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IN THE CIRCUIT COURT OF THE  
SEVENTEENTH JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 89-22385 CP10
	)	
HOWARD S. BROOKS,	)	
	)	
	)	
Defendants.	)	

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Port Lauderdale, Florida

May 10th, 1990

11:00 o'clock A.M.

**APPEARANCES:**

ASSISTANT STATE ATTORNEY  
By SUSAN BAILEY, ESQ.  
Appearing on behalf of the Plaintiff

BRUCE H. LITTLE, ESQ.  
Appearing on behalf of the Defendant

**Also Present:**

Susan Stephans  
Carlos Pearlman  
Clark Dubin

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DEPOSITION

OF

RICK A. SWOPE

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I N D E X

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Deposition of RICK A. SWOPE, a witness of lawful age, taken by the Defendant, for the purpose of discovery and for use as evidence in the above-entitled cause, pending in the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida, pursuant to notice heretofore filed, before AMY JO JONAS, a Certified Shorthand Reporter and Notary Public in and for the State of Florida at Large, at 633 South Federal Highway, Fort Lauderdale, Broward County, Florida, on the 10th day of May, 1990, at 11:00 o'clock A.M.

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Thereupon,

RICK A. SWOPE

A witness named in the notice heretofore filed, and being of lawful age, and having been first duly sworn, testified on his oath as follows:

DIRECT EXAMINATION

BY MR. LITTLE:

Q. State your name for the record?

A. Rick Swope, S-W-O-P-E.

Q. You obviously are the witness we have been deposing for a substantial period of time, correct?

A. Yes, sir.

Q. This is a continuation of a previous deposition?

A. Yes, sir.

Q. Have you had a chance to review the prior deposition?

A. Yes, I have.

Q. Have you noted any errors or problems with that deposition that you at this time would like to correct?

A. Yes.

Q. Okay. Why don't you tell me page and line, and let's talk about it.

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A. On page 81, I just wanted to make an explanation on something that I thought we discussed a little differently. And it could be my error.

You are asking, Mr. Little, about the placement of the barrels.

Q. Correct.

You are referring to line 12?

A. Yes.

Q. Okay.

A. Line 12 and 13 indicates that the question is that the barrels are set up in a straight line to absorb energy. Further up I indicated in line seven that the barrels were on an angle. It seems kind of misleading. Back and forth. I understand the question that barrels are supposed to be set up straight, however this road is at an angle. And it is my opinion that barrels are not put straight on an angle because the vehicles would tend to come in if they missed the curb and hit them. And the barrels would not be set in a specific straight angle because they were coming at a different angle.

Q. Let's talk about that for a second. Maybe we can clarify in terms. Maybe that is why you answered not necessarily in this case. From a general standpoint, you will agree with me that the purpose of

1 a sand filled barrel is to absorb energy?

2 A. That's correct.

3 Q. It is more beneficial to absorb energy if  
4 the sand barrels are placed in a row so that they  
5 repeatedly one after the other absorb energy?

6 A. That's correct. They are meant to  
7 collapse as they go.

8 Q. In this case there was a series of sand  
9 barrels that obviously were in some sort of a straight  
10 line, correct?

11 A. Some sort.

12 Q. As to themselves?

13 A. That's correct.

14 Q. The difference as I see it that you are  
15 pointing out today would be although the sand barrels  
16 were in a straight line, we have a tendency to differ  
17 as to the relationship of that straight line to the  
18 roadway?

19 A. That's correct.

20 Q. Okay. Are you able to tell me how you  
21 would relate the straight line of the sand barrels to  
22 the curve of the roadway? In other words, was it  
23 straight with regard to the wall? Was it barely to the  
24 roadway? Can you relate the sand barrels to this  
25 scene?

1           A.    I would say it is probably parallel to the  
2           roadway where it jogs. That means as the roadway  
3           moves, as the roadway jogs, the sand barrels move  
4           somewhat as well. So it would still be parallel by  
5           following the roadway.

6           Q.    What do you base that opinion on?

7           A.    I base that on the photographs I showed  
8           you in the last deposition, the positioning of where  
9           the barrels were in relationship to the post collision  
10          location of them.

11          Q.    So that opinion is based upon photographs  
12          that were taken post collision?

13          A.    That's correct. That show where the  
14          barrels were sitting.

15          Q.    Is it based on any other fact?

16          A.    It is based on the fact that I spoke with  
17          Mr. Register also. And he indicated that because of  
18          the way the curve was specifically set up at that  
19          point, that it is - that it would be possible,  
20          although he did not know for certain that night the  
21          placement. He said it would be logical and probable  
22          that the barrels would be set on somewhat of a like but  
23          different angle.

24          Q.    Different angle in relation to what?

25          A.    In relation to a straight line parallel to

1 the wall. And we had some further discussions on the  
2 barrel, which I assume we will get into later, unless  
3 you want to now.

4 Q. No. We want to go through the deposition  
5 now and correct any other inconsistencies.

6 Aside from that inconsistency, what else  
7 would you like to correct at this time?

8 A. Let me just check one more thing here, if  
9 I may.

10 On page 59, line 19, you questioned the  
11 wall. And we are talking about I assume at this point  
12 the wall that was struck by the vehicle.

13 Q. Upon which the vehicle rode up?

14 A. Correct. The initial impact was the first  
15 wall, which would be the one that was somewhat at an  
16 angle.

17 You state was it in the same position that  
18 it was pre-crash. Line 22 I begin to give an answer.

19 And then on line 24 you asked another  
20 question,

21 "The I-95 project person?"

22 My answer is,

23 "Correct. He stated that the wall  
24 would be in the same position.

25 Apparently the walls at that area

1 are bolted down."

2 That could be kind of misleading. The walls are  
3 indeed bolted down by the photographs, however, the  
4 wall was moved somewhat.

5 Q. Describe for me how the wall was moved.

6 A. It may be easier if I showed you. I don't  
7 recall if we marked this photograph.

8 One of the photographs we have marked as  
9 Exhibit 2. And the other one is unmarked.

10 Q. Referring to the previously marked Exhibit  
11 2 --

12 A. Yes. You will see that the anchors --

13 Q. You are referring now to the one that is  
14 unmarked.

15 A. Okay. Let's talk to the one that is  
16 marked, but the other one is more clearer.

17 Q. Okay. Then we'll mark that one.

18 A. You can see in this particular area, the  
19 anchor bolt is put out of the roadway. And the wall is  
20 moved somewhat.

21 Q. You are referring to an eight by ten  
22 photograph taken apparently in the northbound direction  
23 at the wall that constituted the initial point of  
24 collision that caused the vehicle to roll over in  
25 essence?



1 A. Yes, sir.

2 Q. Previously marked as Defendant's Exhibit  
3 2?

4 A. Yes, sir.

5 Q. And you are indicating there was a bolt  
6 pulled out from the plate used to anchor that  
7 particular piece of concrete wall?

8 A. That would be an anchor bolt, yes, sir.

9 Q. What facts are you aware of to indicate  
10 that bolt pulled out in this accident?

11 A. In this particular accident, other than  
12 the information I have from Mr. Register, stating that  
13 the wall would not have been in that exact position,  
14 that that anchor bolt - he pointed that out to me  
15 saying that that wall would not have remained in that  
16 position, nor those barrels if there would have been an  
17 accident prior to that. And I would have a tendency to  
18 believe that same thing. That roadway would not have  
19 been left in that condition from an accident prior to  
20 this collision taking place.

21 Q. You are assuming?

22 A. I am pretty positive. I have to assume  
23 it, but I am pretty positive.

24 Q. He was assuming it, right?

25 A. Yes, well, I am, too.

1 Q. Well, that is what I was asking you. You  
2 are assuming?

3 A. Yes.

4 MR. LITTLE: Let's mark the other  
5 photograph that you are talking about I believe  
6 that we are up to is it six?

7 (Whereupon, Defendant's Exhibit 6 was  
8 marked for identification.)

9 Q. Now, referring to an eight by ten  
10 photograph, which we have marked as Defendant's Exhibit  
11 6, tell me what in that photograph indicates to you  
12 that that wall moved?

13 A. This is a little clearer picture of  
14 Exhibit 2 that we have. You will see that the anchor  
15 bolt appeared to be pulled out on the bottom, actually  
16 the center picture. The left part of the wall, as you  
17 have seen, the walls scraped along the bottom of the  
18 road. You can't because of the sand, but it would  
19 appear the wall had been moved somewhat because of the  
20 anchoring bolts moving.

21 Q. Just because of the bolts? Is there any  
22 other reason you think the wall was moved?

23 A. Just the collision, but that doesn't prove  
24 the wall was moved.

25 Q. Would you agree with me that the bolts you

1 are referring to in Defendant's Exhibit 6 are the same  
2 bolts that you can see in Defendant's Exhibit 27

3 A. Yes, sir.

4 Q. By basically, there is nothing new in  
5 either one of the photographs other than the bolts upon  
6 which you are basing your opinion?

7 A. That's correct.

8 Q. What other corrections did you want to  
9 make in your deposition?

10 A. I believe that is about it.

11 Q. While we are making corrections, let's go  
12 back and refer to Defendant's Exhibit number 5, which  
13 is two pages of handwritten notes. And although you  
14 are trying to be a PhD, you currently write like one,  
15 and I would like you to decipher those notes for me.

16 A. Okay.

17 Q. Let's start at the top. Obviously Susan  
18 Beiley, SAO.

19 A. That's correct.

20 Q. Then you have a one. And it says  
21 something I cannot read?

22 A. Spoke with Trooper Saib, S-A-I-B, FHP.  
23 And contact him to speak with him.

24 Q. Okay. The next line number two says what?

25 A. Could have trouble with trooper's

1 conclusion saying vehicle swerved sharply to the east.

2 Q. With that statement regarding the vehicle  
3 swerving to the east, is that something you were told  
4 by Susan Bailey?

5 A. No. Those are my notes.

6 Q. In other words, these two lines that are  
7 under Susan Bailey's name are not indicative of a  
8 conversation you had with her?

9 A. No. I always put the attorney right up on  
10 top of my sheets. Susan happened to be the attorney in  
11 this case.

12 Q. When is it you would have made the  
13 notation you would have trouble with Trooper Saib's  
14 conclusion?

15 A. I don't know. Probably when I was reading  
16 the report. I am not sure.

17 Q. Well, it is indicated in number two under  
18 a statement to the fact - to the effect you are going  
19 to contact him, that's correct?

20 A. That's correct.

21 Q. So certainly you drew the conclusion you  
22 may have trouble with his opinion before you contacted  
23 him?

24 A. That's correct.

25 Q. Then you have indicated pre-crash?

1 A. Correct.

2 Q. One speed, how determined with a question  
3 mark.

4 A. Correct.

5 Q. When is it that you would have written  
6 that?

7 A. When I was reading the pre-crash section  
8 of the report.

9 Q. And there was a determination in the  
10 report as to speed. And you had a question in your  
11 mind as to how that was determined?

12 A. Yes, sir.

13 Q. And then number two says what?

14 A. Number two says if vehicle one veered  
15 sharply to the right, why no surface marks.

16 Q. And again that is a question you had upon  
17 reviewing your report?

18 A. That's correct.

19 Q. Continue with number three.

20 A. Number three is how did you know vehicle  
21 one was in the middle lane. And that would have been  
22 the question that I would have asked or looked for  
23 additional evidence in the homicide report and/or  
24 witness statements.

25 Q. Continue. You have an arrow, and I

1 believe it says by how much.

2 A. How much do sand barrels weigh?

3 Q. Did you ever answer that question?

4 A. Yes.

5 Q. How much do they weigh?

6 A. The barrels are all different weights. I  
7 got this from a roadway and traffic design standards -  
8 it is a 1990 manual.

9 This is the entire I-95 reconstruction  
10 project.

11 Q. Okay.

12 A. This gives all the - everything about I-95  
13 is listed in this book.

14 I also spoke with Mr. Register about this.  
15 And each barrel weighs a different amount of weight  
16 based on the speed limit that occurs on the roadway.  
17 In this particular case construction speeds were under  
18 50 miles an hour. Therefore, according to Mr. Register  
19 there should have been five barrels at the scene,  
20 rather than the four indicated in the photographs.

21 Q. Okay.

22 A. And I will go back from the barrel further  
23 south going north, we'll count them as One, two, three,  
24 four.

25 Q. Let me ask you this, maybe it will save

1           sometime: Did you utilize the weight of the barrel in  
2           reaching any of your opinions?

3           A.     No.

4           Q.     Do you feel that the weight of the barrels  
5           with regard to your testimony in this case has any  
6           relevance?

7           A.     Other than somewhat slowing the car down,  
8           there is really no way we could determine the speed  
9           anyway prior to impact. So really other than as to how  
10          much they slowed the vehicle down, no. We really  
11          wouldn't know.

12          Q.     Have you reached the opinion there were,  
13          in fact, five barrels at this accident scene?

14          A.     I do not believe there were five, no.

15          Q.     How many do you believe there were?

16          A.     Based on the photographs and the trooper's  
17          homicide report, they list four. However, the State  
18          Farm accident does list five.

19          Q.     All right. Continue with your notes. You  
20          have something beginning driver's reaction --

21          A.     Driver's reactions were slowed by the use  
22          of alcohol if passenger grabbed the wheel as stated.

23          Q.     Okay. That obviously is a substantial  
24          statement. Tell me with regard to the notes above when  
25          this was written, this particular sentence.

1           A.     When I read all the reports. Those are  
2 notes to myself and questions that I have that I either  
3 look for in a report or try and find something else in  
4 the report or just something pops out in my mind, and  
5 I put it down.

6           Q.     Would you be comfortable in saying that  
7 all of the indications on the first page of Defendant's  
8 Exhibit number Five, the handwritten notes, were not  
9 written on the same day?

10          A.     They may not have been.

11          Q.     But you have no idea at this point when  
12 they were written?

13          A.     No.

14          Q.     Okay. Tell me why you made that  
15 indication regarding the driver's reaction.

16          A.     Well, because there was information in the  
17 reports I received that it was probable or possible  
18 that the passenger reached over and grabbed the wheel  
19 of the driver.

20          Q.     Okay. What about the reaction slowed?

21          A.     It would be my opinion that if indeed that  
22 was the case, that based on the medical examiner's  
23 report of Mr. - I can't remember his name, I'm sorry -  
24 your client's blood alcohol level, that that would have  
25 slowed down his reaction somewhat in order to react to



1 an emergency situation.

2 Q. Were you aware at the time you wrote this  
3 statement of what the blood alcohol levels were?

4 A. Yes.

5 Q. Do you always presume that if one has  
6 alcohol in his blood that is detectable by way of test,  
7 that his reactions are slow?

8 A. If there is a measureable amounts, yes.

9 Q. And what do you base that opinion on?

10 A. Well, all my schooling and training that I  
11 gave you earlier in our first deposition. Experience.  
12 Those types of things.

13 Q. Continue with the next sentence.

14 A. Okay. Weight of sand barrels would cause  
15 car to rotate differently, if it hit the barrels as  
16 indicated in the diagram.

17 Q. Which diagram are you referring to?

18 A. I'm referring to the homicide diagram,  
19 which would be page ten of the reconstruction diagram  
20 of the PHP report.

21 Q. Which is already attached to this  
22 deposition as an exhibit?

23 A. That's correct.

24 Q. Now, you had previously indicated to me  
25 you didn't utilize the weight of the sand barrels in