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IN THE COUNTY COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY,
FLORIDA

CASE NO. 058069J

STATE OF FLORIDA,

Plaintiff,

-vs-

ALAN PASCUAL,

Defendant.

ORIGINAL

Fort Lauderdale, Florida
January 10, 1995
5:30 o'clock p.m.

APPEARANCES:

OFFICE OF THE STATE ATTORNEY
By: STEPHEN K. TALPINS, ESQ. and
LAURA ADAMS, ESQ., co-counsel
1469 N.W. 13th Terrace
Miami, Florida 33125
Appearing on behalf of the Plaintiff

(No appearance on behalf of the Defendant)

DEPOSITION

OF

RICK SWOPE

1 Deposition of RICK SWOPE, a witness of lawful
 2 age, taken by the Plaintiff, for the purpose of
 3 discovery and for use as evidence in the above-entitled
 4 cause, wherein STATE OF FLORIDA is the Plaintiff, and
 5 ALAN PASCUAL is the Defendant, pending in the County
 6 Court of the Eleventh Judicial Circuit in and for Dade
 7 County, Florida, pursuant to notice heretofore filed,
 8 before KIMBERLY IGLEWSKI, a Notary Public in and for
 9 the State of Florida at Large, at 12 S.W. 6th Street,
 10 Fort Lauderdale, Florida, on the 10th day of January,
 11 1995, at 5:30 o'clock p.m.

12
 13 THEREUPON:

14 RICK SWOPE

15 a witness named in the notice heretofore filed, being
 16 of lawful age and being first duly sworn in the above
 17 cause, testified on his oath as follows:

18 DIRECT EXAMINATION

19 BY MR. TALPINS:

20 Q. Got afternoon, Mr. Swope. As you know, my
 21 name is Steve Talpins. I'm with the Dade County State
 22 Attorney's Office.

23 I know you've given so many depos during your
 24 life, but just to reiterate, I'm going to ask you a
 25 series of questions.

1 If there's anything you don't understand or
2 you think is unfair or anything that confuses you in
3 any way, please feel free to stop me and I'll be happy
4 to clarify or move on as the case may be. Okay?

5 A. I will.

6 Q. Okay. Just for the record, we did notify
7 defense counsel in this case, Essen & Essen, more
8 specifically, Rebecca Nachlas, N-A-C-H-L-A-S, that we
9 were going to be conducting the depo today and they
10 chose not to be here, they're unable to be here.

11 In addition, I discussed the taking of the
12 depo with Mr. Robert Reiff, R-E-I-F-F, and he is aware
13 that the deposition is taking place today.

14 Okay. Mr. Swope, I'm familiar with a lot of
15 your training and qualifications so I'm going to skip
16 to just the most important questions so I don't waste
17 any of your time.

18 Are you currently scheduled to teach any
19 courses?

20 A. Yes.

21 Q. Okay. And where would that be?

22 A. That would be at Broward County Community
23 College. I teach every other police academy.

24 The person who handles the scheduling out
25 there would be George Long.

1 Q. George Long?

2 A. Right. He would be the one that should be
3 contacted as to my schedule.

4 I do have a couple of seminars coming up that
5 I've contracted for for an attorney in Atlanta which
6 are DUI seminars that I teach.

7 Q. Who's the attorney?

8 A. William Head (phonetic).

9 Q. Is he a defense attorney?

10 A. Yes.

11 Q. Okay.

12 A. And although I don't have the final dates on
13 those yet, one's going to be at Harvard and one is
14 going to be hopefully in New Orleans in April.

15 Q. Are you paid for those seminars?

16 A. Yes.

17 Q. Okay.

18 A. And then I have -- usually between January and
19 February, I contract any classes that I may have for
20 the Southern Police Institute and -- I can't think of
21 the guy's name that -- Ron Crouse, C-R-O-U-S-E. He's
22 the one that calls me and gives me the schedule for the
23 year, and if I'm available to assist them, then I'll
24 contract a class. If not, I don't.

25 Q. What are your courses that you're slated to

1 teach next at BCC? Do you know?

2 A. Generally they're DUI courses.

3 I get asked to assist in parking enforcement
4 courses.

5 I was the lead instructor in the parking
6 enforcement course, but because of my business and how
7 busy I am, I gave it to Joe Barbuto from Coral Springs.
8 He handles it now.

9 I may go in as an assistant instructor if he
10 needs me for a half day or a day.

11 And then any other courses that are contracted
12 that I assist through Davis Training and Development
13 which is Denny Davis is the owner of the company.

14 Q. Do you currently teach or are you slated to
15 teach anything about field sobriety tests or the
16 Intoxilyzer?

17 A. Well, the field sobriety tests are at the
18 police academy. Those are ongoing.

19 I teach field sobriety tests for William
20 Head's office to attorneys and that is open -- although
21 he is a defense attorney, it's open to prosecutors as
22 well.

23 And what I mean by teach, I do seminars on how
24 a police officer should be giving the field sobriety
25 test, what to look for and that kind of stuff.

1 Q. And who are those seminars primarily attended
2 by?

3 A. I couldn't tell you. I don't get a roster.
4 All I know is there's 35 to 45 people that
5 show up.

6 Mr. Head's office could give you that
7 information.

8 Q. Are you paid to do that?

9 A. Yes. Absolutely.

10 Q. What other seminars have you taught that have
11 been sponsored by or are attended by attorneys?

12 A. Well, I did one in Miami for Essen's office
13 and I believe it was October. That was a three day
14 seminar. I did two days of the seminar.

15 I did one at the Omni Hotel on Biscayne which
16 was open to all attorneys and I think that was attended
17 half by prosecutors and half by defense. And some
18 judges --

19 Q. Any Dade County prosecutors?

20 A. I don't know. I can't tell you.

21 It was a one day seminar, it was in the Omni
22 Hotel. Whatever the hotel is right there, I can't
23 remember it. It was right there at -- it was south of
24 Bayside, there's that big hotel on the left-hand side
25 as you're going towards the curve. Is it

2
1 Intercontinental or something like that?

2 Q. Yeah, it's Intercontinental.

3 A. Whatever that hotel is, I taught at that one.
4 I think that was it for last year.

5 Q. How much are you paid to do those seminars?

6 A. It varies.

7 I charge different rates, depending on what
8 I'm asked to talk about, how long I'm asked to talk
9 about -- or how long I'm going to talk, number of
10 attendees, those kind of things.

11 Q. At the Essen seminar, what did you teach?

12 A. I believe one day I taught field sobriety
13 testing and the other day we talked about the
14 Intoxilyzer and breath testing which included low
15 volume samples.

16 I showed all the attorneys there how
17 maintenance is conducted, those kind of things.

18 Q. And how much did you charge for the seminar?

19 A. I don't recall.

20 Q. Can you give me an estimate?

21 A. No. I don't know.

22 Probably -- I would assume something around a
23 thousand a day.

24 Q. Okay. Now, I know you've authored several
25 articles dealing with field sobriety tests and the

2
1 Intoxilyzer. Is that correct?

2 A. Yes.

3 Q. Where were those articles published?

4 A. DUI Law Journal, Law and Science.

5 Q. How did you first here about the DUI Journal?

6 A. I was sent -- well, I knew about the Law
7 Journal when I was a cop. I used to read the journal.

8 We had several journals present at the
9 department that we would read a lot of -- we'd read
10 materials that were either sent to us by the State
11 Attorney's Office or we'd read it at the State
12 Attorney's Office.

13 I was sent a thing about two years ago, maybe
14 a year and a half ago, from whoever the editor is of
15 that particular publication asking me if I would like
16 to write an article. And I submitted an article.

17 Q. Do you know who the editor is?

18 A. No. Whoever is the editor -- seems like
19 Morris sounds familiar but I could be off on that.

20 Q. Okay. Do you know who subscribes to the
21 journal, who the reading audience is?

22 A. I have no idea.

23 Q. Do you subscribe currently?

24 A. No. I never subscribed.

25 They send it to me but I don't subscribe.

2
1 Q. Have you ever talked to the editors or anyone
2 who works for the journal?

3 A. I don't know.

4 Q. Well, are your articles reviewed before
5 they're published?

6 A. By me. That's it.

7 Q. Okay. No one else reviews them?

8 A. No.

9 I mean, I've never been asked to rewrite them
10 or to do anything to them, but I assume that someone on
11 the staff looks at them before they're published.

12 But I can't -- I've never been asked to change
13 anything on them.

14 Q. Do you currently read the journal when you
15 receive it?

16 A. Sometimes.

17 Q. What kind of articles are in there?

18 A. Well, there's case law articles, there's
19 articles that have -- that are on appellate issues,
20 about Breathalyzers and about field sobriety testing.

21 There's articles written by -- I think Dick
22 Jensen (phonetic) has written a few articles in there.

23 Q. Who is Dick Jensen?

24 A. He's a doctor in Minnesota. He is familiar
25 with the operations of the Intoxilyzer. He gives

2 1 seminars around the country.

2 Q. For defense lawyers?

3 A. Well, I don't know if they're defense lawyers
4 or not.

5 He gives -- you know, he gives classes, I
6 should say, or he gives seminars. I don't know who
7 they're attended mainly by.

8 But I've met him a couple times.

9 And the articles are just various as far as I
10 know. I mean, I don't pay attention to the legal
11 issues in them, I kind of skim over that.

12 I read articles on partition ratios and things
13 like that.

14 Q. Do you recall if Dick Jensen testified on
15 behalf of the defense in the Thermister (phonetic)
16 hearing?

17 A. I don't know. I didn't testify in that
18 hearing.

19 Q. Who else writes articles for the journal as
20 far as you are aware?

21 A. I have no idea.

22 Generally I never pay attention to the author.
23 I mean, I just don't.

24 Unless it's something specific that -- a name
25 that maybe jumps out at me, but I normally don't pay

3
1 attention.

2 A name something like Kurt DuBowske would jump
3 out at me or something like that but --

4 Q. Why would his name jump out at you?

5 A. Well, because I've read tons of his literature
6 with his name on it.

7 And like I've read a lot of stuff with Dick
8 Jensen on it as well. So those names jump out at me.

9 But some other individuals, their names just
10 may not jump out at me.

11 Q. Have you ever read in the law journal what you
12 would consider to be a pro State article?

13 A. Well, I don't know what you mean by pro State.

14 Q. Pro law enforcement?

15 A. Yeah. I think mine in some respects was pro
16 law enforcement.

17 I basically back the position that the
18 roadsides are correct if they're conducted properly.*

19 So I would say mine was a pro article.

20 As to whether or not I could pick out
21 something specific for you, at this time I can't.

22 Q. Okay. So other than yours, would it be fair
23 to say that you can't specifically recall seeing any
24 pro law enforcement article?

25 A. Well again, you know, I don't want to mince

3
1 words with you. I don't know what you consider to be
2 pro versus what I do.

3 So I really can't answer that. I don't know.

4 Q. Okay. Have you ever testified on behalf of
5 the Dade County State Attorney's Office?

6 A. No.

7 Q. All right. Let's talk about Swope and
8 Associates.

9 When did you first go into business?

10 A. February, 1987.

11 Q. And who did you go into business with?

12 A. Scott Barksdale, B-A-R-K-S-D-A-L-E.

13 Q. And who is Scott Barksdale?

14 A. He was a friend of mine who was a retired
15 police officer from -- I think Atlanta.

16 But he was down here and he was a teacher at
17 Northwest -- or Northeast -- Northwest/Northeast High
18 School. He conducted a law enforcement program
19 there -- I believe half days or three-quarters of a day
20 or something like that -- for students in their junior
21 and senior year.

22 Q. Is he currently working with you now?

23 A. No, no. We only worked together for about a
24 year.

25 And, I mean work -- well actually, I take that

3
1 back. We worked together for about -- about two years,
2 where he would do a certain amount of business for me
3 and we worked together and we split fees and things
4 like that.

5 Q. And what happened after that?

6 A. Well, basically I just decided to -- that I
7 was going to go on my own and continue on with the
8 business.

9 I felt that I was carrying the burden of the
10 business and I just took it all over.

11 Q. Do you have any current business associates?

12 A. No. As far as, you know, people that I share
13 the bills with?

14 Q. Yes.

15 A. No. Absolutely not, ever, ain't going to have
16 them.

17 Q. Can you tell us how you started the business?

18 A. Yeah. I just made some cards up and started
19 doing things initially outside of Broward County.

20 And it was actually investigation, where I was
21 starting to do some investigation, I obtained a class C
22 license from the state of Florida. I was a licensed
23 investigator -- well actually, I am through this year.
24 But I turn in my license after this year.

25 Q. Why is that?

3 1 A. I don't need it anymore. I don't take
2 statements from witnesses and I don't have it -- you
3 know, the only reason I had it before was because if
4 you take statements from witnesses and notarize them,
5 technically, under some chapter in the law, you should
6 be a private investigator.

7 And I initially started out doing that so I
8 obtained a license and then I just turned it in.

9 I went from a class C to a class A license and
10 I turned in my class A. Well actually, my class A was
11 turned in in October of this year.

12 Q. Okay. Do any defense lawyers currently
13 receive any funds or have any interest in your company?

14 A. No.

15 Q. Okay.

16 A. Never. Will never happen.

17 Q. Do you have any investments or participate in
18 any businesses with any defense attorneys?

19 A. I have no investments.

20 Do I participate in businesses? What does
21 that mean?

22 Q. Do you invest any funds or own or operate any
23 businesses in conjunction with any defense attorneys?

24 A. No.

25 Q. What is the nature of your business primarily?

4
1 A. Accident reconstruction.

2 Q. And how much money do you make as an accident
3 reconstructionist?

4 A. Over 300,000.

5 Q. How much income do you make consulting with
6 the defense on criminal cases?

7 A. About 50,000.

8 Q. And how much do you make consulting with the
9 State on criminal cases?

10 A. Probably about 15,000 and -- but you could get
11 that exact figure from the county records in Broward.
12 They would have that.

13 Q. So that's primarily with the Broward State
14 Attorney's.

15 A. Yes, it is.

16 Q. How much income do you make testifying for the
17 defense in criminal cases?

18 A. I have no idea. It's -- I would say it's
19 relatively small because I really don't testify that
20 much.

21 I mean, I may go to hearings and I may attend
22 a lot of hearings, but generally when I testify, it's a
23 very short period of time.

24 So if I'm in court for two hours and I bill
25 \$200 or -- you know, that would be a small percentage

4
1 actually of the amount of money I make.

2 Q. What do you charge to testify on behalf of a
3 defendant?

4 A. It depends where I have to go, what kind of
5 case it is.

6 If it's a DUI manslaughter case, it will be
7 \$150 an hour.

8 If it's a regular DUI case, it's \$100 an hour,
9 although that's changed under my new contract as of
10 this year.

11 Q. And what has it changed to?

12 A. It's changed that I charge a \$500 consultation
13 fee which is nonrefundable, I charge \$500 for any
14 motion or hearing that I attend and another \$500 if
15 they want me for court. And that's the attorney's
16 option.

17 Q. The \$500 for attending court, is that the
18 total amount of money you'll make by going to court or
19 do you then charge an hourly fee in addition to that?

20 A. No. Right now, the way it works is that I
21 would get a \$500 retainer.

22 If the attorney calls me to court, I would get
23 another \$500 for appearing, whether it be for two hours
24 or ten hours.

25 And then, you know, if there's a motion

4
1 hearing or if they want me for some other type of
2 hearing to testify, then that would be another \$500.

3 Q. Do you also charge for travel time?

4 A. Well, I was under the old contract.

5 The new contract, no. It's going to be a flat
6 fee.

7 Q. That's included?

8 A. Yes.

9 Q. What do you charge for depositions?

10 A. \$150 an hour, except your office which is
11 gypping me out of some money.

12 Q. I knew you couldn't resist.

13 A. Right.

14 Q. How many times have you been listed as a
15 defense witness, if you know?

16 A. You could probably tell me that better than I
17 could. I have no idea.

18 I'm sure it's many more times than I know.

19 Q. Okay. So you're listed in cases sometimes
20 without you being aware of that?

21 A. Absolutely. And I do not condone that, by the
22 way.

23 Q. Okay. The cases where you're listed by -- are
24 there some law firms -- strike that.

25 Are there some law firms that you allow to

4 1 list you basically in all their cases?

2 A. Yes.

5 3 Q. And what law firms are those?

4 A. That would be Essen & Essen. I allow Jim Best
5 and Rene Palomino to do that and I allow Bobby Reiff to
6 do that. And that would be about it.

7 Q. Is there any reason you allow them to do that?

8 A. Yes.

9 Q. And what is that?

10 A. It's just my personal choice.

11 Q. Okay. So it would be fair to say then that
12 they sometimes list you before you've even seen the
13 case?

14 A. Those firms, yes.

15 Q. Okay. How do you prepare for trial? When do
16 you learn about the facts in the individual cases?

17 A. Well, it depends. Sometimes I'm sent
18 discovery that the State furnishes to the defense
19 attorney and I review that and usually send a letter to
20 the attorney.

21 Q. Which attorney, State attorney or defense
22 attorney?

23 A. No. Whatever attorney hired me.

24 Q. Okay.

25 A. And if I find something in the file that I

5
1 think is important, I notify them of that.

2 Sometimes I don't look at a file until trial.*

3 Q. What percentage of your income comes from DUI
4 consultations?

5 A. A small percentage. I mean for me. If you're
6 talking about financially-wise, I would say it's a
7 small percentage.

8 Q. Could you estimate what that would be?

9 A. Probably 10 percent of my business.

10 Q. In terms of dollars, how much of your income
11 comes from DUI consultations?

12 A. Well, I don't have it split between
13 consultations and actual court.

14 Q. Okay. Let's consider it combined.

15 How much of your income comes from DUI
16 consultation and testimony?

17 A. Probably about 50,000.

18 Q. All right. Let's talk for a few minutes about
19 field sobriety tests.

20 A. Again, I don't know for sure. Okay. I'm just
21 giving you these incomes, they're kind of like -- I
22 don't have it broken down any specific way, so if I
23 would say 55,000 on the stand, don't hold me to that.

24 Q. Oh, no, no.

25 A. Not that you would do that of course.

5 1 Q. Of course not.

2 Now, you're very experienced in using and
3 discussing field sobriety tests. That's correct.
4 Right?

5 A. I think so.

6 Q. Okay. Approximately how many times have you
7 administered a field sobriety test?

8 A. Are you talking in an actual setting or
9 teaching or demonstrating in front of a class or what?

10 Q. On the road as a law enforcement officer, how
11 many times have you administered a field sobriety test?

12 A. Thousands.

13 Q. And what tests have you administered in that
14 capacity?

15 A. Do you want from the start of my police work?

16 Q. Yeah. What sobriety tests you've used.

17 A. Well when I started in police work, we used
18 the old throw the coins on the ground and pick out the
19 dimes and nickles and things like that. There was coin
20 test.

21 There was a counting test.

22 There was variations of walking the line or
23 walking heel-to-toe so to speak.

24 There was knowledge tests such as where you
25 were at, where you were going, how fast were you

5 1 traveling before we stopped you, those kind of things.

2 Finger-to-nose. Balance test.

3 And then of course the new field sobriety
4 test, the new battery so to speak, the one-leg stand,
5 gaze nystagmus, walk and turn.

6 And I suppose there was other tests I used
7 when I was in the service.

8 Q. Now, would it be fair to say that you've
9 arrested people based at least partially on their
10 performance on the field sobriety tests?

11 A. Sure.

12 Q. Approximately how many times have you arrested
13 somebody for DUI, arrested people for DUI?

14 A. I would say I probably made about 1,500
15 arrests during my career.

16 Q. And over how long was that?

17 A. 15 years.

18 Q. Do you believe that field sobriety tests are
19 helpful in determining alcohol or drug impairment?

20 A. Yes.

21 Q. How helpful?

22 A. I would say, if they're administered correctly
23 and they're scored correctly, I would say that they're
24 very helpful in assisting the officer in determining
25 whether someone is able to operate a motor vehicle.

6
1 Q. What if you have a situation where it would be
2 difficult to score or unusual circumstances performing
3 the test? Do you believe that automatically makes the
4 test results worthless or do you believe that an
5 experienced officer can interpret them?

6 A. Well, that's probably a question that really
7 can't be answered.

8 I mean, situations are always -- when you talk
9 about an unusual situation, that could be probably 50
10 million situations that are unusual.

11 I don't -- obviously an officer who has
12 experience, such as a DUI task force officer, I would
13 say would be in a much better position to evaluate a
14 possible impaired driver than would some officer who
15 makes two DUI arrests a year.

16 Q. Okay. So let me give an example.

17 Because I think you're right, I think my
18 question is too broad.

19 Let's suppose that you were to administer a
20 walk the line test without a line. You would just ask
21 the person to use an imaginary line.

22 Do you believe that you, based on your
23 training and experience, could accurately determine
24 whether or not they're impaired?

25 A. Well, I'll give you that in two parts. Could

6
1 I do it? I would say probably.

2 Do I think it's proper? No. Because now I've
3 changed the scoring results of my test.

4 And I would not want to use that one issue, so
5 to speak, if that was the only test I gave as to
6 determine if the guy was impaired or not. And I think
7 to be totally fair to the guy, that would not be a
8 proper way to do it.

9 Could I tell if he's impaired? I would say
10 probably yes.

11 Would I arrest him? No.

12 Q. Okay. Let me change the facts just a little.

13 Let's suppose that you gave a complete battery
14 of field sobriety tests, the standardized field
15 sobriety test battery, but use an imaginary line on a
16 walk and turn.

17 Under those circumstances, do you believe you
18 could look at the totality of the circumstances and
19 make a proper decision whether to arrest or not?

20 A. Well, you know, again that's hard saying.

21 * When you talk about look at the totality of
22 the circumstances, I'm assuming that you mean that
23 there was an odor of alcohol present, that the guy had
24 bloodshot, watery eyes, he may be unsteady on his feet,
25 he doesn't know where's at, he's disoriented, those