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

STATE OF FLORIDA,

Plaintiff,

vs.

MATTHEW METZGER,

Defendant.

ORIGINAL

NO. 95-9944 CF10A
JUDGE: TAYLOR

X

201 Southeast 6th Street
Fort Lauderdale, Florida

September 24, 1997

10:25 o'clock A.M.

APPEARANCES:

MICHAEL J. SATZ, STATE ATTORNEY,
BY: DAVID RIVERA, ESQ.,
ASSISTANT STATE ATTORNEY,
appearing on behalf of the Plaintiff.

BRUCE D. LINCOLN, ATTORNEY-AT-LAW,
BY: BRUCE D. LINCOLN, ESQ.,
appearing on behalf of the Defendant.

DEPOSITION

OF

RICK SWOPE

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>
RICK SWOPE	3	65

E X H I B I T S

<u>STATES'</u>	<u>FOR IDENTIFICATION</u>
NO. 1-6	P. 3
7	P. 56
8-10	P. 65

1 Deposition of RICK SWOPE, a witness of lawful
 2 age, taken by the Plaintiff for the purpose of
 3 discovery and for use as evidence in the above-entitled
 4 cause, wherein STATE OF FLORIDA is the Plaintiff and
 5 MATTHEW METZGER is the Defendant, pending in the
 6 Circuit Court of the 17th Judicial Circuit in and for
 7 Broward County, Florida, pursuant to notice heretofore
 8 filed, before TRICIA A. SCHUMAN, a Certified Registered
 9 Professional Reporter and Notary Public in and for the
 10 State of Florida at Large, at the State Attorney's
 11 Office, 201 Southeast 6th Street, Room 640, Fort
 12 Lauderdale, Broward County, Florida, on the 24th day of
 13 September, 1997, commencing at 10:25 o'clock A.M.

14 -----

15 Thereupon:

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

20 (Whereupon, a document was marked
 21 as State's Exhibit No. 1-6 for
 22 Identification by the Reporter.)

23 DIRECT EXAMINATION

24 Q. (BY MR. RIVERA) Good morning, Mr. Swope.

25 A. Hello.

1 Q. Would you please state your full name.

2 A. Rick Swope.

3 Q. Mr. Swope, what is your occupation?

4 A. I do primarily accident reconstruction.

5 Q. If you would, in the form of a resume or
6 synopsis give your background in this field.

7 Including, I understand you have some law enforcement,
8 your educational training and experience.

9 A. As police officer for 15 years I went into
10 private practice in 1990, in July. The last six years
11 in law enforcement I was with the Broward Sheriff's
12 Office Traffic Homicide Division. I attended all the
13 accident reconstruction courses put on by the State.

14 I also attended a variety of courses put on
15 by Society of Automotive Engineers and other professors
16 that teach accident reconstruction throughout the
17 country.

18 Q. I'm sorry.

19 A. I became an instructor for the State of
20 Florida in 1985, early '86. 1988 I began teaching
21 accident reconstruction for the State of Florida
22 through Broward County Community College. It was on a
23 contractual basis. Each course I was paid a certain
24 fee as I taught the course. I taught all four courses
25 that deal either to with accident reconstruction or to

1 certify people.

2 I have a Bachelors in Criminal Justice from
3 St. Thomas University. I have a Masters in Science
4 that encompasses technology and engineering from the
5 University of Miami. I received that in December of
6 '95, and I've taken various courses since then
7 involving accident reconstruction. And I teach
8 seminars and lectures.

9 Q. Your BS in Criminal Justice, where did you
10 obtain that and when did you obtain that?

11 A. St. Thomas, I believe it was May of '89.
12 Although, I'm not sure of the exact date.

13 Q. Your Masters in Science, what exactly is that
14 degree?

15 A. That degree encompasses one half of the
16 courses are management business technology courses it's
17 called. The other half deals in industrial engineering
18 courses. So the course descriptions would be MGD
19 courses and IEN courses.

20 Q. MGD being Management Technology, and what did
21 you say?

22 A. IEN, Industrial Engineering.

23 Q. What's the title of that degree? What's that
24 really called?

25 A. It's called MOT degree.

1 Q. Is that an acronym for something?

2 A. Yes. It's Management of Technology.

3 Q. Do you recall what courses you took for that
4 Management Technology degree?

5 A. No. I might have course descriptions, but
6 let me see. I have a transcript.

7 Q. Do you mind if I make a copy of this?

8 A. No. Absolutely. And I have an addendum to
9 that. You're probably aware of that. I do have an
10 addendum to that that corrects the date on the bottom.
11 That date is inaccurate. I think I provided your
12 office with it. You may be aware of it. I believe Al
13 Goodman has the corrected date. Actually, I might have
14 it here. Hold on a second.

15 I have it right here.

16 Q. Just leave that there and I'll make a copy.
17 I'm only concerned with the courses that deal with
18 engineering as it may relate to accident
19 reconstruction. So I'll ask you, are there courses
20 that you took for this MOT degree that have some
21 relationship to engineering? And more specifically to
22 the engineering that may be involved in accident
23 reconstruction or vehicle kinematics or occupant
24 kinematics?

25 A. First of all, there is no class at any

1 college that deal specifically with a
2 reconstruction. What you do is you
3 get from the courses and use them e/
4 in experimentations or whatever. I
5 an example.

6 Q. Let me just rephrase it. Maybe I can be more
7 specific. Were there any courses that you took for
8 this MOT degree that would help you in accident
9 reconstruction?

10 A. Yes.

11 Q. And what courses would those have been?

12 A. Let me see if I can find it here.

13 Well, one class would be IEN512. That deals
14 in statistical quality control and quality. It deals
15 in processing controls and quality control programs,
16 engineering and industrial systems and processes.
17 Another one would be IEN572, Engineering Science and
18 Management Principles.

19 It deals in the process of technological
20 innovation, planning, forecasting. IEN663, which is
21 Project Management Techniques. It covers theory time,
22 management review, techniques, critical path methods.
23 These are all pretty in-depth courses. A lot of it
24 deals with mathematical formulas and applications of
25 the formulas.

1 So the purpose of me taking these courses was
2 to learn how to evaluate a problem and solve the
3 problem. Because most of the accidents you deal in
4 reconstruction are problems. So the ability is to
5 solve the problem, set it up mathematically, and that
6 basically is what I am doing with these courses.

7 Q. Any of the formulas were mathematical
8 formulas that you dealt with in these courses, did you
9 use any of those specific formulas that you can recall
10 in accident reconstruction?

11 A. Well, no, but the reconstruction in any
12 formula is basically already set up. The fact is
13 whether it's in reconstruction or quality control,
14 whatever, you have to be able to set up your own
15 formula, and that's the purpose of doing that.

16 Such as, I guess one class would be
17 Productivity Engineering. I'll just show you a sample
18 formula. This is the ability to set up a formula based
19 on how you are going to solve a problem, and whether
20 the mathematical formula be in qualitative management
21 or engineering or mathematics, it doesn't matter. It's
22 the ability to be able to use the formula and how it
23 applies in certain situations.

24 That's why I took this course versus let's
25 say a mechanical course. A mechanical course may tell

1 me how to change brakes on a car, but that doesn't
2 really help me in solving a problem. I may know how to
3 change brake pads on a car, but that doesn't help me
4 solve the problem in reconstruction. I have to have
5 the ability to solve it quantitatively. And that's why
6 I took these courses.

7 Q. You indicated you took accident
8 reconstruction courses in addition to your education
9 and other training. Did you ever take a course that
10 was taught by Gary Stevens?

11 A. Yes.

12 Q. Are you familiar with his representation as
13 an accident reconstructionist?

14 A. Not as a reconstructionist, no. I'm familiar
15 he was an instructor at IPTN.

16 Q. Do you remember what course you took there
17 with him specifically?

18 A. No. I can estimate it probably was traffic
19 homicide, but I can't say for sure. I mean, it was a
20 long, long time ago.

21 Q. Mr. Swope, you've been listed as a witness in
22 this case against State versus Matthew Metzger. When
23 were you first contacted by defense with regard to your
24 services as an expert witness?

25 A. I believe around April of '96. Although, I'm

1 not sure of the exact date. I'm sorry. February of
2 '96. And again, I'm not sure of the exact date, but
3 it was somewhere around there.

4 Q. And can you tell me what you were asked to
5 do?

6 A. Can I back up?

7 Q. Absolutely.

8 A. I don't have my letters in order. I see that
9 I had contact with Mr. Lincoln around June of '95.
10 That was our initial conversation. Mr. Metzger signed
11 a retainer agreement on July 28th of '95. So sometime
12 in between there we had conversations.

13 Q. What were you asked to do by Mr. Lincoln
14 and/or Mr. Metzger with regards to your services as an
15 expert in this case?

16 A. I spoke with Mr. Lincoln, and he asked me if
17 I would look at this case from a reconstruction
18 standpoint, see if I can analyze the file, and possibly
19 give him some help in understanding the case.

20 Q. Were you asked to help in any specific areas
21 or did you develop the areas yourself that you thought
22 you could assist in?

23 A. I don't recall what I was asked. I know that
24 when looking at the report my comments to Mr. Lincoln
25 dealt with the speed of the vehicle, and I'm speaking

1 of the Metzger vehicle. And also, I couldn't tell from
2 the initial reports if - at least what I had the
3 initial time - who the driver of the car was. If in
4 fact it was Mr. Metzger or if the State had done
5 anything to ensure who the driver was.

6 Q. Okay. With regard to the retainer and the
7 agreement with defense, what fee agreement do you have
8 with the defense, Mr. Lincoln and/or Mr. Metzger?

9 A. Well, I believe the agreement ended up being
10 an indigent case. I believe Mr. Lincoln went in and
11 asked for expenses to cover the reconstructionist. I
12 believe that's what I understand.

13 Q. What have you billed for thus far and/or what
14 do you estimate the bills have been thus far?

15 A. It's probably in the neighborhood of \$2,000.
16 It could be more. I don't -- It's been a while since I
17 sent out a bill.

18 Q. Is it per hour that you're charging on this
19 case?

20 A. Yes.

21 Q. What are you charging per hour?

22 A. On this case I charged 100 per hour because
23 it's an indigent case. I think a court generally has a
24 cap fee, and I think whatever that cap fee is. I
25 normally charge 125.

1 Q. How much time have you invested in this case
2 thus far?

3 A. 20 something hours.

4 Q. 20 something hours?

5 A. Yes, at least.

6 Q. If you are called to testify in this case
7 will your rate change or will it also be 100 per hour?

8 A. It will be the same.

9 Q. How much time do you expect you might bill
10 for that?

11 A. It depends how long I sit in the hallway. I
12 wouldn't anticipate being on the stand too long at
13 least from Mr. Lincoln's standpoint. Whether you keep
14 me up there for a half hour or six days, it's up to you
15 I guess.

16 Q. Now, you also indicated that you investigated
17 traffic fatalities as a police officer?

18 A. Yes.

19 Q. You said you did that for approximately six
20 years with BSO?

21 A. Yes.

22 Q. Did that include DUI manslaughters?

23 A. Yes.

24 Q. Did it also include reckless driving
25 manslaughters?

1 A. Yes.

2 Q. Approximately how many would you say you
3 investigated in those six years?

4 A. Well, I guess I'll break the term
5 investigated down for you. I probably investigated
6 about one quarter of the fatalities we received per
7 year in our unit, myself. But I reviewed all the
8 fatalities. Myself or Hal Samuels will review the
9 content.

10 So I pretty much was involved in every case.
11 In other words, I would review it, send it back. If
12 something needed to be done, we requested additional
13 statements. And then I don't know how it works now,
14 but in those days we would come to the State Attorney,
15 someone would be assigned to us, and a lot of times the
16 State Attorney would say, I need this, this, and this
17 before we could file. But there was a good many that
18 was alcohol related. I don't know what the percentage
19 was, but it was a good amount. Maybe 40 percent, 50
20 percent.

21 Q. With respect to this investigation or this
22 case, State V. Metzger, would you indicate and itemize
23 what it is you received and reviewed up and to this
24 point?

25 A. I received all of the traffic homicide report

1 with all the statements taken by Corporal Slayton, that
2 was attached to that report. I received a fax I think
3 from your office with the formulas on them.

4 Q. I am going to have to nitpick here just for a
5 moment. I just want to be clear as to what statements
6 you reviewed. You did review the traffic homicide
7 report that was authored by Corporal Slayton?

8 A. Correct.

9 Q. Could you indicate what statements you
10 reviewed or I should say whose statements you reviewed?

11 A. The statement of Matthew Cohen, Charles
12 Brown, Patricia Bowles, Robert Wehmeyer, the deposition
13 of Gary Stevens, the deposition of David Cotrone. The
14 deposition of William Muzzy. The deposition of
15 Corporal Slayton, deposition of Gene Detuscan. The
16 deposition of Michael Wagner. The deposition of Terri
17 Stockham. The deposition of Dr. Price. I think that's
18 it.

19 Q. What other documents and/or reports have you
20 reviewed besides the traffic homicide investigation
21 authored by Corporal Slayton and the statements?

22 A. I reviewed some formulas that were faxed to
23 me by your office that Trooper Slayton used including a
24 measurement record sheet.

25 Q. That's Trooper Slayton?

1 A. Yes. I believe it was either faxed to me by
2 you or Mr. Lincoln. A supplemental discovery that came
3 from the lab which consisted of basically swabs that
4 were taken from the windshield, possible hair sample.
5 It came from the FDLE lab. I also looked at that on
6 August 12th, '97.

7 Q. Did you review also the results from
8 Josie - I think her last name is Roman?

9 A. Yes.

10 Q. What else? I'm sorry. I interrupted you.

11 A. I think that's about it.

12 Q. Photographs. Have you had an opportunity to
13 review any photographs?

14 A. Yes. These photographs and the videotape.

15 Q. And the videotape of the scene as well?

16 A. Right.

17 Q. Did you review any photographs taken from the
18 tow yard?

19 A. No. I took my own at the tow yard.

20 Q. Have you received or reviewed anything else
21 that you haven't already mentioned?

22 A. I don't believe so, no.

23 Q. Is there anything else that you believe may
24 be out there by way of report or any physical evidence
25 that you have not yet received that would help you in

1 reinforcing the opinions that you may have or changing
2 your opinions?

3 A. No. I have no idea if it would be something
4 else out there.

5 Q. Are you satisfied with the information that
6 you have in order to render your opinion or is there
7 something more that you'd like to have?

8 A. Well, there is always something more I'd like
9 to have. I think Gary Stevens made the comment, and I
10 agree with him, that the metal ordinate that was
11 measured by the officer could have been measured
12 differently.

13 In other words, he only took one
14 measurement. If we had several measurements or two or
15 three, as Stevens indicated, we would then be able to
16 see if it was in fact a yaw mark by decreasing speed
17 from the start of it to the end. We don't have that.
18 So I think we're just making the assumption it is a yaw
19 mark.

20 Q. Anything else along those lines?

21 A. No. I think that's about it. We don't have
22 any good pictures of that mark either so it all
23 pertains to that mark. I don't think it matters a
24 whole lot, but if you're going to call it a yaw mark
25 you have to know.

1 Q. In the video itself -- I viewed the video
2 several times, and I was able to see what pointed out
3 to me to be yaw marks. Did you see anything like that?

4 A. Well, I saw in the video some striations as
5 which are indicative of yaw marks, but again, before I
6 actually tell you that they were, the point of doing
7 the critical speed analysis is that -- In other words,
8 when you start off at the first, you know, 10 feet of
9 the mark or 20 feet, whatever, you want to take - I
10 think Stevens said 30 feet. The trooper measured 130
11 if I'm not mistaken. By taking several sections of the
12 yaw mark and measuring from the beginning of it to the
13 end, you can then verify it's the yaw mark because the
14 speed would be decreasing.

15 Let's assume on point A I get a speed of .60
16 and point B I get a speed of .65. Well, then I would
17 know that it's not decreasing so therefore, it's not a
18 true yaw mark. It means the car is still accelerating
19 rather than decreasing in speed. We don't have that in
20 this case.

21 I don't think it makes a lot of difference.
22 And I don't remember what Stevens' comment on it was.
23 Because we did have marks and I just considered them a
24 sideways slide. It might effect the speed at six, eight
25 nine miles an hour, but I don't think it really

1 matters. But you'll be the determination of that.

2 Q. You'll forgive me, but we'll go into great
3 detail with that later on.

4 Having reviewed all these reports and the
5 items you just indicated, the documents, the
6 photographs, the video, the statements, generally, what
7 do you believe happened in this accident? What is your
8 conclusion, your opinion, and your conclusion regarding
9 what led up to this accident and what actually
10 caused - or I should say, what led up to this crash and
11 actually caused this crash?

12 A. Well, what led up to the accident was the
13 speed of Mr. Metzger's vehicle. He was traveling above
14 the posted speed limit.

15 Q. Approximately how fast would you say in your
16 opinion was he traveling?

17 A. I would say a minimum of 57 miles per hour
18 with the maximum of 64 miles per hour, and I can give
19 you those sheets later, but I have them here. That he
20 was traveling above the posted speed limit. He either
21 gained on the vehicle in front of him as his lane ran
22 out faster than he thought, or the vehicle in front of
23 him -- I believe there was some testimony from - I
24 believe it was Ware, a vehicle was changing lanes or
25 that Mr. Metzger came up very fast on his vehicle that

1 was in front of him a few car lengths.

2 Mr. Metzger overcorrected, and due to his
3 speed he lost control of the car. Once the car started
4 going sideways he lost control of the vehicle, had no
5 further control due to his speed, and crossed the
6 median and struck the other two vehicles, and that was
7 the cause of the accident.

8 Q. Well, what is your opinion with regard to
9 Mr. Metzger's driving? And specifically, do you
10 believe that his driving was reckless?

11 A. I can't say his driving was reckless. I
12 don't know. Some of the witnesses that gave testimony
13 said I believe he was cutting in on traffic or they
14 thought he was cutting in on traffic. If he was doing
15 that I would say that would be careless or reckless.
16 That would be the court's determination or jury
17 determination.

18 All I can tell you is he was speeding. He
19 lost control of the car. If speed is reckless in and
20 of itself, again, that's a court determination or your
21 determination. All I can tell you is he was speeding.
22 He either overcorrected and lost control or he lost
23 control due to his speed.

24 I believe even Mr. Stevens would agree once
25 that car got into a sideways motion he has absolutely

1 no control of the car, and due to his speed he went
2 across the median and crashed into the other two
3 vehicles.

4 Q. Have you been out to the tow yard where the
5 vehicles were found?

6 A. Yes.

7 Q. What did you do there?

8 A. I inspected the vehicles. I took
9 photographs, which I have if you want. I just took
10 some photographs of the vehicles. I was interested in
11 the time I went out there - as I told Mr. Lincoln - I
12 wanted to see what kind of marks there were on the
13 windshield or interior places in the car.

14 At that point I don't recall, again, what all
15 I reviewed, but again, I wanted to see if the injuries
16 matched up as far as who was driving, who was the
17 passenger, who was in the back seat. And it was my
18 understanding a couple days before we got out
19 there - we, meaning Mr. Lincoln and I - that the
20 windshield had been removed from the car, and so we
21 needed to see that - until I saw it with Trooper
22 Slayton I guess several weeks ago.

23 Q. Do you have -- Strike that.

24 Did you examine the Mustang mechanically?

25 Did you look at the engine, the tires, the interior of

1 the engine?

2 A. I looked at the vehicle as far as cursory.
3 There was really no need in doing a mechanical
4 inspection as far as I felt.

5 Q. Did you find that there was any defect in the
6 car or any devices on the car or any modifications to
7 the car that would have contributed in any way to this
8 crash?

9 A. It's kind of like there was three questions
10 there. I'm sorry.

11 Q. I'll rephrase it.

12 A. I don't want to give you a smart answer.

13 Q. I appreciate that. I'll rephrase it. Did
14 you find that there were any defects to this car that
15 may have contributed to this accident, this crash?

16 A. No. Again, I did not perform a mechanical
17 inspection. I didn't see any need to do it, and I told
18 Mr. Lincoln if we had to do that then that would
19 encompass getting a hold of you, and we'd have to take
20 the car to a facility and tear it all apart, but I
21 didn't see any need for that.

22 Q. Did you find any modifications, any type of
23 modifications whatsoever from the factory or done
24 subsequent to the factory that may have contributed to
25 this crash?

1 A. No.

2 Q. What else did you do at the tow yard? You
3 took photos. You were looking specifically for
4 markings on the interior of the vehicle I think you
5 indicated, and am I correct in saying that that was to
6 determine - to help you in determining who the driver
7 was?

8 A. Basically. I wanted to find out if there was
9 anything, and it was my understanding that there was
10 some debris. And by debris I mean, human debris that
11 was on the windshield of the car or hair or some type
12 of sampling. And I believe by looking at that
13 photograph measuring I could tell Mr. Lincoln where
14 somebody was sitting or who or what position.

15 It was my understanding before I went to the
16 inspection site with Mr. Lincoln that that was still in
17 tact at that time. And then we got there, and I think
18 we found that the windshield had been removed I
19 think - I could be mistaken - just a couple days before
20 we got there.

21 Q. What observations did you make of these
22 vehicles, any of the vehicles that helped you in
23 forming an opinion?

24 A. Well, I don't know if there was anything
25 specifically that helped me in forming an opinion. I

1 wanted to find out what kind of damage all three
2 vehicles had sustained. I had been called by a law
3 firm , I believe, and again, I'm not sure the exact
4 name. I think it was Levy (phonetic) in Palm Beach,
5 that had a civil case for someone against the Metzger
6 vehicle, and they had contacted me and said they
7 thought they had a product case.

8 And they wanted me to look at it, and I
9 informed them I had already been retained by
10 Mr. Lincoln in the criminal matter. And they asked if
11 I could look at it for them anyway. And I said no
12 because I'm technically for the Metzger vehicle.

13 So it was my assumption they were looking at
14 the other two, one of the other two. And I told
15 Mr. Lincoln I thought there might be some kind of
16 product case involved with the fuel tank I believe on
17 the Nissan Mazda. I'm not sure which. So I really
18 didn't do anything as far as, you know, tearing the
19 vehicles apart or requesting it.

20 And it didn't really matter anyway. I just
21 wanted to see what had happened with the cars, if the
22 police report matched up fairly well with what I saw on
23 the damage, how the Mustang came apart. Because I've
24 had a couple Mustangs come up apart and I wanted to see
25 if the well had ripped or broken apart the way they