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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.) Case#: 97-19356CF10A
)
FAVIAN ROLDAN,)
)
Defendant.)
-----X

State Attorneys Office
Fort Lauderdale, FL
December 11th, 1998
11:15 o'clock a.m.

DEPOSITION
OF
RICK A. SWOPE

ORIGINAL

APPEARANCES:
JUSTIN D. GROSZ, Esquire,
Assistant State Attorney,
Appearing on behalf of the STATE.
JOSEPH DAWSON, Esquire,
Attorney at Law,
Appearing on behalf of the DEFENDANT.

I-N-D-E-XWITNESSES/EXHIBITS-Identification Attorney Page#

Mr. Swope - Direct by Mr. Grosz	3
Mr. Swope - Cross by Mr. Dawson	58
Mr. Swope - Redirect by Mr. Grosz	63

CERTIFIED QUESTIONS

(None)

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Deposition of RICK A. SWOPE a witness
herein, taken on behalf of the PLAINTIFF herein,
for the purpose of discovery and for use as
evidence in this case, pending in the Circuit Court
of the Seventeenth Judicial Circuit, in and for
Broward County, Florida, before CHERI ANNE
PRAWDZIK, a Notary Public within and for the State
of Florida at Large, pursuant to notice heretofore
filed, at CIRCUIT REPORTING SERVICE, INC., 3001 S.
Ocean Drive, Suite #6F, Hollywood, Florida, 33019,
on the 11th day of December, 1998, commencing at or
about the hour of 11:15 o'clock a.m.

- - -

Thereupon,

RICK A. SWOPE

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

DIRECT EXAMINATION

BY MR. GROSZ:

Q Would you state your name and spell
your last name.

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

Q And what is your title, if you will.

A Accident Reconstructionist.

1 Q How long have you done that?

2 A Since 1974.

3 Q And prior to -- I guess, you were
4 with the Broward Sheriff's Office for some time, is
5 that correct?

6 A For 6 years.

7 Q When was that?

8 A 1984 to June of 1990.

9 Q And prior to going into the Sheriff's
10 Office, were you in like a private practice status
11 as you are now?

12 A No.

13 Q Give me a little bit of your
14 background and history.

15 A Okay. I was in the military from
16 1974 to 1977 and I was stationed in the Army in
17 Fort Raleigh as an accident reconstructionist and I
18 got out of the service in 1977 and then in 1978 in
19 January, I started with Monroe City Police
20 Department and I was there until 1984 and then I
21 was only out of my work until I came from Monroe
22 City to the Broward Sheriff's Office but I was
23 already -- I already had the job.

24 Q Monroe, meaning the Keys?

25 A No, Monroe City, Michigan.

1 Q Okay.

2 A I worked with the Broward Sheriff's
3 Office until 1990 and then I went into private
4 practice in July of 1990.

5 Q And then, during the 6 years in the
6 Sheriff's Office, did you ever testify as a deputy
7 as an accident reconstructionist?

8 A Yes.

9 Q How many times would you say that you
10 did that?

11 A I'm guessing around 15 times.

12 Q Could you give me some of your
13 occupational background and training aside from
14 your on-the-job experiences that would qualify you
15 as an expert in the field of accident
16 reconstruction.

17 A I attended additional courses while
18 in the military which was put on by the academy and
19 I did an additional 160 hours of accident
20 reconstruction courses and I attended, I believe,
21 another 120 hours at Northwestern College in
22 Michigan and when I was a police officer, I
23 attended about 40 courses and a IPTM Course in
24 Jacksonville and I became an instructor for the
25 State of Florida and I attended speed courses which

1 included seat belts, motorcycles, buses, trucks,
2 pedestrians and those kinds of things and I got my
3 bachelor's degree in 1989 from St. Thomas
4 University and my Engineering degree in '95 in
5 ~~XXXX~~ and I've taken various courses put on by the
6 Society of Automotive Engineers which was primarily
7 1 to 2 courses from them. And I've taught
8 reconstruction courses at Broward County Police
9 Academy and at North Florida University and also in
10 Louisville, Kentucky and I've written various
11 articles and publications.

12 Q Are you currently teaching at any of
13 those academies now?

14 A No, other than being a spokesperson
15 which I've done that in Georgia.

16 Q And what year was that?

17 A 1998, in April.

18 Q Okay then. And during your tenor at
19 the Sheriff's Office, what unit would you be
20 assigned in or called upon if you were to testify
21 in accident reconstruction?

22 A I was in traffic homicide with the
23 exception of 2 months.

24 Q The first 2 months there?

25 A Yes.

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Q During that time, I imagine you testified with respect to expert opinions on the speeds of vehicles, is that correct?

A Yes.

Q And how many times would you say that you did that?

A Well, uhm, that is a difficult question to answer. But on speeds of vehicles, I mean, I've testified on traffic tickets and things like that. Possibly, hundreds of times.

Q Okay. Did you ever have to rely upon a formula -- well, let's say that you investigated an accident and that you had to determine from the accident what the speed of that vehicle was traveling, how many times did you do that type of testimony?

A Testimony, I'm not sure. I certainly would have attempted to figure a speed on each case but when I testified to that, I could not tell you but there's quite a few.

Q Over fifty times would you say that you worked up formulas to determine speeds?

A Yes.

Q And this was while you were with the Sheriff's Office?

1 A Yes.

2 Q And I would imagine there have been
3 many times since then?

4 A Yes.

5 Q Prior to that also, I would imagine?

6 A Yes.

7 Q Okay. What formula do you use to
8 calculate? Is there only one formula or is there
9 more than one formula?

10 A Well, as far as speed?

11 Q Right.

12 A Well, obviously, I'd probably
13 estimate that there are 50 to 60 formulas of one
14 way or another to determine speed, kinetic energy
15 or a simple skid to stop or a Vascular Formula
16 (phonetic) for time and distance.

17 Q Have you testified as an expert in
18 the field of -- and I guess it would be to deriving
19 at the speed or -- I don't know what the name of
20 that field is.

21 But have you rendered an opinion as to those
22 types of things?

23 A Yes.

24 Q How many times have you done that?

25 A Uhm, probably now over 150 times, I

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would say.

Q Okay. And then, from the time that you left the Broward Sheriff's Office to the time that you went back to private practice, was there any time that elapsed such as months or a year or anything like that?

A No.

Q The next day basically, you were admitted to private practice?

A Yes, correct.

Q And you continued the legal education in this field?

A Yes.

Q And how many times now have you been retained to work on a criminal case?

A Well, that again is another tough question because a lot of the cases that I'm retained on, I cannot be of any help. In other words, what I mean is if I look at the case for an attorney, what I bill him is for the time and then it's then that they decide to use me or not to use me. And I don't know if I or you would consider that as being retained. But once I review a case, I mean, that's a difficult question because that probably happens 70 or 80 percent of the time.

1 Q Okay.

2 A Actually, I may have 25 active
3 criminal cases at this time.

4 Q What I'm talking about is from the
5 time that you left the Sheriff's Office in '90
6 until now which is '98, can you give me a rough
7 estimate of time where a lawyer has come to you and
8 has said, I want you to review my case and give me
9 your opinion. How many times?

10 A Possibly several hundred times.

11 Q Okay. Is there an average per year
12 that is done or does it vary?

13 A It varies.

14 Q Okay. And how many times has a
15 lawyer asked you to render an opinion where the
16 case has actually gone to trial and you've had to
17 use your opinion at trial?

18 A On a criminal case?

19 Q Yeah.

20 A Are we talking about a criminal case
21 or a reconstruction case that is criminal?

22 Q Yes, but define the two for me.

23 A Well, define the two. Okay. I've
24 also consulted in the field of the breathalyzer.

25 Q Okay.

1 A But this is a reconstruction case.

2 Q Right.

3 A Because I've testified in the field
4 of the breathalyzer but I would assume that you
5 want reconstruction matters.

6 Q Okay.

7 A I would say that I testified in
8 accident reconstruction criminal matters about 6 or
9 7 times per year.

10 Q Okay. And obviously, you work on
11 accident reconstruction cases a great deal more
12 times than you've actually had to go to Court and
13 testify, is that correct?

14 A Yes, sir.

15 Q How many times have you been
16 requested by the State as a State Witness to
17 testify on accident reconstruction cases since you
18 left the Sheriff's Office?

19 A Approximately 14 times.

20 Q And how many times by the Defense?

21 A Possibly several hundred times.

22 Q And during your tenor at the
23 Sheriff's Office -- and I don't know if they
24 allowed you to do this, but were you allowed to
25 work privately on your own time to do work on

1 accident reconstruction cases where you are hired
2 out?

3 A We were, but not on criminal cases.

4 Q Okay.

5 A In other words, I do not do criminal
6 cases obviously, because you guys would have to do
7 that.

8 Q Right. Were there accident
9 reconstruction cases that would not be classified
10 as criminal cases?

11 A Oh sure. Most of them are not. Very
12 few are really classified criminal.

13 Q Just an accident then, right?

14 A Right.

15 Q How many times has that happened
16 while you were at the Sheriff's Office where you
17 would privately do that?

18 A Not many, maybe 10 or 12.

19 Q Well, with respect to our case, when
20 were you retained on this case here?

21 A On February 28th, 1998.

22 Q Okay. And what specifically were you
23 asked to do?

24 A I was just asked to look at the
25 report and then I spoke with Mr. Dawson to see what

1 I thought happened in the accident and then he
2 actually specifically asked me to look at the
3 speeds to see if the investigators were correct and
4 I believe that the investigator said that the
5 speeds were in excess of 100 miles an hour,
6 somewhere in that ball park.

7 Q What information would you have
8 needed to do that? What was requested of you?

9 A Uhm, well, as far as -- if you are
10 speaking of just the speed information, I obviously
11 would take the information that the police officers
12 have in their reports and I would use that. And I
13 also went to the scene to do some measurements to
14 see if the police were correct and that is really
15 what I need at that point. I mean, there are
16 obviously many other issues but just for a speed
17 question, that's all I need.

18 Q What I'm asking you is: What was
19 requested of you to calculate the speeds?

20 A Well, you didn't say calculate. I go
21 to see if the speeds were anywhere what the police
22 stated they were.

23 Q Was that the only thing? Was your
24 job limited to that question alone?

25 A No, no.

1 Q What other things were requested of
2 you to do?

3 A I was just requested to explain to
4 Mr. Dawson how the accident occurred, if I could.

5 Q Okay. What information would you
6 need to come to that conclusion or explanation?

7 A Well, I want to see the vehicles that
8 were involved in the case and to read any
9 statements that anybody had given or any
10 depositions. And I want to look at the police
11 report and I would need all of that which I've done
12 in this case. And the only thing that I was not
13 able to view in the case was -- and I think Bernie
14 Hollar had this before you, if I am not mistaken?

15 Q Right.

16 A When I looked at the cars, there were
17 pieces of the bumper which was a plastic type of
18 bumper which was cut off and it was my
19 understanding from Bernie, that those pieces were
20 sent to the lab for a paint transfer match.

21 Q Uhm-uhm.

22 A I did not see the lab report about
23 the paint transfer to see if it matched the
24 accident but I had pretty much everything that I
25 needed to look at.

1 Q Do you have or did you have an
2 itemization of the stuff that you were provided
3 with when you reviewed this case?

4 A I have things that I wrote down as I
5 reviewed them and everything is in the file. And
6 of course you can look at that.

7 Q Okay.

8 A But I have that, yes.

9 Q Could you just give us a brief list
10 of what you've reviewed specifically. In other
11 words, like statements of witnesses or whatever it
12 is that you did review.

13 A I reviewed everything that was
14 attached to the traffic homicide report, toxicology
15 reports, measurements, police narratives,
16 everything from the Oakland Police Department and
17 I've looked at a deposition of Shawn Novac, I've
18 looked at the depo of Peter Outwater, photographs,
19 and I've looked at the vehicles.

20 Q Okay.

21 A As I've said, I've looked at
22 paragraphs of the vehicles and I've looked at -- I
23 also looked at vehicle specifications for both type
24 of vehicles in this case and I've also looked at
25 printouts of formulas that were used in this case.

1 Q Okay. And did you review the scene?

2 A Yes, I did.

3 Q And you've been in Broward County for
4 how long now?

5 A Since 1984, in August.

6 Q And you were on the road for 6 years?

7 A Right.

8 Q And so I would imagine that you were
9 familiar with that area as well?

10 A Very familiar.

11 Q Would you agree that Commercial
12 Boulevard and Dixie are public roads?

13 A Right.

14 Q When did you go out there, if you
15 remember?

16 A Well, I went out -- I just know I
17 went out there a couple of times after I got the
18 report from Mr. Dawson and so I would say the first
19 time was possibly the 1st or 2nd of March and then
20 I went out there again to kind of look at the area
21 to see if I could see any evidence out there and to
22 measure the area and to do some of my own
23 measurements and that time I was out there in June
24 of '98 and I was also out there again on November
25 18th of 1998.

1 Q Okay.

2 A I went out there to reconstruct some
3 things at that time.

4 Q When you first went out to see if
5 there was any evidence there, do you mean evidence
6 by way of evidence left at the scene or what do you
7 mean by that?

8 A I went out there for a couple of
9 reasons. One was to look at the roadway to see
10 what type of gouge marks and scratch marks were
11 there of how many cars took the tracks too fast.

12 Q Uhm-uhm.

13 A I went out there for the specific
14 purpose of driving over the railroad tracks at a
15 high rate of speed.

16 Q And did you do that?

17 A Yes, I did.

18 Q What rate of speed did you go over
19 the tracks?

20 A I went over the tracks doing over 70
21 miles an hour.

22 Q And did you check the roadway to
23 ensure safety in doing that?

24 A There was nobody on the roadway at
25 the time. It was 4:00 o'clock in the morning.

1 Q Okay then. What did you find when
2 you did that?

3 A Well, the reason why I went over the
4 tracks is -- and I know I should not have done
5 that but the reason why I did it was because I had
6 taken that area many times in patrol cars at a high
7 rate of speed and so I've already come up with some
8 calculations of what I thought the speed of the
9 vehicles were and I wanted to see roughly not only
10 what it would feel like but to see what the loss of
11 control was so to speak, in other words, I knew I
12 would not lose control.

13 Q Why not?

14 A Well, because I was a driving
15 instructor for 10 years also and I've done race car
16 things on the track and I felt confident that I
17 would not lose control -- at least I hope I would
18 not lose control.

19 Q Uhm-uhm.

20 A I felt mathematically that I would
21 not lose control and so I looked at the area
22 several times before I went there and there was
23 nobody there at the time that I did it and I think
24 my girlfriend at the time was with me -- not in
25 the car but she was an ex-police officer and she

1 was looking around and to flag me if there was
2 anybody around on the other side to go across the
3 tracks and basically I did this to see how far I
4 would land and that's what I did.

5 Q What type of vehicle were you in?

6 A I was in a Pontiac Grand AM.

7 Q What did you find?

8 A Well, I found that I went across the
9 tracks at the speed of 70 and whether it was 70 or
10 69 or 68, there could be a one to two mile
11 difference in the speed but I found that the
12 vehicle was not difficult to control and I found
13 that I came down roughly about 100 feet to 110 feet
14 after I cleared the tracks.

15 Q Did you get all 4 wheels off the
16 ground?

17 Could you feel that when you were driving
18 across the tracks?

19 A Yes, I could feel that they were off
20 the ground.

21 Q And when you landed, was there any
22 problem controlling the vehicle?

23 A No.

24 Q Did you go back and then check for
25 marks that the undercarriage of th4e vehicle may

1 have left?

2 A Yes.

3 Q What did you find?

4 A I went 100 to 110 feet and whether or
5 not you've been out to the scene, there are 100's
6 of scrape marks and gouges on the roadway but
7 I believe the ones that I left were from my
8 vehicle.

9 Q Did you check the undercarriage of
10 your vehicle to see if that was consistent?

11 A Yes, and it was.

12 Q Will you agree that there is a slight
13 incline as you were approaching the tracks heading
14 westbound?

15 A Yes, sir. I would agree.

16 Q And would you also agree that there
17 is a decline as you come down over the tracks on
18 the westbound side?

19 A I agree.

20 Q How far away were you from the tracks
21 when you decided to drive over them? And I take it
22 you were heading westbound, is that correct?

23 A Yeah, I was.

24 Q And I think 15th Avenue is just east
25 of there, right?

1 A Right.

2 Q And I think the next light when you
3 are heading eastbound, I think that was the next
4 light, right?

5 A Right.

6 Q Which is the first light east of the
7 tracks?

8 A I believe it's the first light east
9 of the tracks, yes, and I think I checked but it
10 was maybe about a quarter of a mile, somewhere in
11 there.

12 Q Okay. When you were at that light
13 there at 15th facing westbound on Commercial, how
14 would you describe the visibility on the other side
15 of the tracks on the westside of the tracks from
16 where you were?

17 A There is good visibility there.

18 Q Could you see the bottom of the road?

19 A Well, at what point? I mean,
20 directly on the westside of the tracks, no, but
21 could I see the road west of the tracks?

22 Q Uhm-uhm.

23 A Maybe 100 feet, yes.

24 Q Okay. Do you think at any point from
25 where you were on 15th as you approached the

1 tracks, that you would not have been able to see
2 the vehicles on the other side of the tracks?

3 Do you understand what I'm saying?

4 A I understand what you're saying but I
5 could not tell you for sure.

6 Q Okay.

7 A Is it possible, yes.

8 Q Okay.

9 A But I was really not looking for that
10 issue.

11 Q Okay then. I guess that was the
12 first time you had gone back to the scene and you
13 went back out there since then to make
14 measurements?

15 A Yes, to look at other issues about
16 the case and I did read the police officer's report
17 carefully as far as what the speeds were that he
18 came up with and I wanted to make sure that his
19 measurements, so to speak, as far as the drop from
20 the tracks to ground level on the westside of the
21 tracks were proper or not and those types of
22 things.

23 Q Did you find that this was proper or
24 improper?

25 A Well, I would say -- you know, I have

1 surveying equipment that I use which is a little
2 bit more accurate than what he was using but he
3 certainly was not off by a great deal than I was.

4 Q Okay.

5 A Maybe it was off 3 or 4 inches.

6 Q Okay.

7 A And being off by a 1'6" drop was not
8 really that bad, you know.

9 Q Okay.

10 A It's not going to change anything
11 anyway.

12 Q What type of equipment do they use?

13 A I think in his deposition, the
14 Officer indicated that he used a level and I think
15 he used some type of a regular level.

16 And what I actually have is a Clinometer which
17 they actually use in surveying and it's accuracy is
18 point zero-zero to an inch.

19 Q And do you get that equipment tested
20 frequently?

21 A Once a year I take it in to be
22 maintained or if it gets broken during the year,
23 it gets fixed which frequently happens.

24 Q Has this one been broken in the last
25 year?

1 A No.

2 Q And has it been tested for accuracy?

3 A Yes, but my surveyor handles all of
4 that.

5 Q Okay. Do you have those documents if
6 we need to look at them?

7 Could you provide them to us?

8 A Oh, sure. I could bring the
9 equipment in and you could certainly look at that,
10 if you want.

11 Q Okay. How does your fee structure
12 work with respect to being retained on a case?

13 A I charge a fee of \$150.00 dollars
14 which is a retainer and then I bill \$125.00 dollars
15 per hour for work that I do and I bill out \$175.00
16 dollars per hour for Court testimony and for
17 deposition testimony -- although you guys do not
18 pay that amount.

19 Q Okay. So you get \$150.00 dollar
20 retainer up-front?

21 A Yes.

22 Q And after that, you have an hourly
23 fee which would encompass any outside-of-court work
24 that you do on the case?

25 A Right.

1 Q And there is a different hourly fee
2 that encompasses for you to testify in Court or to
3 give a deposition?

4 A Yes.

5 Q How many hours to date would you say
6 that you worked on the case?

7 A Twenty-three hours.

8 Q When you get a case like this, you
9 were asked to do some accident reconstruction work
10 and speed reconstruction. But do you have a goal
11 in mind when you first start a case like this?

12 In other words, what do think about when you
13 first got the case?

14 A Well, what do I think about when I
15 first get it?

16 Q Right.

17 A I want to read all of the material to
18 see number one, if I can come up with a a speed if
19 I feel that I have the information to do that and
20 then, I do that by reading everything that the
21 police officers have put in their reports and then
22 at some point I want to look at the vehicles, if
23 they are available, and I want to read depositions
24 when they come in and I speak to the attorney one
25 or two times during the case. Also, at some point,

1 I make a determination and give the attorney what
2 my opinion of the case is and then generally, at
3 some point, I give a deposition and then at some
4 point before trial I'll sit down with the attorney
5 and we'll decide what exhibits he or I may wish to
6 use providing what the client can afford and I can
7 create the exhibits of what they actually want to
8 use.

9 Q Uhm-uhm. Have you reached a
10 conclusion or an opinion with respect to this case?

11 A Yes.

12 Q And were the conclusions or opinions
13 that you were asked to make, were they conclusions
14 or opinions that were asked of you to make? And
15 what I mean is, they asked you to make an accident
16 reconstruction and to look at the speeds, right?

17 A Right.

18 Q But did you reach those opinions and
19 conclusions on those things?

20 A Correct, I did.

21 Q Were you satisfied with your
22 thoroughness with what you put in?

23 A That's a tough answer to give because
24 I'm always willing to look at whatever information
25 is provided to me right up until the moment I