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

CASE NO.: 12-XXXXXX-MM10A  
JUDGE: MERRIGAN

STATE OF FLORIDA,

Plaintiff,

vs.

ORIGINAL

KD,

Defendant.

DEPOSITION

OF

SERGEANT ROBERT BART

DATE: September 23, 2013

TIME: 3:19 p.m. - 3:55 p.m.

PLACE: LAW OFFICES OF MICHAEL DYE, P.A.  
One East Broward Boulevard  
Suite 700  
Fort Lauderdale, Florida 33301

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APPEARANCES:

(No appearance on behalf of the State  
of Florida.

APPEARING ON BEHALF OF THE DEFENDANT:

LAW OFFICE OF MICHAEL DYE, P.A.  
One East Broward Boulevard  
Suite 700  
Fort Lauderdale, Florida 33301  
BY: MICHAEL DYE, ESQUIRE

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Deposition of SERGEANT ROBERT BART  
taken for the purposes of discovery and for use  
as evidence in the above-entitled cause, pursuant  
to notice heretofore filed before KATHIE JO  
BEFUMO, Court Reporter, and Notary Public in and  
for the State of Florida at Large.

INDEX

WITNESS

SERGEANT ROBERT BART

PAGE

Direct Examination by Mr. Dye: 4

NO EXHIBITS

1 THEREUPON:

2 SERGEANT ROBERT BART

3 was called as a witness by the Defendant, and  
4 after being first duly sworn, was examined and  
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MR. DYE:

8 Q. State your name, for the record.

9 A. Robert Michael Bart, B-a-r-t.

10 Q. And what is your employment?

11 A. I'm a sergeant with the City of Margate.

12 Q. And on or about March 2nd, 2012, were you on  
13 duty and within your jurisdiction?

14 A. Yes.

15 Q. And you had the opportunity to encounter  
16 KD, correct?

17 A. Yes, I did.

18 Q. And can you please describe what happened  
19 that brought your attention to her.

20 A. I had walked into Walmart. It's pretty dead  
21 at night. This was after midnight.

22 Q. Where was the Walmart?

23 A. It's at 5500 West Atlantic Boulevard.

24 Q. And what happened when you walked in?

25 A. I parked my car on the east side of the

1 Walmart. We do have two designated parking spots in  
2 the front, but I had just parked my car. There  
3 wasn't many cars in the parking lot, just employees.  
4 I parked my car on the east side and walked into  
5 Walmart.

6 Q. And what brought your attention to Ms.  
7 D?

8 A. When I came out the exit I noticed a car  
9 parked in one of the designated police spots.

10 Q. And was the car there when you went in?

11 A. I don't remember. I just noticed it when I  
12 came out. I don't know how long I was inside  
13 Walmart. I don't think it was there originally I  
14 don't remember.

15 Q. And when you walked out and you saw the car  
16 in the police spot, was it inappropriately parked or  
17 was it within the lines?

18 A. I -- from the exit that I walked out of, I  
19 didn't get close to look at it. I just noticed there  
20 was a car parked in the police spot. And it's not a  
21 completely enforceable thing. We just tell people we  
22 have it there so we can get into Walmart and it's  
23 also a theft distracter. So there's a million other  
24 parking spots to park in, but she chose to park in  
25 that spot.

1 Q. Was the car running at that time?

2 A. I don't remember.

3 Q. You don't remember if you saw any brake  
4 lights.

5 A. No. No.

6 Q. And what happened next?

7 A. I went around the east side of Walmart. I  
8 get in my car. As I came back around I noticed now  
9 the car's lights were on. So I didn't see anybody  
10 get in the car. I didn't know if there was anybody  
11 in the car when I walked out of Walmart. I don't  
12 know if she had just walked out behind me. I didn't  
13 see anybody in the car up until I knew there were  
14 lights on.

15 Q. So you noticed the lights on and Ms. D  
16 was backing out.

17 A. Yes.

18 Q. And was there anything that was concerning  
19 to you at this time other than it was parked in a police  
20 spot?

21 A. I just - curiosity I didn't have to go  
22 anywhere. I stayed in the parking lot and watched  
23 her.

24 Q. And as she started driving through the  
25 parking lot can you describe her driving pattern?

1           A.     She was just driving real slow. As a matter  
2 of fact, the exit that I was going to go out of to  
3 Atlantic Boulevard I assumed that was the same exit.  
4 And I was going to get out to the exit behind her, as  
5 a matter of fact.

6           Q.     So she wasn't driving erratically.

7           A.     Just driving real slow.

8           Q.             And what street did she pull out on?

9           A.     She was still in the parking lot at Lakewood  
10 Mall. Lakewood mall is a fairly long mall.        It  
11 stretches from probably a quarter mile long and it has  
12 other businesses in there.

13          Q.     Okay.

14          A.     Walmart is at the west end of it and she was  
15 traveling east through the parking lot.

16          Q.     So she was at the Lakewood Mall parking lot.

17          A.     Yes.

18          Q.     Okay. As you were going towards the exit  
19 what happened with the car, what happened next?

20          A.     There's a stop sign, and you make a right at  
21 the stop sign and that would bring you out onto West  
22 Atlantic Boulevard. I would be more than happy to  
23 draw it for you if it would help you. But she didn't  
24 make the right. She went through the stop sign.

25                 And now everything is closed beyond that with the

1 exception of McDonald's, which I even don't know if  
2 they were -- they're 24 hours now. I'm not sure if  
3 they were open at that point.

4 Q. So she drove through the stop sign.  
5 Remember earlier, we said the parking spot was not an  
6 enforceable violation. Was the stop sign?

7 A. We have enforcement rights in there, but if  
8 there's another vehicle -- if there's no other  
9 vehicle and she just rolls through the stop sign, we  
10 don't do anything about it as long as there's no  
11 accident.

12 Q. Was it a roll through or she just didn't  
13 slow up?

14 A. I don't even remember. I just remember her  
15 coming to the stop sign, she went past the stop sign  
16 and that's what first caught my attention, when she  
17 went past the stop sign instead of exiting out of  
18 Atlantic Boulevard.

19 Q. And that caught your attention because  
20 nothing else was really open there.

21 A. Unless you're from the area, you know,  
22 there's another exit all the way at the other end of  
23 the parking lot, but I just stayed around and just  
24 watched.

25 Q. And what actions did she take after she



1 rolled through the stop sign?

2 A. As soon as you past the stop sign to your

3 left there's more parking.

4 Q. Okay.

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1 Q. So it appears as if she didn't believe that  
2 the store was closed or

3 A. I don't know. I'm going to take it as  
4 frustration, that she wanted alcohol and there was no alcohol  
5 available to her.

6 Q. And she appeared not to recognize that  
7 everything was closed down.

8 A. No. To me, no clue. Now, Walmart doesn't  
9 sell hard liquor. They sell wine and beer. That liquor  
10 store sells hard liquor.

11 Q. What happened after she pulled on the door,  
12 she got back in her car and drove off?

13 A. Drove off. I followed her through the  
14 parking lot. Now, I'm going to stay behind her  
15 because I'm very curious that I'm thinking she's  
16 either drunk or under the influence or -- I'm going  
17 to see what she's going to do.

18 I follow her through the parking lot. Now, east  
19 through the parking lot and we end up at the next  
20 exit, which is past the McDonald's. She drove real  
21 slow, stopped at the stop sign, made a real slow turn  
22 and headed out towards Atlantic Boulevard. There's a  
23 traffic light about the 5300 block and she waited for  
24 the traffic signal and I waited behind her.

25 Q. She stopped appropriately at the red light.

1 A. Real slow. She stopped.

2 Q. And then what happened next?

3 A. As soon as the light changed to green, as I  
4 would say, all Hell broke loose, because she had been  
5 driving in one pattern, which was very slow. She  
6 just, in my opinion, floored the vehicle.

7 Q. Okay. And so this was inconsistent with  
8 what you had previously observed.

9 A. Completely. Completely.

10 Q. All right. And you said she accelerated at  
11 a rapid rate.

12 A. Yes.

13 Q. How fast was she going? What top end?

14 A. I don't know -- what kind of car, a BMW.  
15 Those things accelerate very fast. It's my opinion  
16 that she pressed the accelerator to the floor and  
17 went into that turn as hard as she could. She  
18 bypassed the first and second lanes and I heard the  
19 tires screeching as she made the left-hand turn to go  
20 eastbound on Atlantic.

21 Q. So it was -- there were two left-hand turn  
22 lanes, but she made a turn from a middle lane.

23 A. Atlantic Boulevard has three lanes westbound  
24 and eastbound, so she's going to go eastbound onto  
25 Atlantic Boulevard.

1           So the law says you're suppose to enter the first  
2 lane and then get over to the second lane if you want  
3 after you've made sure there's no traffic there. And  
4 by far, you're not going into the third lane unless  
5 there is no traffic around and then who cares. But  
6 Atlantic Boulevard does have traffic this time of the  
7 night, so this was a concern of mine.

8           Q.       When she made that turn did she enter with  
9 traffic?

10          A.       There was traffic on Atlantic Boulevard.           I  
11 couldn't tell you -- she didn't hit any cars, but I  
12 do remember other traffic on Atlantic Boulevard.

13          Q.       You paced her --

14          A.       I tried to. She accelerated faster than my  
15 car could actually keep up with hers.

16          Q.       Could you describe her driving pattern at  
17 this point?

18          A.       Completely erratic. When she got into the  
19 turn, she, at the last moment, she didn't hit the  
20 curb, but she came very close to hitting the curb.  
21 She over corrects and ends up a little bit into the  
22 left, the middle lane, straddles the right lane all  
23 while still accelerating.           I tried pacing her on my  
24 car. The speed limit is 45 going eastbound.           I hit  
25 about 60 and she was still pulling away from me. So

1 it's just a guesstimate on speed. I'm radar  
2 certified. She probably was doing 75 miles per hour  
3 by the time she came up onto Banks Road.

4 Q. And this is headed eastbound.

5 A. Eastbound.

6 Q. Now, in a DUI arrest there's three phases.  
7 The first phase is observing the person driving and  
8 there's indications or clues.

9 A. I don't go by phases. I just go by  
10 observation and see what happens.

11 Q. She was exhibiting numerous clues of  
12 impairment, correct?

13 A. Yes.

14 Q. So at this point in time you're not thinking  
15 she's trying to get away from you or anything.

16 A. No. I wasn't thinking that. I think she  
17 was she just -- if that is what she was trying to  
18 do, it was definitely not indicative when I turned my  
19 lights on her, because she decided she was going to  
20 stop.

21 Q. And could you please describe the stop?

22 A. She slammed on the brakes.

23 Q. So she went from slamming on the gas -

24 A. She went from about 75 down to 30 faster  
25 than my car could. And I was on the brakes and I

1 almost rear ended her. All my stuff on my front seat  
2 ended up on the floor.

3 Q. And she continued to drive erratically.

4 A. She showed up to about 35 miles per hour.  
5 She came up to Banks Road. Now, Banks Road turns  
6 into another shopping center. There's a 24 hour  
7 7-Eleven there. Right past Banks Road going east  
8 there's another entrance into that shopping center.  
9 It's about the 4900 block and there's a turn lane to  
10 get into the shopping center and she headed for the  
11 turn lane without slowing very much slower than 25,  
12 30 miles per hour.

13 Q. As she was stopping she almost struck a  
14 pedestrian.

15 A. This was out of -- like out of the twilight  
16 zone. What are the odds of a pedestrian on the  
17 sidewalk where she's going and I'm following her. I  
18 see the pedestrian crossing the entrance of the  
19 shopping center from west to east. I couldn't tell  
20 you male, female. I think it was a female. Was  
21 walking on the entrance way into the shopping center.  
22 She has her car aimed right at the pedestrian. And  
23 I'm thinking, either she steps on the brake or moves  
24 or that person steps it up or they are going to hit.  
25 That person saw the car coming and did a little trot

1 and missed the person by about five feet. And up on  
2 -- she went past the entrance and kind of like up  
3 onto the sidewalk a little bit.

4 Q. And that's where she stopped.

5 A. That's where she stopped.

6 Q. Little wheel a little pop up

7 A. Yeah. Not a -- it's just an entranceway.

8 There's grass on both sides and there's a sidewalk  
9 and she was up on the sidewalk a little bit.

10 Q. You had no contact information for the  
11 pedestrian.

12 A. No. No.

13 Q. When you approached the vehicle, normally a  
14 person rolls down their driver's side window and you  
15 ask them for driver's license and registration. Can  
16 you please describe what happened here?

17 A. I have to refresh, for the record. All  
18 right.

19 I went up to the car, knocked on the window to  
20 get her to roll the window down. Asked her for her  
21 driver's license, registration. She got some  
22 envelope with a bunch of papers. She's trying to go  
23 through them. She's having problems.

24 Q. Back up a little. The first window that she  
25 rolled down, which window was it?



1           A.       I don't remember. Did I write something in  
2 the report?

3           Q.       Yes.

4           A.       Rear passenger window.

5           Q.       Instead of rolling down the driver's side  
6 window.

7           A.       Right. According to the report           I don't  
8 specifically remember that.           I wrote it down, so she  
9 probably did it.

10          Q.       So that's when you knocked on the glass and  
11 told her to open the correct window.

12          A.       Right.

13          Q.       You asked her for her license and  
14 registration.

15          A.       Yes.

16          Q.                It's called a divider attention question,  
17 just to focus us two things at one time.

18          A.       No. That's how I normally. Nowadays, we  
19 don't usually ask for registration.           It's just a  
20 habit since it's been 26 years.

21          Q.       Describe what happened when she was looking  
22 for her driver's license and registration?

23          A.       She had an envelope in her hand with a bunch  
24 of papers and she was going through it, trying to  
25 find these items. And like a magic trick that you

1 see everything came flying out of her hand up in the  
2 air onto the floor. And at that point I knew that  
3 there was some issue with her, some problems.

4 Q. Okay. Where did she say she was headed?

5 A. Home.

6 Q. You observed certain things, that her speech  
7 was slurred, that her movements were slow, and you  
8 made a determination that you believed that she was  
9 impaired.

10 A. Yes, I did.

11 Q. Did you believe that she was impaired by  
12 alcohol or drugs?

13 A. At the point I couldn't smell anything on  
14 her breath, but I think she told me she had a couple  
15 glasses of wine. But then some alcohol beverages you  
16 can smell the alcohol faster than others. There's  
17 other times you really don't know until you have them  
18 locked in the back of the car and the car fills up  
19 with it. At that point I couldn't quite tell. I  
20 knew she was under the influence of something.

21 Q. Okay. And at that point you radio for  
22 Officer Irelan or you had already done that?

23 A. I don't remember how I got him to come, but  
24 he was the -- Officer Irelan makes many of our DUI arrests,  
25 so --

1 Q. He does the roadside sobriety exercises.

2 A. Yes. Yes.

3 Q. Are you familiar with the drug Ambien?

4 A. Yes.

5 Q. Are you familiar with its affects, not  
6 personally, but --

7 A. I know it's a sleeping medication.

8 Q. You said you have been on the department for  
9 26 years.

10 A. Yes.

11 Q. Have you ever seen Ambien recreationally  
12 used?

13 A. No, because, as I understand it, when  
14 someone is on Ambien it's like a forgetful drug, so  
15 you're on it and still functioning normal and then  
16 you just don't remember.

17 Q. Okay. Sorry.

18 A. I have no idea what -- regardless of what  
19 you're showing me there, it wouldn't have made no  
20 difference. I'm going only on what I saw.

21 Q. Absolutely.

22 A. I can't be an expert testimony to it, what  
23 Ambien does or doesn't do to a driver.

24 Q. You've never seen it before, an Ambien  
25 driver.

1           A.       If I ever had one where I made an arrest on  
2 a DUI, mind you back in the day I did plenty of DUI  
3 arrests, I would not know what Ambien does to  
4 somebody any differently than let's say a Xanax or a  
5 cocaine or -- all I could do is point out my  
6 observations.

7           Q.       All right.     Now, in 26 years you've also  
8 done, I assume, a fair amount of drug arrests.

9           A.       Yes.

10          Q.       All right. You've seen people that are  
11 high.

12          A.       Yes.

13          Q.       You've seen people that use Ecstasy and  
14 marijuana.

15          A.       I've seen people use marijuana.           Ecstasy I'm  
16 not familiar with.

17          Q.       Okay. Have you ever arrested someone for  
18 possession of Ambien?

19          A.       No.

20          Q.       How many drug arrests have you made in the  
21 last year?

22          A.       I'm a sergeant now, so I usually try to stay  
23 away from drug arrests. My guys do it. I've been a  
24 sergeant since 2009, so any drug arrests that I've  
25 made personally, I might have led officers to a drug

1 arrest, but as far as Ambien goes, no. I don't know,  
2 is it considered to be a controlled substance?

3 Q. Schedule 4.

4 A. Okay.

5 Q. Do you have a drug recognition expert at  
6 Margate?

7 A. What do you mean by that?

8 Q. A police officer who is trained as a drug  
9 recognition expert for DUIs?

10 A. No. I don't know what courses Irelan has  
11 been through.

12 Q. Okay.

13 A. As far as I remember I think that if she  
14 said she was on Ambien, she was also on a couple other  
15 medications; Xanax, Valium.

16 Q. Are you familiar -- do you know what the  
17 toxicology results came back in this case?

18 A. No, I do not. I have no idea.

19 Q. All right. So I'm going to read something  
20 off and I'm reading this from the National Highway  
21 Transportation Safety Administration.

22 A. Can I ask you a question?

23 Q. Yes.

24 A. What does this have -- you can talk to me  
25 about all this and --

1 MR. DYE: Off the record.

2 (Thereupon, there was a conversation off the  
3 record.)

4 MR. BYE: Back on the record.

5 BY MR. DYE:

6 Q. All right. Like I said, I'm reading this  
7 off of the National Highway Transportation Safety  
8 Administration Drug Toxicology sheet.

9 A. Okay.

10 Q. These are some symptoms that were observed  
11 by individuals who were suspected of driving on  
12 Ambien and I'm just going go to go through these.

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- 1           A.     Yes.
- 2           Q.     And weaving?
- 3           A.     Yes.
- 4           Q.     Slow slurred speech?
- 5           A.     Yes.
- 6           Q.     Slow reflexes?
- 7           A.     Yes.
- 8           Q.     Dazed appearance?
- 9           A.     Yes.
- 10          Q.     Disorientation?
- 11          A.     I can't say that. That I can't answer
- 12          Q.     Confusion?
- 13          A.     I can't answer that.
- 14          Q.     well, if somebody rolls down their passenger
- 15 side rear window --
- 16          A.     Okay. That's just an observation. My Crown
- 17 vic has the handles in the front, the back window and
- 18 the front window real close together, and I can't
- 19 tell you how many times I've done the same thing.
- 20 Like I said, it was just an observation, so I don't
- 21 know where they are placed on her car, but in my car
- 22 they're placed very close together and one out of ten
- 23 times I roll the back window down when I meant to
- 24 roll the front window down.
- 25          Q.     She wasn't able to maintain balance when you

1 observed the -- you saw the roadsides.

2 A. She had difficulty with the roadsides. But  
3 you can put any drug at the top of that list. You  
4 can put Valium. You can put Xanax. You can put  
5 alcohol. I'm going to answer yes to them, so that's  
6 just one drug. I'm sure if you pulled up from that  
7 same site, 20 different drugs, you're going to have  
8 the same side affects. I'm not going to testify to  
9 her side affects came from Ambien.

10 Q. I'm not asking you to testify they came from  
11 Ambien. There are different affects of different  
12 drugs, so that's one --

13 Also, with regard to this, did she seem able to  
14 keep short term memory or was she forgetful?

15 A. I don't remember as far as her short term  
16 memory.

17 Q. Dilated pupils?

18 A. That I didn't look at.

19 Q. And you didn't do any of the roadsides.

20 A. No. I watched. I watched them.

21 Q. So based on your observations, you believed  
22 that she was impaired, but not necessarily by  
23 alcohol.

24 A. Like I said, I -- she told me she had some  
25 wine. I didn't smell anything on her right away.



1 And, also, the fact that she was going to -- she went to  
2 Walmart and then she went to a liquor store.

3 She's trying to get, obviously, what do you get in a  
4 liquor store, alcohol. You're not going to buy  
5 anything else, so I'm assuming she wants alcohol, so  
6 she might have been drinking earlier and she just  
7 needs more or maybe it was her time for alcohol. I  
8 don't know.

9 Q. Did she have slowed reflexes or anything?  
10 You said her movements were slow, correct?

11 A. She had her -- her hand/eye coordination was  
12 fairly poor.

13 Q. That's Ataixa.

14 A. What is that.

15 Q. Poor hand/eye coordination.

16 A. You might have gone to Harvard, but I went  
17 to Nova. I wouldn't know. You have better word  
18 usage than I. I don't know what it means?

19 Q. Ataixa.

20 A. I can't tell you. Maybe the next one I'll  
21 know what it means.

22 Q. Go back to this point, you knew she was  
23 impaired. You didn't necessarily know by what and  
24 you turned the investigation over to Officer Irelan.

25 A. Yes.

1 Q. Okay.

2 A. She should not **have** been **behind a wheel of a**  
3 **car, so I can tell you that.**

4 MR. DYE: I'm going to **leave** it **at that**  
5 **Read or waive?**

6 THE WITNESS: **Waive.**

7 (Thereupon, the deposition **concluded at 3:52**  
8 **p.m.)**

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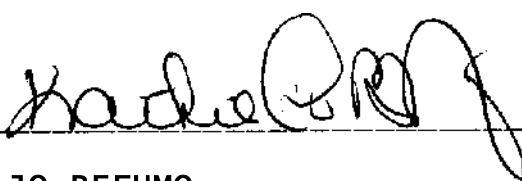
CERTIFICATE OF OATH

STATE OF FLORIDA)

COUNTY OF BROWARD)

I, the undersigned authority, certify  
that SERGEANT ROBERT BART personally appeared  
before me and was duly sworn.

WITNESS MY HAND AND SEAL this 9th day of  
March, 2014.



KATHIE JO BEFUMO

Notary Public, State of Florida

-(sc:VZ:æet, KATHIE.10 BEFUMO

\* MY COMMISSION #EE 160607  
EXPIRES: February 29, 2016  
Bonded Thu Bate( Notary Unica

CERTIFICATE

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STATE OF FLORIDA:

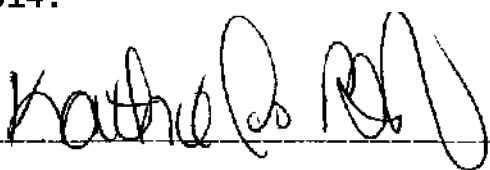
COUNTY OF BROWARD:

I, KATHIE JO BEFUMO, Professional Reporter, and Notary Public, State of Florida at Large, do hereby certify that I was authorized to and did stenographically report the foregoing deposition; and that the transcript is a true record of the testimony given by the witness.

I further certify that the deposition was taken at the time and place shown hereon, and that all counsel and persons as hereinabove shown were present.

I further certify that I am not an attorney, counsel, relative or employed by either party or attorney, nor financially interested in the action.

DATED this 9th day of March, 2014.



KATHIE JO BEFUMO  
Court Reporter  
Notary Public