

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

STATE OF FLORIDA,

Plaintiff,

vs.

OREN SHARPE,

Defendant.

NO. 94-17078CF10A
JUDGE BACKMAN

COPY

Fort Lauderdale, Florida

August 7, 1995

4:20 o'clock P.M.

APPEARANCES:

MICHAEL J. SATZ, STATE ATTORNEY,
BY: LISA TODD, ATTORNEY AT LAW,
ASSISTANT STATE ATTORNEY,
appearing on behalf of the Plaintiff.

(No appearance on behalf of the Defendant.)

DEPOSITION

OF

RICK SWOPE

1995 AUG -9 PM 1:20
STATE ATTORNEY
17TH JUDICIAL
CIRCUIT OF FLORIDA

1 Deposition of RICK SWOPE, a witness of
2 lawful age, taken by the Plaintiff for the purpose
3 of discovery and for use as evidence in the
4 above-entitled cause, wherein STATE OF FLORIDA is
5 the Plaintiff and OREN SHARPE is the Defendant,
6 pending in the Circuit Court of the 17th Judicial
7 Circuit in and for Broward County, Florida,
8 pursuant to notice heretofore filed, before TERRI
9 CAMIZZI, a Shorthand Reporter and Notary Public in
10 and for the State of Florida at Large, at the
11 office of the State Attorney, 201 Southeast 6th
12 Street, Fort Lauderdale, Broward County, Florida,
13 on the 7th day of August, 1995, commencing at 4:20
14 o'clock P.M.

15 -----

16 Thereupon:

17 RICK SWOPE,
18 a witness named in the notice heretofore filed,
19 being of lawful age, and being first duly sworn in
20 the above cause, testified on his oath as follows:

21 DIRECT EXAMINATION

22 Q. (BY MS. TODD) Could you state your
23 name for the record and spell your name.

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

25 Q. What is your profession?

1 A. I do primarily accident reconstruction.

2 Q. In this case you are hired by the
3 Defendant in this case, Oren Sharpe?

4 A. Yes.

5 Q. In the case of Oren Sharpe, have you
6 arrived at an opinion regarding accident
7 reconstruction?

8 A. Yes.

9 Q. Is that the only opinion you were asked
10 to formulate in this case?

11 A. Well, I don't know if you want to say
12 that's the only opinion I was asked to formulate.
13 I really wasn't asked to do anything. I was just
14 given the case and I reconstructed it and I gave
15 Mr. Tobin several opinions.

16 Q. What opinions did you give him?

17 A. Well, I gave him just a couple of
18 opinions. I can pull them for you here.

19 Basically I arrived at a couple of
20 opinions that had to deal with the accident,
21 itself. Those opinions dealt with the speed of
22 the Sharpe vehicle as it lost control.

23 Q. That would be speed going eastbound?

24 A. That's correct.

25 Q. What was that speed?

1 A. The speed I used for that was
2 approximately 56 to approximately 62 miles per
3 hour, and I settled on 60 miles per hour. That
4 was the speed I got most consistently. That was
5 the first issue that I dealt with was the speed.
6 There was no question that Mr. Sharpe was
7 exceeding the speed limit on Pembroke Road. That
8 is issue number one.

9 The second issue that I looked at in
10 the case was there was testimony from the
11 occupants of the Sharpe vehicle - in the Sharpe
12 vehicle that indicated a truck or some type of
13 pickup was ahead of Mr. Sharpe's vehicle and
14 activated the brake lights, which caused
15 Mr. Sharpe to take an action to the right.

16 I looked at that opinion. That opinion
17 of his going to the right is consistent with the
18 way the accident occurred, meaning that Mr. Sharpe
19 was traveling eastbound on Pembroke Road, leaving
20 the lane of travel, going partially off the lane
21 of travel and then coming back across the
22 eastbound lanes of traffic, crossing the median
23 and getting in the accident in the westbound
24 traffic. That was consistent.

25 Q. Did you find any evidence of there

1 being a truck on the road?

2 A. Well, the answer to that is, physical
3 evidence, no. Because number one, the police
4 didn't look for any. That is number one. And
5 number two, the testimony itself, that is not
6 evidence. It's sworn testimony, but not physical
7 evidence, but it is evidence so I did look at
8 that.

9 Q. Why did you say the police didn't look
10 for any?

11 A. Because there was no indication in the
12 photographs that they looked for any, that they
13 actually took pictures of that. The investigation
14 did not center on that. In fact, the
15 investigating officer did not look for it. The
16 officer that assisted on the scene did not look
17 for it. That was in their testimony, so I really
18 can't tell if there was any or not.

19 Q. That is based on your review of
20 depositions?

21 A. I assume they are all truthful in
22 giving depositions.

23 Q. So you have no indication that there
24 was a truck other than the witness' testimony in
25 the person in Oren Sharpe's vehicle's testimony?

1 A. Well, not necessarily. The actions
2 taken by the driver are consistent with evasive
3 action. In other words, the action that
4 Mr. Sharpe took was consistent with him making
5 that type of move for a vehicle braking in front
6 of him.

7 Q. Did you yourself have to speculate as
8 to whether there was a truck there and as to
9 whether that truck actually put on its brakes?

10 A. Well, there was a truck there according
11 to even the witness, Mr. Castellaneta. As to
12 whether the brake lights were activated or not, I
13 don't believe that Mr. Castellaneta was in a
14 position to see that, at least based on his
15 testimony, but there was a truck there. Whether
16 it activated its lights or not, that is indicative
17 of -- The only evidence I have of that is
18 Mr. Sharpe's actions and the testimony of people
19 in his vehicle.

20 Q. No physical evidence?

21 A. Correct.

22 Q. What other opinions did you come to?

23 A. The other -- Technically, that is it as
24 far as opinion testimony in arriving at certain
25 opinions on the case. That is what I looked at.

1 I also looked at other areas such as
2 witness statements, deposition statements, the
3 investigation, itself. Those are things that I
4 looked at in giving Mr. Tobin opinions as well.

5 Q. What opinions did you give him?

6 A. Well, one opinion was in looking at the
7 statement -- Let me just get my notes here. You
8 can have copies of these, by the way.
9 According to Officer Philipson's testimony that
10 Castellaneta is what he considers to be the key
11 witness in the case, yet he never spoke with him
12 at all, at least as of the deposition he never
13 spoke to the witness at all. So the information
14 that he arrived at in filling out his PC
15 Affidavit, which was incorrect because that did
16 not match the testimony of Mr. Castellaneta's
17 deposition testimony. Then I felt that was an
18 improper move to make as an investigator to take
19 hearsay from another officer and never speak with
20 the main witness.

21 Deputy Philipson also indicated that
22 without the witness, Castellaneta, the case would
23 most likely not be made. I have subnotes here
24 that Deputy Philipson never spoke with the witness
25 and that the witness obviously changed his story

1 and testimony from the statement to the
2 deposition. And the PC also is not accurate as
3 according to the witness statement which I -
4 speaking of Castellaneta, which Deputy Philipson
5 put in his Probable Cause Affidavit was based on
6 hearsay evidence from Deputy Miller.

7 Q. That's your opinion having reviewed the
8 statement and the deposition?

9 A. Yes.

10 Q. And knowing that the deputies at that
11 time only had the statement to review because the
12 deposition had not been taken?

13 A. Well, if Officer Miller would have
14 filled out the Probable Cause Affidavit and made
15 the arrest, then I would agree with you. But as
16 an investigating officer you don't take hearsay
17 evidence from someone else, which may or may not
18 be correct and then go and make an arrest, which
19 is what happened in this case.

20 Q. Do you or do you not agree that only
21 having the statement of the witness and not having
22 taken the deposition, that the reports are
23 consistent or inconsistent?

24 A. I think that the statement and the
25 Probable Cause Affidavit is inconsistent.

1 Q. How about the statement and the report
2 of Deputy Philipson?

3 A. That seems to be inconsistent as well.

4 Q. Why are they inconsistent?

5 A. Well, because the way that Deputy
6 Philipson indicates in his Probable Cause
7 Affidavit. Let me get that here.

8 He indicates in his Probable Cause
9 Affidavit that he indicates that there is improper
10 lane changes and following too closely, yet there
11 is nothing mentioned in any of the statements
12 taken at the scene or at a later date or at least
13 prior to Deputy Philipson filling out a Probable
14 Cause Affidavit that that occurred. There is no
15 mention of anything, even Castellaneta, that there
16 was improper lane change, and following too
17 closely, which he indicates in his Probable Cause
18 Affidavit. That comes from Deputy Miller who,
19 when he gave his deposition, didn't even remember
20 the case at all. As a matter of fact, he thought
21 it was another case until he got over halfway
22 through the depo. So I thought that was a little
23 bit -- I was leery about that.

24 Q. What other opinions did you come to?

25 A. The affidavit also states, or testimony

1 from Officer Miller to Deputy Philipson, that
2 Castellaneta indicated that Sharpe was weaving in
3 and out of traffic. Which again, the reason I'm
4 saying things such as improper lane change and
5 weaving is because that goes into reckless
6 driving. Speed of itself is not, at least to my
7 understanding. There would be more than just
8 speed to indicate reckless driving.

9 So these are all things that add up to
10 reckless driving, yet Castellaneta never stated
11 that either, that he was weaving in and out of
12 traffic. He indicates that he came up past him,
13 made him move over. He never indicated weaving,
14 which is what Deputy Philipson used in the
15 reports. He also, Castellaneta, never indicated
16 that this happened more than once.

17 So in other words, if it was weaving,
18 it was one lane and that wouldn't be considered
19 weaving in and out of traffic. That would be
20 making a lane change. Whether it's proper or not,
21 that be would determined from someone else, but
22 not - I don't think from the witness at that
23 point.

24 There is no testimony that - at least
25 from Castellaneta, and I'm following the officers

1 on this as their main witness - he never indicated
2 that Sharpe was squeezing between any traffic,
3 that he didn't try to weave his way in between two
4 cars.

5 Also there was a mention made from
6 Officer Miller that Sharpe -- I'm sorry, Officer
7 Miller indicated that Castellaneta told him that
8 Sharpe was whipping in and out of traffic or
9 whipping his vehicle to the right. Again, to me
10 that would be indicative of a reckless driver, but
11 that was never testified to either in the
12 deposition or statement.

13 Also Castellaneta did not say anything
14 about Sharpe losing control on any of the
15 actions. He is not sure about how the car lost
16 control. He is sure of the lane change to the
17 right. And that is really -- Those are the kinds
18 of inconsistencies that I should say I looked at
19 in looking for reckless driving.

20 Q. Are there any other inconsistencies?

21 A. Well, there is -- Well, there are
22 inconsistencies between the statement that
23 Castellaneta gave and the deposition that he
24 gave. He had everybody in the wrong lane of
25 traffic for the first part of the deposition, and

1 then I believe he reviewed his deposition and then
2 changed his story back to what it was initially at
3 the time that he gave the statement to the
4 officers that night. But again, the words such as
5 improper lane changes, whipping between traffic,
6 squeezing between traffic, those words were never
7 used. And it was my understanding in reading the
8 report, unless I read it wrong, that that was what
9 Deputy Philipson was basing his conclusion on.
10 And again, just for the record, the speed I have
11 no question with. I don't have a qualm about that
12 at all. I think the speed computations are pretty
13 accurate and I think I am within the same range as
14 Deputy Philipson, but the actions of the driver
15 before that is what I was looking at.

16 Q. Are there any other opinions that you
17 formulated?

18 A. When you say that I formulated, I have
19 written notes down of questions that were either
20 asked by Mr. Tobin or myself that I may have
21 looked at and may not have. If you want, I can
22 just tell you what I looked at.

23 Q. Go ahead.

24 A. I normally don't narrate in a depo, but
25 if you want me to do that, I will.

1 Q. Go ahead and tell me what you looked
2 at, and if I have any questions I can go through
3 it.

4 A. Okay. One of the questions that was
5 not asked was about the victim's seat belt. I was
6 questioning as to why that was not looked at to
7 see that the victim did not have a seat belt on,
8 and what kind of injuries would have occurred had
9 the seat belt been worn and the injuries were
10 fatal or not. Obviously I am not a doctor so that
11 would be a question for you to ask the M.E., and
12 obviously if you ask that question, but this is a
13 question I have for Mr. Tobin.

14 It is also my understanding that all
15 the witnesses were together for quite some time
16 before any statements were taken and apparently
17 there were jurisdictional issues at first as to
18 who was going to work the case.

19 Q. What is your opinion regarding all the
20 witnesses being together? How would that effect
21 an investigation?

22 A. Well, obviously you have to look at
23 that a little more in detail than you would people
24 who are totally - that don't know each other or
25 have no interest in the case. Whether the

1 passengers have an interest or not, I can't tell
2 you, but it would seem they are probably friends
3 of Mr. Sharpe. But the statements were taken
4 generally quick. I think that you have to look at
5 that, but I think you would have to look carefully
6 at the statements of the witness,
7 Mr. Castellaneta, and see really the initial
8 statement that he gave. At least in my opinion,
9 in looking at it, it did indicate a reckless
10 operation.

11 And by looking at that, some facts I
12 looked at which is my next point to you, was that
13 Castellaneta made a statement originally that
14 Sharpe passed him at 80 to 85 miles per hour while
15 he was traveling about 40 to 45, yet the accident
16 occurs just a very short time after this took
17 place and Castellaneta pretty much behind Sharpe,
18 wherein Sharpe should really be pulling away from
19 him at twice the distance. But Castellaneta
20 states that he makes the lane change also and gets
21 behind Sharpe and he accelerates up to near the
22 speed that he was going, yet that would put
23 Castellaneta at around 80 miles an hour or 75.
24 And I don't believe he was going that fast because
25 later he changes that and recants a little bit.

1 So I really don't know if Castellaneta
2 would have sped up to about 75 if that was the
3 case. Again, I just want to repeat the things
4 that Deputy Miller indicated that Castellaneta
5 kept indicating about this whipping action of the
6 driver, Mr. Sharpe. And again, I don't see that
7 anywhere in either information. Let me just look
8 here to make sure I have everything for you.

9 The witnesses that did testify in the
10 case and that would be Neil Snyder, Rohan Reid,
11 Mitchell Weill, Omar Smith, all seem to indicate
12 that there was some type of loss of control when
13 Mr. Sharpe made his move to the right. So those
14 things seem to jive so to speak and come
15 together.

16 Also the entire, I guess, the last fact
17 that I have, if you want to call it a fact, is the
18 testimony of Deputy Philipson. And he indicated
19 in his deposition that his understanding was that
20 Sharpe switches lanes because of the vehicle in
21 front, too closely to the vehicle in front and
22 that is what he indicates, yet this information is
23 not indicated in any statements at all. There is
24 no testimony that that is what happened. And I
25 just -- I guess maybe that you consider that an

1 opinion or not, just that I don't think there is
2 enough in this case at least from the witness
3 statements to indicate reckless driving, certainly
4 speed.

5 Q. So essentially you agree with the
6 opinion that the speed of the Defendant going
7 eastbound was approximately 60 miles per hour?

8 A. I do.

9 Q. However you feel that based on other
10 facts and other witnesses' statements you don't
11 believe that there is enough information to
12 formulate a reckless driving charge that would be
13 with a death of vehicular homicide?

14 A. Well, at least as I read the
15 information, as it stands now there is not enough
16 unless there is something again that I missed.
17 But what I am saying is that none of the witnesses
18 statements back the Probable Cause Affidavit or
19 the homicide report, that they differ.

20 So therefore, if the witnesses'
21 statements differ and they don't indicate action
22 such as improper lane changes, whipping, following
23 too closely, it's my understanding, and obviously
24 you are the legal person, but it is my
25 understanding that that does not constitute

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reckless driving, speed alone.

Q. At this point have you completed your entire investigation?

A. I have completed everything that I have. I don't know if there is any additional witnesses that the State or Mr. Tobin may have somewhere. I plotted everything out that I have from my office such as the homicide report and depositions I went over. You or Ed may have somebody that I am not aware of that you may depose.

Q. Let's talk about your training and experience. Where did you first start to train to become a traffic homicide or accident reconstructionist?

A. We are not going to go through this again, are we?

Q. Yes.

A. 1974 I began training in the U.S. Army, Fort Gordon, Kansas was my first course. In December, I believe, of '74, I was assigned to the Kansas Highway Patrol for three weeks.

Q. Let's talk about the U.S. Army. Were you honorably discharged?

A. Yes.

Q. From the U.S. Army?

1 A. Yes.

2 Q. Then you were with Kansas?

3 A. No.

4 Q. Excuse me, where did you go after the
5 U.S. Army?

6 A. I went to Monroe City Police Department
7 in Monroe, Michigan.

8 Q. How long were you at the police
9 department in Monroe, Michigan?

10 A. I was hired December of '78. I
11 resigned July - August, I believe, 12th of 1984.

12 Q. Why did you leave there?

13 A. Because I got a job with the Broward
14 Sheriff's Office. Two days later I started at
15 Broward Sheriff's Office.

16 Q. Was that the only reason?

17 A. Yes.

18 Q. When did you start at Broward Sheriff's
19 Office?

20 A. I started, I believe, August 15th or
21 16th of 1984. I worked a zone on the road patrol
22 for three months and I was then transferred to the
23 traffic unit.

24 I encompassed about 2500 hours of
25 training with various schools with accident

1 reconstruction. I began teaching for the State of
2 Florida in 1989. I became an instructor with the
3 Florida Department of Law Enforcement in 1986, and
4 I took various training courses. I was the
5 administrative coordinator of the Traffic Homicide
6 Unit for three years.

7 Q. Your training courses, what did they
8 consist of?

9 A. Well, they consisted of anything from
10 at-the-scene accident investigations up through
11 accident reconstruction, advanced accident
12 reconstruction. I took courses at the University
13 of Miami, engineering dynamics. Courses were put
14 on this, courses with the Society of Automotive
15 Engineers. These types of course are what I took.

16 Q. Who taught these courses?

17 A. Well, some courses were taught by Ph.D.
18 Engineers. Some courses were taught by other
19 accident reconstructionists, some by engineers,
20 some police officers. It just depends on the
21 course.

22 Q. When did you leave BSO?

23 A. I left July, I think, 27th or 28th,
24 1990.

25 Q. Why did you leave the Broward Sheriff's

1 Office?

2 A. Because I had my own business.

3 Q. Your own business being?

4 A. Accident reconstruction.

5 Q. Is that the only reason you left the
6 Broward Sheriff's Office?

7 A. Yes, it is.

8 Q. When were you hired by the Defendant?

9 A. I spoke with Mr. Tobin on May 4th
10 of '95. I'm sure I had contact with him
11 previously, but that is when I first started
12 getting the reports.

13 Q. Would you consider that to be your
14 official hiring date?

15 A. Yes.

16 Q. How much have you billed so far in this
17 case?

18 A. I've sent two bills to Mr. Tobin, which
19 of course, go to the county. Both bills total
20 \$650, so 1,300 to this point or to the point of
21 the last bill.

22 Q. And that would be up to date?

23 A. Well, no. The last bill that I sent
24 Mr. Tobin was on June 7th of '95, and I'm sure I
25 probably have another six or seven hours on top of

1 that.

2 Q. Do you have time sheets for those six
3 or seven hours?

4 A. From the six or seven of '95?

5 Q. Yes.

6 A. No, because I wouldn't have billed
7 yet. I am just estimating.

8 Q. How much would you bill based on those
9 six or seven hours?

10 A. If it's six hours, \$600. A hundred
11 dollars per hour.

12 Q. So that would be plus 600 to \$700?

13 A. Correct.

14 Q. For a total of approximately 1,900 to
15 \$2,000?

16 A. Yes.

17 Q. You indicated that the hourly rate was
18 a hundred dollars?

19 A. Yes.

20 Q. How much money would you receive if the
21 case pleas prior to trial?

22 A. Whatever I bill up to that time. I
23 mean, I assume there is a court order that I have
24 that the judge is going to pay up to \$4,000 in
25 expert costs. I don't know if that includes just

1 me or other people, but if the case pled today
2 whatever my bill is up to today, that is what I
3 would expect to receive.

4 Q. So you would continue to proceed on an
5 hourly rate?

6 A. Yes, ma'am.

7 Q. How about if the case goes to trial?

8 A. Same.

9 Q. How many additional hours could you
10 estimate you would use in preparing for trial?

11 A. Well, that would be up to Mr. Tobin. I
12 have everything pretty much down. I would
13 probably expand the diagram that you see here,
14 blow that up. That wouldn't take that long. And
15 whatever additional -- I would just estimate
16 probably in the neighborhood of three to four
17 hours.

18 Q. How about coming to court, how many
19 additional hours would that be?

20 A. Depending on how long your cross would
21 be, I guess. I wouldn't think Mr. Tobin would
22 cross me or have me more than an hour and probably
23 the State would have me no more than an hour or
24 hour and a half, so probably three hours.

25 Q. How about waiting for court?

1 A. Waiting for court, hopefully no more
2 than two hours.

3 Q. Did anybody assist you in preparing
4 your work on this case?

5 A. Yes.

6 Q. Who would that be?

7 A. Bruce Buffa, B-U-F-F-A.

8 Q. Do you have an address for him?

9 A. No.

10 Q. Do you have a phone number?

11 A. Yes. 407-402 -- I'm sorry, 482-2383,
12 482-2383.

13 Q. How did he assist you?

14 A. He did the diagram.

15 Q. Did he do any of the measurements for
16 the diagram?

17 A. Yes. That is what he does. He did the
18 scaling. I just verified it all when I went out
19 to the scene. He gets the physical work on the
20 diagram. I did the car, the measurements,
21 et cetera, the impact based on Deputy Philipson's
22 testimony and ledger sheet, but he just does the
23 street.

24 Q. So he takes measurements that are
25 provided to him and does the diagram?