve that's in the external breath tube that acts as a one-way valve.

Q. Okay. So you just removed the one-way valve?

A. We removed it from its location near the sample chamber and there's another one in the breath tube, in the external breath tube.

Q. Okay. Now, in this particular instrument, on June 2, 2005, you had a predicted value for the simulator of a .08 and you actually had an actual value read .068; is that correct?

A. I would have to look at that. I don't have that memorized.

Q. Okay.

A. Yes, that looks like that's what that is.

Q. Okay. And then later that day you had a predicted value of .08 and you had an actual value of .072; is that correct?

A. Yes, sir.

Q. Okay. Then, now, if the person blows a deficient sample on, let's

say, 6-3, at 3:10, you had this -- what is this number VU00618?

A. That's the test record number.

Q. Okay. Test record No. VU00618, the person blew a deficient sample on the first test, so we would never actually get the instrument to read what the simulator reading should be; is that correct?

A. Correct. That step is never, never performed if that deficient sample occurs in the first test.

Q. Okay. But then on 6-3 with this test record No. 619, okay, a person blew a .165 and a .160. He had a predicted value of .08 and an actual value of .071; is that correct?

A. Yes, sir.

Q. Okay. Now, that's two one-thousands of a gram, I suppose, within tolerance; is that correct?

A. Yes, sir.

Q. Okay. If that had been a .069, we would have been completely out of tolerance; is that correct?

A. Correct.

Q. Then later I suppose Mr. Finkley went to check the instrument, actually went to an on-site inspection; is that correct?

A. Um, I would have to -- have to see the on the -- are you referring to --

MR. BOYD: May I approach the witness, Your Honor?

THE COURT: Yes, you may.

Q. (By Mr. Boyd) That would be easier if I approach the witness. Yes, June 3 you had Mr. Doe. Now, was this routine maintenance that we're talking about or

was this maintenance precipitated by the fact that you appeared to be having low reference results?

A. No. It's just a normal on-site inspection.

Q. Okay. Now, at that point I actually did a .000. You blew into the instrument and, of course, since he didn't -- now, did he get a -- did the first sample get accepted?

A. No, it was an interference. It was acetone check. It should show zero.

Q. That was the operational message 4?

A. Right.

Q. That's interference?

A. Right.

Q. Okay. On the second one you did the RFI?

A. Correct.

Q. And again, with RFI on the first sample, it wouldn't even check the simulator; is that correct?

A. Correct.

Q. Then after the simulator was replaced, he actually did two sufficient samples for one complete test and we show that now it's a .077; is that correct?

A. Correct, uh-huh.

Q. Okay. Now, at this point it seems like from the 5th and the 7th, it's starting to go down again. We're starting to get lower and lower and lower simulator readings, some five, some three, some one, some three. Did you ever come up -- now, I noticed on this one, again, we had an interferent; is that correct?

A. Yes, it's an inspection.

Q. That's an inspection?

A. Right.

Q. Okay. So we have, again, it seems like over a period of time that the simulator actual readings are going down with regard to what it ought to be. It ought to be a predicted value at .08. Again, it seems like the simulator is starting to -- reading is starting to go down; is that correct?

A. Yes, sir.

Q. Again, you did an inspection test on 6-17?

A. Yes, sir.

Q. Okay. Did you ever figure out in your mind -- I mean, when the simulator predicted value and the actual value starts going down, like this, it seems like, so quickly, and toward the beginning of the life of the simulator solution, did it cause you any concern with regard to the stability of the instrument?

A. No, not the stability of the instrument.

Q. How about the simulator? Did you start to think that maybe you had a simulator problem or a temperature problem with the simulator?

A. Reasonably certain that the reason it does that on the EN instruments is due to the condensation that occurs on the vapor samples which is introduced into the instrument. There's a piece of tubing that connects the reference sample device to the instrument and it's not heated. So there is some condensation that occurs. There's the celluloid valve in the EN instruments is very small. It's very susceptible to the presence of condensation. And we found that because of that condensation, actually over a very short period of time, as you can see there from the time that the solution is changed, it's a matter of several tests and there's been sufficient condensation introduced into that small valve, that will actually, actually cause that reference sample result to be low or in the

case of that first test you pointed out to me, actually be out of tolerance.

One of the things that we try to do during the on-site inspections is not only -- we change the solution at least once every calendar month and we try to get the condensation -- blow the condensation out of the connecting tubing, as well as if it's severe enough, we will actually disassemble the valve and dry it out. It doesn't have any effect on the subject reading, because the subject's breath sample does not go through the same plumbing as does the reference analysis vapor.

Q. The subject's breath sample is actually going through a heated tube and then the internal tube is also heated; is that correct?

A. Correct. This tubing, the tubing that the reference analysis sample goes through, is heated once it gets inside the instrument. It's the tubing between the device, the reference sample device, or simulator and the instrument that's not heated where the condensation issue occurs.

Q. Okay. Now, last week I think it was after the Houston Chronicle article came out in late October, you had the problems in Houston related to the digital voltage meter and digital voltage measurement, you were called down to Austin by the Scientific Director again. What was the purpose of that meeting?

A. Right. Well, that was just a fall workshop that they have. There's one each spring and one each fall that we go to and there are different topics that are discussed and this -- obviously, that, obviously, was one of the topics that was discussed.

Q. And what was the discussion about the Houston Chronicle?

A. Primarily the discussion involved a letter, which I don't have with me, but I would be happy to produce for you --

Q. Please.

A. -- that is from -- in fact, that's my intention. I just kind of was busy

this morning when Leann called me to come over.

Q. Can I give you my --

A. I finally do have a letter from CMI, which is signed by -- it's written by and signed by the principal engineer for the intoxilyzer instrument and it will be very self-explanatory as far as the information that it provides.

But, quickly, in a nutshell, what it does provide is the range of the digital voltage measurement of the instrument. It talks about, as we discussed earlier, post-calibration numbers that should be present. And the range that I gave you last week is not quite specific.

The numbers that are given in the letter are within the range that I gave you, that between 3300 and 3600 post-autocalibration. But there are -- it's a little more specific in the letter and you will see that when you -- when you get it and I will be happy to -- in fact, it was my every intention to carry it with me and anyone that asks for it, I will -- I will provide that information.

Q. Please. I'm handing you a sticky note with my actual tax number on there. And it turns out the numbers that you gave me last week were a little less specific; is that correct?

MR. ROBINSON: Objection, Your Honor, relevance. The problems with the lab in Houston are not of any concern to this case whatsoever.

MR. BOYD: Well, actually, Your Honor, the relevance is that last week we were talking about a certain set of numbers that the intoxilyzer is supposed to have worked within and it turns out that Terry is telling us today that his numbers were a little less specific than what CMI's actual numbers are and that was the exact point of the cross-examination and the point of the investigation.

MR. ROBINSON: It has still not been demonstrated what

that would have to do with this specific instrument and this specific test.

MR. BOYD: Well, I am cross-examining him about the fact that over a period of time the intoxilyzer seems to be showing lower and lower reference results and we're finding out, is it a problem with the simulator, is it a problem with the hose connecting the simulator to the intoxilyzer, or is it a problem with the intoxilyzer circuitry itself? We don't know.

THE COURT: I'm going to overrule the objection. However, Mr. Boyd, I'm going to let you ask that one question again and then you need to move on to another point.

MR. BOYD: Sure.

THE COURT: I don't know, Terry, if you remember the question you can go ahead and answer it. If not, Mr. Boyd, if you would restate it.

Q. (By Mr. Boyd) We were talking about that CMI, the engineers, put out a memo telling you what the precise guidelines are for the digital voltage meter and all the different -- now, there's five different things in the intoxilyzer. What are they?

A. There's five channels.

Q. Channels. And each one of them is supposed to work within those voltage parameters; is that correct?

A. Each one has what are called the ADV counts which is referred to by CMI in ADV counts, as well as a DVM or digital voltage measurement.

Q. Okay. Does anything within the software or the database of the intoxilyzer allow you to check the specific digital voltage readings on a particular day or with a particular test?

A. You can do it on a particular day at any time you wish. There's a menu that's password protected in every instrument that allows you to see those numbers;

however, to my knowledge, it's not possible to see that specific number as the test is being conducted.

We found out at the workshop that where that number came from that was printed in the newspaper had to do with a -- basically a guess by the person that wrote the article, having seen the logs that were maintained by the Houston Police Department's Breath Alcohol Testing Program, that that number was basically a guess based upon a number that they saw previous to that date and subsequent to that date. So they said it had to have been about this on this date. There's no way to -- there's no way to know that for sure.

Q. Okay. But that was when this individual did an inspection test --

MR. ROBINSON: Objection, again, Your Honor.

THE COURT: Mr. Boyd, I think it's time to --

MR. ROBINSON: -- the details of this in Houston.

THE COURT: I agree. I'm going to sustain the objection, Mr. Boyd. You went way off from the original question that you had asked, so I think we need to move on to another point.

Q. (By Mr. Boyd) Okay. Now, over this period of time, again, we have -- it seems like, again -- and is this going to be the same problem going from 6-30 -- I believe that was the date of this test?

A. Yes, sir.

Q. From 6-30 on. Now, right after that, the next inspection was actually on 6-30; is that correct?

A. Correct.

Q. Okay. Now, on 6-30 during the actual test, it appears test number -- test slip No. 677; is that correct?

A. Yes, sir.

Q. The predicted value -- okay. On 6-27, again, we're starting to show some instability as far as --

A. No. I'll stop you right there. It doesn't have anything to do with instability.

Q. Okay. But you think this is attributable to the similator?

A. Yes.

Q. To the hose?

A. To the -- yes, I do.

Q. During this period on 6-27, we start to see the actual value compared to the predicted value starting to go down pretty good, going down from .074 to .073, .074, and then on the actual test we have a predicted value that's less than the actual value -- we have an actual value that is much less than the predicted value; is that correct?

A. I would say it's less. It's not much less.

Q. Okay, .08 versus a .074 --

A. That's a 0.0006.

Q. Okay. Then the very next day you did the inspection test or someone did; is that correct?

A. Yes, sir.

Q. And, again, the very next day, 7-1 --

A. Actually, it was on the same day as the test. It was just a little bit later.

Q. And when you do the inspection test, that's when you check the DVM; is that correct?

A. Yes, sir.

Q. Okay. Then after this, again -- now, did anyone bother to blow out the simulator hose to your knowledge or dry it out after the inspection test?

A. We usually blow it out, yes, sir.

Q. Okay.

A. That's about all we can do.

Q. Okay. Now, by 7-2 through 7-5, we are starting to show, we actually have a predicted value of .08 and an actual value of .07; is that correct?

A. Yes, sir.

Q. So that's starting to get close to its limits as far as tolerance goes, within a thousandth; is that correct?

A. Yes, sir.

Q. And is that -- again, you attribute that to the simulator or the simulator hose?

A. Yes, I do.

Q. Okay. Did you check the thermometer on the simulator to see if maybe it was the thermometer that was reading a little low?

A. We always check the temperature of the reference sample solution at the time that we do the inspection and we record that temperature.

Q. Okay. Now, here I start to see after the inspections on 7-8, okay. It seems like -- I mean, what did you do? Did you change the tube or did you change the simulator --

A. We actually put a little -- what we started doing is we -- we got an idea from another technical supervisor which we implemented to see if it would work, and, yes, it does.

Q. And what was that?

A. We put like a trap in the tubing between the reference sample device or the simulator in the instrument, which the idea is to trap as much of the condensation and the moisture there before it gets to the valve of the instrument and we had very good success by doing that.

Q. Okay. So right around the time -- is this when you installed the trap on July 15, 2005?

A. I'm going to say it was -- it was in -- depending on the instrument location, I'm going to say it was sometime in July or August that we started doing that with the instruments. Now, I don't know specifically if that's when we did that with this instrument. But by looking at the reference analysis results and them being more consistent, I would say that is very close, if not the date that we did it.

Q. Right. And it looks like right around 7-8, you go from having consistently low actual values per your simulator solution to around 7-8, you had an inspection test, an inspection, and then starting right about that time you start showing where the numbers start getting more right on with the predicted value; is that correct?

A. Yes, sir.

Q. Okay. So you think that all these problems related to this test run with this instrument around this time had to do with the simulator or with the tube and not with the instrument itself?

A. Yes, that's my belief.

Q. Okay. You weren't experiencing any aberrant, deviant readings at that point; is that correct?

A. That's correct.

Q. Okay. Now, in general, you would agree with me, wouldn't you, that the longer you blow, the higher the score; is that correct?

A. Generally, yes, sir.

Q. Okay. So who would tell, like, Lawrence Allen, the breath test operator, the difference between a one-asterisk sample, a three-asterisk sample, or a six-asterisk sample? Is that part of their training? You tell them that generally the longer you blow, the higher the score?

A. They're not -- they're not instructed to in those terms. They are instructed to use the asterisks as a guideline to help them avoid having an invalid test due to no .02 agreement. They are instructed to use the asterisks or the stars as a guideline to get both samples to be the same, same size. And the goal is to get both samples delivered with the same number of asterisks or stars for each. That's how they are instructed. If they figure out that -- that the longer you blow, that they see -- they may see a higher, a higher number, that's something that they can figure out on their own.

Q. Okay.

MR. BOYD: I would like to go ahead and offer DX-1, consisting of six pages. Those are the maintenance records and inspection test records related to this intoxilyzer instrument.

MR. ROBINSON: No objection.

MR. BOYD: And then DX-2 --

THE COURT: DX-1 is admitted.

MR. BOYD: And then DX-2 also consists of six pages, which would be the test information logs pertaining to this instrument.

MR. ROBINSON: No objection.

THE COURT: DX-2 is admitted.

Q. (By Mr. Boyd) Okay. So, actually, after just days after the actual test in this case, you made some modifications to the tube that connects the simulator to

the intoxilyzer instrument; is that correct?

A. I'm not going to use the word "modification", because that has implications, as far as breath testing is concerned. But I would -- yes, we did. We did have an idea that we tried and we have been satisfied with the outcome of trying that and the instruments do all have those traps in the tubing between the reference sample device and the instrument.

Q. Okay. And this individual that was involved, you know, with the tests in Houston, what was his name?

MR. ROBINSON: Objection, Your Honor, relevance.

THE COURT: Sustained.

MR. BOYD: I'll pass the witness.

[End of Testimony]

DEFENSE EXHIBIT NO. 1

Maintenance and inspections records.

DEFENSE EXHIBIT NO. 2

Test information logs.

STATE OF TEXAS *

COUNTY OF DALLAS *

I, NANCY BREWER, Certified Court Reporter, do hereby certify that the foregoing pages constitute a full, true, and accurate transcript of the testimony of Terry Robinson as transcribed from audio tapes, and not reported by me, to the best of my ability.

SUBSCRIBED to by me on this the 12th day of December, 2005.

_____NANCY BREWER, CSR, NO. 5759