

State of Florida )  
                  ) : ss  
County of Broward )

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

STATE OF FLORIDA, )  
                          ) )  
                  Plaintiff, )  
                          ) )  
                  vs. )  
                          ) )  
MARK HELSEL, )  
                          ) )  
                  Defendant. )  
-----X

Case No. 94-5356CF10A

COPY

Fort Lauderdale, Florida

June 12, 1995

2:00 p.m.

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DEPOSITION OF RICK SWOPE  
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APPEARANCES:

ASSISTANT STATE ATTORNEY  
KATHERYN MAUS, ESQUIRE  
Appearing on behalf of the Plaintiff.

NORMAN ELLIOTT KENT, P.A.  
Appearing on behalf of the Defendant.

1995 JUN 27 AM 9:52  
STATE ATTORNEY  
17TH JUDICIAL  
CIRCUIT OF FLORIDA



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<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
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Rick Swope

By Mr. Kent

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By Ms. Maus

42

E-X-H-I-B-I-T-S

Defendant's

Page

NONE

1                   Deposition of RICK SWOPE, a witness herein,  
2 taken on behalf of the Defendant herein, for the purpose of  
3 discovery and for use as evidence in this cause, pending in  
4 the Circuit Court of the Seventeenth Judicial Circuit, in  
5 and for Broward County, Florida, before LESLIE J. KIRKLAND,  
6 a Notary Public within and for the State of Florida at Large,  
7 pursuant to notice heretofore filed, at 600 S. Andrews Aven.,  
8 Fort Lauderdale, Florida, on the 12th day of June, 1995,  
9 commencing at the hour of 2:00 p.m.

10

- - -

11 Thereupon,

12

RICK SWOPE,

13 having been first duly sworn, was examined and testified  
14 upon his oath as follows:

15

## DIRECT EXAMINATION

16 BY MR. KENT:

17

18

Q.       Would you please state your name for the  
record?

19

A.       Rick Swope, S-W-O-P-E.

20

21

22

23

Q.       And Rick, you have been listed by the State of  
Florida as an accident reconstruction expert in the October  
8th, 1993 accident involving one Mark Helsel. When were you  
so employed?

24

A.       If I can look at this paper here?

25

Q.       Sure.

1           A.       I received a file from the Broward State  
2 Attorney's Office on June 30th of 1994. I had spoken with  
3 Mark McCue about a week before I received the file.

4           Q.       Now, tell me what experience you have in  
5 accident reconstruction and how such a young man like  
6 yourself became such a sophisticated, knowledgeable  
7 individual in the field of accident reconstruction.

8           A.       Well, actually I'm older than I look, but I  
9 had a CV I wanted to give you so you can look at it. I was a  
10 police officer for 15 years, the last six and a half years I  
11 was with the Broward Sheriff's Office. I was involved in  
12 traffic accident reconstruction since 1974 where I attended a  
13 120 hour course given by the Kansas Highway Patrol, in the  
14 State of Kansas.

15                   I worked traffic the entire 15 years I was a  
16 police officer. And in 1985 and '86 I took classes dealing  
17 with accident reconstruction, physics, vehicle dynamics at  
18 University of Florida, North Florida, in Jacksonville. In  
19 1986, early '87 I became instructor for the Florida  
20 Department of Law Enforcement in Florida.

21                   MR. KENT: We'll make your CV part of the  
22 deposition record if you have no objection to  
23 that.

24                   MS. MAUS: None.

25 BY MR. KENT:

1 Q. Later on we'll be stipulating as to your  
2 expertise. Now you're in private practice, right? You hire  
3 yourself out to individuals or state attorney's office or  
4 private law firms that want you to look at an accident scene  
5 and evaluate them critically, correct?

6 A. Yes.

7 Q. Mark McCue contacted you concerning this case  
8 in June of 1994 and then, subsequently, he gave you a  
9 discovery list as well on this case?

10 A. Yes, sir.

11 Q. And you've had an opportunity to review and  
12 scrutinize the facts and nature of this accident?

13 A. Yes.

14 Q. Tell me some of the things that you would list  
15 if you were going to record a job description of accident  
16 reconstruction. In other words, to frame it easier, when you  
17 testify as to accident reconstruction, what is it generally  
18 that your expertise testifies to?

19 A. Well, I testify and evaluate primarily  
20 physical evidence which may exist at the scene or which may  
21 be collected at the scene by some person, generally, the  
22 police officer. I look at vehicles if they are available,  
23 photographs of the accident scene or possibly photographs  
24 that are taken later. In the case of deaths, I look at  
25 medical examiner reports. In some cases I speak to the

1 medical examiner.

2 I look at toxicology reports if there is any.  
3 I look at the time of death, the medical examiner's report.  
4 I look at witness statements, driver's statements, police  
5 officer statements. I meet the police officer either at the  
6 scene if I can or at some other time.

7 Q. Actually, that was one of the key questions I  
8 wanted to ask you with respect to your expertise. As a  
9 police officer when you were doing these investigations, your  
10 reconstruction of the accident would be contemporaneous with  
11 the accident, and now as a consultant, you generally come in  
12 after the fact or at least in this case you're coming in  
13 after the fact.

14 A. Yes.

15 Q. So what are some of the differences,  
16 discriminating differences, that impact upon you as an  
17 accident reconstruction expert coming in after the fact as  
18 compared to spontaneously responding to the scene as when you  
19 were a police officer?

20 A. Well, I guess the primary difference would be  
21 that I'm now relying more on other people's statements or  
22 reports or measurements than if I was actually doing it  
23 myself. Primarily when I am called now, in about 95 percent  
24 of my cases, it could be anywhere from two months to five  
25 years. One case I have is 8 years old.

1                   So now I'm depending more on -- probably I'm  
2 giving greater weight to such things such as photographs by  
3 the police officers, measurements, witness statements,  
4 reports, then I would have when I originally did it on the  
5 scene.

6                   Q.       So in some respect then you're stating, of  
7 course, that you have to rely on what other people did, and I  
8 don't mean this in a negative sense, but in some respect  
9 you're like a Monday morning quarterback, you are evaluating  
10 the work that's already been accomplished by others.

11                  A.       In some respect, yes. Many times the work,  
12 such as this case, if I'm referring to this case, the work  
13 that Deputy Phillipson did was what I consider to be a  
14 preliminary information. He went out there and collected the  
15 evidence. He came up with what he thought happen. He put it  
16 into a report and he submitted it to the state attorney's  
17 office.

18                       Wherein, he could have done research, some  
19 books, researched the blood alcohol level as to what the  
20 effects would be on the driver's perception. That's more of  
21 the reconstruction field. So, basically, as an officer he  
22 put the information together and turned it into the State  
23 Attorney's Office, which is his job.

24                  Q.       And the state attorney's office contacts you  
25 in June of 1994 to review this and it is almost 20 months



1 after the actual accident. Without talking yet,  
2 specifically, about this particular investigation, how -- and  
3 you just said some reports can get turned over to you from  
4 three months to five years later -- how does the report being  
5 turned over to you 20 months later, how can that adversely  
6 infect or affect your ability to scrutinize the reports?

7 A. I think the written report itself doesn't  
8 affect the ability at all for me to look at it. If anything,  
9 individuals' memories fade after a period of time, so if I  
10 was going to speak to a witness or the officer even that may  
11 not be as good as after a week after the accident happened.

12 What is physically down on paper, I mean, if  
13 you give me that report 10 years from now, it should be the  
14 same.

15 Q. Then moving towards this case, has your  
16 scrutiny been in reliance on those reports or have you now  
17 gone out and spoken with officers and witnesses?

18 A. I spoke with the investigating officer Deputy  
19 Phillipson and reviewed the report with him.

20 Q. And this report included his diagram and his  
21 reconstruction diagram and other things like that?

22 A. Yes, sir.

23 Q. And this was done sometime after June of 1994,  
24 after you got hired, obviously. When was it done?

25 A. I spoke with Deputy Phillipson on July 5th of

1 1994, which was, I guess, about five days after I received  
2 the paperwork and I spoke with him again, probably, about  
3 three or four months later.

4 Q. Are there any other individuals that you have  
5 spoken with that are included on the witness list in this  
6 case?

7 A. Yes.

8 Q. And who would that be?

9 A. I spoke with Deputy Matt Gorman and that was  
10 only maybe a two minute conversation because if I recall  
11 Deputy Gorman just took the photographs and helped  
12 Phillipson.

13 Q. Have you recorded any notes of any interviews  
14 you've done with Phillipson or Gorman or have you made any  
15 documentary notes of your review of the investigative report?

16 A. Yes, I have.

17 Q. And those are the notes on the yellow legal  
18 pads there?

19 A. Yes.

20 Q. And what did you make notes of that stood out  
21 in your mind that were worthy of making a notation?

22 A. Well, I made notes in speaking with Deputy  
23 Phillipson and looking at the homicide report of several  
24 things. Number one, the speed limit in the area which was 25  
25 miles an hour. I made notes of the type of vehicle that it

1 was, 1992 Saturn four door. I made notes that the pedestrian  
2 was 65 years old; that the impact occurred in the right of  
3 the northbound lane of travel; that there was a windshield  
4 strike, actually called impact, but we call it strike,  
5 between the center and upper portion of the windshield; that  
6 the vehicle did not come to a stop at the end of the skid  
7 mark; that the vehicle, in fact, went approximately a block  
8 down the street before it stopped.

9 Deputy Phillipson used one of the deputies'  
10 car out at the scene. I believe it was the first officer who  
11 responded, Michael Metroka, and he obtained a coefficient  
12 friction of the roadway surface at that time of a .86; that  
13 there was two samples of blood drawn and those samples came  
14 back to be a .18 and .17; that the speed as a minimum was 32  
15 miles per hour and that Deputy Phillipson had the pedestrian  
16 walking at about 5.6 feet per second.

17 That's what he estimated and that was my  
18 conversation with Deputy Phillipson. I do have some notes  
19 that I took from his deposition.

20 Q. Now, this goes -- before you do that -- this  
21 goes into where your expertise comes in. Deputy Phillipson  
22 concluded that based on the length of the skid marks and the  
23 friction coefficient you referred to, that the minimum speed  
24 of the vehicle in this 25 mile an hour area was 32 miles per  
25 hour. Is that the kind of computation and judgment you would

1 have made if you were the deputy out there investigating the  
2 scene?

3 A. Yes.

4 Q. Okay. Do you know how or did Deputy  
5 Phillipson indicate to you how he made that computation in  
6 this case?

7 A. Yes.

8 Q. Tell me how he did it.

9 A. Well, the first thing he did was he had to  
10 arrive at the coefficient friction and he took the patrol  
11 car, again, from this Deputy Metroka, I believe his name is,  
12 and he used a skid test formula wherein the formula is  $F$   
13 equals speed squared over 30 times distance.

14 In other words, what he does is he skids the  
15 car three times, measures the length of the skid marks, and  
16 you would then average them out and get the skidding factor  
17 on the roadway at that point. He then took those marks and  
18 he used that in another formula which is  $S$  equals 30 times  
19 distance times factors squared. He then arrived at a speed  
20 of 32 miles per hour.

21 Now, the thing that Deputy Phillipson didn't  
22 do was at that particular point, since the car left and went  
23 down the road, that is a minimum speed, so there is -- Deputy  
24 Phillipson put in his report 32 miles per hour as a minimum.  
25 I would agree with that; however, speed had to be higher and

1 he didn't really elaborate on that.

2 Q. Okay. So you're satisfied that your review of  
3 Deputy Phillipson's report was accurate based on your own  
4 professional experience?

5 A. Yes.

6 Q. And there is nothing that he did that you  
7 would have done differently?

8 A. No. The only thing that probably would have  
9 done differently would have been skidded the defendant's car  
10 at that time at the scene rather than the officer's.

11 Q. And you were not able to do that because you  
12 weren't called in until June of 1994?

13 A. That's correct.

14 Q. So if you had your druthers in making an  
15 assessment of this case, it would have been better for you or  
16 it would have permitted you to be more precise if you had  
17 actually used the defendant's car at that time?

18 A. Yes. I'd like to say I wasn't out there. I  
19 don't know if it was possible. There may have been some  
20 reason the car couldn't have been driven or some other type  
21 of reason that they could not use the car in that particular  
22 occasion, but it's not going to change it that much.

23 Q. It could change it or alter it is what you're  
24 saying?

25 A. It could change it maybe a mile or two an

1 hour, but I mean the difference would be probably  
2 infinitesimal.

3 Q. As well as using the defendant's vehicle to  
4 more accurately gage the minimum speed per vehicle, it's to  
5 your advantage to go out there and inspect the actual site to  
6 make a determination as to whether or not there were other  
7 factors that could have been involved in the accident, such  
8 as lighting, road conditions or weather for example?

9 A. Correct.

10 Q. In this particular case, all you did was  
11 receive photographs of the road and the weather and the  
12 situation, right?

13 A. I did receive those. I went to the scene  
14 also, but I did receive those, yes.

15 Q. Did you have an opportunity to review the  
16 property that was taken into custody?

17 A. Meaning visually see the property?

18 Q. Yes.

19 A. No, sir.

20 Q. Did you have an opportunity to inspect or  
21 evaluate any of the chemical test reports?

22 A. I looked at them. I can't tell you that I  
23 inspected them personally. I didn't go to the file or chain  
24 of custody. I did speak with - at the M.E.'s office - I  
25 contacted, I'm not sure, I think I contacted Gene Deduskin

1 (phonetic) on the case in order to find out that the blood, I  
2 believe, was still in custody, number one, and number two, if  
3 there was any problem with the sample or anything like that I  
4 normally take to Gene, but I might have talked to Terry.

5 Q. Did you inspect the lighting conditions? I  
6 know you went out there back in - it would have been after  
7 June of 1994 - did you have an opportunity to inspect any of  
8 the lighting conditions that were there?

9 A. Yes.

10 Q. Now, did you inspect the lighting conditions  
11 in June of '94 or were you relying on some reports that  
12 indicated what they were back in October of 1992?

13 A. Well, that's two fold, I guess. Number one, I  
14 did rely on the reports, number one, and number two, I made  
15 contact with Broward County Survey, Jim Stafford, who is in  
16 charge of the Broward County Traffic Division in order to  
17 ascertain if any additional lighting had been added since the  
18 time of the accident or if any lighting had been removed.

19 He contacted me back probably within 24 hours  
20 and advised me that his records indicated that the lights  
21 that were out there at the time of the accident are still in  
22 place.

23 Q. Did you happen to go out there at 4:30 in the  
24 morning or the time the accident happened?

25 A. I went out there at 3:15 a.m.

1           Q.       What would you say the lighting conditions of  
2 the roadway were at the time this occurred?  Actually, tell  
3 me what you saw and observed rather than asking you generally  
4 about the conditions.  Tell me what you noticed the lighting  
5 conditions to be.

6           A.       I assume you mean at the point of impact?

7           Q.       Yes.

8           A.       At the point of impact the roadway surface was  
9 well lit.  As a matter of fact, there are lights -- there are  
10 lights just -- Well, there are lights just north and south of  
11 the actual point of impact.

12          Q.       Is this mercury vapor lighting?

13          A.       Yes, it is.

14          Q.       And are these lights on poles that are on the  
15 side of the street?

16          A.       That's correct.  There is a streetlight 44  
17 feet north of Northwest 25th Street on the east side of the  
18 street.  And there is a streetlight on the Northwest corner  
19 of Northwest 25th Street near where the point of impact  
20 occurred.  If you are aware, 25th Street actually comes out  
21 on the east side of the street just south of the scene and on  
22 the --

23          Q.       We're both operating without the photos in  
24 front of us, but I did have an opportunity to review all the  
25 photos that Deputy Phillipson and the other deputies made at



1 the time. Okay.

2 Now, as I understand it, there is a light in  
3 the area where the accident occurred, but it's on the other  
4 side of the street, is that what you observed?

5 A. Yes.

6 Q. And the other light you're referring to is  
7 about 25 feet down the roadway also on the other side of the  
8 street?

9 A. No. That light is on the east side of the  
10 street. Actually it's 44 feet north of Northwest 25th  
11 Street, but just so you are aware, I'm showing you this  
12 diagram, Northwest 25th Street, actually, on the east side of  
13 the street is south of the scene, and it's also north of the  
14 scene on the west side of the street, so actually it's one of  
15 those weird intersections.

16 Q. One of the things you do in accident  
17 reconstruction is, aside from looking at the actual scene, is  
18 to determine whether it's well lit and actually you go to the  
19 medical examiner and talk to the medical examiner about the  
20 injuries that were inflicted upon the victim.

21 Did you have an opportunity to do this in this  
22 case?

23 A. No, I did not.

24 Q. I would guess that because your first  
25 employment was June of 1994, you probably haven't had an

1 opportunity to see the victim's body but to just look at the  
2 medical report?

3 A. That is correct.

4 Q. Did you have an opportunity to look at  
5 diagrams of the medical examiner?

6 A. Yes.

7 Q. Do you remember them independently or do you  
8 need to refer them?

9 A. I probably have to refer to them. I remember  
10 looking at them but --

11 Q. Do you remember viewing the photographs of the  
12 deceased?

13 A. I recall that with Deputy Phillipson if my  
14 memory serves me right.

15 Q. One of the deputies has them. Did you notice  
16 any particular places where the deceased was struck by the  
17 vehicle?

18 A. Maybe I missed that --

19 Q. In other words, if you look at the diagram --  
20 For example, if I were to show you one of these drawings from  
21 the autopsy report, it would show that there is a large gash  
22 in the decedent's buttocks. Were you able, by looking at  
23 these drawings from the medical examiner, make a conclusion  
24 as to where or how the decedent was first struck by the  
25 vehicle?

1           A.       It appeared from the autopsy report and  
2 photographs or the diagram that the victim was struck on the  
3 right side.

4           Q.       In the rear, based on the large tear in her  
5 buttocks?

6           A.       That would be up to the medical examiner to  
7 determine. All I can tell you is the injuries on the right  
8 side including the arm and leg, et cetera, appeared to be a  
9 right side strike.

10          Q.       Are you able to make an assessment, as a  
11 medical examiner would, as to whether or not there was any  
12 defensive movement by the decedent prior to being struck?

13          A.       No, I couldn't tell you that.

14          Q.       That would be up to the medical examiner?

15          A.       Yes.

16          Q.       By defensive movement, you know what I'm  
17 talking about?

18          A.       Yes.

19          Q.       All right. Also from the reports that you  
20 looked at with respect to the accident, are you able to make  
21 any judgments as to whether or not the decedent was running  
22 at the time she was hit by the vehicle?

23          A.       Yes.

24          Q.       And what is your judgment to that?

25          A.       No, that she was not running.

1 Q. What do you base that decision on? What  
2 sophisticated, scientific techniques are you using to reach  
3 that conclusion?

4 A. Basically, what I use for that is a couple of  
5 things. Number one would be the damage impact to the car,  
6 which means that an individual who is running, generally,  
7 impacts in one part of the car and because the car is moving,  
8 as it was in this case, whether it was, you know, five miles  
9 an hour or greater, the damage pattern on the vehicle is  
10 different. Which means that if an impact occurs on the,  
11 let's say, front center of the car, and the individual is  
12 running, as their body is vaulted up to the car, they're  
13 going to be continued.

14 If they are coming from left to right, their  
15 body is going to not only match the speed of the car, but  
16 become airborne. It's going to continue the momentum that  
17 the person has because it is a 90 degree angle collision and  
18 rather than impacting say towards the center of the  
19 windshield or a little bit off to the right center from the  
20 driver's perspective, it may occur much farther to the right,  
21 such as the whole right side of the windshield because an  
22 individual is in motion.

23 If an individual was at a walking speed or  
24 less, generally the point of strike on the car, the point of  
25 impact is consistent with the point of impact on the

1 windshield or about in that area.

2 Also, generally, an individual that is running  
3 is in somewhat of a different position as far as they're not  
4 fully upright and erect. They are generally more in a little  
5 bit of an angled position. Their legs are apart, generally.  
6 So there are different things that you look at particularly  
7 vaulting and that kind of stuff.

8 Q. In this particular incident, it's your  
9 judgment based on what you are able to observe the victim was  
10 not running?

11 A. That's true and also I did look at one other  
12 factor which was the age of the victim in this case. I  
13 believe she was 68. I didn't have any, at least knowledge,  
14 that she was a runner or anything at that point.

15 Q. Now, were you able to ascertain or did Deputy  
16 Phillipson indicate to you which way the decedent was  
17 crossing the street when she was hit?

18 A. Yes.

19 Q. How do you reach that judgment and how did you  
20 do so in this case?

21 A. I reached the judgment on two fold. Number  
22 one, and that was speaking with Deputy Phillipson, looking at  
23 the point of rest of the victim and also, I believe, in his  
24 investigation, and I would have to look, I know he did some  
25 background as to where she was coming from or where she was

1 going.

2 Also I believe the skid marks in the road gave  
3 the direction of the vehicle at that point, and let me just  
4 check, there was one other -- I guess that was it with  
5 exception of the medical examiner's report.

6 Q. Yes, there was a supplemental discovery report  
7 with respect to the deceased that reflected some clothing  
8 that was found on her person, that she had been wearing. Did  
9 you have an opportunity to inspect that clothing?

10 A. No, I did not.

11 Q. Can you by inspecting clothing sometimes also  
12 make a judgment as to where a decedent might have been hit by  
13 a vehicle or the speed or impact of that vehicle?

14 A. At times, yes.

15 Q. So it would probably be useful in this case  
16 perhaps for you to inspect the clothing at some point?

17 A. If we had the clothes. It's my understanding  
18 that we are not in possession of them from Deputy Phillipson.  
19 I could be wrong on that.

20 Q. Now, other than Detective Phillipson and the  
21 other Detective Gorman, have you spoken to any of the  
22 witnesses, like Tim Hankerson (phonetic) or Delman Daniels or  
23 other individuals? Mr. Daniels was the first one to arrive  
24 on the scene. Mr. Hankerson was one of the people that  
25 worked with Mark Helsel.