

IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT, IN AND
FOR BROWARD COUNTY, FLORIDA

CASE NO. 96-12200 CF10A
JUDGE: KAPLAN

STATE OF FLORIDA,
PLAINTIFF,

VS.

MANUEL CORRATGE,
DEFENDANT.

COPY

Fort Lauderdale, Florida

October 28, 1998

4:30 o'clock P.M.

APPEARANCES:

DAVID RIVERA, ESQUIRE
Appearing on behalf of the State

ORLANDO BUCH, ESQUIRE
Appearing on behalf of the Defendant

ALSO PRESENT:
JILL HIRSCH

DEPOSITION

OF

RICK SWOPE

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I N D E X

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Direct Examination by Mr. Rivera 3

CERTIFIED QUESTIONS

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1 Deposition of RICK SWOPE, a witness of
 2 lawful age, taken by the State for the purpose of
 3 discovery and for use as evidence in the above-entitled
 4 cause, pending in the Circuit Court of the 17th
 5 Judicial Circuit, in and for Broward County, Florida,
 6 pursuant to notice heretofore filed, before JODY E.
 7 LEBEL, a Shorthand Reporter and Notary Public in and
 8 for the State of Florida at Large, on the 28th day of
 9 October, 1998, at 201 S.E. 6th Street, Room 655, Fort
 10 Lauderdale, Florida, commencing at 4:30 P.M.

11 _____
 12 THEREUPON:

13 RICK SWOPE

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

17 DIRECT EXAMINATION

18 MR. BUCH: I'm going to object. I know
 19 that Mr. Rivera called the deposition. I'm
 20 going to invoke the rule of sequestration of
 21 witnesses. And I'm asking the State
 22 Attorney to exclude Miss Hirsch, she was an
 23 adverse witness and a State witness in this
 24 matter, from sitting in on this deposition.
 25 She is entitled to read the deposition. I

1 don't think she should be privy to any
2 information that could be used in trial to
3 taper her testimony in court only to what my
4 expert says. And this is just a basic rule
5 of common law. I'm allowed and I am
6 invoking this rule at this time. Because
7 this case is pending for trial, it is set
8 for trial, and I am allowed to have this
9 witness sequestered. And one of the reasons
10 they have the sequestration rule is that if
11 the witness, whether it be an expert or a
12 police witness, or a civilian witness cannot
13 taper their testimony accordingly. And I am
14 just going to object to it.

15 MR. RIVERA: In response the rule is
16 very clear as to who can be excluded --

17 MR. BUCH: What rule? Cite the rule
18 for me.

19 MR. RIVERA: The rule is clear,
20 Orlando. You have been practicing law for a
21 very long time with regard to depositions
22 and the rule is clear with regard to, it is
23 in the 90's section, with regard to --

24 MR. BUCH: I don't see any.

25 MR. RIVERA: Well, let me just finish

1 what I have to say. With regard to what
2 witnesses can be excluded from a deposition
3 that is only a defendant. The only person
4 that can be excluded from a deposition. The
5 presence of Jill Hirsch here -- Jill Hirsch
6 is a traffic homicide investigator. Jill
7 Hirsch has extensive, extensive training and
8 experience and education as a traffic
9 reconstruction expert. She has testified
10 numerous times. She is a witness in this
11 case.

12 The purpose of her presence in this
13 deposition is to aide this prosecutor. This
14 prosecutor in not a traffic homicide
15 investigator. This prosecutor does not have
16 any training or expertise. This deposition
17 itself is of a crash reconstructionist who
18 will be giving expert testimony on a very
19 complicated issue, several complicated
20 issues, including traffic homicide
21 reconstruction, crash accident
22 reconstruction and including, quite
23 possible, occupant kinematics testimony
24 which is all of a complicated nature.

25 It involves the areas of science

1 including physics and engineering. And
2 extensive training as a law enforcement
3 officer. It is very common that a
4 prosecutor, or an attorney, can use the
5 assistance of another expert, or someone who
6 has great knowledge as traffic homicide
7 investigator Jill Hirsch does, in assisting
8 in asking proper questions and soliciting
9 proper fact-finding. This is a fact finding
10 mission and that is what Jill Hirsch is here
11 for.

12 MR. BUCH: If I may respond? I show
13 you I'm quoting here from Florida Statutes
14 90.616, exclusion of witnesses. At the
15 request of a party the Court shall order,
16 upon a sole motion, the court may order
17 witnesses excluded from the proceeding so
18 that they cannot hear the testimony of other
19 witnesses except as provided in sub-section
20 (2). A witness may not, and I emphasize
21 not, be excluded if the witness is a party
22 who is a natural person. Miss Hirsch is not
23 that. In a civil case --

24 MR. RIVERA: You know that refers to a
25 trial or hearing. You know that.

1 MR. BUCH: Well, it says from a
2 proceeding so they cannot hear the
3 testimony.

4 MR. RIVERA: You can make an objection
5 for the record.

6 MR. BUCH: If I may --

7 MR. RIVERA: And Judge Kaplan can
8 choose to strike this deposition if he
9 chooses to.

10 MR. BUCH: The problem is, is that the
11 harm will already have been done.

12 MR. RIVERA: Not if he strikes this
13 deposition. Then it can't be used.

14 MR. BUCH: Besides I really have not
15 been noticed that she was going to be here
16 and on a personal note I object to her being
17 here. It says here a person is present and
18 is shown by the party's attorney to be
19 essential to the presentation of the party's
20 cause. Now it says in a criminal case in
21 sub-section (d) the victim of the crime, the
22 victim's next of kin, the guardian of a
23 minor or a lawful representation of the
24 person, unless upon motion, the Court will
25 determine if such person's presence be

1 prejudicial.

2 I was just content at this point that I
3 object to her presence here and because I
4 wasn't notified I can't make a motion to the
5 court to exclude her and I think I should be
6 given the privilege to make my argument
7 before the Court and have it decided.
8 Because once he testifies -- I haven't
9 subpoenaed her for deposition. I wasn't
10 notified. I think I should be entitled to
11 make a motion before Judge Kaplan because
12 she is an adverse witness in a State
13 proceeding.

14 She is your witness. One of the reason
15 that we sequestrant witnesses is so that
16 they don't find out or taper their testimony
17 at trial. And that is why I am objecting.
18 And also --

19 MR. RIVERA: Obviously you even stated
20 earlier that she will be entitled to read
21 this deposition afterwards.

22 MR. BUCH: Right. But that is not the
23 point.

24 MR. RIVERA: Here is the remedy. The
25 remedy is that there is no motion

1 requirement for this, number one. And
2 number two, the remedy is that Judge Kaplan
3 can review this and certify this entire
4 deposition and then if he decides or rules
5 that this was improper, then he can strike
6 this entire deposition.

7 MR. BUCH: The only problem with that
8 is that I will not have a remedy.

9 MR. RIVERA: If he strikes this, I
10 can't use this deposition. That is the
11 remedy.

12 MR. BUCH: The problem is that it will
13 be too late. Because then, obviously, the
14 remedy -- it will be kind of like applying
15 alcohol after the leg has been cut off.

16 MR. RIVERA: If it's stricken then I
17 can't use it.

18 MR. BUCH: Right. You can't use it,
19 but you can retake his deposition. And you
20 can ask Miss Hirsch questions about my
21 expert witness's opinions.

22 MR. RIVERA: But that is exactly why
23 she is here. So she can aide me in the fact
24 finding.

25 MR. BUCH: She is an adverse witness.

1 If she were an independent witness and not
2 an adverse witness, perhaps I wouldn't
3 object but she is a police witness.

4 MR. RIVERA: You made your point.

5 MR. BUCH: If I can just have a moment.
6 I did not receive notice and I think I am
7 entitled a notice. Let me just see.

8 MR. RIVERA: Can we begin the
9 deposition while you search this?

10 MR. BUCH: Let me just see that. Give
11 me a minute. I would appreciate it.
12 Because this witness is crucial to my case.
13 If she's going to be here, she is an adverse
14 witness. I think it violates the rule of
15 sequestration of witnesses.

16 MR. RIVERA: This is not a trial. This
17 is not a hearing. It's a deposition.

18 MR. BUCH: It is a proceeding. I'm
19 going to object to it. And until, if I may,
20 just get a ruling from Judge Kaplan I don't
21 want to -- because obviously she is your key
22 witness. She is the key witness. She did
23 the traffic homicide investigation. She is
24 going to -- how do I know what she says is
25 not going to take over his testimony? It

1 probably will. I just object to this.

2 MR. RIVERA: You know she can read his
3 deposition afterwards; right?

4 MR. BUCH: That is not the point. The
5 point is about prejudice.

6 MR. RIVERA: That is the point you just
7 made. What is the other prejudice?

8 MR. BUCH: The fact that she is a
9 police officer and she did the traffic
10 homicide report. And the fact that it is
11 just fundamentally unfair that this should
12 happen like this. I was given no notice of
13 this.

14 MR. RIVERA: No notice is required.

15 I'm going ask that the witness be sworn in.

16 (Thereupon the witness was duly sworn by the court
17 reporter.)

18 MR. RIVERA: For the record I welcome
19 Judge Kaplan's reviewing this deposition
20 with the objection that Mr. Buch has made.

21 BY MR. RIVERA:

22 Q Please give us your name.

23 A Rick Swope. S-W-O-P-E.

24 Q And where are you currently employed?

25 A I'm the owner of Swope Reconstruction.

1 Q What type of company is that?

2 A It does primarily accident reconstruction
3 activities.

4 Q Mr. Swope I have deposed you in the past
5 and you have given some of your background. I am not
6 going to go too much into that except to ask you
7 specifically with regard to occupant kinematics.
8 Have you ever been qualified as an expert
9 specifically in the area of occupant kinematics in a
10 court of law?

11 A I don't recall if I have been specifically,
12 in other words as an occupant kinematics expert, but
13 I have been able to render opinions based on
14 kinematics through reconstruction.

15 Q And that was based on being qualified as
16 what?

17 A An accident reconstructionist.

18 Q What you're saying in essence is after
19 having been qualified as an expert in accident
20 reconstruction you have been or a specific court has
21 allowed you to testify in areas of occupant
22 kinematics; is that correct?

23 A Yes.

24 Q Can you tell me when that occurred?

25 A No.

1 Q Can you tell me how many times that has
2 occurred?

3 A Probably over forty.

4 Q That you've testified in the area of
5 occupant kinematics?

6 A Sure. And that, just so you're -- well I
7 can't ask questions. My definition of kinematics can
8 apply to injuries, it can apply to seat belts and it
9 can apply to movements in cars. So there is a vast
10 range. I don't want to trick you as to what the
11 interpretation is.

12 Q That is fine. In circumstances have you
13 testified in a manner as to give expert testimony
14 about who a driver may or may not have been? Have
15 you given that type of testimony?

16 A Yes.

17 Q Has that also been over forty times?

18 A Yes, sir. At least.

19 Q When is the last time you testified on
20 behalf of the State as opposed to defense or civil
21 trial?

22 A I don't recall. I have no idea.

23 Q Do you recall testifying this year?

24 A No.

25 Q For the State?

1 A No.

2 Q Last year for the State?

3 A I don't recall.

4 Q You don't recall or you didn't?

5 A I don't recall. I don't think I did. It's
6 probably been a couple years, but I don't recall.

7 Q Your best recollection is that it's been a
8 couple years?

9 A My best recollection would be a couple
10 years. Right. You're not counting civilly, just
11 criminal?

12 Q Just criminal.

13 A At least a couple years.

14 Q Specifically for the case that you have
15 been listed as a witness, Manuel Corratge is the
16 defendant. Mr. Orlando Buch has listed you as a
17 witness in this case. And I understand that you
18 reviewed certain documents, photographs, etc. in
19 order to form opinions about this crash; is that
20 correct?

21 A Yes.

22 Q With regard to this crash that occurred on
23 April 27, Saturday, 1996, on the 2800 block of Davie
24 Boulevard in Fort Lauderdale, what opinions have you
25 formed as a result of your review of the material

1 that has been provided to you?

2 MR. BUCH: I am going to object to him
3 answering that question and I cite rule of
4 criminal procedure 3.220(1)(2) protective
5 orders. At any time in the taking of a
6 deposition a motion of a party or a deponent
7 upon showing that there was an examination
8 being conducted and in spite of that faith
9 such a manner as to unreasonably annoy,
10 embarrass or impress upon the deponent.
11 Part B is the court in which the action is
12 pending or the court where the deposition is
13 taken may terminate a deposition, limit the
14 scope, limit the time of a deposition,
15 continue the deposition at a later time,
16 order the deposition to be taken in an open
17 court and additionally if there was any
18 sanction authorized by this room. I am
19 going to object on that ground and I refuse
20 to allow this deposition to continue.

21 MR. RIVERA: Let me just ask Mr. Swope
22 then.

23 BY MR. RIVERA:

24 Q Is the presence of traffic homicide
25 investigator Jill Hirsch annoying you or embarrassing

1 you?

2 A Is it annoying or embarrassing to me?

3 Q Yes.

4 A No. Not me. Mr. Buch can obviously make
5 any determination he wants but I'm not here to give
6 you legal termination, I'm just here to testify.

7 Q I am asking you if you find her presence
8 here annoying or embarrassing?

9 A Well, Jill always annoys me but that is
10 another statement. For the depo, no. I am just
11 kidding. For the depo I am just here to testify.
12 And I am here to do whatever you guys tell me to do.

13 MR. BUCH: I would object. We have an
14 adverse witness in this room. It's a State
15 witness and I don't know if Mrs. Hirsch has
16 ever been qualified as an expert. If there
17 was an unbiased expert, I would not have any
18 objections but this is the person who did
19 the traffic homicide report. No disrespect,
20 but I feel like I have no stand about it.

21 No notice was given to me that she was
22 going to be here. I just object to it.
23 Frankly I just want a ruling on this matter.
24 If the judge says it is okay then I will
25 take it subject to appeal and maybe we will

1 get a quick ruling on this matter.

2 MR. RIVERA: If Judge Kaplan was on the
3 bench now I would go down there and do this
4 but unfortunately this is the third time
5 that I attempted to depose Mr. Swope. Mr.
6 Swope is a very busy man. Two previous
7 times Mr. Swope has been called away to
8 testify the information that I got. And we
9 are going to be doing this trial come Monday
10 and it is now Wednesday afternoon.

11 MR. BUCH: I object because if I had
12 been advised, I would have done the research
13 and the case law and I just object to the
14 unfairness of it. Obviously the rule of
15 sequestration of witnesses, which I am
16 invoking now and I will invoke it at the
17 trial, is being violated by her presence. I
18 don't see how anybody cannot see that.

19 MR. RIVERA: I think it is clear to me
20 and I think you have made your objection.

21 BY MR. RIVERA:

22 Q Mr. Swope what opinions have you formed
23 with regards to this case?

24 MR. BUCH: I am going to object to him
25 answering that. Based on the unfairness of

1 the presence of a traffic homicide
2 investigator who is going to testify on
3 behalf of the State. It violates the rule
4 of sequestration of witnesses. And there is
5 no way I can cure that. And my guy is
6 looking at many long years in prison if we
7 should not prevail in this case and I would
8 just object to her presence here.

9 MR. RIVERA: Okay. Your objection is
10 noted.

11 MR. BUCH: Mr. Swope, I am going to
12 instruct you not to answer.

13 MR. RIVERA: You're instructing this
14 witness not to answer?

15 MR. BUCH: Rule 3.220(1)(2).

16 MR. RIVERA: I just want to be clear
17 about this. You are instructing this
18 witness not to answer?

19 MR. BUCH: Right. Until we get a
20 ruling from the Court.

21 MR. RIVERA: On what basis do you
22 believe you can instruct a witness in a
23 deposition not to answer the question?

24 MR. BUCH: Well it says here motion to
25 read, you know, protective orders. It says

1 motion to terminate or limit the deposition
2 at any time during, and I am citing criminal
3 procedure rules 3.220(1)(2), motion to
4 terminate or limit examination. Any time in
5 any particular deposition a motion of a
6 party, I represent a party in this case, the
7 defendant Manuel Corratge is the deponent,
8 or upon showing that the examination is
9 being conducted in bad faith or in such a
10 manner as to reasonably annoy, embarrass or
11 impress the deponent or party the court in
12 which the action is pending or the circuit
13 court where the deposition would be taken
14 may terminate the deposition, limit the
15 scope.

16 MR. RIVERA: What basis do you believe
17 he is being annoyed or embarrassed?

18 MR. BUCH: My party. I represent Mr.
19 Corratge. I can't speak for the deponent.

20 MR. RIVERA: But that is what we are
21 talking about here. The rules specifically
22 says that if he is being annoyed,
23 embarrassed or pressed you have a right to
24 take the sanction.

25 MR. BUCH: Or the party. And I am

1 saying it is unfair --

2 MR. RIVERA: It is not the party.

3 MR. BUCH: It says here on 3.220(1)(2),
4 at any time during the taking of the
5 deposition on motion of the party making a
6 motion --

7 MR. RIVERA: Motion by you. Yes.

8 MR. BUCH: To eliminate the
9 examination. I don't want him to give his
10 opinion on the Corratge matter while Miss
11 Hirsch is here. It says at any time during
12 the taking of the depo on motion of a party,
13 Mr. Corratge, I am making it on his behalf
14 --

15 MR. RIVERA: Continue to read.

16 MR. BUCH: -- and upon showing that the
17 examination is being conducted in bad faith
18 in such a manner as to originally annoy,
19 embarrass or press the party. I mean it is
20 unfair for a witness. I am going to ask her
21 to be sequestered from being here. So that
22 is why I am limiting the examination. I am
23 making a motion and --

24 MR. RIVERA: Okay. In the interest of
25 expedites I'm going to ask my expert, who is

1 here to assist me in this fact-finding to
2 not be part of this deposition at this point
3 in time. However, at this time I'm letting
4 you know that I'm reserving the right to
5 recall Mr. Swope for the purpose of the
6 deposition --

7 MR. BUCH: I don't have any objections
8 to that. I think that is the only
9 appropriate thing to do.

10 MR. RIVERA: I disagree. And I'll tell
11 you, if this case wasn't going to trial on
12 Monday, I wouldn't want to try the Court's
13 patience or the deponent's patience in this
14 matter. If this trial wasn't going to trial
15 on Monday, I would pursue this because I
16 don't believe you have made any good faith
17 argument in order to stop investigator Jill
18 Hirsch from being here. Thank you, Jill.

19 (Jill Hirsch leaves the room.)

20 BY MR. RIVERA:

21 Q Mr. Swope, what opinions have you formed as
22 a result of your investigation of the case?

23 A Obviously I have formed several opinions
24 but I assume you want the main thing so --

25 Q Actually I want all of them.

1 A Okay. The opinion I formed was that in
2 reviewing all the information that I have to date, I
3 see no physical evidence, no testimony, to indicate
4 that the suspect in this case, Mr. Corratge, is the
5 operator, or the driver, of vehicle number one. That
6 is basically it in a nutshell.

7 Q You indicated you had many opinions. What
8 opinions have you formed?

9 A Well when I said that, Mr. Rivera,
10 obviously the opinions I have can be multiple. Such
11 as an accident did occur. There were people that are
12 dead in this case. Those types of things.

13 BY MR. RIVERA:

14 Q I understand.

15 A But the main opinion deals with the fact
16 that I cannot identify that Mr. Corratge is the
17 operator of vehicle number one.

18 Q When you say vehicle number one, I think
19 you are using the same reference that the traffic
20 homicide investigator used to identify the cars.

21 A I am.

22 Q I am going to more specifically identify
23 the car for purposes of later reference. When you
24 say vehicle number one, you are referring to a 1981
25 Mercury Marquis, cream in color?

1 A No. A 1985 Mercury Marquis, tan in color.
2 That is according to the police report.

3 Q Let me just ask you this for purpose of
4 clarity. What is your belief as to the vehicle that
5 Mr. Corratge, Mr. Sylva and Miss Fleitas were in,
6 what vehicle do you believe that was?

7 A I believe that was on page four of the
8 traffic homicide report. A 1985 Mercury Grand
9 Marquis, four-door, tan in color, baring a Florida
10 Tag LPH-99K.

11 Q Whenever I refer to a vehicle from now on
12 it will be the same as Jill in her report. This '85
13 Mercury Marquis, tan in color, that defendant
14 Corratge was in that you are referring to as vehicle
15 number one?

16 A Yes.

17 Q With respect to vehicle number one and
18 you're also aware that there was a Dodge Caravan, I
19 believe a 1991, that was involved in this crash?

20 A Yes.

21 Q What is the other vehicle that was involved
22 in this crash?

23 A The other vehicle was a 1985 Mercury
24 Marquis four-door, silver in color.

25 Q With regard to the crash itself, have you

1 formed an opinion as to who caused the crash? What
2 vehicle caused the crash? And in what manner?

3 A No.

4 Q And why is that?

5 A Because my function was to look and find
6 out who, if I could see, was operating the vehicle
7 number one based on the information I have and the
8 traffic homicide report and the statements and the
9 other information attached to it. I was not looking
10 at the causation of the accident, I only attempted to
11 locate the driver.

12 Q At this point I'm asking you, if you can,
13 to give your opinion based on what you have read as
14 to who caused that crash? What vehicle caused this
15 crash?

16 A Based on what I read, it would be vehicle
17 number one.

18 Q That is the vehicle that Mr. Corratge and
19 Mr. Sylva and Miss Fleitas were in?

20 A That is correct.

21 Q On what basis do you make that
22 determination?

23 A That was based on, again as I indicated,
24 the traffic homicide report and the conclusion by
25 Officer Hirsch.

1 Q Specifically what do you see that indicates
2 that vehicle one caused this crash?

3 A Well apparently vehicle number one was
4 proceeding at a rate of speed which was above the
5 speed limit and made some type of improper lane
6 change. And I believe they collided into vehicle
7 number three and then there was another vehicle that
8 collided.

9 Q Vehicle number three being the Dodge
10 Caravan?

11 A Yes. I believe the right front of vehicle
12 one clipped vehicle number two at some point and then
13 they ended up hitting vehicle number three. And the
14 accident occurred.

15 Q I am just going to ask you to be a little
16 more specific to your conclusion. You indicated that
17 the right front of vehicle one, the '85 tan in color,
18 Mercury Marquis, hit the Dodge Caravan 1991; is that
19 correct?

20 A Yes. In the rear.

21 Q In the rear?

22 A Right.

23 Q Would that be the rear left?

24 A I think this was, yes, left rear.

25 Q And then what action, what course did