

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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.

5 A. And there's some single story store fronts.

6 Q. And did she park over there by those?

7 A. She slowly drove into the dark unlit area of
8 the parking lot and drove towards the businesses. I
9 don't know which one she was going to, but I was,
10 okay, this is really catching my attention. What was
11 this person doing? So I stopped my car at the -where
12 she would have made a turn into the parking lot.
13 There's a little street that runs through the
14 parking lot and now she's into the parking area.

15 Q. Can you describe how she parked?

16 A. She kind of drove slowly up to the business
17 like she was looking for something, and then she
18 makes these couple weird -- like she had a real hard
19 time getting into the parking spot. I think she -- I
20 don't know if she was backing in. I have to look at
21 this.

22 Q. So she had a hard time parking within the
23 lines.

24 A. Yes. And she was parked, looked like it was
25 next to some bushes. So she was having a hard time

1 getting out of the car.

2 Q. Okay. So she ends up, after she parked, she
3 attempted to get out of the vehicle.

4 A. She got out. She eventually got out.

5 Q. And what did she do once she got out?

6 A. I think she looked right at me. I mean, I
7 was in a marked unit and I was maybe 100 feet from her, 150
8 feet from her and I'm looking at her and she's looking at
9 my direction. And I'm in a fully
10 marked police car. It's a dark parking lot, but at
11 150 feet you know it's a police car.

12 Q. That was my next follow-up question. Were
13 you in the light or were you out of the light?

14 A. I was still towards where the lit area was.
15 She was in the dark area of the parking lot.

16 Q. Okay.

17 A. It's not that dark where you can't notice
18 unless you're completely blind that's it's a police
19 car.

20 Q. Where did she go?

21 A. She walked over to the liquor store.

22 Q. And that was closed.

23 A. She tried pulling on the door and then she
24 got really frustrated. She started to yank on the
25 door to try to open it and then went back to her car.

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.

13 A. Ambien by itself or combined with other
14 medications?

15 Q. This Ambien by itself.

16 A. Okay.

17 Q. I just want to go through these to see
18 what's consistent with her behavior and what's not

19 A. Okay.

20 Q. Erratic driving.

21 A. Erratic driving can go with alcohol, can go
22 with cocaine, can go with marijuana, go with any other
23 drug.

24 Q. But in this case I'm just asking what was
25 present, erratic driving?

- 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.)

9 -----

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

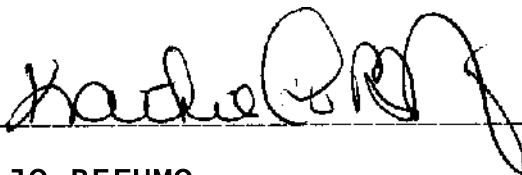
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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:aet, KATHIE.10 BEFUMO

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

CERTIFICATE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF FLORIDA:

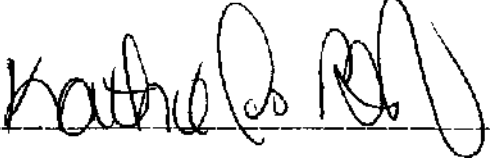
COUNTY OF BROWARD:

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