

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
STATE OF FLORIDA

v. Case No. 01-2850 CF A02

BERNARDO ECHEVERRY,
Defendant.

MOTION HEARING

PRESIDING: THE HONORABLE HUBERT LINDSEY

APPEARANCES:

ON BEHALF OF THE STATE:

BARRY KRISCHER, STATE ATTORNEY
401 North Dixie Highway
West Palm Beach, FL 33401
By: E. PARKER, Assistant State Attorney

ON BEHALF OF THE DEFENDANT:

ORLANDO GONZALEZ, ESQUIRE
250 Australian Avenue
West Palm Beach, FL 33401

August 15th, 2002
Palm Beach County Courthouse
West Palm Beach, Florida

ORIGINAL

1 BE IT REMEMBERED that the following
 2 proceedings were had in the above-entitled cause before
 3 the HONORABLE HUBERT LINDSEY one of the judges of the
 4 aforesaid Court, at the Palm Beach County Courthouse,
 5 located in the City of West Palm Beach, State of
 6 Florida, on August 15th, 2002 with appearances as
 7 hereinabove noted, to wit:

8 MR. GONZALEZ: I have one of Judge Sterns's
 9 cases, Your Honor.

10 THE COURT: Let's do that one really
 11 quick.

12 MR. GONZALEZ: Judge, I don't think it'll be
 13 really quick.

14 THE COURT: Okay.

15 MS. PARKER: It may be, Judge.

16 MR. GONZALEZ: All right. Bernardo Echeverry,
 17 Your Honor.

18 THE COURT: And what page is that on?

19 MR. GONZALEZ: Judge, I didn't see it on the
 20 calendar.

21 THE COURT: I'm looking with you.

22 MR. GONZALEZ: Echeverry, E-C-H -

23 MS. PARKER: Originally, Judge, it was set
 24 for 4:00 o'clock today in front of Judge Stern,
 25 and the JA then reset it for this morning at 8:30.

1 So I don't -

2 THE COURT: Okay. Let's see what the 4:00
3 o'clock says.

4 MR. GONZALEZ: There it is, Judge.

5 THE COURT: 4:00 o'clock says, yeah, here
6 it is on the 4:00 o'clock.

7 Bernardo Echeverry, clarification of
8 procedure for payment of expert.

9 CLERK: Judge, we don't have that file.

10 THE COURT: We don't have that file,
11 folks. Hate to send you back to Judge Stern. If
12 you want to -

13 CLERK: Judge, I just received it.

14 THE COURT: You've got the file. Okay.
15 Who is asking for this?

16 MS. PARKER: Judge, this is the state's
17 motion. Elizabeth Parker on behalf of the state.

18 And essentially, if I can, I have a copy
19 of my motion and -

20 THE COURT: Well, Mr. Gonzalez doesn't
21 have a dog in this fight.

22 MR. GONZALEZ: Judge, that is exactly what I
23 was gonna tell the court. I don't have any
24 standing to argue, okay.

25 THE COURT: Sure.

1 MR. GONZALEZ: And Mr. Swope was noticed, or
2 I advised him for 4:00 o'clock. However, he
3 couldn't be here -

4 THE COURT: Who's that, the county
5 attorney?

6 MR. GONZALEZ: He's the expert.

7 THE COURT: Oh, the expert.

8 MR. GONZALEZ: In my vehicle homicide case.

9 THE COURT: Oh, okay. State, what is it
10 you want to know?

11 MS. PARKER: Judge, what the problem is is
12 essentially we had a deposition, Mr. Swope gave me
13 an hour and a half of deposition time and left
14 before the deposition was over.

15 THE COURT: Mm mmm.

16 MS. PARKER: So Judge Stern ordered that he
17 give me four hours of continuous deposition time,
18 which is set for Monday.

19 Mr. Swope submitted a bill for that
20 partial deposition. I wrote him a letter back
21 saying that I would submit a bill upon completion
22 of the deposition, as is the proper procedure in
23 this county.

24 THE COURT: Sounds fair.

25 MS. PARKER: I would submit it to the

1 judge, who would then sign it and submit it to the
2 Board of County Commissioners.

3 Mr. Swope wrote me a scathing letter
4 telling me that he would not show up for
5 deposition, that he refused to give any deposition
6 on this case.

7 THE COURT: Well, somebody needs to talk
8 to him. I mean, a judge, so he's noticed for
9 today at 4:00?

10 MS. PARKER: Well, no, he was not noticed.
11 I didn't believe that he had standing, I just
12 wanted, Judge, Mr. Swope is contending that I was
13 not following the proper rules and the proper
14 administrative order for payment of expert witness
15 fees. So that's why I brought it in front of,
16 placed it on the docket in front of Judge Stern,
17 because our deposition is set for Monday morning
18 and him telling me he's not going to show up.

19 THE COURT: You don't think it'd be
20 better, you don't think it'd be better if we had
21 that person here to tell us whatever it is he
22 wants to tell us?

23 MS. PARKER: Well, I know he's supposed to
24 be in the courthouse this morning to testify in a
25 case, so I don't know that -

1 THE COURT: Because I would, you know, I
2 think a judge ought to look at him and say here's
3 what we're going to do and why, so that he won't
4 be mad at you.

5 MS. PARKER: Well, I think that we're past
6 that point.

7 THE COURT: Let's do this. Let's do this.
8 I'll be here all day. And I don't have
9 a heavy calendar in the afternoon, so if, and I
10 don't think you need to be here.

11 MR. GONZALEZ: I just have a couple of
12 depositions, Judge, but I can work around that.

13 THE COURT: Sure, okay.

14 If he's set for 4:00, come at 4:00. Oh,
15 gee, see if you can find him, get him up here.

16 MS. PARKER: I think we can get him here
17 earlier, Judge.

18 THE COURT: Sure. Just bring him in at -

19 MS. PARKER: I know his schedule.

20 THE COURT: Bring him in any time.

21 MS. PARKER: Okay. Thank you, Judge.

22 [WHEREUPON, the court considered other matters after
23 which this case was recalled and the following
24 proceedings were had].

25 THE COURT: Okay, who are we looking for?

1 MS. PARKER: Page 32, Judge, it's the 4:00
2 o'clock.

3 THE COURT: Oh, yes.

4 MS. PARKER: And may I approach, Judge? I
5 just wanted to give you a copy of the motion, the
6 letter and the bill, and the administrative order.

7 THE COURT: Sure, thanks.

8 MR. GONZALEZ: Judge, if I could be heard for
9 one second?

10 THE COURT: Sure.

11 MR. GONZALEZ: Judge, earlier this week, we
12 set this hearing for 4:00 o'clock this afternoon.
13 Mr. Swope contacted his civil attorneys so that
14 they could be present at that 4:00 o'clock
15 hearing.

16 THE COURT: Mm ¹mmm.

17 MR. GONZALEZ: I believe that Judge Stern is
18 in trial and couldn't hear it at 4:00 o'clock, so
19 therefore, it was changed to 8:30 this morning,
20 and now 11:00 o'clock.

21 With all due respect to Mr. Swope, he is
22 not represented. And I think that this hearing is
23 going to depend on, Your Honor is going to make a
24 decision on his fees. And I think that -

25 MS. PARKER: That's not what I'm

1 requesting, Judge.

2 MR. GONZALEZ: Well, Judge, the wherefore
3 clause of the motion says, wherefore, the state
4 attorney is asking to clarify the fees.

5 MS. PARKER: Well, we -

6 THE COURT: Wasn't this a matter of when
7 to pay, when it's done or not?

8 MS. PARKER: Well, that's what my, that's
9 what it's set here for, Judge, because Mr. Swope
10 told me and wrote to me and said that because I
11 had not paid the first portion of the deposition,
12 he was not going to show up to complete the
13 deposition which is set for Monday morning.

14 So my concern was that I would be
15 without a deposition in this case which is set for
16 trial very shortly. So I pulled the
17 administrative order that was signed by Judge Fine
18 in April of 2001.

19 At this time, I don't know that we need
20 to make a determination as to hourly rates, if
21 that's the big concern. I just, my concern is
22 that the deposition is not gonna take place on
23 Monday morning.

24 I want to have an order from the court,
25 or at least my request is that I do not have to

1 Mr. Swope contrary to his claim, prior to taking
2 his deposition and that until completion of the
3 deposition, then I would submit my bill as is
4 proper procedure to the court and then to the
5 Board of County Commissioners.

6 THE COURT: I'm looking at the, I'm
7 looking at the administrative order here.

8 Does it say in there, I haven't read it
9 all, does it say in there that you don't have to
10 pay the fees until the deposition is taken?

11 MR. GONZALEZ: No, sir, it doesn't.

12 MS. PARKER: It says other, it says other
13 experts shall be compensated on a case by case
14 basis -

15 THE COURT: Where are you reading?

16 MS. PARKER: I'm 'sorry, Judge, number
17 seven.

18 THE COURT: On the second page?

19 MS. PARKER: On the second page.

20 Shall be compensated on a case by case
21 basis, after entry of an agreed order having the
22 concurrence of the state attorney, county attorney
23 and the defendant or after a hearing in open
24 court.

25 One problem, Judge, that I do have is

1 this, the bill that was submitted to me, I told
2 Mr. Swope that I would only pay for one, one
3 charge for travel expenses to West Palm Beach,
4 since it was no fault of mine that he walked out
5 of the deposition before it was finished.

6 MR. GONZALEZ: Judge, he didn't walk out, he
7 walked out, obviously, but the, we've already
8 litigated that, in front of Judge Stern.

9 THE COURT: Sure.

10 MR. GONZALEZ: That's not the issue.

11 THE COURT: Where is Mr. Swope?

12 MR. GONZALEZ: He's present, Judge, before
13 the court.

14 THE COURT: That's you?

15 MR. SWOPE: That's me, Judge.

16 THE COURT: Okay. So the state isn't
17 asking for a particular figure that it has to pay
18 Mr. Swope, it's just saying I want the deposition
19 to continue, and then we'll, we'll worry about the
20 fees then.

21 MS. PARKER: That's what I was requesting,
22 Judge.

23 THE COURT: Sure. Mr. Swope, what is it
24 that you want to tell the court?

25 MR. SWOPE: Judge, may I approach?

1 THE COURT: Sure. Who represents, Mr.
2 Swope? No one?

3 MR. GONZALEZ: No one.

4 MR. GONZALEZ: Judge, this is a bill that Mr.
5 Swope submitted earlier this year to the state
6 attorney's office, and Mr. Swope is concerned -

7 THE COURT: For the taking of deposition,
8 we're talking about?

9 MR. GONZALEZ: No, this is another deposition
10 that he hasn't been paid for.

11 THE COURT: Oh.

12 MR. GONZALEZ: And he's concerned that he's
13 not being paid on time and adequately.

14 THE COURT: Well, sure, I can understand
15 his concern.

16 MS. PARKER: Judge, an order, I did check
17 on that -

18 THE COURT: But I'm not sure, I'm not
19 really concerned with it, not today.

20 MR. GONZALEZ: Yes, sir.

21 THE COURT: Here, let me give this back to
22 somebody.

23 Okay, yes, Mr. Swope, you have some
24 concern about getting paid for your time.

25 MR. SWOPE: Yes.

1 THE COURT: Yes, okay.

2 So the state has said that you walked
3 out, or did not conclude a deposition that had
4 begun, before it was completed, you walked out
5 before it was completed.

6 MR. SWOPE: Well, that's, like most things
7 that the state says, that's not true, Judge.

8 THE COURT: Okay.

9 MR. SWOPE: I was in court earlier that
10 previous, that morning, and I notified Mr.
11 Gonzalez, who called the state and said that I was
12 in court, and I had to catch a plane at 5:00
13 o'clock that day out of Fort Lauderdale.

14 THE COURT: Sure.

15 MR. SWOPE: We had a storm that day, so it
16 took me like an hour and a half or whatever to get
17 up here, I'm not sure. But Mr. Gonzalez had
18 related to the state that we could set it for
19 another day, either that week or some time in the
20 future.

21 THE COURT: Sure.

22 MR. SWOPE: The state insisted that I
23 appear.

24 So I had to drive an hour and a half up
25 through traffic and I had to drive an hour and a

1 half early so I could catch my 5:00 o'clock
2 flight.

3 THE COURT: Sure.

4 MR. SWOPE: But the state was aware of
5 that prior to me appearing for deposition, which
6 we could have easily reset.

7 THE COURT: Okay.

8 MR. SWOPE: So that was not my fault. And
9 I didn't walk out, I told the state, or Mr.
10 Gonzalez did, that I had to catch a plane that day
11 for a trial the next day in Tampa.

12 THE COURT: Okay.

13 MR. SWOPE: So I didn't walk out.

14 THE COURT: Okay.

15 MR. GONZALEZ: It's on the record, Judge.

16 MS. PARKER: Judge, if I just -

17 THE COURT: State, you have Mr. Swope's,
18 Mr. Swope's recollection of what happened, and if
19 that's accurate, that doesn't sound terribly
20 unreasonable to me, if he had a, he had a
21 commitment that he had to go to.

22 MS. PARKER: It's a little bit different,
23 Judge. The case was set for -

24 THE COURT: Okay. It may be, let me see.

25 MS. PARKER: Okay.

1 THE COURT: Let me see if I can cut
2 through all this.

3 I'm not really concerned with who's
4 telling the more accurate version of it. What I
5 am concerned here with now is a deposition being
6 completed.

7 And I don't say this to you, or to
8 anybody, to indicate what I thought may have
9 happened. But a deposition has to be taken, and
10 you have to be compensated.

11 But being compensated before the
12 deposition is not a condition of the deposition
13 having been taken. You understand that?

14 MR. SWOPE: I agree with that, Judge, and
15 I didn't request that.

16 THE COURT: Sure.

17 MR. SWOPE: I just requested that my
18 previous bill be paid, that's all.

19 THE COURT: We don't have a problem.

20 MR. SWOPE: Absolutely, as long as I get
21 paid for travel, that's no problem.

22 THE COURT: You will get paid.

23 MR. SWOPE: Okay.

24 THE COURT: If the state or, or the public
25 defender's office, I can't tell you about private

1 orders, but you will actually be paid if the state
2 or the public defender's office requires your,
3 requires your time, because they are backed by the
4 taxing power. That is, they get their money from
5 taxes, and so they will have money to pay you.

6 MR. SWOPE: I will be there for the depo,
7 Judge.

8 THE COURT: Sure. So, okay, that's all we
9 want to do now is do a deposition?

10 MS. PARKER: That's correct, Judge, it's
11 set for 10:00 o'clock Monday morning at the state
12 attorney's office.

13 THE COURT: Okay. I don't need them to
14 sign any kind of an order clarifying fees, because
15 I think Mr. Swope has indicated to me he
16 understands that.

17 MR. SWOPE: That's correct. I will be
18 there.

19 THE COURT: You're advised to do the
20 deposition, to respond to the subpoena.

21 These folks, whoever take up your time,
22 are obliged to pay you.

23 What that figure is will be determined
24 some time in the future, by agreement or by the
25 court.

1 MR. SWOPE: They pay the figure, I don't
2 have a problem with that.

3 THE COURT: Thank you, sir.

4 MR. SWOPE: Thanks, Judge.

5 THE COURT: Thank you all.

6 MS. PARKER: Thank you, Judge.

7 MR. GONZALEZ: Judge, thank you.

8

9 [WHEREUPON, the proceedings were concluded].

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C E R T I F I C A T E

THE STATE OF FLORIDA,

COUNTY OF PALM BEACH.

I, ELLEN FROGNER, being an official transcriptionist of electronically recorded criminal proceedings in the Fifteenth Judicial Circuit as authorized by Administrative Order 4.017 9/92, do hereby certify that the foregoing is a true and correct transcript of the duplicate tape, to the best of my ability to hear and comprehend its contents, provided by Court Administration for the electronically recorded proceedings which took place on August 15th, 2002.

I further certify that I am not an employee or relative of any party connected with this action, nor do I have any financial interest in this action.



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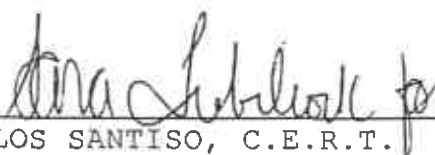
C E R T I F I C A T E

STATE OF FLORIDA

COUNTY OF PALM BEACH

I, CARLOS SANTISO, an Official Electronic Recording Clerk of Electronically Recorded Proceedings in the Fifteenth Judicial Circuit as authorized by Administrative Order 2.011 3/93, do hereby certify that the Master Tape of the Electronically Recorded Proceedings which took place on August 15th, 2002, is the original tape of the above proceeding. Recorded in its entirety and archived in the Centralized Recording Department.

Dated September 23rd, 2002.



CARLOS SANTISO, C.E.R.T.
Certified Electronic Court
Reporter and Transcriber