

1 (Thereupon, a partial transcript was
2 requested to be transcribed.)

3 CHRISTINE HOUSTON,
4 called as a witness on behalf of the Respondent,
5 having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. COX:

8 Q. Would you identify yourself, please.

9 A. Christine Houston.

10 Q. All right. How are you employed?

11 A. I work for the Kansas Department of Health and
12 Environment, the breath alcohol program.

13 Q. What is your capacity with the breath alcohol program?

14 A. I'm a supervisor.

15 Q. And how long have you been a supervisor?

16 A. Since September of 2008.

17 Q. Did you have some capacity with an -- and I'm going to
18 use the abbreviation in the interest of time, Kansas
19 Department of Health and Environment, I'm going to call
20 it KDHE. Did you have some connection with KDHE before
21 September of 2008?

22 A. Yes. I started with KDHE in the breath alcohol program
23 as a laboratory improvement specialist in October of
24 2001 and worked until 2004 and then went up to the
25 tuberculosis lab and worked as microbiologist until

1 of 2008?

2 A. I don't have the printouts, no.

3 Q. Are you aware of that happening?

4 A. Yes.

5 Q. How is it that you have come by that information?

6 A. I requested that information from the Olathe Police
7 Department.

8 Q. And do you have the information about what happened on
9 February 11th with respect to Machine No. 2576?

10 A. I don't have the printout but I looked at them.

11 Q. Okay. Tell me what your take is on what happened.

12 A. Basically he did four tests. Two on Instrument
13 80-002576 and then two more on 80-002575 and three of
14 the tests had what we considered to be ghost readings
15 and one did not.

16 Q. All right. Do you have an opinion as to what happened?

17 A. There's several things that could have happened. One
18 of the reasons that a possible ghost reading could
19 happen is that the temperature of the sample chamber
20 itself is low or lower than it should be but that would
21 have been seen on an inspection at CMI. Another issue
22 could have been that there was something floating
23 around.

24 Q. Let me stop you there. Did CMI catch that on their
25 check?

1 A. No. There was no reference as to a cell chamber
2 temperature fluctuation or operator anything of that
3 sort on the work repair sheet.

4 Q. And we have a couple of those. Maybe I can get those
5 out. They are there. They are at the tail end. I'm
6 going to hand you previously what has been marked as --
7 I don't know whether these are complete but I'm going
8 to hand you Plaintiff's Exhibit No. 8 and 9. Are
9 either one of those documents what you just now
10 referred to?

11 A. Plaintiff's Exhibit No. 9 would be.

12 Q. Okay. Now, Ms. Houston, you were indicating what other
13 problems there might have been. You indicated one was
14 low temperature of the sample chamber. You indicated
15 CMI ruled that out?

16 A. Correct.

17 Q. What else could it have been?

18 A. There could have been debris in the sample chamber,
19 which is very unlikely with such a new instrument and
20 the fact that there is a screen put in place to ensure
21 that but that could have been another cause.

22 Q. What else could it have been?

23 A. The operator.

24 Q. All right. Tell me about that.

25 A. Since we don't require that the officers wait the

1 Q. Okay. That may have been an unfair question.

2 MR. COX: I don't think I have anything
3 else. No further questions of this witness. Thank
4 you, Ms. Houston.

5 THE COURT: All right.
6 Cross-examination?

7 MR. NORTON: Thank you.

8 CROSS-EXAMINATION

9 BY MR. NORTON:

10 Q. If an instrument operator eats or drinks something
11 within 20 minutes prior to doing a weekly check, that
12 can cause a ghost reading?

13 A. Dr. Pepper can create a ghost reading of .007.

14 Q. Does it have alcohol in it?

15 A. No, but the byproducts from digestion can sometimes
16 within the mouth create mouth alcohol. That's why we
17 have this slope detector.

18 Q. But the slope detector should catch if somebody's Dr.
19 Pepper is causing the machine to recognize it as
20 alcohol, shouldn't it?

21 A. Not at .007. There is no way for a slope detector to
22 read anything at that negligible level of an amount.

23 Q. Are you aware of any other food or beverage that causes
24 the Intoxilyzer 8000 to report the existence of breath
25 alcohol concentration when there isn't one?

1 A. We have not tested it, no.

2 Q. So have you tested for Dr. Pepper?

3 A. I have not personally, no.

4 Q. Is that something you heard somebody from a conference
5 or something?

6 A. CMI.

7 Q. Okay. So CMI admits that Dr. Pepper will give you a
8 ghost reading on the Intoxilyzer 8000?

9 A. If you drink it and then blow directly through it
10 without a 20-minute deprivation period, it can, yes.

11 Q. You don't know what was wrong with this 2576 that
12 caused it to report .009 for subject tests on a subject
13 that had not been drinking, did you?

14 A. I know that there are certain things that I could
15 basically say it wasn't. But no, I can't -- I wasn't
16 there. I don't know specifically. There could have
17 been an ambient condition that could have created
18 something also.

19 Q. Okay. Or could it be that the machine just
20 malfunctioned in some way you're not aware of, correct?

21 A. If it got sent in and CMI looked at it and it couldn't
22 find anything wrong with it, then most likely it was
23 some kind of anomaly at the time of the test.

24 Q. CMI received that machine and they fixed it and sent it
25 back to the Department of Health and Environment,

1 Q. Okay. What if that same machine does air blanks --
2 does all the air blanks properly, the cal check is
3 within tolerance but it registers the breath alcohol on
4 the subject that you knew had no alcohol in that
5 person's system, would that be a satisfactory --

6 A. It depends on the situation. I actually had it occur
7 during a site inspection, but the instrument read .040.
8 That's a little bit higher than .009. I took that
9 instrument immediately out of service and there was a
10 malfunction in the pumping system of that instrument to
11 remove the alcohol from the sample chamber and
12 basically clear it.

13 Now, this instrument, per se, if I was called and
14 asked about what whether or not to take it out of
15 service, I would have told the individual no and then
16 they basically call, contact us and ask us what we
17 would like for them to do with the instrument. I would
18 have asked that individual to purge the instrument for
19 about an hour just to make sure that it's completely
20 clear, there is no ambient conditions, nothing like
21 that, and I would have asked the individual to retest
22 the instrument.

23 MR. NORTON: Judge, by the way, I move
24 to strike the portion of the answer that was
25 nonresponsive to my question.

1 THE COURT: Overruled. I don't think
2 it harmed anything.

3 Q. (BY MR. NORTON) So one time you blew .040 with no
4 alcohol in your body?

5 A. Uh-huh, yes. On the Intoxilyzer 5000.

6 Q. Okay. Regardless of how the machine performs on air
7 blanks and calibration checks, it should never report
8 the presence of breath alcohol when there isn't breath
9 alcohol, should it?

10 A. If you have all the safeguards in place, the 20-minute
11 deprivation period and the slope detection, you're not
12 going to have any issues during a regular breath test.
13 No, we don't want an officer blowing through the
14 instrument and get a .007, but it's not that there is
15 anything wrong with the instrument. It could be the
16 operator or the person blowing through the instrument
17 themselves because we don't make them wait that 15 or
18 20 minutes to make sure everything is cleared out of
19 their system.

20 Q. Or it could be a problem with the machine, correct?

21 A. It could be.

22 Q. When you say "alcohol deprivation period," that's what
23 the protocol requires, right, that the person be
24 deprived of alcohol for 20 minutes?

25 A. Correct.