

A PRACTICAL GUIDE TO THE DEFENSE OF BREATH TESTS AT TRIAL

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SALT LAKE CITY, UTAH
APRIL 26, 2024



Utah Association of
**Criminal
Defense
Lawyers**

STATE OF UTAH

V.

SOBER SUSAN SMITH

We asked that you do 2 things:

Hold them to their own rules.

Make sure that they employed reasonable safeguards to remove mouth alcohol as a concern.

- **Show .02 agreement of replicate samples as required by National Safety Council standards**
- **Show that they observed Susan for 15 minutes prior to protect against something like a burp or belch**

How do you view this case?

The law presumes that Susan is not guilty of the crime(s) charged.

This presumption persists unless the prosecution's evidence convinces you *beyond a reasonable doubt* that the defendant is guilty.

CR104 Presumption of Innocence.

<https://legacy.utcourts.gov/muji/?cat=2>

Compare the Role of the State and the Accused

There is no burden of proof upon the defendant whatsoever, and the burden never shifts to the defendant to introduce evidence or to prove innocence.

When a defense is raised by the evidence, the burden is on the State to negate or disprove it beyond a reasonable doubt.

- **They made no effort to introduce any evidence that the test was reliable despite not having a second test with .02 agreement.**
- **No effort to show that Susan didn't burp or belch in the rear of the patrol car.**

Not Guilty = Not Proven Beyond a Reasonable Doubt

Grave Suspicion Is Not Enough

Facts and circumstances that merely place upon the defendant a grave suspicion of the crime charged or that merely raise a speculation or conjecture of the defendant's guilt are not sufficient to authorize a conviction of the defendant.

Do you think it is good enough to “observe” a person that is in the back of a patrol car? Do you think that was the intent of the 15-minute observation requirement?

Do you assume that the machine's slope detector is good enough when it has been show time and time again to miss mouth alcohol?

What is a reasonable doubt?

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty and in criminal cases the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find her guilty. If, on the other hand, you think there is a real possibility that she is not guilty, you must give her the benefit of the doubt and find her not guilty.

<https://legacy.utcourts.gov/muji/?cat=2>

What is a reasonable doubt? Where do you see this “real possibility”?

A reasonable doubt is a doubt for which a reason can be given. Where do you look to see if there are doubts?

- The evidence,
- A lack of evidence, or
- A conflict in the evidence.

If your mind is wavering, unsettled, or unsatisfied, then that is reasonable doubt and you must find the defendant not guilty.

What is a reasonable doubt?

After giving consideration to all of the facts and circumstances of this case, if your minds are:

- **wavering,**
- **unsettled,** or
- **unsatisfied,**

then that is a doubt of the law, and it requires that Ms. Smith be acquitted.

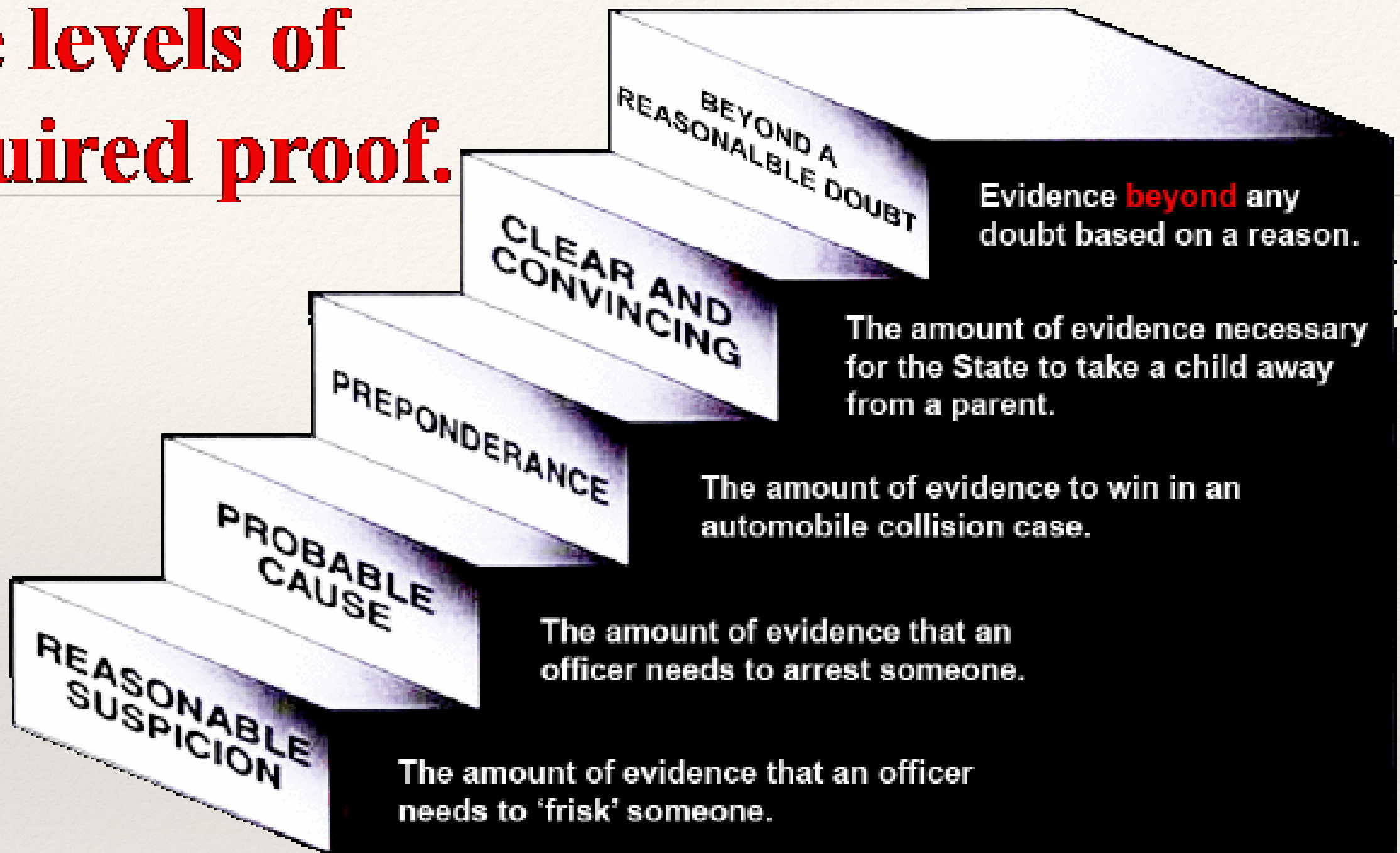
Acquitted means found not guilty / not proven beyond a reasonable doubt.

Comparing Reasonable Doubt to Other Levels of Proof

The prosecution has the burden of proving the defendant guilty beyond a reasonable doubt. Some of you may have served as jurors in civil cases, where you were told that it is only necessary to prove that a fact is more likely true than not true. **In criminal cases, the prosecution's proof must be more powerful than that. It must be beyond a reasonable doubt.**

<https://legacy.utcourts.gov/muji/?cat=2>

The levels of required proof.



Count 1 – Unlawful Alcohol Concentration

For now, we are just talking about the reasons for doubt as to Count 1.

Has the State proved beyond a reasonable doubt that Sober Susan Smith's breath alcohol concentration was .05 grams or greater at the time of the test?

They chose to get 1 sample and cannot show .02 agreement.
They don't do what the National Safety Council recommends.
They don't do what the world's foremost breath testing expert recommends.

Section R714-500-7 - Breath Alcohol Concentration Test Analytical Results

- A. The instrument should be operated by either a certified operator or technician.
- B. **Breath specimen analyzed for breath alcohol concentration shall be essentially alveolar or end expiratory in composition according to the analysis method utilized.**
 - 1. The results of tests to determine breath alcohol concentration shall be expressed as equivalent grams of alcohol per 210 liters of breath.
 - 2. Analytical results on a breath alcohol concentration test shall be recorded using terminology established by State statute and reported to three decimal places.
 - a. For example, a result of 0.237g/210L shall be reported as 0.237.
- C. Results of breath alcohol concentration tests will be printed by the instrument.
- D. Results are deemed to be an exact representation of breath alcohol concentration at the time of test.
- E. The printed results of a breath alcohol concentration test will be retained by the operator or the operator's individual agencies' designated record or evidence custodian.
- F. Instrument internal standards on a breath alcohol concentration test do not have to be recorded numerically.

Reasonable Doubt requires following the rules and using reasonably available safeguards.

- Make sure that the observation period involves trying to make sure that the person does not burp or belch.
- Use the .02 agreement of samples.

3 things are necessary to protect against mouth alcohol

1. 15-minute “wait” (OBSERVATION) period

2. .02 agreement of the samples

3. the slope detector in the machine (.049 on cake & .11 when no alcohol should have been detected)

THE DRINKING DRIVER



Basic Breath Testing Manual

Revised 05/2014

mouth cavity directly into the blood. Not all of the alcohol is passed on to the stomach through swallowing. Some remains in the mouth, combining with saliva. This alcohol will eventually be absorbed, evaporate or pass on to the stomach. Alcohol that remains in the mouth cavity is known as mouth alcohol. (Residual alcohol from the last drink, will dissipate from the mouth cavity in less than 15 minutes.) This mouth alcohol will have significantly higher concentrations than what is in the blood or breath. Since alcohol can remain in the mouth for this period of time:

ALL INDIVIDUALS MUST BE PLACED UNDER OBSERVATION FOR AT LEAST 15 MINUTES. AND NOT ALLOWED TO EAT, DRINK, SMOKE OR TAKE ANYTHING ORALLY PRIOR TO A BREATH ANALYSIS.

This ensures no mouth alcohol or other contaminant could affect the result of a breath analysis or contaminate the sample cell. Generally, if a subject belches or regurgitates into the mouth during the observation period, the observation period should be restarted.

The best breath test expert in the world says
replicate test is needed:

J. Anal Toxicol 1994 Vol 18
pages 306-311

Quality Assurance in Breath-Alcohol Analysis*

Kurt M. Dubowski

*The University of Oklahoma Health Sciences Center, Department of Medicine and Forensic Science Laboratories,
P. O. Box 26901, Oklahoma City, OK 73190 and Office of the State Director of Tests for Alcohol and Drug Influence,
State of Oklahoma*

Is there a State expert in Utah that would dare disagree with Dr. Dubowski?

Repeating an analysis is a widely employed QA practice in chemical analysis. Collection and sequential analysis of at least two separate breath specimens has become accepted practice, as recommended by the NSC Committee on Alcohol and Other Drugs. The Committee recommended that "The breath samples should be collected at intervals of not less than 2 nor more than 10 minutes, after an initial deprivation period of at least 15 minutes" (22). Any difference between the duplicate results greater than a predefined maximum should be regarded as an indication of a potential problem. Conversely, acceptable agreement of the duplicate results eliminates the unrecognized presence of such actual or supposed irregularities as the effects of mouth alcohol, alleged radio frequency interference with the instrumental analysis, and other confounding factors (36). The sequence of a positive initial, or screening, test

The National Safety Council says that we
need replicate tests... and they have since
1986.

RECOMMENDATION OF THE SUBCOMMITTEE ON TECHNOLOGY

**DUPLICATE BREATH ALCOHOL
TESTING**

**NATIONAL SAFETY COUNCIL
COMMITTEE ON ALCOHOL AND OTHER DRUGS**

1986

Even the National Safety Council says we need 2 samples:

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October 1986

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And the National Safety Council CONTINUES to state how important 2 tests are:

NATIONAL SAFETY COUNCIL COMMITTEE ON ALCOHOL AND OTHER DRUGS

REPORT OF THE SUBCOMMITTEE ON ALCOHOL: TECHNOLOGY, PHARMACOLOGY, AND TOXICOLOGY

WASHINGTON, DC
FEBRUARY 18, 2008

Subcommittee Co-Chairs: Patrick Harding, Kurt Dubowski, Ph.D.
Report prepared by Patrick Harding

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Subcommittee members: Janet Anderson-Seaquist, Mack Cowan, Rod Gullberg, Glenn Hardin, Brian Hodgson, and Michelle Spirk

- B. The significant weight assigned to breath alcohol results, along with the serious consequences arising from conviction on an impaired driving offense requires evidential breath alcohol testing programs to implement appropriate quality assurance measures.¹⁻⁶

Why doesn't the State of Utah want to follow basic requirements to eliminate mouth alcohol in Ms. Smith's case?

Acceptable Practices for Evidential Breath Alcohol Testing *February 18, 2008*

3. Testing protocols should employ a minimum pre-exhalation mouth alcohol deprivation period of 15 minutes. (1, 2, 7b, 7i, 8, 9, 17, 18)
4. Breath alcohol measurements should be conducted on at least duplicate independently exhaled end-expiratory breath samples; the breath sample results should agree within the applicable established and documented criteria. (1, 2, 7i, 8, 17)

SUBJECT INFORMATION

Baker/Time Observed:

04:19

Subject Last Name:

Subject First Name:

Subject Middle Initial: V

Date of Birth: 08/23/2

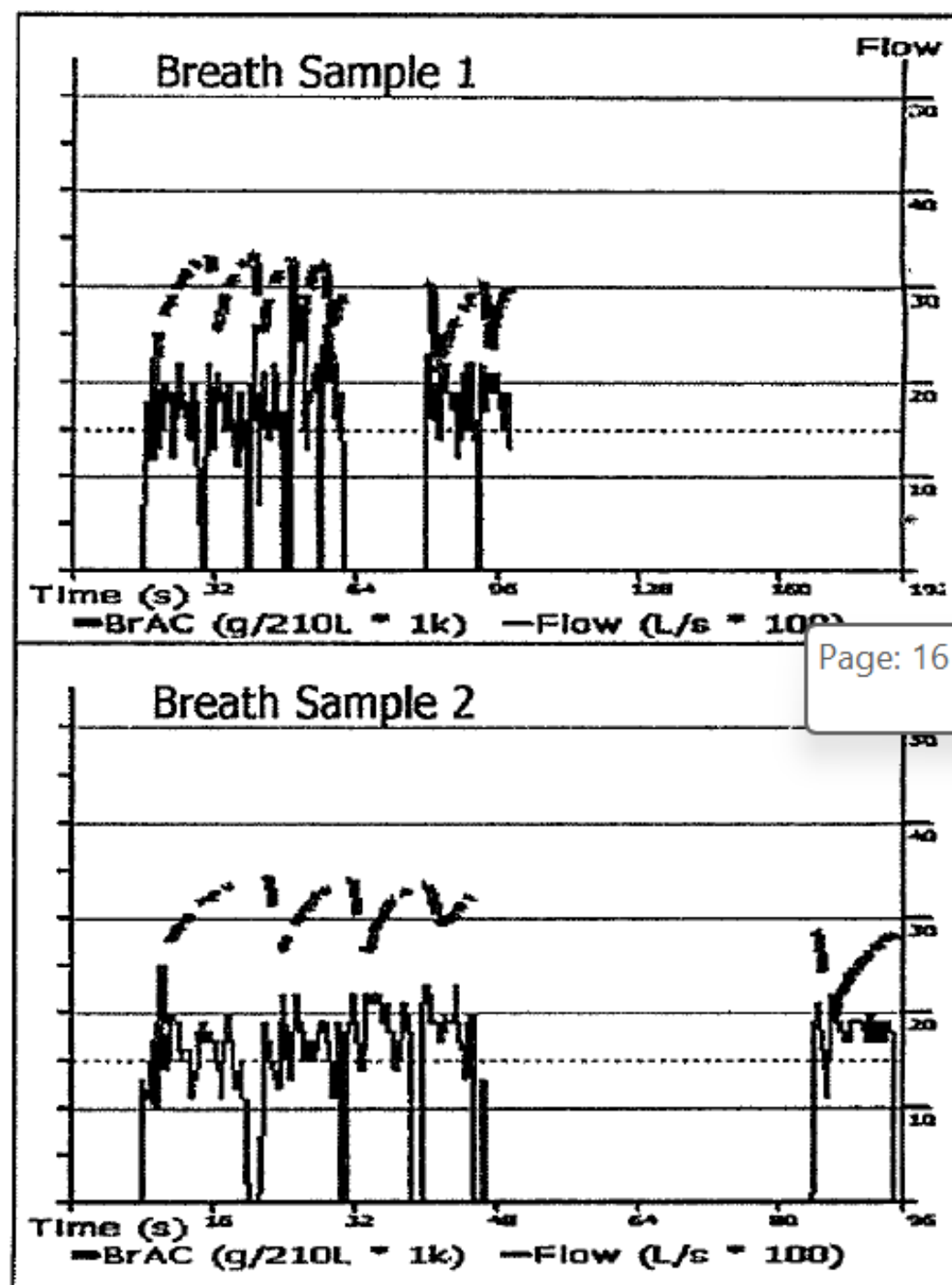
License #: 2209

State of Issue: UT

Test	g/210L	Time
Air Blank	0.000	04:35
Diagnostic Test	Pass	04:36
Air Blank	0.000	04:36
Subject Test	0.058	04:37
Number of Attempts	1	
Breath Volume	2.66 liters	
Air Blank	0.000	04:37

Result Details

Test	g/210L	Time
Air Blank	0.000	01:48:25
Diagnostics	Passed	01:49:00
Air Blank	0.000	01:49:38
Subject Sample	0.121	01:51:28
Breath Volume	1.20 Liters	
Air Blank	0.000	01:52:18
Dry Cal Chk	0.077	01:52:39
Air Blank	0.000	01:53:19
Diagnostics	Passed	01:54:58
Air Blank	0.000	01:55:36
Subject Sample	0.114	01:57:22
Breath Volume	1.36 Liters	
Air Blank	0.000	01:58:07



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[Handwritten Signature] 1521

Operator's Signature

Reasons for Doubt From the Evidence Unlawful Alcohol Concentration – Count 1

From their witness – Mr. Tilson:

- ❖ .118 based upon mouth alcohol
 - ❖ .02 from breath spray
 - ❖ .032 cake
 - ❖ .049 gum
-
- ❖ The mouth alcohol problem is a real problem in this case.

Reasons for Doubt From the Evidence Unlawful Alcohol Concentration – Count 2

Officer Janke

- ❖ Part of the 15-minute observation period was when Susan was in the rear of the patrol car on the way to the police station.
- ❖ Divided by a plexiglass cage.

Mr. Tilson

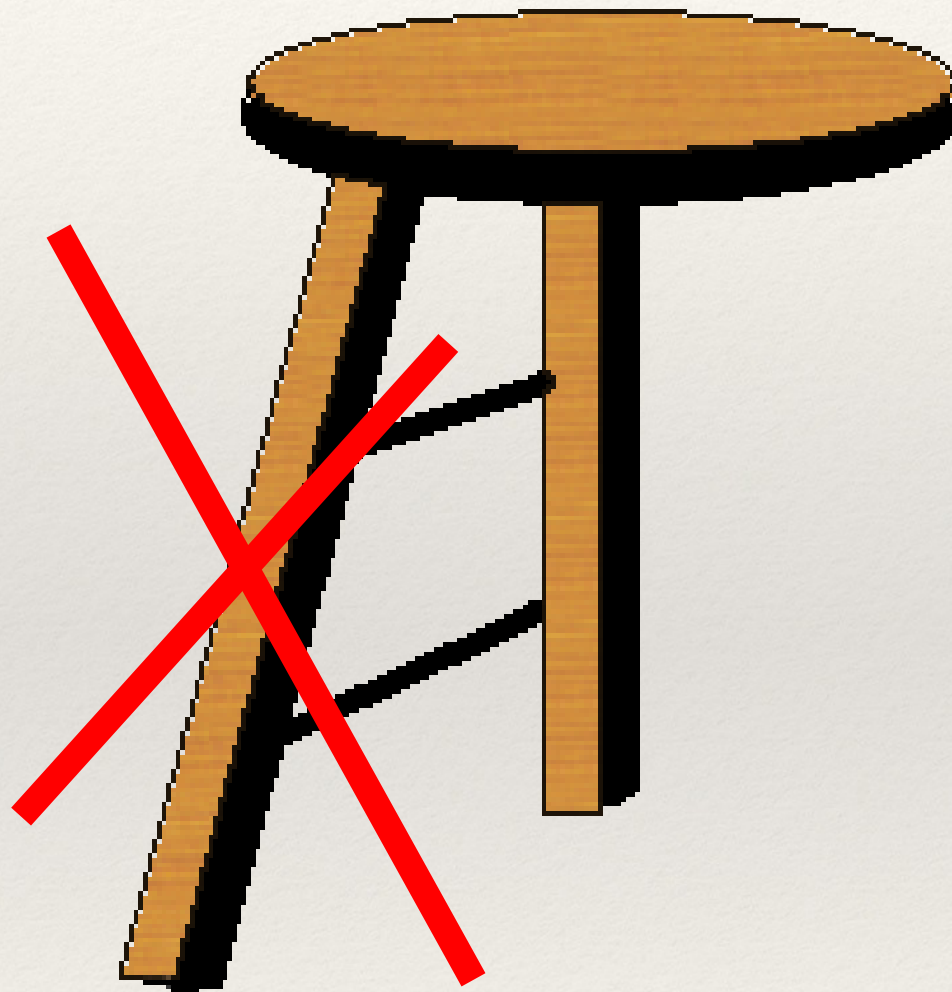
- ❖ Cannot say the 15-minute observation period was sufficiently followed
- ❖ He chose not to enable the Intoxilyzer 8000 to produce 2 samples
- ❖ He eliminated 1 of the essential safeguards to mouth alcohol

Reasons for Doubt From a Conflict in the Evidence Unlawful Alcohol Concentration – Count 2

- Where is the evidence that is consistent with intoxication?
 - No impairment of speech
 - No impairment of ability to stand and walk
 - No impairment of ability to balance
- “Observation” in this case v. what we all know observation means
- Mr. Tilson – “You can rely upon it”, but 36% of the time it missed mouth alcohol.

Reasons for Doubt From a Lack of Evidence

Unlawful Alcohol Concentration – Count 2



Why wouldn't you have the safeguard of 2 samples to show .02 agreement? It's so easy to check for.

What are we asking for?

- ❖ Count 1 – Unlawful Alcohol Concentration – Not Guilty
– Not Proved Beyond a Reasonable Doubt
- ❖ Count 2 – Failure to Maintain Lane – Guilty

Why is the Mouth Alcohol Defense my “go-to” defense?

1. My clients are broke, and it is affordable.
2. They want a Not Guilty, and it works.

Some caveats...

1. Y'all = you all
2. Fix'n to = something has not occurred yet, but it is about to.
3. I curse (when I'm nervous and) when I'm in the company of friends.
4. I'm not a Utah lawyer.
5. The stuff I say here is just for the purposes of this presentation for Utah lawyers. And for you Georgia prosecutors that see this know that I'm just kidding.

Admissible doesn't mean that it should not be challenged at trial.

State v. Vialpando, 2004 UT App 95, 89 P.3d 209 –

- (1)the suspect was in the officer's presence for the entire period;
- (2)it is clear that the suspect had no opportunity to ingest or regurgitate anything during the minimum observation period; and
- (3)nothing impeded the officer's powers of observations during the observation period.

Let's prepare ourselves.

Why are you doing this?

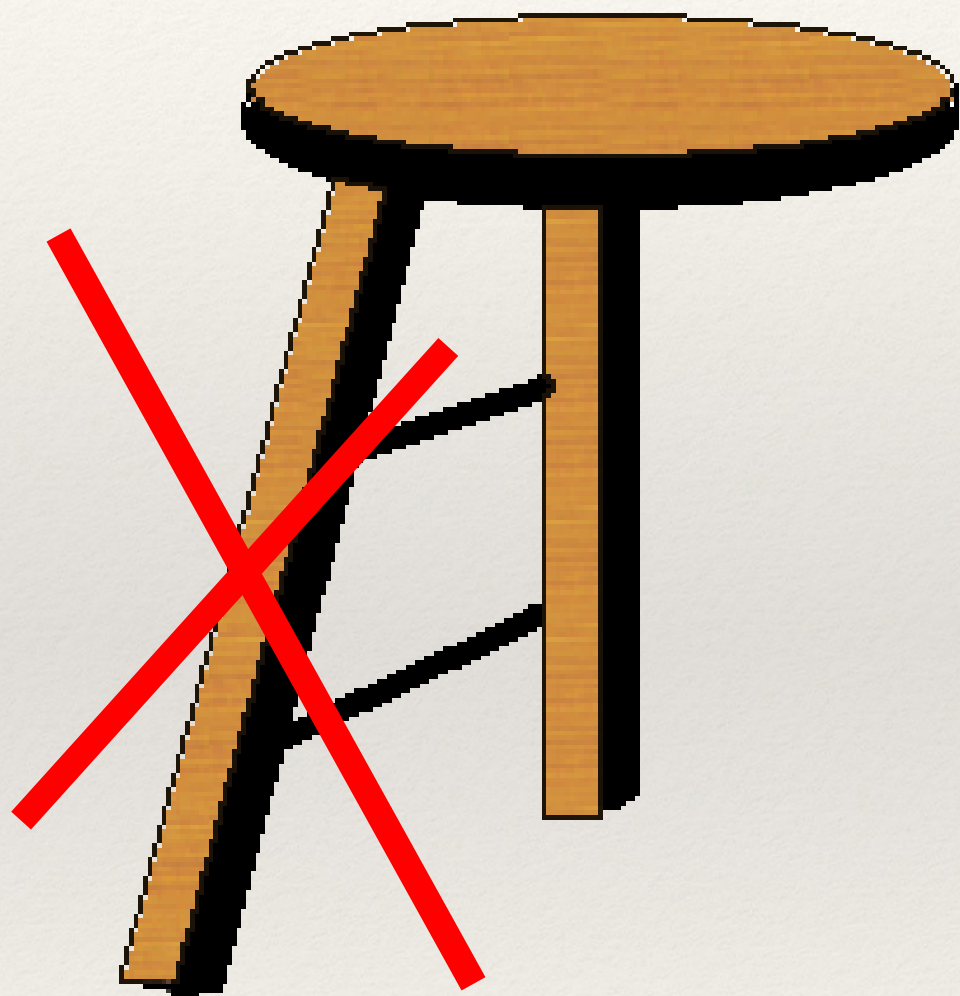
Who is this about?

I am not perfect. I lose (a lot). (Truth be told, I love the feeling of being an underdog and representing underdogs. Also, a huge Taylor Swift/TTPD fan.)

*Are you sure you must do this on a budget?

3 Safeguards Against Mouth Alcohol From the Manual

- .02 agreement of the samples (the consecutive samples may not vary by more than .02)
- 15-minute “wait” (OBSERVATION) period
- the slope detector in the machine (Invalid Sample)



Utah has given you a couple of little gifts. This is #1.

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The Mouth Alcohol Defense starts with the Intoxilyzer Operator's Manual

THE DRINKING DRIVER



Basic Breath Testing Manual

Revised 05/2014

The possibility of mouth alcohol is dangerous stuff when the State relies upon a breath test to prove an “unlawful alcohol concentration” charge.

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Gift #2 that Utah has given you

J. Anal Toxicol 1994 Vol 18
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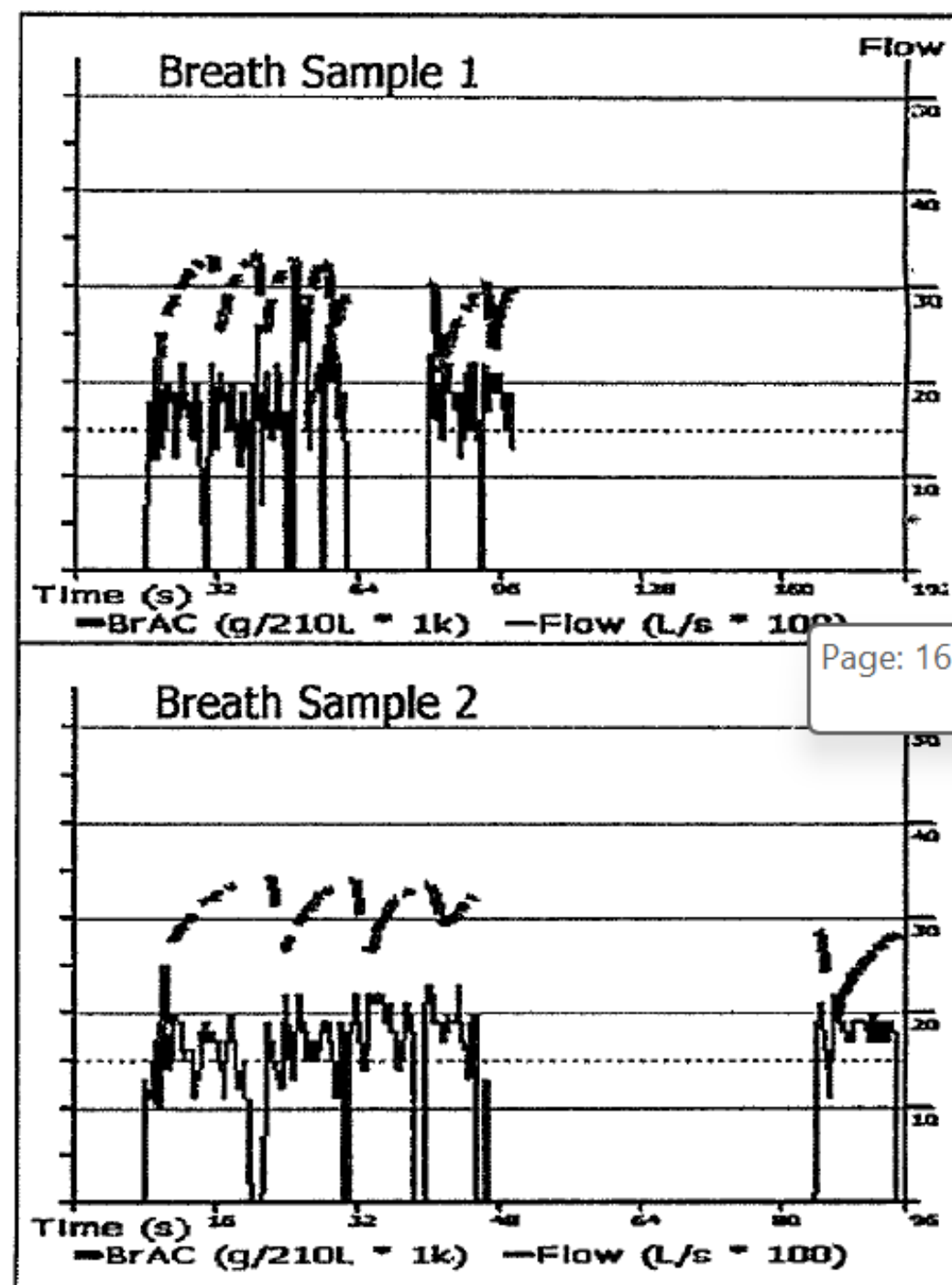
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J. G. [Signature] 1521

Operator's Signature

Evaluation of Breath Alcohol Testing Instruments to Replace the Intoxilyzer 5000

September 2012

GBI Crime Laboratory



The Intoxilyzer 9000 is not the best device at detecting mouth/residual alcohol

Mouth Alcohol Tests

The mouth alcohol test category of the laboratory evaluation was designed to test the effectiveness of the breath testing instrument's mouth alcohol detection systems. It was comprised of three subcategories worth a total of 50 possible points.

Mouth Alcohol Test Criteria Evaluated	Summary	Intoxilyzer 9000	Evidenzer 240 Mobile	Datamaster DMT-GF
Mouth Alcohol LOD	Mouth alcohol limit of detection was evaluated using an ethanol containing mouthwash or breath spray. After administration of ethanol to the oral cavity, a breath sample was provided at regular intervals as close together as the instrument allowed until the alcohol was completely dissipated. The process was repeated until a total 5 administrations have been made. The mouth alcohol limit of detection was determined by looking at the analyzer's response and the breath alcohol curve characteristics.	10	15	0
Mouth Alcohol Detection in Drinking Subjects	Mouth alcohol detection in drinking subjects was evaluated using a controlled dosing experiment. Dose subjects were required to consume a small amount of an alcohol containing beverage and provide a breath sample at an interval determined by the evaluator. Estimated BrAC was compared to the mouth alcohol results to evaluate the effectiveness of the instrument in identifying mouth alcohol. This test was performed on a minimum of 5 drinking subjects with two separate administrations of mouth alcohol.	10	25	0
Mouth Alcohol Detection with Foreign Objects	A mouth alcohol detection test with foreign objects was performed using non-dosed subjects in a laboratory setting. In this test the mouth alcohol limit of detection test was performed while a variety of foreign objects such as gum or bread remain in the mouth. This test was performed on a minimum of two foreign objects. This test does not need to be performed more than once for each object tested.	0	5	10
Total		20	40	10

The Intoxilyzer 9000 is not the best device at detecting mouth/residual alcohol

Subject	Mouth Alcohol Detection in Drinking Subjects Results													
	Intoxilyzer 9000 ¹					Evidenzer 240 Mobile ²					DMT-GF ³			
	Test #1		Test #2		Estimated BrAC (g/210L)	Test #1		Test #2		Estimated BrAC (g/210L)	Test #1		Test #2	
	Time Elapsed (min)	Result	Time Elapsed (min)	Result		Time Elapsed (min)	Result	Time Elapsed (min)	Result		Time Elapsed (min)	Result	Time Elapsed (min)	Result
1	2	MA	4	MA	0.105	2	MA	4.5	MA	0.123				
2	3.5	MA	5	0.073	0.080	4.5	0.105	6.5	0.102	0.096				
3	3	0.163	5	0.103	0.077	3.5	MA	5	MA	0.084				
4	1	MA	2.5	MA	0.049	7	0.07	9	0.056	0.066				
5	1.5	0.189	3.5	0.112	0.093	3.5	MA	5	MA	0.100				
6	2.5	0.132	4	0.116	0.116									
7	1	MA	3	MA	0.069									

- 64% mouth alcohol detections.
- 100% mouth alcohol detections
- Dosed subject test for DMT-GF was cancelled due to chronic Interference warning.
- Time is time elapsed since last drink, measured with timing device.
- Mouth alcohol (MA) created by consumption of alcoholic beverage.
- Estimated BrAC at time of mouth alcohol test was calculated using modified Widmark formula.
- Results in bold indicate effective flag.
- Dates: February 15, 2012; February 21, 2012; March 14, 2012; and April 4, 2012; Ethanol Source: Alcoholic beverage; Time elapsed since exposure measured with timing device; Thermometers: 72576029, 11564016

The Intoxilyzer 9000 is not the best device at distinguishing cake from alcohol

Sample	Mouth Alcohol Detection with Foreign Objects Results ¹								
	Dentyne Ice Arctic Chill - 1 piece					Publix yellow sheet cake ~1 inch cube			
	Time Elapsed (min)	Intoxilyzer 9000	Evidenzer 240 Mobile	DMT-GF		Time Elapsed (min)	Intoxilyzer 9000	Evidenzer 240 Mobile	DMT-GF
1	Baseline	0.000	0.000	0.000		Baseline	0.000	0.000	0.000
2	0	MA	MA	MA		0	MA	MA	MA
3	2	0.049	MA			2	MA	MA	
4	3			MA		3			MA
5	4	0.020	MA			4	0.032	MA	
6	6	0.000	0.000	MA		6	0.013	MA	MA
7	9			0.000		8	0.000	MA	
8						9			0.003
9						10		MA	
10						12		0.015	0.000
11						14		0.000	

The Mouth Alcohol Detector (SLOPE DETECTOR) is not perfect.

23 Q Let's talk about the question I asked you. Does
24 the slope detector work perfectly or not?

25 A No, it doesn't flag every sample as an invalid

1 sample that contains mouth alcohol, no, but it will always
2 flag it as an invalid sample if it produces a drop when it
3 reaches a certain threshold, which it's programmed to do.

4 Q It doesn't work all the time, does it?

5 A Again, it doesn't always flag every individual who
6 has mouth alcohol as invalid, but every person's mouth
7 alcohol profile that has a drop that it's trained to actually

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4 Q It doesn't work all the time, does it?

5 A Again, it doesn't always flag every individual who
6 has mouth alcohol as invalid, but every person's mouth
7 alcohol profile that has a drop that it's trained to actually
8 identify as mouth alcohol, it will.

9 Q So it does work perfectly all the time, is that
10 what you're telling me?

11 A Well, in my opinion, it will identify when a
12 subject's mouth alcohol profile drops by a set amount and
13 that varies based on concentration. If it's .03 or less to
14 about .003. So, if they get a .003 drop and it's .03 or
15 less, it's going to flag it as mouth alcohol. If it's
16 between .03 and .06, I believe if the drop is 6 percent, it's
17 going to flag it as mouth alcohol. And if it's .06 or more,
18 I believe it's .006, it will flag it. So, it's when it
19 drops.

The Mouth Alcohol Detector (SLOPE DETECTOR) is not perfect.

20 Q I'm a really straightforward guy. If I'm asking
21 these questions in some way that you don't understand, please
22 let me know. Yes or no, is the slope detector perfect?

2 THE COURT: If you will answer yes or no, and then
3 if you need to explain further, you certainly can.

4 THE WITNESS: Yes, Your Honor.

5 No, it's not perfect for use as a definitive tool
6 for catching every single instance where there is mouth
7 alcohol.

The Mouth Alcohol Detector (SLOPE DETECTOR) - A .11 Result With a True BAC of .00?

3 Q And part of Mr. Wigmore's study was about whether
4 or not the slope detector accurately worked, correct?
5 A Yes. The subjects were providing single subject
6 samples and in these particular cases he had some individuals
7 register - - in fact, one individual registered as high as a
8 .11 and he didn't have any alcohol in his system. So, he
9 found that it didn't always flag something as mouth alcohol.

Did you see what the State expert said about it being a single sample study?

Comparison of Mouth Alcohol Curves

Operator's Manual

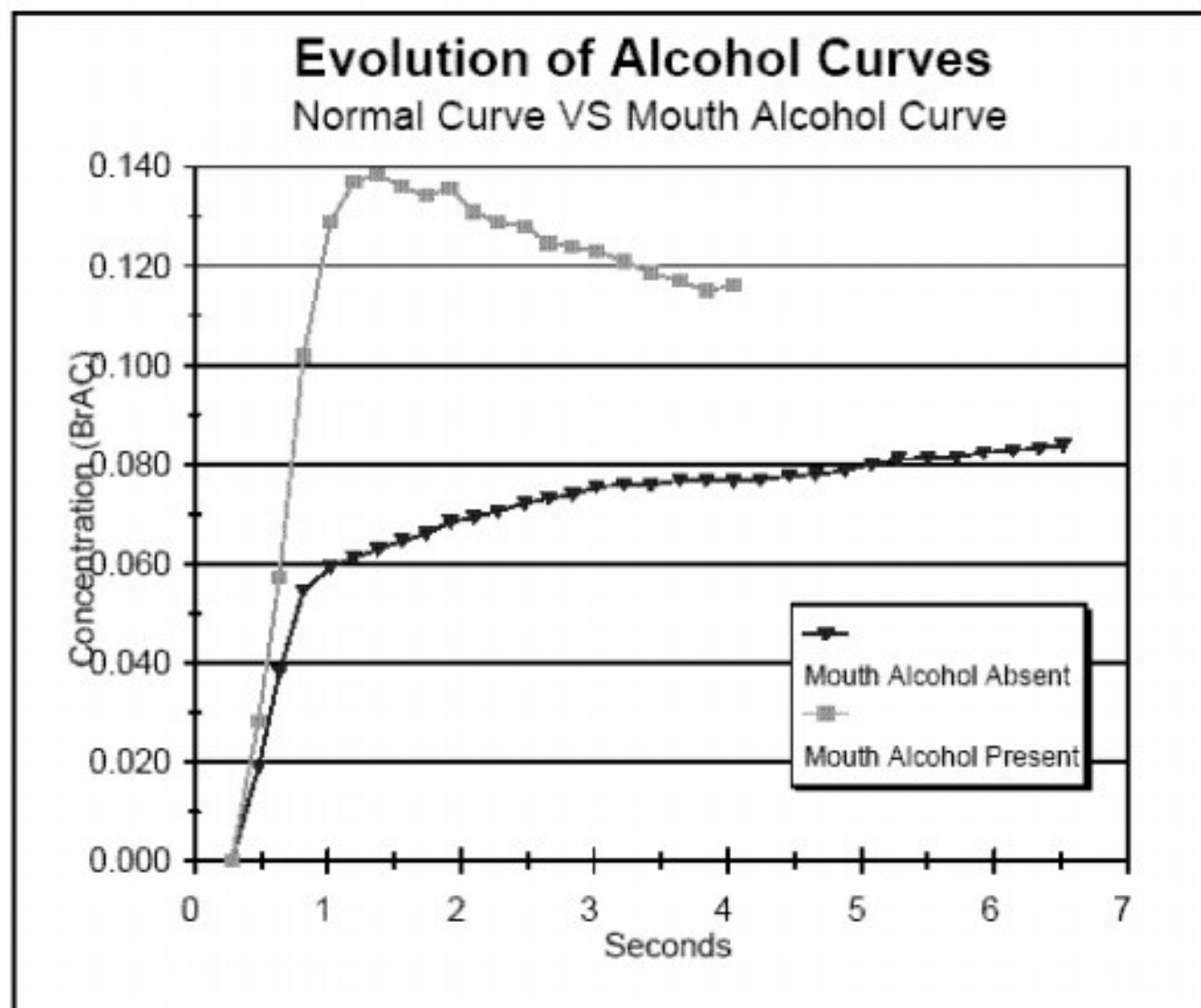


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Garriott's Medical-Legal

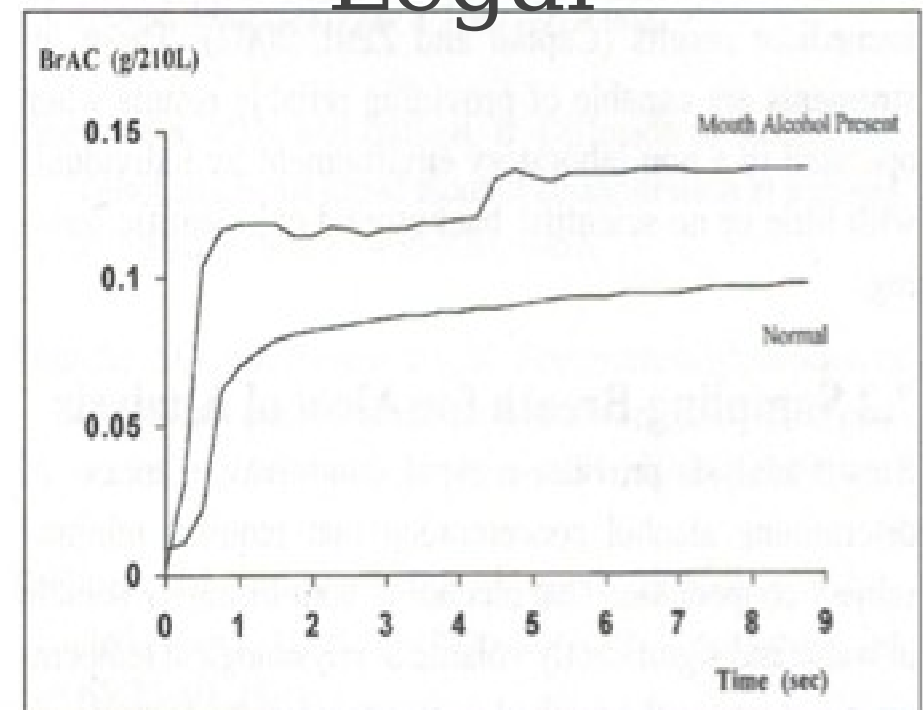
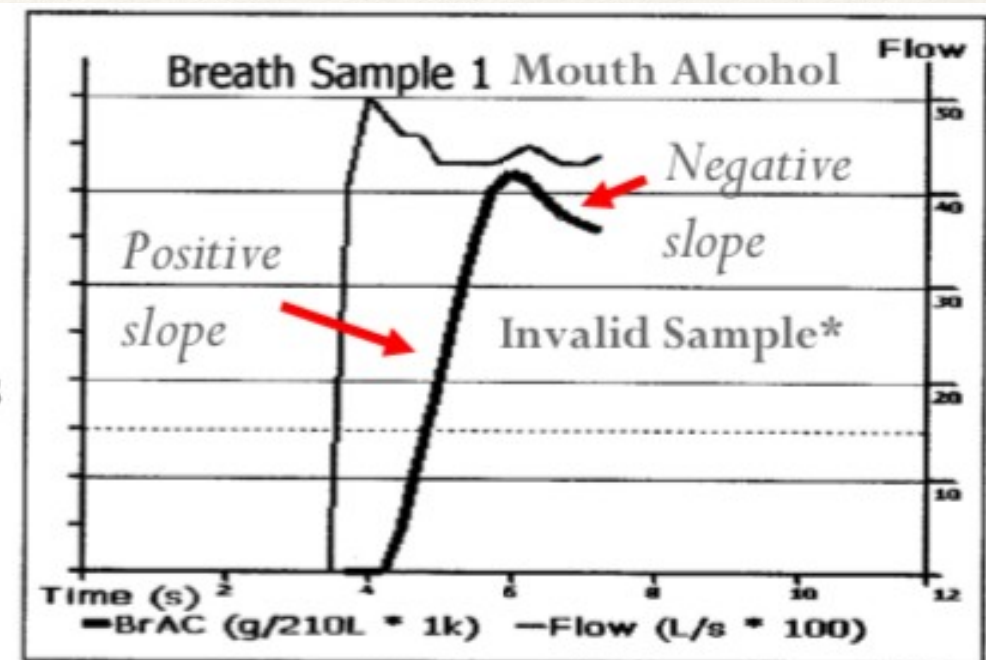


Figure 7.1 Breath alcohol profiles showing patterns of normal exhalation and mouth alcohol. Data from a BAC DataMaster during exhalation from an alcohol-dosed subject (Rod Gullberg, Washington State Police).

Comparison of Mouth Alcohol Curves

2. **Slope.** As seen in *Breath Sample 1*, the **breath alcohol profile typically associated with residual or mouth alcohol** is characterized by an initial rapid rise in alcohol concentration or **positive slope** followed by a **distinct drop from the peak measured breath alcohol concentration or negative slope** as the subject continues to blow. Thus, the Intoxilyzer 9000 is designed to flag any breath sample that exhibits a change from a positive to a negative slope in the BrAC profile during a continuous exhalation as an **Invalid Sample**.



Though this change in slope is present in the vast majority of cases where significant levels of mouth alcohol exists, occasionally, the alcohol level will not drop a sufficient amount to cause the instrument to flag it as Invalid. In the unlikely instance that a breath sample containing significant mouth alcohol is not identified using the range and slope criteria of the Intoxilyzer 9000, the sample will be further evaluated for mouth alcohol by analyzing the consecutive samples provided by the subject for agreement.

Jury Selection Ideas:

[illegible]

Jury Selection Ideas:

If you show them, they'll show you

Who are *you*?⁴

Few people will listen unless they have some sense for who the storyteller is, and that requires getting to know you a bit. This must happen well in advance of opening, when most lawyers start their stories. It must happen during *voir dire*, where you must spend time not only on your jurors, but on yourself. I don't mean this in the fake, pretend, bad-lounge-singer way that so often happens during *voir dire*. Rather, you have to give the jurors a piece of yourself, and an honest piece. Be genuine, even if that

Carl Bettinger, Twelve Heroes, One Voice

Jury Selection Ideas:

- Common Ground / Shared Values
- Rule Followers – The Pros and The Cons

Opening Statement

- I spoke with you about my fear of the number.
- Ask that they reserve judgment on it until the conclusion.
- Challenge the State to show compliance with the 15-minute observation requirement.
- Let them know that they will not see compliance with the 15-minute

Opening Statement

- How long did it take the State to perform that test?
- How much more would it cost the State to do that test (the cost of the plastic breath tube and the printout)?
- Why don't they have a second test to show .02 agreement?

Cross-Examination of the Operator: Why is there no replicate/confirmatory test?

- Ask how long it took to perform that test
- Ask how much more it cost the State to do that test (the cost of the plastic breath tube and the printout)
- And they don't have a second test to show .02 agreement

Goals in Cross-Examination of the Arresting Officer and Breath Test Operator: 15-minute Observation

1. Lock them down with regard to the timeline
2. Lock them down with regard to their observation of your client
3. Their observation period consisted of times when they were not watching your client
4. Lock them into their training on the observation period

Cross-Examination of the Operator: Observation of My Client

1. Did not watch my client during the entirety of the 15-minute period
2. She was in the rear of your patrol car during part of the 15-minutes prior to the breath test
3. Possible she could have burped during the 15-minute period

Cross-Examination of the Operator: Training on the 15-Minute Wait Period

1. 15-minute wait period is required before each test
2. During the 15-minute period, the suspect is to be:
 - (1) in a controlled environment,
 - (2) prohibited from consuming alcohol, and
 - (3) monitored for regurgitation or vomiting.
3. If vomit or regurgitate, allow them to rinse their mouth with water, and restart the 15-minute wait period.
4. This applies to cases of burping or belching where regurgitation is suspected.

Cross-Examination of the State's Expert: STAY FOCUSED ON YOUR GOALS?

1. The mouth alcohol detector is not perfect.
2. The Intoxilyzer 9000 can produce results as high as .11 when a person has a true Blood-Alcohol Concentration of .000.

Additional Cross-Examination Areas:

3. You wrote the Intoxilyzer Operator's Training Manual.
4. You established the Intoxilyzer Operator's Training Curriculum.
5. In order to be assured that mouth alcohol will not influence the printed alcohol concentration, the 15-minute observation period must followed.

Closing

- We're not here fighting over general reliability.
- We're here because we think it's important that they follow THEIR rules in performing a test.
- We asked at the beginning of the trial if the State would simply show us that the rules for performing a breath test were followed.
- The evidence does not eliminate mouth alcohol as a problem.

Thank you!

Want to keep in touch?

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