

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

THOMAS COLEGARY, individually and as Personal Representative of the Estate of TARA COLEGARY, deceased and KAREN COLEGARY,

Plaintiffs,

vs. Case No. 01-6591 (21)

NEVILLE AUDLEY WILLIAMS and BOX LEASING CORPORATION, an Ohio corporation,

Defendants.

DEPOSITION OF:

RICK ANTHONY SWOPE

DATE: September 24, 2003

TIME: 10:50 a.m. to 1:00 p.m.

PLACE: Conroy, Simberg, Ganon 3440 Hollywood Boulevard, 2nd Floor Hollywood, Florida 33021

BY: Lynn McKittrick, RPR Notary Public State of Florida at Large

KLEIN, BURY, REIF, APPLEBAUM & ASSOCIATES, INC. 888 Southeast 3rd Avenue, Suite 201 Fort Lauderdale, Florida 33316 (954) 463-2933

The deposition, upon oral examination of RICK ANTHONY SWOPE, was taken on the 24th day of September, 2003 at the office of Conroy, Simberg, Ganon, 3440 Hollywood Boulevard, 2nd Floor, Hollywood, Florida, beginning at 10:50 a.m., before Lynn McKittrick, RPR, Notary Public in and for the State of Florida at Large.

RICK ANTHONY SWOPE, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KREVANS:

Q. Good morning. Tell us your full name. A. Rick Anthony Swope, S-W-O-P-E.

Q. Mr. Swope, my name is Scott Krevans. I represent the defendants in this case. I'm going to ask you a series of questions today. If I pose a question you don't understand, just tell me.

A. Yes, sir.

Q. If you give me an answer to a question, I'm going to assume that you understood the question that I posed. Do you understand?

A. Yes, sir.

Q. I won't try and trick you in any way, but

APPEARANCES:

KELLY D. HANCOCK, ESQUIRE Krupnick, Campbell, Malone 700 Southeast 3rd Avenue, Suite 101 Fort Lauderdale, Florida 33316 Attorney for Plaintiffs

SCOTT D. KREVANS, ESQUIRE Conroy, Simberg, Ganon 3440 Hollywood Boulevard, 2nd Floor Hollywood, Florida 33021 Attorney for Defendants

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I will rely on your answers as being accurate and truthful. All right?

A. Yes, sir.

Q. What is your professional address?

A. 8211 Southwest 28th Street in Davie, Florida. Also, 1355 Peachtree Street, Northeast, Suite 150, Atlanta.

Q. You have a Florida office and a Georgia office?

A. Yes, sir.

Q. How do you split your time between those two offices?

A. I generally spend about 65 to 70 percent of my time in Florida and the rest of it would be in Atlanta or actually commuting.

Q. Where do you reside?

A. At 8211 Southwest 28th Street.

Q. In what city?

A. Davie.

Q. Do you have a residence in Atlanta as well?

A. No, just an office.

Q. In terms of the work you do for Swope Reconstruction, is that done in any type of corporate capacity?

1 A.No.

2 Q.Do you have a corporation that you
3 operate out of in order to perform the consulting
4 services you provide?

5 A.No, it's a sole proprietorship.

6 Q.And who is the proprietor of the
7 business?

8 A.Myself.

9 Q.Do you have any employees in the
10 business?

11 A. Yes.

12 Q.How many employees do you have?

13 A. Well, I have basically contractual
14 employees, three to five, depending on the time
15 and depending on what we're going. It could be
16 surveying crews, photographers, investigators,
17 secretaries, a bookkeeper.

18 Q.They're contract employees?

19 A. Yes, with the exception of my wife.

20 Q. Who's a full-time employee?

21 A. Yes.

22 Q. And yourself, of course?

23 A. Yes.

24 Q. And as part of Swope Reconstruction, do
25 you provide forensic or legal type consulting to

1 Q.I'm probably not asking the question

2 clearly. What I'm interested in knowing is ...

3 The work that you do, do you do any work outside
4 of a case that's either in litigation or is a
5 potential litigated type case?

6 A.No.

7 Q.So all of your work that you do for Swope
8 Reconstruction is either at the request of lawyers
9 or insurance companies or folks who are involved
10 in either the prelitigation process or the
11 litigation process?

12 A. Yes.

13 Q.Do you keep a list of the cases you've
14 handled over the past several years with the folks
15 who have retained you and depositions that you've
16 given?

17 A. Well, yes. The ones that I've been
18 retained on officially, yes. The ones that I do
19 not provide further assistance, other than the
20 retainer, I don't keep track of that. But I do
21 have a list of depositions in court, per the rule
22 -- I think it's the federal rule -- that I keep
23 for three years.

24 Q.I can get that faxed from your office at
25 some point?

1 individuals and corporate entities who are
2 involved in litigation-related matters?

3 A. Yes.

4 Q. And what percentage of your work --
5 strike that.

6 Do you know what I mean when I use the
7 term forensic consulting?

8 A. Yeah.

9 Q. What does that mean to you?

10 A. Accident reconstruction.

11 Q. When I use the word forensic consulting,
12 I use it in the context of litigation or
13 litigation-related matters. What I'm interested
14 in knowing is what percentage of your time is
15 devoted either to matters that are in litigation
16 or possible litigation or litigation-related
17 matters.

18 A. Well, as far as matters that are in
19 litigation, 55 percent of my work is plaintiff,
20 45 percent is defendant, and I don't keep track of
21 matters that I do not keep. In other words, there
22 are many case that either I have a conflict with
23 or I cannot be of assistance to that attorney
24 based on my conclusions, but I don't keep track of
25 that, so --

1 A.Sure, I can get that to you.

2 Q.That will be great. Now, in terms your
3 fees, I assume you get paid for your services?

4 A. Well, most of the time. It depends on
5 the lawyer.

6 Q. You make a charge, but you're supposed to
7 get paid?

8 A. Yes.

9 Q. What is your charge for service?

10 A. I bill 150 an hour for all work on a
11 file; I bill mileage at 40 cents a mile; court or
12 deposition is \$200 per hour portal to portal.

13 Q. Do you keep time records?

14 A. Yes.

15 Q. How do you keep track of your time?

16 A. I keep track of my time basically two
17 different ways. One way would be, I have a daily
18 sheet that I turn in and my wife puts that into
19 the computer -- or I put it into the computer --
20 and then when the billing is sent out to the
21 attorney -- that's basically the best way to keep
22 the time, because that's broken down per hour or
23 per minute that I work on the case. And the
24 attorney receives a bill, and the activities are
25 described on the bill.

1 Q. Do you have a retainer fee that you
2 charge?

3 A. It depends on the firm. New firms I do
4 charge retainer fees for. Most insurance
5 companies and attorneys I worked for before, I do
6 not charge a retainer.

7 Q. What is your retainer fee for attorneys
8 you're not familiar with?

9 A. It's anywhere from 1500 to 2500,
10 depending on -- if the case is out of state, it's
11 \$2500; if it's in state, it's 1500.

12 Q. Did you keep a record of your time with
13 respect to the Colegary matter?

14 A. Yes.

15 Q. Do you have a billing sheet with you here
16 today with respect to the time that you charged?

17 A. No, because I haven't put a billing out
18 yet on the case. But I will, and I can fax you
19 that as well, but there's been no bill sent out to
20 Mr. Hancock as of this moment.

21 Q. Do you put your time as you do the work
22 or do you do it at the end of the case?

23 A. I generally put it in as I do the work,
24 and then anywhere from four to six weeks a bill is
25 sent out, once the work is actually started.

1 Q. I know we have your papers upstairs, but
2 with respect to the work that you did in this
3 case, just generally -- and you're free, so it's
4 clear on the record, to refer to your written
5 materials to help you -- when did you start
6 working on the Colegary matter?

7 A. Officially, where I started reading
8 depositions, was September.

9 Q. Of this year?

10 A. September 1st of this year. I spoke with
11 Mr. Hancock several times about the case over the
12 past several months, but I really started reading
13 depositions on September 1st.

14 Q. Other than having conversations with
15 Mr. Hancock or someone affiliated with his office,
16 did you do any substantive work before September
17 of 2003?

18 A. No.

19 Q. And when during September of 2003 did you
20 do your work?

21 (There was an interruption in the
22 proceedings.)

23 (The last question was read back by the
24 court reporter.)

25 A. From September 1st to the 18th I read all

1 the transcripts and all the information I was
2 provided from those -- for that two-week period.

3 Q. And you made notes that we're going to
4 attach here to the deposition regarding what you
5 thought was significant from the transcripts that
6 you read?

7 A. Yes.

8 Q. Did you do any work between the 18th and
9 the present time?

10 A. Yes.

11 Q. What additional work did you do, sir?

12 A. I went to the accident scene and met with
13 Investigator Jill Hirsch and the state's
14 reconstruction expert, Don Felicella. I was at
15 the scene last night and I also went to the scene
16 -- I believe it would be Friday.

17 Q. This past Friday?

18 A. This past Friday, yes.

19 Q. So how many times were you at the scene?

20 A. For this case, twice.

21 Q. So you went once and you met

22 Ms. Hirsch --

23 A. Yes.

24 Q. -- and Mr. Felicella?

25 A. Yes.

1 Q. Were they there together?

2 A. Yes.

3 Q. And when was that?

4 A. Last night, which would be the 23rd, at
5 8:00 p.m.

6 Q. What was your purpose in meeting them
7 last night?

8 A. Well, my purpose in meeting them was to
9 go over the report -- first of all, to meet Jill
10 Hirsch and to go over the report that she had
11 prepared and the photographs, just to ask her if
12 she remembered the case, just basically what she
13 put in the report, to show me where her zero point
14 was, those types of things, and to meet with
15 Felicella, also, to indicate if he noticed
16 anything with the car -- I know Jill had done a
17 cursory inspection of the car and I believe
18 Felicella did a little bit more in depth
19 inspection -- and also just to see how he
20 calculated everything. That was basically what I
21 did.

22 Q. Now, when you met with Felicella you
23 mentioned you asked him about his inspection of
24 the car.

25 A. Yes.

1 Q. When did he inspect the vehicle?
2 A. I don't recall the date -- it might be in
3 his report -- but certainly after he had been
4 retained by the state.

5 Q. And Ms. Hirsch inspected vehicle on the
6 evening of the accident?

7 A. Yes.

8 Q. Did Felicella find any defects in the
9 vehicle?

10 A. No.

11 Q. Did Ms. Hirsch find any defects in the
12 vehicle?

13 A. No.

14 Q. Did Ms. Hirsch find that the headlights
15 were operating properly on the night that this
16 accident occurred?

17 A. I think she indicated that the headlights
18 were on and that the switch was on, on the on
19 position, but I don't think she did any further
20 work beyond that. So obviously, they were working
21 -- there was no question about them working
22 certainly after the accident, and I'm assuming
23 they were working before because of the witness
24 statements.

25 Q. Mr. Felicella, did he find any defect

1 with respect to the operation of the lights?

2 A. No.

3 Q. Now, you made mention that you met them
4 there last night at 8:00?

5 A. Yes.

6 Q. How long did you spend there with them?

7 A. I left at 9:30.

8 Q. Were they there for an hour and a half
9 with you?

10 A. Yes.

11 Q. Other than what you've told us, which is
12 have her go over her report and show you the zero
13 point, what else did you do last night?

14 A. I asked her if she -- well, I went
15 through the photographs with Jill. And basically
16 one of the questions I had, were the streetlights
17 on, at the time. Jill indicated she had a definite
18 recollection that the streetlights were on. In
19 looking at the photographs, it's difficult to
20 tell, in all of them, but it appears that the
21 streetlights are on, at least on the south side of
22 the roadway. Obviously, the roadway, it had some
23 change to the roadway, indicating that the area
24 had been built up or actually paved a little bit
25 better since the time of the accident.

1 I also -- she indicated to me where the
2 zero point was, and we had measured that point
3 back -- I believe it was 154 feet -- to the
4 approximate point where she believed the point of
5 collision was. I then measured from Northwest 4th
6 Avenue back to the railroad tracks and also to
7 Andrew Avenue. And the reason being was, I
8 believe Felicella, in his deposition, had
9 estimated what the distance was to those
10 positions. I think you -- or someone had asked
11 that distance, so --

12 Also, there were some -- in reading the
13 statements, either Mr. Williams' car came from
14 Andrews or came from 3rd Avenue, so I kind of
15 wanted to get an idea of what that distance was.

16 And I believe -- oh. And also, I did not
17 get a copy of Jill's initial measurement sheet, so
18 she gave me that sheet last night.

19 Q. Are you familiar with homicide reports
20 and how they're prepared?

21 A. Yes.

22 Q. Did you ever, as part of your work when
23 you worked for the Broward Sheriff's Office,
24 prepare homicide reports?

25 A. Yes.

1 Q. Can you look in the --

2 I assume you were provided with the
3 homicide report in this case?

4 A. Yes.

5 Q. Can you look in the homicide report and
6 tell me what time Ms. Hirsch arrived on the scene?

7 A. I don't recall if that's in the homicide
8 report or not.

9 Q. Take a look and see if that's reflected
10 in there.

11 Let me ask you: Did you review her
12 deposition?

13 A. Yes, I did.

14 To get back to that, I know she was
15 notified at 4:17 a.m., when she was notified of
16 the accident, and I don't recall if it gives an
17 exact arrival time, but I know that that's when
18 she was notified.

19 Q. Do you have information -- either from
20 her deposition, in any of your notes, or from the
21 homicide report -- as to the time that she
22 actually arrived at the scene?

23 A. No, I don't recall that time being
24 present.

25 Q. What time do you understand that the

1 accident took place, sir?
 2 A.I think the accident was around 4:00 a.m.
 3 Q.So she obviously would have arrived at
 4 some point after 4:17 a.m.?
 5 A. Yes.
 6 Q.As part of her accident report, did you
 7 see that there was -- and I don't know what you
 8 should call this document -- a Florida Traffic
 9 Crash Report completed by an Officer Fernando
 10 David?
 11 A. Yes.
 12 Q.And did you review Fernando David's
 13 report?
 14 A. Yes.
 15 Q.Did you notice, in reviewing his
 16 deposition and his report, that he would have
 17 arrived at the scene just as the accident
 18 occurred?
 19 A. Yes.
 20 Q.Were you also aware that he would have
 21 been the first police officer to arrive at the
 22 scene?
 23 A. Yes.
 24 Q.Are you familiar as a past police officer
 25 that that is part of the responsibility of an

1 September 10th, 2003?
 2 A.I can't say that I am or not.
 3 Q.So you are familiar with the fact that
 4 Fernando David, in his report, indicated the
 5 streetlights were out in the area where the
 6 accident occurred -- or it was dark and no
 7 streetlight, is what he used?
 8 A. Yes.
 9 Q.Excuse me. I want to quote it
 10 correctly. I think what he said in his report is
 11 dark, no streetlight, correct?
 12 A. Right, it would be a number 5.
 13 Q. What does dark, no streetlight mean?
 14 A. Just that it's dark out and there's no
 15 streetlights. Either the streetlights are not
 16 operating or the streetlights -- there are no
 17 streetlights, one or the other.
 18 Q.In this case, we know that there are
 19 streetlights on Broward Boulevard?
 20 A. Yes, we know that.
 21 Q. So, according to -- regardless of whether
 22 they're there or they're not, according to the
 23 officer who arrived first on the scene, there were
 24 no operational streetlights at the time the
 25 accident occurred?

1 investigating officer, to note the traffic
 2 conditions at the time an accident occurred when
 3 they arrive on the scene?
 4 A. Yes.
 5 Q.And did you notice that he observed what
 6 the lighting conditions were?
 7 A. Yes.
 8 Q.What did Officer Fernando David indicate
 9 that the lighting conditions were at the time of
 10 the accident?
 11 A.I believe he indicated a 5, which would
 12 be no streetlights.
 13 Q.Dark, no streetlights?
 14 A. Yes.
 15 Q.Did you ever attempt to contact Officer
 16 Fernando David to determine what his recollection
 17 was of the accident?
 18 A.I did not, no.
 19 Q. What deposition were you provided --
 20 strike that.
 21 Were you provided a deposition of
 22 Officer Fernando David?
 23 A.No.
 24 Q.Are you aware that he gave a deposition
 25 in the civil case, the case we're in here, on

1 A. Yes.
 2 Q.In formulating your opinions in this
 3 case, have you considered that the streetlights in
 4 the area where the accident occurred were actually
 5 operable?
 6 A. Yes.
 7 Q. Why have you done that?
 8 A. Well, because of the photographs that I
 9 looked at and also because of Officer Hirsch, as
 10 to what Jill indicated. She said she had
 11 knowledge of it, and so that's what I --
 12 Q.And with respect to the photographs, do
 13 you know what time the photographs were taken?
 14 A.I believe she indicated to me that they
 15 were taken somewhere around 5:15 or 5:30 a.m.
 16 Q. So they were taken over an hour after the
 17 time the accident occurred?
 18 A. Yes.
 19 Q. Did you make any determination to see
 20 whether the lighting conditions were the same at
 21 the time the photographs were taken as they were
 22 at the time the accident occurred?
 23 A. Just, again, by asking Ms. Hirsch. That
 24 was really the only thing I did. And I also went
 25 and looked at the light poles, as well.

1 Q. Did you learn anything from looking at
2 the lightpoles?

3 A. Well, the poles all indicated that
4 they're 1977, so I know that they at least have
5 been there since 1977. That certainly doesn't
6 mean that the bulb was on at the time, but the
7 poles had been there since '77. They are
8 streetlight poles. So it would be my assumption
9 that the poles had been there since that time.

10 Q. And just so it's clear, you've told me
11 that what you're utilizing in terms of what the
12 lighting were is the information that Ms. Hirsch
13 gave you?

14 A. Yes, and there's a reason for that.

15 Q. And the reason is what?

16 A. Well, the reason is because she's the
17 homicide investigator, which technically is --
18 maybe not to a lawyer -- but technically, that
19 would be the official report. The initial report
20 done by the other officer was a reporting form.
21 I'm not saying it's correct or incorrect, I'm just
22 saying the official report would be the traffic
23 homicide investigator's.

24 Q. Have you attempted to speak with Officer
25 Fernando David to determine what his recollection

1 A. She was a student for quite some time. I
2 believe she went through the entire course. I
3 don't -- you know, it's hard to tell. I mean I
4 know her, but I think she went through the entire
5 course, which would be 240 hours plus 200. So it
6 would be 440 hours, and I believe that's four
7 hours a night for X number of weeks.

8 Q. Was it one school year -- that is, two
9 semesters that you taught her -- or a longer
10 period of time, if you recall, sir?

11 A. I think it was a longer period of time.
12 I think the courses went over a year and a half, I
13 believe.

14 Q. Have you maintained a friendship with her
15 since she left your course?

16 A. Other than professionally, no. I mean
17 I've met her probably twice in the past five years
18 on cases. I mean I don't talk to her any other
19 time, except that, unless I see her somewhere in
20 passing.

21 Q. Sure, or at profession associations or
22 something like that, you might come in contact?

23 A. Right, that's the only time.

24 Q. How did you contact her? Did you call
25 her at the police station or somewhere else?

1 of what the street lighting was?

2 A. I have not personally. I did talk to
3 Felicella on it, and I think he attempted to reach
4 him and didn't for whatever reason. Whether or
5 not that's going to take place, I don't know.

6 Q. Now, have you told me basically what you
7 did with Ms. Hirsch; that is, you reviewed the
8 photographs, you went over her zero point, you
9 asked her about the lighting conditions? Anything
10 else that you did with her last night at the
11 scene?

12 A. Just went over her calculations, which
13 were present in her report as well, and that
14 really was it.

15 Q. Did you know Ms. Hirsch before last
16 night?

17 A. Yes.

18 Q. How did you know her?

19 A. She was a student of mine.

20 Q. At what school?

21 A. At Broward Community College. I was the
22 one who certified her in her accident
23 investigation courses.

24 Q. And was it one semester she was a student
25 of yours or more than one semester?

1 A. Well, I initially put a call in to her.
2 And then I spoke with Mr. Hancock, I believe
3 yesterday, and his office informed me that they
4 had made contact with Jill, as well, and that she
5 had agreed to meet at the scene that night, which
6 would be last night.

7 Q. Was she on duty when she met you last
8 night?

9 A. No. Well, she was in civilian clothes
10 and in her car. I didn't ask her. I don't think
11 she was.

12 Q. Did you make arrangements to compensate
13 her for her time?

14 A. No, I did not.

15 Q. She did that as a personal favor to you?

16 A. Well, unless Mr. Hancock's office
17 compensated her. I normally would compensate her,
18 but I know that it was arranged through the law
19 office. So whatever arrangements they made, they
20 made.

21 Q. Now, Mr. Felicella, had you ever met him
22 before last night?

23 A. Yes.

24 Q. How do you know Felicella?

25 A. He was a student of mine also.

1 Q.How long did you teach Felicella?
 2 A.Again, probably over a year and a half.
 3 But I think, if memory serves me correct, he used
 4 to be an officer with Sunrise, and Sunrise would
 5 go through the various courses put on by the
 6 sheriff's office for their yearly qualification,
 7 so I think he attended that over a period of
 8 several years. Since I was one of the main
 9 training officers, I met most of the cops during
 10 that time. So they would come through the
 11 course. I think at that time you had to have
 12 40 hours of certification a year, so he would go
 13 through that course.
 14 Q.Have you had interaction with him since
 15 that time?
 16 A.Again, professionally, yes.
 17 Q.Do you socialize with him at all?
 18 A.No.
 19 Q.Now, what did you do at the scene last
 20 night with Felicella?
 21 A.He provided me with a set of his notes
 22 and his packet, which I believe he provided in his
 23 deposition. He just provided me with another
 24 copy. I discussed the vehicle inspection with
 25 him. He indicated that there was no anomalies

1 understand it?
 2 A.I believe it was like a pinkish color
 3 too.
 4 Q.Do you have some photographs that show
 5 the skirt --
 6 A.No.
 7 Q.-- the pinkish color?
 8 A.No.
 9 Q.Where in the information that you were
 10 provided did you determine that the skirt was
 11 pinkish?
 12 A.I just -- off the top of my head, I
 13 believe it was a light-colored skirt, but I could
 14 be wrong.
 15 Q.Do you have any data that was provided to
 16 you that could tell you what color her skirt was?
 17 A.I have to look and see here.
 18 Q.Go ahead. You're welcome to look at the
 19 photographs or anything.
 20 A.I believe that Jonathan Sachsel, I
 21 believe he said that Tara had on a pink type
 22 blouse and skirt.
 23 Q.Do you see anywhere that the color of the
 24 skirt is described?
 25 A.No. I just thought it was one sentence.

1 with the vehicle that he found. He basically
 2 reiterated to me the conversation he had with
 3 Jill, the same thing I had with Jill, about where
 4 the zero point was and where the measurements were
 5 taken. I think he also used a formula and
 6 analysis roughly the same as Jill used, and we
 7 just went over that figure. And that was roughly
 8 about it.
 9 Q.Did you determine from any of the
 10 materials that you've received what clothing
 11 Ms. Colegary was wearing at the time this accident
 12 occurred?
 13 A.Yes.
 14 Q.How did you make that determination?
 15 A.Well, I believe I saw a picture of it at
 16 Kelly Hancock's office. And I also reviewed the
 17 depositions, where there was a description that
 18 she had on some type of a pink top with like
 19 little sparkles on it and some type of skirt, as
 20 well, and she also was wearing black high heels.
 21 I call them high heels, but -- they looked very
 22 high. They looked to be like three, four inches
 23 -- I'm just speculating -- but they looked pretty
 24 high.
 25 Q.So what color was her skirt, as you

1 He indicated a pink blouse and skirt.
 2 Q.Have you seen any photographs showing
 3 what she was wearing that night?
 4 A.Yes, I did see a picture at Kelly
 5 Hancock's office.
 6 Q.You don't remember what it showed?
 7 A.No.
 8 Q.Do you know if she was wearing a jacket
 9 at the time the accident occurred?
 10 A.No. I know there was a mention of a
 11 jacket. Whether she had it on or not, I'm not
 12 sure.
 13 Q.Did you see any information which would
 14 tell you whether she was wearing a jacket or not?
 15 A.No.
 16 Q.Did you see any photographs that showed
 17 you what color the jacket was that she had had on?
 18 A.I believe there was a photograph from the
 19 police of the jacket laying on the road. I
 20 believe it was a brown type leather jacket. It
 21 looked like it appeared to be a brown leather
 22 jacket.
 23 Q.Do you have any understanding whether she
 24 was wearing that jacket or not or how it got on
 25 the scene?

1 A.No. I know that it was cold, the people
2 indicated, but whether she was wearing it or not,
3 I don't know.

4 Q.Did you review the information from
5 Mr. Felicella?

6 A.Yes.

7 Q.Did he make mention as to what color
8 clothing she had on at the time the accident
9 occurred?

10 A.I don't recall.

11 Q.Mr. Swope, so I'm clear -- because I just
12 want to know the source of your information --
13 your knowledge as to what Ms. Colegery was wearing
14 at the time the accident occurred came from a
15 photograph that Mr. Hancock showed you and the
16 statement that you just referenced from Jonathan
17 Sachsel?

18 A.Yes.

19 Q.Any other information that you had with
20 respect to what clothing she had on at the time
21 the accident occurred?

22 A.No, I believe that's it.

23 Q.Now, with respect to the calculations
24 performed by Ms. Hirsch, you reviewed her
25 calculations in her report?

1 Q.When you had him stand off to the side of
2 the road, where was he standing?

3 A.He would be standing -- well, initially
4 he was standing on the north side of the street,
5 and I had another individual there that I put in
6 the street.

7 Q.In which part of the street?

8 A.Right at the approximate point of impact.

9 Q.Did you shut traffic down?

10 A.No.

11 Q.When did you do that, between lights or
12 something like that?

13 A.Yes.

14 Q.So when you say he was on the north part
15 of the street, where were you referring to, on the
16 median or further north?

17 A.On the sidewalk.

18 Q.On the north-most sidewalk?

19 A.Yes.

20 Q.Adjacent to the eastbound lanes?

21 A.Westbound lanes.

22 Q.Right. Okay. So you put someone on the
23 sidewalk and -- you put Mr. Felicella on the
24 sidewalk --

25 A.Yes.

1 A.Yes.

2 Q.Was there anything incorrect in her
3 report or her calculations that you found?

4 A.No.

5 Q.No mistakes or things that needed to be
6 changed in any way?

7 A.No.

8 Q.How about with Mr. Felicella's report,
9 did you review his report?

10 A.Yes.

11 Q.Were there any errors that you found in
12 his report?

13 A.No.

14 Q.What did you do with Mr. Felicella, other
15 than reviewing his report?

16 A.We -- meaning him and I -- walked the
17 scene, from the 4th Avenue towards the railroad
18 tracks, which would be east. And I also got into
19 a vehicle and drove the area a few times and had
20 Don stand off to the side of the road to see if I
21 could see him on the side of the road and also to
22 see, you know, what he could see of the traffic
23 signals. That was basically it, just kind of
24 small talk with the time, distance information.
25 That was it.

1 Q.-- and you put someone in front of you?

2 A.Yes.

3 Q.Did you take any measurements when you
4 did that?

5 A.Well, the measurements, I had already
6 made. In other words, I had marked the roadway as
7 to where I knew the approximate point of impact
8 was and I also marked off the railroad tracks and
9 I marked off Andrews Avenue and I had marked off
10 in the roadway as to how wide the lanes were and
11 where certain points were that I had already
12 premarked.

13 Q.So what determination did you make based
14 upon having an individual in the roadway and
15 having Mr. Felicella on the sidewalk, on the
16 north-most sidewalk?

17 A.Well, a couple things. Number one is, I
18 wanted to know if -- actually, several different
19 things. But one would be to see, driving an
20 automobile, traveling westbound, if I could see a
21 person as far back as Andrews or as far back as
22 the railroad tracks, if I could see a person in
23 the roadway or on the median, it would be in those
24 areas. And the other area would be that when I
25 was standing at the approximate point of

1 collision, if I could see headlights to the east
2 and if I could see the traffic signals for
3 Brickell and Andrews.

4 Q. Did you make any notes of those
5 activities or just record them mentally in your
6 head?

7 A. Well, I made some notes of them.

8 Q. Can I see them?

9 A. Let me see where we put them here. That
10 would be in this packet, and it would be -- I can
11 find it for you.

12 Q. Thank you. Why don't you read it and
13 we'll go over it? Read to me what's on this
14 page.

15 A. The top is 9/23/03, 1265 feet from
16 Northwest 4th Avenue to Andrews, measuring to the
17 northwest corner. Note: This does not include
18 distance required for turn radius, et cetera.
19 630 feet to railroad tracks.

20 Q. Can I stop you? This is 630 feet from
21 Northwest 4th Avenue to the railroad tracks?

22 A. Right. And down below, I subtract that.

23 But I had, the area is well lit. Looking
24 to the east, two sets of signals are noticeable,
25 Brickell and Andrews.

1 A. Yes.

2 Q. So as you go east, you hit Brickell, and
3 then Andrews is east of that?

4 A. Yes. And when you can see the light at
5 Andrews, a red light, traffic should have the
6 green for north-south Andrews. That's just kind
7 of a note to me; meaning that --

8 Q. If you can see the red light -- when you
9 see the light at Andrews, a red light, traffic
10 should have a green north and south on Andrews?

11 A. Correct, and the same would be for
12 Brickell.

13 Q. Is that significant to you at all?

14 A. Yes.

15 Q. Why?

16 A. Well, it indicates to me that if --

17 I believe there was testimony from the
18 pedestrian, Mr. Sachsel, that when he looked to
19 the east, he saw a red traffic signal. Now,
20 whether he saw Brickell or whether he saw Andrews,
21 I don't know; but obviously, if he would see a red
22 signal, that means the traffic north and south
23 should have a green and that they could be
24 permitted to make a turn onto Andrews -- I mean
25 Broward.

1 Q. Which comes first as you head east?

2 A. Brickell.

3 Q. And then Andrews is east of that?

4 A. Correct.

5 Q. Okay.

6 A. Number one is, order or look at signal
7 plans. Lights don't appear to operate together,
8 at least on this date; meaning that I don't know
9 what they were operating like at the time.

10 Q. Which lights are you referring to?

11 A. Brickell and Andrews; meaning that
12 sometimes you get a green light on Brickell and,
13 you know, 100 feet later you have to stop at the
14 light at Andrews.

15 Q. Is Brickell the same thing as
16 Southeast 3rd, or it's different?

17 A. (No response.)

18 Q. Southeast 3rd, I think, is east of that;
19 isn't it?

20 A. No, it can't be east of that. It would
21 have to be --

22 Q. It's not?

23 A. I think it's the same as 3rd. No, I
24 don't think it's 3rd. I'm not sure.

25 Q. You just know that's Brickell?

1 Q. And he's looking at the light on Broward
2 Boulevard that intersects with Brickell and with
3 Andrews?

4 A. Yes.

5 Q. That's the light that you're referring
6 to?

7 A. Yes.

8 Q. So you're saying if there was a red light
9 there, there would be a green light for Andrews?

10 A. Yes.

11 Then below that, I have order a scale
12 aerial, which is just a note to me. I requested a
13 scale aerial from Mr. Hancock.

14 And then I took the 630 minus 154 --

15 Q. 630 being?

16 A. That would be from 4th to the railroad
17 tracks. And I subtracted 154, because that would
18 come from 4th to the point of impact, which leaves
19 476 feet from the impact point to the railroad
20 tracks. So I wanted to know that distance to see,
21 you know, what that would show - or what that
22 would be.

23 Q. Absolutely. Okay. Any other notes that
24 you made with regard to what you did with respect
25 to having somebody on the roadway and someone on

1 the sidewalk to make observations as to when you
2 could see them? Specifically, did you record how
3 far away you were from those vehicles when you
4 could see them or did you just make note that you
5 could see them from this point going forward?

6 A. I made a mental note that I could see
7 them from that point forward.

8 Q. You could see them from what point going
9 forward?

10 A. From the railroad tracks and from
11 Andrews.

12 Q. If they were situated at the point of
13 impact and if they were situated on the sidewalk?

14 A. In the median.

15 Q. I thought you said the sidewalk.

16 A. That's why I had Felicella.

17 Q. Felicella was where?

18 A. He was on the north side of the
19 sidewalk. I just wanted to see if you could see
20 people if they were on the north side as easily
21 you could in the median. The other person was in
22 the median and in the roadway.

23 Q. Who was in the median?

24 A. Gary Sand (phonetic).

25 Q. Is that someone who works for you?

1 A. Right.

2 Q. So you're saying with the headlights on
3 the car on, with the lighting that was available,
4 looking from the railroad tracks to the various
5 points you mentioned, these individuals were
6 visible to you?

7 A. Yes.

8 Q. Were they moving or were they stopped?

9 A. Twice. I believe two times I had him
10 moving and two times he was stopped.

11 Q. Obviously you knew that there was an
12 individual on the median?

13 A. Yes.

14 Q. And obviously you knew there was an
15 individual on the roadway?

16 A. Yes.

17 Q. And obviously you knew there was an
18 individual on the sidewalk?

19 A. Yes.

20 Q. And with that knowledge, you were looking
21 out in the distance to see if you could see those
22 folks?

23 A. Yes.

24 Q. Anything else that you did, other than
25 make a mental note in terms of the visibility?

1 A. No.

2 Q. Who's he?

3 A. I believe he works for Mr. Hancock's
4 firm.

5 Q. He works from Mr. Hancock?

6 MR. HANCOCK: He's an investigator.

7 Q. They threw him out in the median, huh?

8 A. I put him in the median. I figured, you
9 know, big deal.

10 Q. Who did you put in the roadway?

11 A. He went both places.

12 Q. And is what you're telling me that you
13 could see him with the lighting that you had
14 available last night, when you went out to the
15 scene from the railroad tracks, whether he was in
16 the median, at the point of impact, or on the
17 sidewalk?

18 A. Yes, but -- I want to not talk too much,
19 but I want to make clear to you that I'm not
20 talking about the headlights on the car, just so
21 that I'm clear with you, I'm talking about the
22 fact that you can see somebody much farther than
23 headlights if there's lighting in the area.

24 Q. And we're talking about to see who the
25 driver of the car can see?

1 A. I did, myself, stand in the roadway, as I
2 indicated, and I wanted to see if you could see
3 the lights at Brickell and Andrews and if you
4 could see headlights coming.

5 Q. You stood in the roadway and looked to
6 the east?

7 A. Yes.

8 Q. You stood in the westbound lanes and
9 looked to the east?

10 A. Yes.

11 Q. Could you see headlights coming?

12 A. Yes.

13 Q. Any problems seeing headlights coming at
14 all?

15 A. No.

16 Q. Now --

17 A. Well, with the exception of one time.
18 Somebody came without lights.

19 Q. But if someone had their headlights on,
20 you were able to see them?

21 A. Yes.

22 Q. Even without the headlights, could you
23 see their vehicle was approaching you?

24 A. I saw it at some point. I wasn't
25 standing exactly in the road at the time, I was on

1 the sidewalk, but --
 2 Q. Anything else you did out at the scene
 3 last night?
 4 A. No.
 5 Q. Now, did you make a determination based
 6 on the information that was available to you where
 7 -- how it was that Tara Colegery got to the
 8 median that separates east and westbound Broward
 9 Boulevard?
 10 A. Yes.
 11 Q. How did she get to that point on the
 12 median that she got to?
 13 A. She crossed the eastbound lanes of
 14 traffic.
 15 Q. She crossed eastbound lanes of Broward
 16 Boulevard?
 17 A. Yes.
 18 Q. And then she came to the median?
 19 A. Yes.
 20 Q. Did you make a determination where in the
 21 median she crossed?
 22 A. Approximately, but that was only based on
 23 the testimony of the people who were with her, and
 24 it was also based on the point of impact, so --
 25 Q. Are you able to give me any measurements

1 You're taking a point of 154 feet from
 2 where?
 3 A. From the lateral line of the intersection
 4 of 4th and Broward. I used the same point that
 5 Jill used.
 6 Q. So is it your understanding that she
 7 crossed in the middle of the street -- that is,
 8 she crossed over the eastbound lanes of Broward
 9 Boulevard -- not at a crosswalk, but in the middle
 10 of the street?
 11 A. Yes.
 12 Q. And was there an available crosswalk for
 13 her to use?
 14 A. There are crosswalks at either Brickell
 15 or at -- I don't think it's 4th. The next one I
 16 think is 5th, which would be where the 7-Eleven
 17 is, which is west of the Kentucky Fried Chicken.
 18 Q. Is there an area where you can cross at
 19 Northwest 4th Avenue at the light, even if it's
 20 not a painted crosswalk? In other words, at the
 21 intersection of Northwest 4th Avenue and Broward
 22 Boulevard, you can cross in that area, correct?
 23 A. There's not a light there.
 24 Q. Oh, there's not a light at 4th?
 25 A. No.

1 as to how far from -- I'm just using either the
 2 zero point that Jill Hirsch used or the
 3 measurements you made last night -- should would
 4 have been from Northwest 4th Avenue, at the point
 5 that she crossed in the median?
 6 A. Well, the measurements I used was 154 to
 7 164 feet, meaning that I got about a 10 foot
 8 difference, considering that the median is only
 9 7 feet wide. And I believe all the witnesses
 10 indicated they did stop there, but, again, I could
 11 be off a few feet either way, so --
 12 Q. I just want to get an understanding. The
 13 154 foot number is 154 feet east of the
 14 intersection of Northwest 4th Avenue?
 15 A. Yes.
 16 Q. And where in the median do you place her,
 17 in the middle, more to the north, or more to the
 18 south?
 19 A. I placed her a little bit more to the
 20 east -- actually, to the east on the median of the
 21 point of collision --
 22 Q. East on the median --
 23 A. -- but on the north side of the median.
 24 Q. So when you say east on the median, we
 25 can determine --

1 Q. The next light is 5th?
 2 A. Yes.
 3 Q. So there was a crosswalk available to her
 4 on 5th?
 5 A. Yes.
 6 Q. And then there's a crosswalk available to
 7 her on Brickell?
 8 A. Yes.
 9 Q. How far was she from a crosswalk? Did
 10 you take that measurement?
 11 A. Yes. I just looked at it last night.
 12 And from 4th -- I'm sorry -- from 5th Avenue, she
 13 would have been approximately 200 feet.
 14 Q. 200 feet from a crosswalk?
 15 A. Yes.
 16 Q. And how about to Brickell?
 17 A. Well, Brickell would be about 800 feet,
 18 because it's about 476 to the tracks and about
 19 another 200 feet after that to Brickell, east,
 20 so --
 21 Q. So it would be 800 feet for one --
 22 Did you say 800 feet?
 23 A. Yes.
 24 Q. -- and 200 feet for the other?
 25 A. Yes.

1 Q. So the closer one would have been on
2 5th Avenue?

3 A. Well, again, that's considering where
4 she's coming from. I don't know -- I know that
5 the bar area is somewhere back in there. I'm not
6 sure if she actually would have been close to
7 Brickell at all or not. She may have been. I
8 don't know.

9 Q. So she crossed the eastbound lanes of
10 Broward Boulevard?

11 A. Yes.

12 Q. And then she came up on the median?

13 A. Yes.

14 Q. And the point, again, that we measured is
15 154 feet from the point that you referenced in the
16 record?

17 A. Yes.

18 Q. And, then, did she continue to cross the
19 westbound lanes of Broward Boulevard in the middle
20 of the street as opposed to the crosswalk?

21 A. Yes.

22 Q. Is that a violation of Florida law?

23 A. Yes.

24 Q. And you're familiar with that in terms of
25 your work as a former police officer and as an

1 A. Well, several reasons. Number one is,
2 there are traffic control signals, there are
3 pedestrian control signals. And generally, the
4 intersections are lit better somewhere either east
5 or west of this intersection.

6 Q. Is another reason because drivers who are
7 coming down the road typically anticipate that an
8 individual may cross at a crosswalk, but otherwise
9 wouldn't anticipate an individual to cross in the
10 middle of the street?

11 A. Yes. Well, they certainly would. Their
12 expectation would be higher in a crosswalk than it
13 would be somewhere else.

14 Q. I had a question on the tip of my
15 tongue. Well, let's just move on.

16 Now, with respect to -- I remembered the
17 question.

18 You made mention that you looked at the
19 distances with the lighting on. Did you make any
20 notation of what the visibility would have been
21 for you of individuals in the roadway with the
22 streetlights off last night?

23 A. No, I wasn't able to do that.

24 Q. Obviously, there's greater visibility to
25 both pedestrians and vehicle operators when the

1 accident reconstructionist?

2 A. Yes.

3 Q. Are you familiar with the statutes that
4 govern -- that would govern her actions at not
5 crossing at a crosswalk?

6 A. Yes.

7 Q. Are you familiar with Florida Statute
8 316.130?

9 A. Yes.

10 Q. And doesn't it, in fact, indicate that no
11 pedestrian -- every pedestrian crossing a roadway
12 at any point -- well, strike that. Let's just
13 save that.

14 So you're familiar with it, that she's
15 supposed to obey the law in that regard?

16 A. Yes.

17 Q. In this case, did Tara Colegery fail to
18 comply with Florida Statute 316.130?

19 A. Yes.

20 Q. Can you tell us in what respects she
21 failed to comply with that statute?

22 A. She did not cross at a marked crosswalk
23 when one was available.

24 Q. Why is an individual supposed to utilize
25 an available crosswalk?

1 streetlights on the roadway are on as opposed to
2 off?

3 A. Yes.

4 Q. That's why we have streetlights, so that
5 it provides greater visibility to both drivers and
6 pedestrians using the roadway?

7 A. Yes.

8 Q. Now, you mentioned you've been out to the
9 site on -- related to this case, as opposed to
10 driving through -- on other occasions; is that
11 correct?

12 A. Yes.

13 Q. What other occasions were you there?

14 A. On Friday night.

15 Q. This past Friday?

16 A. Yes.

17 Q. And what time did you go to there this
18 past Friday?

19 A. I believe 9:00.

20 Q. So last night you were out there at
21 8:00 p.m. and Friday you were out there at
22 9:00 p.m.?

23 A. Yes.

24 Q. How long did you spend out there this
25 past Friday?