

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
11TH JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

CRIMINAL DIVISION

CASE NO. F00-17128

THE STATE OF FLORIDA,

Plaintiff,

vs.

EDUARDO GALIANA,

Defendant.

COPY

State Attorney's Office
E.R. Graham Building
1350 Northwest 12th Avenue
Miami, Florida
March 11, 2002
Monday, 11:00 a.m.

DEPOSITION OF RICK SWOPE

Taken before JOANNE CUSTIN, Court Reporter and
Notary Public in and for the State of Florida at
Large, pursuant to Notice of Taking Deposition
filed in the above cause.

- - - - -

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:

LAURA ADAMS, ESQ., A.S.A.
COLLEEN KAY, ESQ., A.S.A.
on behalf of the State of Florida.

MICHAEL CATALANO, ESQ.
MAE CAIN, ESQ.
on behalf of the Defendant.

ALSO PRESENT:

DR. WILLIAM FOGARTY
DET. PATRICK MCGEEHAM

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>
RICK SWOPE	3	--	--

EXHIBITS MARKED FOR IDENTIFICATION

State's Exhibit No. 1-A	81
State's Exhibit No. 2	84
State's Exhibit No. 3	105
State's Exhibit No. 4	111

1 THEREUPON --

2 RICK SWOPE

3 was called as a witness by the State of Florida
4 and, having been first duly sworn, was examined and
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MS. ADAMS:

8 Q. Good morning. Can you tell me your name
9 for the record?

10 A. Rick Swope, S-w-o-p-e.

11 Q. You are here for deposition in the case
12 of State of Florida versus Eduardo Galiana?

13 A. Yes.

14 Q. You have been listed as a defense
15 witness.

16 When were you first contacted in this
17 case?

18 A. The first time I received materials was
19 September 22nd of 2001.

20 I probably spoke with Mr. Catalano
21 before that.

22 I am assuming that, I don't have the
23 exact date that I spoke with him, but I assume I
24 spoke with him to get the materials.

25 Q. It was Michael Catalano who contacted

1 or impairments, only accident reconstruction
2 in this case.

3 Of course, alcohol is a factor, but we
4 are also not going into the things that he is
5 not here to do.

6 I promise you I won't change my mind
7 later.

8 BY MS. ADAMS:

9 Q. Have you ever been asked to be a witness
10 on any other cases in which Michael Catalano was a
11 defense attorney?

12 A. Yes.

13 Q. How many?

14 A. Over the past ten years, probably six or
15 seven that I am aware of.

16 Q. How many times have you testified on
17 behalf of criminal defendants in Miami-Dade County
18 courts over the last five years?

19 A. I have no idea.

20 Q. More than five?

21 A. I have no idea.

22 Q. You have no idea at all?

23 A. No.

24 Q. Do you keep track of any type of work
25 that you do?

1 A. Yes.

2 Q. How do you keep track?

3 A. I would usually keep track of
4 depositions and court cases that I testify in.

5 I usually keep that for a three year
6 period.

7 Q. Over the last three years how many times
8 have you testified on behalf of criminal defendants
9 in the Miami-Dade County courts?

10 A. I have no idea.

11 Q. Do you know whether it is fifty?

12 A. I have no idea.

13 Q. You don't know if it is more than five?

14 A. I would have to look at the documents.

15 I was not asked to produce those, nor
16 was I asked to bring them with me.

17 If I was asked to look at those, then I
18 could tell you exactly how many times I have
19 testified in this county during the past three or
20 four years.

21 Q. How many times have you testified as a
22 state witness in criminal cases in Miami-Dade
23 County, Florida in the last three or four years?

24 A. None.

25 Q. In what areas, what materials were you

1 given for preparation in this case?

2 A. I reviewed an accident report.

3 I reviewed a traffic homicide report and
4 all the attachments prepared by, I believe it was,
5 Trooper Bostick.

6 I reviewed the deposition of Leonardo
7 Amador, the deposition of Marlene Amador.

8 Statement of Facita Alonzo, statement of
9 Carlos T-a-t-a-j-a.

10 Deposition of Trooper Bostick, there
11 were two, one dated October 14th, 2001, the other
12 dated May 10th, 2001.

13 I reviewed the State's discovery as far
14 as blood information, toxicology, Medical Examiner
15 information, et cetera.

16 I reviewed an autopsy report, deposition
17 of Officer Garcia, deposition of Trooper Gonzalez,
18 deposition of Julie Ramos.

19 I reviewed all the press releases from
20 FHP, the PC affidavits, the deposition of Dr. Roger
21 Mittleman, M.E.

22 I reviewed police photographs, vehicle
23 information specifications. I believe I have
24 those.

25 And I have some that were prepared by

1 the officers in the case.

2 I think that Mr. Fogarty had some.

3 I viewed a copy of notes in a deposition
4 of Mr. Fogarty that Mr. Catalano took recently.

5 And just various stuff in the file I
6 received, such as certificate of non-appearances,
7 subpoenas which really didn't play into my
8 opinion.

9 That is pretty much everything I have
10 reviewed today.

11 Q. Who gave you those materials?

12 A. I received all of it from Mr. Catalano's
13 office.

14 Q. Did you ask for any materials that you
15 have not received in order to render opinions about
16 the traffic accident reconstruction?

17 A. Not that I am aware of.

18 I just asked for all materials he
19 receives, Mr. Catalano, in discovery. I am
20 assuming I received that.

21 Q. Was there anything that you specifically
22 requested that you were not provided?

23 A. I requested to see the vehicle, the
24 vehicle that the defendant was operating at the
25 time.

1 Q. Anything else besides the vehicle?

2 A. No, not that I am aware of.

3 Q. Have you interviewed any witnesses,
4 including the defendant, in preparation for your
5 testimony in this case?

6 A. No.

7 Q. Did you go to any scenes in preparation
8 for your testimony in this case?

9 A. Yes.

10 Q. Where did you go?

11 A. I went to the scene of the accident.
12 I took Trooper Bostick's report with
13 me.

14 I did some measurements of the scene,
15 prepared a proportional diagram of the area,
16 located the Trooper's reference points he indicated
17 in his report.

18 I looked at his measurements as far as
19 where the impact occurred, where the final rest
20 occurred, the general area, visibility.

21 Q. Did you conduct any tests to determine
22 the coefficient of friction in the area using drag
23 slide?

24 A. No.

25 Q. At any time have you conducted any

1 testing for this particular case?

2 A. No.

3 Q. When did you go to the scene of this
4 crash?

5 A. I went there on December 12th, 2001.

6 I went by at another time, but it was
7 just very briefly.

8 I just tested the measurements I did on
9 the proportional diagram.

10 Q. How much time did you spend on the scene
11 on December 12th?

12 A. I spent probably three and a half hours
13 at the scene doing the diagram information, site
14 survey, those types of things.

15 Q. At this time have you completed all work
16 that you were asked to do in this case?

17 A. As far as I am aware, yes.

18 I don't know if there is additional
19 testimony that is going to be taken or deposition
20 testimony. If there is, I will review that.

21 My understanding is pretty much
22 everything is already completed at this time.

23 MR. CATALANO: You have to keep in mind
24 we asked to do computer aided diagram analysis
25 and we were denied the money.

1 If the Judge changes his mind, or gives
2 the money, we will ask him to do it but
3 without the money it can't get done.

4 That's a separate issue.

5 MS. KAY: It is my understanding you are
6 not going to ask Mr. Swope to or have Mr.
7 Swope generate a report regardless of whether
8 the money is or is not available?

9 MR. CATALANO: Right now I have not
10 asked him to generate a report.

11 THE WITNESS: And sent whatever
12 additional materials.

13 I assume I would meet with Mr. Catalano
14 prior to trial to discuss the testimony as far
15 as that.

16 I don't think I am going to be doing
17 anything else.

18 BY MS. ADAMS:

19 Q. Now you have been deposed many times in
20 the past?

21 A. Several.

22 Q. Is it fair to say more than a hundred?

23 A. Yes.

24 Q. You know the purpose of the deposition
25 is to allow the opposing party the opportunity to

1 find out your opinions and your theories about a
2 case in advance of trial?

3 A. Yes.

4 Q. You understand how important it is to
5 give accurate and complete answers during this
6 deposition?

7 A. Yes.

8 Q. Do you feel at this time you have had
9 sufficient opportunity to review the contents of
10 your file to give accurate and complete answers to
11 the questions propounded during this deposition?

12 A. Yes.

13 Q. Is there any reason today that you could
14 not give me accurate complete answers during the
15 deposition, you are sick, you are tired, anything
16 along those lines?

17 A. No.

18 Again, it depends on what questions.

19 When you ask questions outside of what I
20 did in the files, I certainly wouldn't give you
21 that information.

22 Q. Do you hold any opinions within a
23 reasonable degree of accident reconstruction
24 certainty regarding the collision, which is the
25 subject of the State of Florida versus Eduardo

1 Galiana?

2 A. Yes.

3 Q. Have you reduced your opinions to
4 writing?

5 A. No. With the exception of my notes in
6 the file I have not prepared a report, per se, as
7 far as being in written form, but all of the
8 opinions that I am going to render will be based on
9 either the yellow sheets I have in writing or the
10 computer generated forms. It is printed out.

11 I think everything is there pretty much.

12 Q. You did complete some notes and some
13 diagrams?

14 A. Yes.

15 MS. ADAMS: I would like to take a break
16 at this moment to make copies of those.

17 MR. CATALANO: No objection.

18 You are not going to be able to copy
19 some of this, it is too big.

20 THE WITNESS: (Handing.)

21 BY MS. ADAMS:

22 Q. First off, do you have an opinion as to
23 the speed of the Mazda pickup truck driven by
24 Eduardo Galiana at the time it impacted the
25 Oldsmobile driven by Ilean Amador?

1 A. Yes.

2 Q. What do you believe the Mazda was
3 driving at the point of initial impact?

4 A. When I have my notes back, I can tell
5 you.

6 Q. Then, we will just wait.

7 A. Do you have any other areas you wanted
8 to cover?

9 Q. That is going to be the majority in as
10 much as he has indicated I don't have to ask you
11 about the blood alcohol stuff.

12 MR. CATALANO: Be easier to wait for the
13 notes.

14 (Thereupon, a recess was taken, after
15 which the following proceedings were had:)

16 BY MS. ADAMS:

17 Q. You indicated to me that you had an
18 opinion as to the speed of the Mazda pickup truck
19 at the time of its impact on the Oldsmobile?

20 A. Yes.

21 Q. What opinion do you hold regarding the
22 speed of the Mazda at the initial impact?

23 A. Based on all my research, I believe the
24 vehicle was going anywhere from 46 to 59 miles per
25 hour.

1 I can tell you why there is a varying
2 range.

3 Q. We will get to that in a moment.

4 What opinion do you hold regarding the
5 speed of the Oldsmobile at the time of the initial
6 impact?

7 A. It was going 4 miles per hour to 14
8 miles per hour.

9 Q. So you believe that the difference
10 between these two vehicles was between the range of
11 43 and 45 miles per hour?

12 A. What are you talking about?

13 Q. You believe that the Mazda was going
14 between 46 and 59 miles per hour at the time of the
15 impact?

16 A. Right.

17 Q. You believe that the Oldsmobile is going
18 between 4 and 14 miles per hour?

19 A. Yes.

20 Q. So the difference in speed between these
21 vehicles at the time of impact, according to your
22 calculations, is anywhere from 42 to 45 miles per
23 hour?

24 A. Yes.

25 Q. Where was the Mazda relative to the

1 point of impact when the Oldsmobile enters the
2 intersection of Southwest 99th Place and 8th
3 Street?

4 A. Well, it depends on which speed you are
5 using.

6 Q. Well, tell me which speed you are using.
7 You have calculated such a large
8 difference and you cannot say anything more
9 specific than 45 or 59 miles per hour?

10 A. That is correct.

11 Q. So where do you think the Mazda would
12 have been at the point of impact when the
13 Oldsmobile enters the intersection?

14 A. I don't understand the question.

15 Q. Where do you believe the Mazda was at
16 the point the Oldsmobile enters the intersection?

17 A. You are going to have to give me a speed
18 range. I didn't calculate that specifically.

19 I calculated the police impact point
20 which is, I believe is about 45 or 46 feet from the
21 lateral line of intersection, using the pole that
22 the police officer used as his reference point.

23 I think the impact was 45 feet to the
24 east of that.

25 I didn't calculate it to when the car

1 entered the intersection on each specific area. I
2 didn't do that.

3 Q. Why not?

4 A. What is important to you may not be
5 important to me.

6 I only calculate things I feel are
7 important.

8 Q. You do not feel the location of where
9 the Mazda was at the time the Oldsmobile enters the
10 intersection is important to the case?

11 A. It is not important to me.

12 Whether it is important to you or Mr.
13 Catalano is another issue. It was not important to
14 me.

15 At that point I am trying to calculate
16 where the vehicles hit, where they ended up, where
17 the vehicles were, the speeds of the vehicles. I
18 didn't do each time.

19 I probably would have done 200
20 calculations based on the variances in speed.

21 Q. You do not feel it was important to know
22 where the Mazda was at the time that Oldsmobile
23 enters from 99th Place onto Southwest 8th Street?

24 A. It is not important as my ultimate
25 opinion as to go out, figure out the time distance,

1 as to each different calculation.

2 It is maybe important to you or Mr.
3 Catalano.

4 It is not important to my ultimate
5 opinion.

6 I have not been asked to do that.

7 Q. Are you capable of calculating the place
8 where the Mazda pickup truck would have been at the
9 time that the Oldsmobile enters on Southwest 8th
10 Street?

11 A. Sure.

12 Q. How long do you believe it took in
13 seconds for the Mazda to travel from the
14 intersection of 99th Place to the point of impact?

15 MR. CATALANO: I have to make an
16 objection to vagueness.

17 When you say from the intersection, I
18 think it would be fair to pick a particular
19 place because the intersection is what,
20 seventy feet or fifty feet?

21 THE WITNESS: I normally use the stop
22 bar, so, you know, I figure from the stop bar
23 on the turn.

24 BY MS. ADAMS:

25 Q. That is fine. That is what I understood

1 that Corporal Bostick used as his reference point
2 as well.

3 A. The stop bar?

4 Q. End of the stop bar.

5 A. It would take approximately about 6.5 to
6 7.5 seconds to reach the point of collision, if
7 this is, assume this, she turned into the middle
8 lane which she did not turn into the middle lane so
9 there are variances on it.

10 Q. So you believe it is between 6.5 and 7.5
11 seconds for the Mazda to travel from where the
12 intersection of Southwest 99th Place and Southwest
13 8th Street are to the point of collision?

14 A. That is correct, but that's, again,
15 using that she turned into the center lane, which I
16 don't believe is what she testified to.

17 Q. How many feet would that be?

18 A. It is about 140.

19 Let me check on that figure for you. It
20 is about 145 feet.

21 That would be from the lateral line not
22 the stop bar.

23 Q. How long do you believe it took for the
24 Oldsmobile to travel from the position of Southwest
25 99th Place to the point of collision?

1 A. From the stop bar, it would be about 8
2 seconds if you are going back to the stop bar, not
3 the lateral line.

4 Q. Now, at the time of impact, excuse me,
5 how far did the Oldsmobile travel from the stop bar
6 on Southwest 99th Place to the point of impact?

7 A. I would say that in the lateral turn
8 about 145 to 155 feet, not lateral, the radial turn
9 from the stop bar to the point of impact, not the
10 lateral line to the intersection.

11 Q. If the Mazda had been traveling at the
12 speed limit posted --

13 A. 45, yes.

14 Q. -- how much longer would it have taken
15 for it to have traveled from Southwest 99th Place
16 to the point of collision than what you are
17 estimating the speed at, which is between 46 and 59
18 miles an hour?

19 A. You mean how long would it take to cover
20 the distance from the intersection to the point of
21 impact at 45 miles an hour?

22 Q. Yes.

23 A. I have not figured that out.

24 Q. Are you capable of doing that?

25 A. Yes.

1 Q. Please, go ahead.

2 A. You want me to figure it out?

3 Q. Yes?

4 A. It is up to you, I am not here to figure
5 out calculations for you, only what I have already
6 figured out.

7 You have other people to do your
8 calculations.

9 MR. CATALANO: I have to object.

10 I don't think the deposition is the time
11 for doing mental gymnastics.

12 THE WITNESS: It's very simple, you take
13 45 times 1.466 and you come up with feet per
14 second and you use that and round it off from
15 154 to 155.

16 BY MS. ADAMS:

17 Q. Why did you not calculate how long it
18 would have taken the Mazda to travel from Southwest
19 99th Place to the point of collision if it were
20 traveling at the speed limit?

21 A. I don't know. Again, it wasn't
22 important to me.

23 Q. Let's assume that the Mazda enters the
24 intersection of Southwest 99th Place and Southwest
25 8th Street.

1 A. Okay.

2 Q. And that the Mazda is traveling at the
3 posted speed limit of 45 miles per hour.

4 Let's also assume that the Oldsmobile is
5 turning from 99th Place onto Southwest 8th Street
6 to reach the posted speed limit.

7 A. Okay.

8 Q. Under this set of circumstances would
9 the Mazda have ever caught up to the Oldsmobile?

10 A. Are you saying if the Mazda, I thought
11 your question was had the Mazda entered the
12 intersection at the same time she turned or are you
13 saying if the Mazda was back six or seven or ten
14 seconds, whatever the case may be, would they have
15 caught up?

16 I don't know if you stated the question
17 correctly.

18 Q. If the Mazda is traveling at the speed
19 limit --

20 A. Okay.

21 Q. -- and the Oldsmobile pulls out in front
22 of the vehicle to ride up to the speed limit, could
23 the Mazda have ever caught up to the Oldsmobile?

24 MR. CATALANO: I think it is a nebulous
25 question.

1 THE WITNESS: How far away would the
2 Mazda be?

3 The way you are questioning, he could be
4 two seconds away or fifty seconds.

5 I think your question is how long would
6 it take the Oldsmobile to accelerate to the
7 speed of 45 miles an hour, how long would that
8 take and where would the truck be?

9 I think that is probably what you mean.

10 BY MS. ADAMS:

11 Q. You have not calculated the location
12 that you believe the Mazda was at at the point in
13 time when the Oldsmobile enters onto Southwest 8th
14 Street, correct?

15 A. No. When it broke the lateral line and
16 entered onto the street, no.

17 That is just a matter of fact.

18 As I indicated to you taking the speed
19 he was going in that varying range and putting him
20 back to how long it takes the car to get to the
21 position of impact.

22 Q. You don't find it to be significant
23 where the vehicle was at the point in time when the
24 Oldsmobile entered onto Southwest 8th Street?

25 A. Again, that is up to the person doing

1 the case or asking the questions.

2 Whether or not it is important to me, it
3 may not be important to you.

4 In this case I did not do that specific
5 question in that specific manner.

6 Q. At the time the Mazda leaves from
7 Southwest 99th Place to go onto Southwest 8th
8 Street --

9 A. You have it wrong.

10 Q. I'm sorry, the Oldsmobile. Thank you.

11 A. Okay.

12 Q. When the Oldsmobile travels onto
13 Southwest 8th Street, from the time it enters from
14 the intersection until the time of the collision,
15 you are indicating that the vehicle is traveling,
16 it takes 8 seconds to get from there, from the
17 intersection to the point of collision?

18 A. In the manner you asked me initially,
19 yes.

20 Q. Did you not testify that it is your
21 opinion that the Oldsmobile took 8 seconds to go
22 from the intersection to the point of impact?

23 A. I testified that was correct, but that
24 was not the facts in the case. That is what I
25 testified to.

1 Q. Are you aware of the blood alcohol value
2 of Eduardo Galiana at the time his blood was drawn?

3 A. Yes.

4 MR. CATALANO: I don't think I sent him
5 the most recent one we got last week. I told
6 him it was really darn close, okay.

7 THE WITNESS: I know it was well in
8 excess of the limit. I think it was in the
9 2's. Whatever is in the report I would go
10 with.

11 BY MS. ADAMS:

12 Q. Do you have an opinion as to the
13 validity of that test result?

14 A. I have not been asked to give an opinion
15 on that. I am assuming that it was done
16 correctly.

17 I didn't see anything that I pointed out
18 to Mr. Catalano, although I was not asked to do
19 that.

20 I am assuming the police did the proper
21 procedures of taking blood.

22 Q. Would you expect that a blood alcohol
23 content like that would impair the judgment of the
24 average driver?

25 A. Yes.

1 Q. Tell me what physical evidence you
2 analyzed to calculate the speed of the Oldsmobile?

3 A. I think I reviewed the photographs. I
4 looked at the police information, the point of
5 impact to the point of rest.

6 I looked at stiffness coefficients and B
7 coefficients, which I received from Neptune
8 Engineering and the Society of Engineers.

9 I received them from a book, Dr. Rudolph
10 Lipper. I looked at those.

11 I believe that is pretty much what I
12 looked at.

13 Q. Can you explain to me the calculations
14 that you used to make a determination that at the
15 time of the collision the Mazda was traveling
16 between 46 and 59 miles an hour?

17 A. I think you have all those. I don't
18 know how you wanted to see it.

19 Q. Explain it to me.

20 A. Oh, explain the calculations?

21 Well, the calculations are on the form,
22 like I used momentum incline also collision.

23 I also used a crush formula. I gave you
24 the stiffness coefficients, A and B formula.

25 I used two separate programs. I used

1 one program which normally the police use, AR Pro
2 or AR Version 6, and I used linear and rotational
3 momentum program from Dr. Lipper's ARM, A-R-M.

4 I used, I looked at the police specs.

5 I also pulled vehicle specification
6 reports from Expert Auto Stats and also from
7 Canadian Vehicle Specs Computer.

8 My understanding is there were three
9 occupants in the Oldsmobile, there was one occupant
10 in the Galiana vehicle.

11 I took those weights and added that. I
12 believe I added about 300 pounds to the Olds, about
13 200 pounds, 250 to the Galiana vehicle.

14 I also used the distance in the police
15 report that Bostick indicated the vehicles
16 traveled.

17 I believe that the Galiana vehicle went
18 approximately 141 feet from impact to rest,
19 actually about 141 feet to where the vehicle itself
20 made contact with an object, the Galiana vehicle.

21 The Amador vehicle traveled about 191
22 feet from impact to rest.

23 Those measurements were a little bit
24 different than showed on his reference points.

25 If you laid out the lateral lines,