

REPORTER'S RECORD

VOLUME 1 OF 1 VOLUMES

TRIAL COURT CAUSE NO. [REDACTED]

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THE STATE OF TEXAS

IN THE COUNTY CRIMINAL

Plaintiff,

COURT NO. [REDACTED]

VS

[REDACTED]

DALLAS COUNTY, TEXAS

Defendant.

TRIAL BEFORE A JURY

On the 25th day of April, 2005, the following proceedings came on to be heard in the above-entitled and -numbered cause before the Honorable Judge Tom Fuller, Judge presiding, held in Dallas, Dallas County, Texas.

Proceedings reported by _____

FORM 42-15 PERIODIC 1-800-651-4888

(PROCEEDINGS)

1 The following testimony was given by Alvin Finkley

2

3 STATE: The State calls Alvin Finkley.

3

4 (Whereupon the witness was sworn and testified as follows)

5

6 STATE: Would you please state your name and spell
7 it for the court reporter?

8

9 FINKLEY: Good afternoon my name is Alvin Finkley,
10 F-I-N-K-L-E-Y.

10

11 STATE: How are you employed?

11

12 FINKLEY: As a technical supervisor over area 23.

12

13 STATE: How long have you been employed at that
14 position?

13

15 FINKLEY: Approximately five years.

15

16 STATE: Please state your educational background
17 and qualifications for that position.

16

18 FINKLEY: Bachelors of Science in Chemistry and a
19 Masters of Science in Ocular Pharmacology and I have successfully completed the
20 courses required by the Texas Department of Public Safety to be a certified technical
21 supervisor.
22

19

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23

24 STATE: What are your duties and responsibilities as
25 a technical supervisor?

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BARBARA BATES, CSR

OFFICIAL COURT REPORTER, COUNTY CRIMINAL COURT NO. 5

FORM 42-13 F210AD - 1-808-431-0188

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STATE:

If on November 22, 2003 Officer Cathcart

~~operating in its proper fashion the subject obtained a test result of .119 what~~
~~opinion is it~~

FINKLEY:

It's my opinion that at an alcohol

concentration such as this today an individual would not be able to safely operate a
motor vehicle.

STATE:

I pass this witness.

DEFENSE:

Mr. Finkley that last question was

conditional wasn't it? In other words she asked if the test was given and if it was given
and was operating in its proper fashion, correct?

FINKLEY:

That's correct.

DEFENSE:

You would agree wouldn't you sir that just

because the machine says something doesn't make it so, you would agree with that
wouldn't you?

FINKLEY:

Sure that's why I have to review the

information.

DEFENSE:

You would also agree wouldn't you that

obviously if you knew the results were inaccurate you wouldn't be testifying, correct?

FINKLEY:

If I didn't stand by this test I wouldn't be

here today.

BARBARA BATES, CSR

OFFICIAL COURT REPORTER, COUNTY CRIMINAL COURT NO. 5

FORM 12-12 PRO-100-100-100-100

is what I base my opinion on.

1 **STATE:** **If on November 22, 2003 Officer Cathcart**
 2
 3 **conducted a breath test using the intoxilyzer 5000, serial no.68002260 and it was**
 4 **operating in its proper fashion the subject obtained a test result of .119 what were**
 5 **opinion be of that person's ability to safely operate a motor vehicle?**

6 **FINKLEY:** **It's my opinion that at an alcohol**
 7 **concentration such as this today an individual would not be able to safely operate a**
 8 **motor vehicle.**

9
 10 **STATE:** **I pass this witness.**

11 **DEFENSE:** **Mr. Finkley that last question was**
 12 **conditional wasn't it? In other words she asked if the test was given and if it was given**
 13 **and was operating in its proper fashion, correct?**

14 **FINKLEY:** **That's correct.**

15 **DEFENSE:** **You would agree wouldn't you sir that just**
 16 **because the machine says something doesn't make it so, you would agree with that**
 17 **wouldn't you?**

18
 19 **FINKLEY:** **Sure that's why I have to review the**
 20 **information.**

21 **DEFENSE:** **You would also agree wouldn't you that**
 22 **obviously if you knew the results were inaccurate you wouldn't be testifying, correct?**
 23

24 **FINKLEY:** **If I didn't stand by this test I wouldn't be**
 25 **here today.**

1 **DEFENSE:** **May I approach?**

2 **JUDGE:** **Yes.**

3 **DEFENSE:** **Part of your job is to testify, correct?**

4 **FINKLEY:** **That is correct.**

5 **DEFENSE:** **I believe that you indicated that you have**
6 **been a technical supervisor for five years is that correct?**

7 **FINKLEY:** **That is correct.**

8 **DEFENSE:** **And you, where did you receive your**
9 **degrees?**

10

11 **FINKLEY:** **Jarvis Christian College and The University**
12 **of North Texas Health Science Center at Fort Worth and the Texas College of**
13 **Osteopathic Medicine.**

14 **DEFENSE:** **And when did you get your degree sir?**

15 **FINKLEY:** **1994 and 1998.**

16 **DEFENSE:** **Now did you participate in upgrading any of**
17 **these instruments by putting in software upgrade replacing lens, gaskets, chopper**
18 **motor, battery number one, source lamp tubing, power supply, rebuilt celanoid**
19 **number one, clean sample chamber, perform software upgrade and vertical line/ca**
20 **what does ca stand for?**

21

22 **FINKLEY:** **Linear and calibration.**

23 **DEFENSE:** **Did you do any of that on any of these**
24 **instruments, sir?**

25

- 1 **FINKLEY:** On this particular instrument?
- 2 **DEFENSE:** No on any of these instruments.
- 3 **FINKLEY:** Yes I did.
- 4 **DEFENSE:** But not this one.
- 5 **FINKLEY:** That was done by Kristy Swearingin and he
- 6 name is right there. That's not my name but that's her name right there.
- 7 **DEFENSE:** Were you present when she did this or do
- 8 you know?
- 9 **FINKLEY:** In the office every day.
- 10 **DEFENSE:** Is that a yes or no?
- 11 **FINKLEY:** Yes I was.
- 12 **DEFENSE:** The part of the upgrade is putting new
- 13 software in the instrument that comes from the manufacturer, correct?
- 14 **FINKLEY:** Actually from Austin.
- 15 **DEFENSE:** Well where did they get it sir?
- 16 **FINKLEY:** I don't know where they purchased it you
- 17 would have to call the Capitol to get that information.
- 18 **DEFENSE:** So you don't know where the software comes
- 19 from that you put on these new machines is that correct?
- 20 **FINKLEY:** That's correct. It was a mandate by the
- 21 State, the Texas Department of Public Safety to upgrade all the instruments. We were
- 22 given the software by the State. It was put into our instruments as ordered by the
- 23
- 24

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P117

State.

1

DEFENSE: Okay so you don't know what the software

2

is then.

3

FINKLEY: I don't know what it is?

4

DEFENSE: Yes sir.

5

FINKLEY: It's a chip that was put into the instrument.

6

DEFENSE: So you just put a chip in?

7

FINKLEY: That's correct.

8

DEFENSE: And you participated in this is that correct?

10

FINKLEY: Yes I did.

11

DEFENSE: Is that what turned this instrument into an

12

EN an enhanced model 5000?

13

FINKLEY: No the instrument is still a sixty eight it's not

14

an EN.

15

DEFENSE: It's not an EN?

16

FINKLEY: No it's not.

17

DEFENSE: Now this machine in addition. Can I have

18

19

Defense Exhibit Number three admitted?

20

STATE: No objection.

21

JUDGE: Defense Exhibit No. Three is admitted.

22

DEFENSE: These are maintenance records on this

23

24

particular instrument from October 22, 2003 to December 22, 2003 correct?

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