

In the Matter Of:
STATE OF FL vs SEYMOUR

15-000210CF

RICK SWOPE, PH.D

April 18, 2019



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1 IN THE CIRCUIT COURT OF THE TWENTIETH
2 JUDICIAL CIRCUIT IN AND FOR
3 LEE COUNTY, FLORIDA

4 CASE NO: 15-000210CF

5 STATE OF FLORIDA,

6 Plaintiff,

7 vs.

8 KIEREEK LEMWELL SEYMOUR,

9 Defendant.
10
11 _____/

12
13 VIDEO CONFERENCE DEPOSITION OF
14 RICK SWOPE, Ph.D.

15 TAKEN ON BEHALF OF THE PLAINTIFF

16
17 Thursday, April 18, 2019

18
19 12:25 p.m. - 1:22 p.m.

20
21 515 East Las Olas Boulevard
22 Suite 1300
23 Fort Lauderdale, Florida

24 Lynn Cantin, RMR, CRR
25

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22 ALSO PRESENT:

23 Gary Lewis, Investigator
24 Trooper John Benton
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DIRECT EXAMINATION
BY MS. MARZANO

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DEPOSITION OF RICK SWOPE

Thursday, April 18, 2019

RICK SWOPE, Ph.D.

having been first duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MS. MARZANO:

Q. I know that you've given many depositions over the years, sir, you don't need to be reminded about how a deposition works, correct?

A. Correct.

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

A. My name is Rick A. Swope, S-W-O-P as in "Paul" "E."

Q. All right. You may not remember, but I think I had you as a witness more than one time back in my misdemeanor days, which was a while ago, so I do know a little bit about your history.

I would like to ask you, what is your Master of science in? Exactly, what is that degree?

A. It's a dual degree from University of Miami, it's in the School of Business and the School of Engineering, it's a dual degree.

Q. Okay. And that's -- part of it is considered to be part of technology?

1 A. Yep.

2 Q. Okay. And when you indicate "technology,"
3 what aspect of technology were you -- was your Master
4 about?

5 A. Computer sciences and engineering and
6 industrial.

7 Q. Engineering is a big field. So, explain to
8 me what part of engineering that would be.

9 A. I just explained it to you. Engineering,
10 it's industrial engineering and technological
11 engineering, which is sciences.

12 Q. So, it's industrial and technological
13 engineering?

14 A. Correct.

15 Q. Okay. You know, I mean, there's a lot of
16 different kinds of engineering.

17 A. You're correct.

18 Q. Okay. And did you do a Master thesis in
19 order to obtain this Master's degree?

20 A. I did, except in the engineering school I
21 went to at the time, we did 12 separate papers. So,
22 there was no thesis; the thesis I did for my Ph.D., I
23 did not do a thesis for the Master's. I did 12
24 individual papers, research projects based on each
25 course.

1 Q. Okay. And what were those 12 papers?

2 A. Well, I don't remember all 12 of them. I
3 remember one was on collision data recorders; one was on
4 accident reconstruction dealing with linear momentum;
5 one was on safety engineering at construction zones; one
6 was management of traffic, which would be MOT from the
7 Florida Department of Transportation; the other ones I
8 don't remember without looking them up. Those are the
9 ones that just come to mind.

10 Q. When you talk about "collision data
11 recorder," you're talking about what many people
12 typically call EDRs or event data recorders?

13 A. Yes. Yeah, but mine, I did two separate
14 ones, one focused on cars and one focused on trucks.

15 Q. Okay. And these would be early versions of
16 these -- of those type of -- the type of technology,
17 correct?

18 A. Yes, correct. They were some of the first
19 versions; however, the truck -- the trucks were sort
20 of -- you know, trucks had been doing it long before
21 cars.

22 Q. Sure, because they're commercial vehicles and
23 they were differently regulated.

24 A. Well, the -- yeah.

25 Q. Talk to me about your accident

1 reconstruction, I think you said a paper on linear
2 momentum?

3 A. Correct.

4 Q. Okay. Tell me what you wrote about.

5 A. I dealt with basically the individual paper,
6 I dealt with conservation of momentum, it dealt with two
7 different types of momentum calculations. One dealt
8 with the 360-degree method, which basically is the one
9 that's normally taught to officers; the other one dealt
10 with quadrants doing momentum in different quadrants.
11 There are four quadrants, that's what used to be taught
12 initially.

13 So, I did both papers on that. I did
14 examples of crash testing based on the reliability of
15 linear momentum. I also did -- one of the papers
16 correlated with crash data from the National Highway
17 Traffic Safety Administration where they do a particular
18 crash test involving motor vehicles.

19 Also, it did -- I did use crash test data
20 based on crash testing I had done myself at Broward
21 Community College in teaching students advanced traffic
22 homicide as well as advanced reconstruction. Those
23 papers were used with data from there as well as the
24 Florida Highway Patrol, Miami Police Department - Metro
25 Dade, I should say - Broward Sheriff's Office, crash

1 testing at the Southern Police Institute, and, also,
2 some crash testing with Doctor Rudy Limpert from Utah.

3 So, it was a combination of crash testing
4 data that was put together and formulas that were used
5 at the college as well as papers and outlines I used for
6 the Florida Department of Law Enforcement in teaching
7 throughout Florida and throughout the country.

8 Q. Okay. So, for a portion of your Masters's
9 program that you were working, you were employed as a
10 law enforcement officer; isn't that right?

11 A. No, you're wrong.

12 Q. You were completely out of your employment as
13 a certified law enforcement officer at the time you got
14 your Master's degree?

15 A. I didn't -- you -- that's a different
16 question. You're asking me now was I certified; the
17 first question was, was I in law enforcement.

18 Q. No, no, no. I'm asking you, when you were
19 taking the courses to obtain your Master's degree and
20 you were -- you were -- you just talked about teaching
21 and various things like that, were you employed as a
22 certified law enforcement officer at that time with the
23 Broward County Sheriff's Office?

24 A. No.

25 Q. Okay. So when -- I believe you left the

1 Broward County Sheriff's Office in 1990; when did you
2 begin getting -- taking courses towards your Master's?

3 A. January of 1994.

4 Q. Okay. Okay. So, four years after you left
5 the Broward Sheriff's Office is when you did that?

6 A. Approximately, correct.

7 Q. Okay.

8 A. I was teaching for the police academy, but I
9 wasn't -- and I believe I kept my certification until
10 '97.

11 Q. Okay.

12 A. At that time, you were allowed to keep your
13 certification, I forget what the requirements were, but
14 I believe you had to take some kind of training every
15 year, but you did not have to be active law enforcement
16 to keep your certification. That changed around '96 or
17 '97.

18 Q. Okay. And when you say the 360-degree method
19 of doing conservation of linear momentum versus the
20 quadrant section, are you saying that quadrant was what
21 was originally used and then the 360 degree was what was
22 used later?

23 A. Yes. Initially, officers were taught the
24 quadrant method up until probably -- I'm sort of
25 guessing, but I would say until maybe 1986 or '87.

1 Prior to that, it was all quadrant methods, again, I'm
2 probably sort of little hazy on the dates, but normally,
3 the counterclockwise and the 360-degree momentum
4 became - I don't want to say "popular" - but it became
5 used more probably in the mid '80s maybe, I'm not sure
6 exactly, but somewhere around there.

7 Q. Okay. And to your knowledge, is the
8 360-degree method the method that's still used today?

9 A. Yes, that is correct.

10 Q. And if you're doing accident reconstruction,
11 is that the method that you use when using conservation
12 of linear momentum?

13 A. It is.

14 Q. All right. Now, you went on and you got from
15 California Coast University in Santa Ana what you call a
16 Ph.D. in engineering management; is that right?

17 A. I don't call it that; that's what they call
18 it.

19 Q. Okay. And you received that degree in May of
20 2017; is that right?

21 A. That is correct.

22 Q. And that is a university that exists with
23 absolutely no actual physical facility at which
24 students, you know, are taught?

25 A. That is not -- that is not correct.

1 Q. Okay. Where is the university located?

2 A. You already said, Santa Ana, California.

3 Q. So, there's a school in Santa Ana,
4 California; is that right?

5 A. Well, I went there and it said "California
6 Coast," I went there for my Ph.D. requirements, I did my
7 boards there, I went there for a couple of different
8 training cycles during my 11 years in getting my Ph.D.
9 So, unless it was a fake building with fake professors
10 and fake rooms, then I guess they fooled me.

11 Q. Most of the work you did on your Ph.D. was
12 done online or -- done online, correct? Or no.

13 A. No. My communication was online, I didn't do
14 any work online. I received textbooks, it's an
15 accredited school, which is why I went there, I could
16 not find the program I was looking for at that time
17 anywhere in the country.

18 Now, most colleges provide that type of
19 service, but when I started the Ph.D. program, and I
20 believe it was maybe 2009, I'm not sure exactly -- no, I
21 started actually earlier, there was only a few
22 accredited places in the country that you could do it
23 without physically going to the class.

24 So, I took nothing online except
25 communications with my professor, I had two different

1 assigned professors, and then I had an assigned Ph.D.
2 who worked with me on my -- on my paper. Each class --

3 Q. And that is --

4 A. -- each class was individually performed, the
5 tests were sent to me where I provided the test answers,
6 obviously, and were sent back to the university, and I
7 think there were -- I forget how many classes, nine -- I
8 think there was eight or nine classes plus my paper, I'm
9 not sure exactly, but something like that.

10 Q. Paper on?

11 A. My paper was on traffic control
12 signalization. Primarily, it dealt with the
13 three-signal phase and the timing of the yellow lights
14 as well as traffic control at certain intersections that
15 were studied as well as the timing of the yellow lights
16 and the traffic control signal. That's what my paper
17 was on and it was published.

18 Q. Okay. You've had a degree in engineering
19 management; how does that differ from a degree in
20 engineering?

21 A. I don't know, you'd have to tell me. It is
22 an engineering degree, it's in managerial engineering,
23 but my paper --

24 Q. Okay. But what is --

25 A. -- my paper dealt with industrial and mine

1 dealt with safety, which is -- mine was more of a safety
2 engineering in traffic, that's what I took the courses
3 for and that's what my paper was on. So, basically, in
4 this particular class, you sort of choose the path that
5 you want to go on and that's the path I chose.

6 Q. Then why isn't it called a degree in
7 industrial engineering?

8 A. You'd have to ask them.

9 Q. Do you have an actual document from them that
10 indicates that that's the degree you received? Is that
11 what they call it?

12 A. What degree are you referring to? I
13 indicated on my education -- on my curriculum what it
14 is. It's a Ph.D. --

15 Q. A Ph --

16 A. -- in engineering management, that's what the
17 school calls it, just like the University of Miami calls
18 it the Management of Technology degree from the School
19 of Business and Engineering. I don't provide --

20 Q. So you're not -- okay. Sorry. You're not a
21 professional engineer, are you?

22 A. I'm not sure what you mean by -- am I a P.E.?
23 No.

24 Q. Yeah, are you a P.E.?

25 A. No, I do not do P.E. work. P.E. is a

1 separate type of engineering, I'm not an electrical
2 engineer, I don't dig ditches as an engineer --

3 Q. I didn't ask that, sir. I asked you if you
4 were a P.E., which is a professional engineer, and it
5 would include, for example -- I know they do accident
6 reconstruction as part of their work, they are licensed
7 professional engineers; so you are not one, is that
8 right?

9 A. I am not a P.E.

10 Q. Okay.

11 A. That has nothing to do with accident
12 reconstruction. So, I'm not sure where you're going
13 with that. But --

14 Q. Okay. Well, I'm just asking --

15 A. Yes. I'm just telling you, it has nothing to
16 do with accident reconstruction, P.E.s do not do that
17 kind of work unless that's a field that they want to go
18 into. There is no "P.E." in accident reconstruction. A
19 P.E. is for a different type of engineer that signs
20 official documents, does plans, things like that, that's
21 what a P.E. is.

22 Q. Well, sir, I don't know that I agree with
23 that, but, okay.

24 A. Well, you don't have to agree with it, I'm
25 not interested in you agreeing with it. I'm telling you

1 what it is because my daughter is a P.E., so, I know
2 exactly what they do, and that's why I have her on
3 staff.

4 Q. Mr. Swope, you don't have to be rude, it's
5 not necessary.

6 MR. ADRIEN: Objection, argumentative. He's
7 not being rude; he's responding to your continual
8 question as to what a "P.E." is.

9 MS. MARZANO: Sir, Mr. Adrien, he is being
10 rude.

11 MR. ADRIEN: I disagree with that. If you
12 will just accept his answer instead of arguing
13 with him, we won't have a problem.

14 MS. MARZANO: That's fine, Mr. Adrien, thank
15 you very much. It's my turn to take the
16 deposition.

17 BY MS. MARZANO:

18 Q. Are you a certified accident
19 reconstructionist?

20 A. Yes.

21 Q. Who are you certified by?

22 A. Florida Department of Law Enforcement; I'm
23 certified by the National Highway Traffic Safety
24 Administration; the Department of Transportation; those
25 are to name a few.

1 Q. When exactly did you get your certification
2 from the Florida Department of Law Enforcement? Do you
3 have a document that indicates that?

4 A. You have my certificates, you can pull those
5 at any time.

6 Q. I don't have your certificates, sir.

7 A. Well, then you should have asked me for them
8 before the deposition.

9 Q. Sir, I did ask for everything. I asked for
10 reports, I asked for all sorts of things and I got
11 nothing. So that's --

12 A. Well --

13 Q. -- I can't help that.

14 A. Okay. Well, excuse me. First of all, let's
15 get the record straight. You have not asked me anything
16 for any part of my file nor did I receive a document
17 from you requesting that, so, let's be clear and let's
18 not mislead anybody that's reading this. You could have
19 sent me a subpoena at any time for documents; you did
20 not.

21 So, let's be accurate with what you're
22 saying. I know that's difficult sometimes, but let's be
23 accurate with what you're saying. You did not at any
24 point ask me for any documents at all. So, let's be
25 straight.

1 Q. Well, I asked counsel for them. So, that's
2 fine.

3 A. Well, excuse me, that's not what you said.

4 Q. Yes, it is, that is what I said.

5 A. No, you didn't. No, you didn't.

6 Q. You did not -- I'm not going to argue with
7 you about it, sir.

8 A. Well, of course, you don't want to argue
9 because I caught you in a false statement.

10 Q. Could you provide me, after this deposition,
11 your certificate from Florida Department of Law
12 Enforcement in accident reconstruction, please?

13 A. No, you can pull it yourself. I'm not going
14 to take -- you can pull it yourself.

15 THE COURT REPORTER: Wait. You guys are
16 talking at the same time and the record is not
17 being made.

18 BY MS. MARZANO:

19 Q. From where, sir? Where am I supposed to pull
20 that from?

21 A. I would think the Florida Department of Law
22 Enforcement.

23 Q. Okay. I will try to do that. All right.
24 What specifically were you hired to do in this case?

25 A. I was asked to look at this case and provide

1 any opinions that I thought necessary regarding an
2 accident reconstruction and I was basically asked to
3 look at the work on this particular case and see if I
4 could provide Mr. Richards with any opinion or analysis
5 in regards to this case.

6 Q. And when were you hired?

7 A. Hang on a second. I probably spoke with
8 Mr. Richards sometime at the end of February of 2019, I
9 received a court order on the 7th day of March, 2019,
10 authorizing certain fees on this case. So, I would -- I
11 would say that would probably be -- I guess if you want
12 to say official date.

13 Q. All right. And when did you open your office
14 in Atlanta?

15 A. I'm not sure, probably '93 maybe, '94,
16 somewhere in there.

17 Q. And how much money do you make as a
18 consultant a year?

19 A. That's none of your business.

20 Q. How much money do you make from defense work?

21 A. That's none of your business either.

22 Q. How much money do you make from doing work
23 for the State of Florida?

24 A. I'm not sure. Are you talking referring to
25 the JAC cases or cases that I'm working for the State?

1 Q. Cases in which you're working for the State.

2 A. I have no idea. I'm working two, I think,
3 JAC cases, and I'm working one case for the Dade State
4 Attorney's Office.

5 Q. What is that case name?

6 A. I don't know, I don't have it in front of me.

7 Q. When were you hired in that case? You said
8 the Miami-Dade -- Miami-Dade State Attorney's Office?

9 A. Correct.

10 Q. Okay. And who's the attorney that you're in
11 contact with?

12 A. I don't know, it just changed, I'm not sure
13 who the attorney is, but I believe -- the name just kind
14 of came to me now, I think it's Eismann, State vs.
15 Eismann. E-I-S-M-A-N-N, I believe, I'm not sure of the
16 first name, but I'm pretty sure the last name is
17 "Eismann."

18 Q. Okay. Thank you. And what are you doing for
19 the State in that case?

20 A. You know, you only have about 15 minutes, so
21 I would kind of get to the point. But, anyway, I'm
22 doing a reconstruction for them on a motor vehicle
23 fatality.

24 Q. Okay. In this particular case, what are your
25 opinions?

1 A. Well, what are you looking for?

2 Q. Your opinions. You said you were hired to
3 offer opinions about the accident reconstruction;
4 whatever opinions you have in regard to Mr. Seymour, I'm
5 trying to use my 15 minutes quickly.

6 A. Okay. Well, first of all, I'm not able to
7 make out -- there's a momentum calculation done by the
8 officer, I think it's Benton in the case, I'm not sure,
9 but I think it's his calculation. So, I was trying to
10 go back through the reports and figure out -- my
11 understanding is, unless I'm wrong, you can correct me.

12 My understanding is that the crash occurred
13 on May 18th; Corporal Benton became involved on May
14 21st; that there's no onsite photographs; the markings
15 and information contained in the field note packet,
16 which I believe is Page 4 of the field note packet,
17 you'll see that there's diagrams in the field note
18 packet, there's actually three diagrams, I have them
19 marked -- I have them marked -- well, if you want to
20 mark this exhibit or take it, I guess it's up to you
21 guys, but I have the exhibits marked as 1, 2 and 3 in
22 my -- in my packet.

23 And I attempted to follow different marks
24 such as the gouge marks from the Jeep to the final point
25 of rest, which, by the way, there is no final point of

1 rest listed in the police report anywhere. If you look
2 at the documents that I have -- and, again, I'm going to
3 refer to my markings, so when you look at these, you
4 know which ones I'm referring to.

5 If you look at what I have marked as Document
6 1 and 2, the cars are in different positions, that's
7 number one, at final rest; in other words, if you look
8 at Document 1 and 2, the vehicles are in a different
9 position. If you look at Document 3 --

10 Q. Excuse me, can you please hold up for the
11 camera which one you're referring to as Documents 1 and
12 2?

13 A. Okay. Can you see me?

14 Q. I can see you.

15 A. Okay. 'Cause I can't see you at all.

16 Q. Oh, I don't know why you can't see me.

17 A. I can't see you. But can you see this or do
18 I have to move closer?

19 Q. You know what, it has a number on it at the
20 bottom that indicates a discovery number; can you tell
21 me what that number is?

22 A. Number 1. You want me to get closer to the
23 camera or what?

24 Q. At the bottom on the right-hand corner, there
25 should be like a Number 30 or Number 29.

1 A. No, oh, this one, 0030. I'm sorry. I'm
2 sorry.

3 Q. Okay.

4 A. And Number 2 would be Bates Number 0031.

5 Q. And Number 3 would be what page?

6 A. 0005.

7 Q. Okay. Thank you. That helps.

8 A. All right. So, if you look at those -- those
9 first two, which I have as -- I guess I'll refer to as
10 0030 and 0031, see that the cars are facing -- the one
11 car listed as Number 1 is facing in a different
12 direction; I'm not sure on Number 2, which is 0031,
13 you'll see Vehicle Number 2 in the center of the road
14 past the point of collision -- I'm sorry, approaching;
15 and 0005, you'll see gouge marks and scuff marks and
16 fluid trails.

17 You'll see that the gouge mark, which
18 presumably for Vehicle 2, which is the Jeep, goes
19 completely off the roadway, but yet, the measurements
20 don't go there, that's number one. Number two is, if
21 you look at the fluid trail, there's tire marks that are
22 identified as the fluid trail and tire marks, and on my
23 Exhibit 5, which is -- these are police photos, I'm
24 holding this up.

25 Q. Yeah.

1 A. This is Number 5 and this is Number 6, I'm
2 sorry, this is Number 6. Number 5 has listed the AOC,
3 which is painted on here, and you'll see that fluid
4 trail goes off one way and comes back into the median
5 and the tire mark basically crosses.

6 So, number one is, you can't have a car doing
7 two different directions at one time. The fluid trail
8 is also a steady trail, meaning that there's no
9 spinning. My understanding is one of the witnesses or
10 someone referred to the car, the Jaguar, as spinning.

11 Q. Right.

12 A. I'm sorry?

13 Q. Yes.

14 A. Right. But, obviously, it can't be spinning
15 because the fluid trail is solid. There is no
16 spattering of the fluid trail, there's no indication of
17 rotation by tire marks, there's no indication of
18 anything other than the fluid mark from the point of
19 collision or what the officer has marked as the point of
20 collision to rest.

21 If you also look at Number 5, the tire mark
22 is also identified and they sort of have a line on it
23 here. Well, if this would be the fluid mark from the
24 car, the center mass of the car or whatever is leaking
25 from the car, I should say, not the center mass, but the

1 front fluid area, the tire mark crosses up at the
2 median.

3 So, in other words, you have two distinct
4 separate marks, they have nothing to do -- one of them
5 is from the accident, I don't know which one, I'm
6 assuming the fluid trail, but the tire mark has nothing
7 to do with the accident.

8 Now, why is that important? Because it
9 changes the direction of travel postcollision. So, in
10 other words, that changes the momentum calculation
11 postcollision and changes everything dramatically.

12 If you continue to look, and I'm trying to
13 give you everything at once here --

14 Q. All right. Well, I'd like to ask you a
15 question. What direction do you believe that the Jaguar
16 was at final rest?

17 A. Well, first of all, I don't know where final
18 rest is because it wasn't identified by measurements.

19 Q. Okay.

20 A. Number two --

21 Q. And, also --

22 A. Wait, wait, I'm not done. Wait, I'm not
23 done.

24 Q. Well, I have another question.

25 MR. ADRIEN: I'm going to object that you

1 interrupted the witness. The witness is trying
2 to answer you. You got to give him an
3 opportunity to answer.

4 MS. MARZANO: He isn't answering my question,
5 I would just like to have it --

6 MR. ADRIEN: Well, he's doing the best he can
7 to answer, but if you cut him off, then you're
8 not going to get anything done.

9 MS. MARZANO: Mr. Adrien, we're not going to
10 get anything done since you won't ever stop. Let
11 me take my --

12 MR. ADRIEN: Please, let the witness finish
13 his answer is all I'm asking.

14 MS. MARZANO: I'll let him finish, I have a
15 clarification question, which I would like to ask
16 him. It's my depo.

17 MR. ADRIEN: Are you withdrawing the other
18 question that you were asking?

19 MS. MARZANO: Mr. Adrien, if you're going to
20 do, this I'm going to move to exclude him,
21 period, because I am tired --

22 MR. ADRIEN: You can move to exclude him but
23 I'm trying to get a clarification as to what
24 exactly --

25 MS. MARZANO: That's fine. If you want to

1 ask him a question, you can do that when I'm
2 done.

3 BY MS. MARZANO:

4 Q. All right. Listen, my question is, in what
5 direction do you have that Jaguar going post impact?

6 A. I have it in the direction that the fluid
7 trail goes from the point of collision, I'm following
8 the fluid trail, which, I believe, came from the Jaguar
9 to the median. So, do I have it in the general
10 direction as the officer? Yes. I'm just identifying
11 that the fluid trail is more likely to be from the car
12 than the tire mark that I identified earlier.

13 So, the officer identified both of those
14 marks, but both of them cannot be from the collision.
15 One of them would have to be from the collision, I'm
16 making the assumption, based on the information I have,
17 that it's the fluid trail from the Jaguar to the median.

18 Q. Do you have the Jaguar at final rest facing
19 east or west?

20 A. I believe it would be facing towards the
21 northeast; however, again, the diagrams show me two
22 different things.

23 Q. Whose diagram --

24 A. The diagram --

25 Q. Sorry, sir. Are you referring to 1, 2 or 3

1 that you were referring to earlier, those diagrams?

2 A. Yes.

3 Q. All right. Thank you.

4 A. But, again, I don't know which way because I
5 don't know what final rest is.

6 Q. So you didn't consider any of the witnesses'
7 testimony in regard to what -- where final rest was?

8 A. Why would I consider witness testimony when I
9 have physical evidence? I do not consider witnesses,
10 that's -- it's an attorney issue, it's not mine. I try
11 to use physical evidence and make determinations.

12 Q. I'm referring to, for example, the trooper
13 who was there that night and actually saw it, where
14 final rest was; do you consider that?

15 A. Well, no, because we have two different
16 diagrams and we have two different sets of measurements,
17 or what I consider to be different measurements, as to
18 where the car was. I don't believe that -- in other
19 words, if the officer that was there that night was
20 completely aware of where it was, then why wasn't the
21 final rest measurements listed in the homicide diagram?

22 So, in other words, to answer your question,
23 no, that officer never must have relayed that to
24 Corporal Benton because final rest is not listed in his
25 report.

1 Q. Okay. So, your opinion is that you think
2 that the officer was incorrect about the tire and the
3 direction of the Jaguar post impact, correct?

4 A. I didn't say anything about the direction; I
5 said that only one of the marks that he identified out
6 of the two would be correct. I think the fluid trail is
7 most likely the correct one, not the other tire mark.

8 Q. Okay. I find that interesting 'cause the
9 last witness that was hired by defense said that fluid
10 mark didn't come from -- from the area of impact, but --

11 MR. ADRIEN: Objection as to the comment and
12 as to the witness being asked as to what some
13 other witness he doesn't know about said.

14 MS. MARZANO: I'm not asking him, I'm just
15 making a statement.

16 MR. ADRIEN: And I object to the statement.

17 BY MS. MARZANO:

18 Q. Were you able to calculate the speeds of
19 either vehicle?

20 A. No.

21 Q. Not at all?

22 A. Well, when you say "not at all," I attempted
23 to calculate, but first of all, I don't have -- the
24 measurements are off, the point of collision -- I'm
25 sorry, the point of rest is off, and --

1 Q. Sir, you said that the measurements are off;
2 is that right?

3 A. Would you like me to continue my answer or do
4 you want to cut me off again?

5 Q. The question -- you said the measurements are
6 off; are you saying the measurements that the officers
7 have taken are incorrect?

8 A. That's correct --

9 Q. Okay. And --

10 A. -- I cannot -- I cannot -- I cannot match up
11 the measurements with the areas on the photographs that
12 are listed; in other words, nothing comes out correct.
13 If I look --

14 Q. Okay. And are you talking about the
15 photographs that were provided to us in discovery? I
16 think there's about 50, 60 photographs that were taken
17 at the end of March?

18 A. I don't know the dates they were taken, but
19 they were taken by the officers.

20 Q. No. Did you take photographs --

21 A. Yes, I took --

22 Q. -- of that?

23 A. Yes, I took photographs, yes, but I'm not
24 using my photographs, I'm using the officers'.

25 Q. Your using the officers' photographs?

1 A. Of course I am. Why would I use mine?

2 Q. Well, I don't know, that's why I'm asking.

3 A. No, I use the officers' photographs that were
4 provided to me in discovery.

5 Q. So why did you take photos?

6 A. Generally, just to identify the area, to
7 indicate that I had been there, to indicate any changes
8 that there may or may not have been at the intersection.
9 That's pretty much why I took it, same thing as I took a
10 video.

11 Q. You took a video? Really? We haven't been
12 provided the video.

13 A. Yep.

14 Q. Did you write any reports?

15 A. No, I wrote notes to myself, which I have
16 here.

17 Q. Have you written any E-mails with your
18 opinion in it?

19 A. No.

20 Q. Do you have any E-mails, notes, records in
21 regard to your analysis of this traffic crash?

22 A. Yes, I have a bunch of notes, which are typed
23 out; I also have some information I pulled from
24 Department of Transportation involving crash test data,
25 I have that --

1 Q. In regard -- what kind of vehicles or from
2 what data did you pull?

3 A. Well, what I pulled the vehicles for, when I
4 determined that the momentum calculation was completely
5 wrong by the officer, which it isn't even close, by the
6 way, I pulled some information to look at the crash test
7 data to find out what kind of damage I would see at
8 certain levels of crash testing.

9 So, I wanted to see -- well, first of all, I
10 think the officer has impact at 61. So, what I wanted
11 to do was, I pulled the crash test data to find out,
12 number one, is what would the front of a Jaguar look
13 like at that type of speed; and number two is, what
14 would a Jeep Cherokee look like on a side impact if it
15 was hit near that speed.

16 So, I pulled that and I tried to compare it
17 to the photos, I did not do photogrammetry at this point
18 because I haven't asked Mr. Richards if the Court will
19 approve that because that'd probably cost about 2- or
20 \$3,000.

21 Q. Yeah, I don't think that's happening, we have
22 trial starting on Monday.

23 So, you are saying that you looked at crash
24 data -- that crash data is the type of crashes that are
25 set up by the National Highway Transportation Safety

1 Administration or car manufacturers to test their
2 vehicles?

3 A. The ones I used are from the federal
4 government. They're from the USDOT, they have file and
5 report numbers on, they have all the information
6 associated with each individual crash tests, that data
7 is usually pretty easily obtainable, but I do have the
8 crash test numbers.

9 Q. All right. Can I have the crash test
10 numbers?

11 A. Sure.

12 Q. Yes. Thank you.

13 A. Sure. The first one I did is, it's -- every
14 test, by the way, is highlighted as NCAP, which is "N"
15 as in "Nancy," "C" as in "Paul" (verbatim), "A" as in
16 "Apple," "P" as in "Paul." NCAP.

17 Q. Okay. Got it.

18 A. This test number is 2001-008; the other
19 test -- the other test is 214 "D" as in "David," "M" as
20 in "Mary," "G" as in "George," "A" as in "Apple," 99-13.
21 Those are the two -- I pulled a bunch of tests, but
22 these were the two which I thought were probably the --
23 the best representative ones of what we see. Frontal --

24 Q. How is the momentum calculation completely
25 wrong? Specify exactly what is wrong with it.

1 A. First of all, there's no way to tell approach
2 and departure angles based on the information that I
3 have; so, in other words, if the fluid trail is correct,
4 that changes the departure angle of both vehicles; if
5 the tire mark is correct, that changes the departure
6 angles of both vehicles.

7 So, in other words, there's two different
8 things: One is -- which we didn't get into because I
9 think there was -- whatever, but, if you look at one of
10 the photos I pointed out to earlier, there are gouge
11 marks -- let me just see if I got the photo here.

12 If you look at 0005, you'll see that in the
13 field sketch diagram, there's a gouge mark which goes
14 completely off the road onto the swale area; if you look
15 at Photograph Number 3A, which I'm pulling up here,
16 you'll see that I tracked in blue the gouge mark, which
17 occurred -- which the officer identified because it's on
18 that field sketch diagram, which goes off the road and
19 it goes to the sidewalk to, I guess, would that be west
20 of the cones, which are in this --

21 Q. All right. Did --

22 A. I'm sorry.

23 Q. I'm sorry. Were you finished?

24 A. Well, I was trying to point out that if you
25 look at the cones that are on this diagram -- I'm sorry,

1 on this photograph, you'll see that the gouge mark ends
2 up way west, about 26 to 28 feet west of these cones.

3 Now, hang on --

4 Q. Well, what do those cones mean to you?

5 A. Well, I'm getting -- I was getting to that --

6 Q. Oh.

7 A. -- so, give me a second.

8 If you look at what I have marked as 3C as in
9 "Charlie" and 3D, I have two of them marked, if you look
10 at both of these photographs, these are fluid trails,
11 which are identified in the police diagram -- I'm sorry,
12 in the police measurements and diagram, which come right
13 to the direction of the cones; in fact, it's painted --
14 you see tire marks in 3D, you see the tire marks, which
15 are identified in the police diagram as well as one of
16 the measurements, which go up onto the sidewalk and over
17 into where these cones are, so -- but the gouge mark,
18 which is identified by measurement, comes further west
19 of that. So, the tire -- the car isn't that wide, the
20 car -- or long, the car is not 40-feet wide or 40-feet
21 long.

22 So, in other words, if you're identifying
23 both of these marks, then when you leave the scene of
24 departure, both -- you can only use one. So, which is
25 it? Is it the gouge mark from the point of departure

1 that you're using or is it going to be the tire mark,
2 which you've identified, or I should say, the police
3 identified going up onto the sidewalk into this sort
4 of -- I don't know if the cones are there for a
5 particular reason, for this case or not, but, obviously,
6 this is where it was identified.

7 So, basically, you have two points of
8 departure for the Jeep: You have one where the gouge
9 mark comes further west, and then you have one where it
10 comes further east, and, again, that's based on
11 photographs and measurements.

12 So, neither measurement marks identifies
13 where that location is at, and, again, we don't have a
14 final rest position.

15 Q. Well, okay. That's your position that we
16 don't have final rest. But, okay. That's fine.

17 A. Well, was that a question or is that a
18 statement?

19 Q. It wasn't a question. What specific tire
20 marks are you referring to and tell me where they are
21 measured onto the sidewalk?

22 A. They're measured on the field sketch diagram,
23 which indicates there's a start -- Number 11 is the
24 start of the gouge mark at one twenty-six three, then
25 you have continuation of gouge mark at 137, and then you

1 have continuation of the fluid trail. Well, 137 and
2 147, which would be Measurement 16 and 17 on 0005 do not
3 comport to the same area; in other words, you either
4 have a fluid trail mark or you have a gouge mark,
5 they're not separated by that distance.

6 Then, you have a continuation of the gouge
7 mark and then you have a continuation of the fluid
8 trail. Well, but the fluid trail shows clearly on the
9 sidewalk where it comes up over the curb and onto
10 that -- I'll say the coned area to make it easy. But
11 the gouge mark is well down the road, those two
12 measurements don't correlate, they're totally different.

13 So, you either have a gouge mark or a fluid
14 trail, and, again, that's a misrepresentation of what we
15 see for the marks. The marks don't even make sense.
16 One of them is from the accident and one is not. But
17 unfortunately, we don't have a final rest point measured
18 other than maybe somebody said verbally, but there's no
19 final rest point measured. And then, of course, we have
20 a continuation of the gouge and then we have the -- the
21 end gouge, which is to the west of those cones.

22 Q. Any other opinions that you have? What else
23 are you going to testify to?

24 A. Well, I'm looking right now.

25 MR. ADRIEN: Just for the record, I object as

1 to the open-ended question as to whatever you're
2 going to say. If counsel wants to ask a specific
3 question --

4 MS. MARZANO: Mr. Adrien, you object to me
5 asking leading questions; then you object --

6 MR. ADRIEN: Well, I --

7 MS. MARZANO: -- open-ended questions, I can
8 ask whatever question I want, this is --

9 MR. ADRIEN: I agree, and I can make whatever
10 objection I want to. My objection is, you're
11 leaving it open so that in trial you can say, oh,
12 but you didn't say "yes," but you didn't ask the
13 question.

14 MS. MARZANO: Fine.

15 MR. ADRIEN: If you want a specific question
16 answered, ask it.

17 MS. MARZANO: I did, I asked the question I
18 would like answered: What other opinions and
19 what else is he going to testify to. It
20 shouldn't be that complicated.

21 MR. ADRIEN: You have to let him know what
22 you want.

23 MS. MARZANO: All right. Mr. Adrien, that's
24 what I'm asking. It's a very specific question,
25 actually.

1 MR. ADRIEN: I disagree.

2 MS. MARZANO: That's fine, you can disagree
3 all you'd like.

4 THE WITNESS: Well, I can tell you a couple
5 things I plan on doing to make it easy. One is
6 the -- the two report numbers I gave you from
7 NHTSA, I intend -- I intend to take photographs
8 from those crash tests and place them alongside
9 photographs that FHP took pertaining to the
10 damage to the front of the Jaguar.

11 So, in other words, I'm going to take a
12 picture from, like, your office, let's say, of
13 the damage and put it up against the damage of
14 the NHTSA report, I'm going to do that with both
15 vehicles, 'cause that's going to show an impact
16 speed in my mind much less than what was
17 calculated.

18 BY MS. MARZANO:

19 Q. Okay.

20 A. That's one thing I'm going to do.

21 Q. Okay. What else?

22 A. I wanted to -- I have not got the report yet
23 on the DNA result for the air bags.

24 Q. Well, guess what? Mr. -- your -- the client,
25 Mr. Seymour, his DNA is on both air bags, sir.

1 A. Right.

2 MR. ADRIEN: Hold on. I'm objecting to that;
3 did you provide the result of the DNA to us?

4 MS. MARZANO: Yes, I did, in discovery,
5 you've gotten them.

6 THE WITNESS: Okay. I am -- my understanding
7 was they were on both of the air bags, I haven't
8 really spoken with the attorneys yet, I just
9 found that out, I think, maybe yesterday, that
10 apparently, it was on both air bags. I don't
11 know --

12 BY MS. MARZANO:

13 Q. How did you -- I thought Mr. Adrien's saying
14 I didn't give it them, which I did give it to them --

15 MR. ADRIEN: I was asking if you provided --
16 (Unreportable cross-talk.)

17 MR. RICHARDS: Hang on, everyone. For
18 clarification, Ms. Marzano did tender the results
19 of the DNA.

20 MS. MARZANO: Thank you very much,
21 Mr. Richards, I really do appreciate you saying
22 that because we did --

23 MR. RICHARDS: Let's move on, I wanted to
24 clarify another issue.

25 MS. MARZANO: I'm not done yet, you're not

1 clarifying. I'm not done yet.

2 MR. RICHARDS: Ask your question.

3 BY MS. MARZANO:

4 Q. Mr. Swope, go ahead and clarify.

5 A. I think that's the only other thing that I
6 planned on doing was -- which if I would have it
7 available today, I would have gave it to you, but my
8 office is working on an overlay of the police
9 measurements on an aerial photograph as well as the
10 evidence that's on the -- I should say drawing, which is
11 on --

12 Q. I'm sorry, sir. What is the aerial
13 photograph that you plan on doing this with?

14 A. Whatever aerials we have from the scene that
15 was -- the aerials -- the photos --

16 Q. We have no aerials that were provided in
17 discovery.

18 A. Well, I have aerials that --

19 Q. And that's the question, when did you get --
20 what -- what point in time do these aerials purport to
21 be from?

22 A. I don't know what the date --

23 Q. Whatever aerial you're going to use, when was
24 it created?

25 A. I don't know when it was created, I have to

1 get you that date. All I know is, is that I asked my
2 office to look it up and pull the --

3 Q. Okay. Well, then I want the date of the
4 aerial that you plan on using.

5 A. Jesus, can I finish that answer?

6 Q. I'm just asking you for something you said
7 you don't have, I'm telling you, I would like to get
8 that.

9 A. Well, if you'd let me finish and answer one
10 time, maybe I would get that to you.

11 Q. Well, you -- you didn't, you just said you
12 didn't know. So, go ahead.

13 A. I said what I would do is find out from my
14 office staff when the aerial was taken, and if it's the
15 same time frame, that's what I would find out, I'll ask
16 my daughter when she obtained the aerial. She has them,
17 I don't know the date of it, but I will find out.

18 Q. Well, first of all, it's a problem because if
19 you intend to use it at trial, it's not been disclosed,
20 unlike the DNA evidence was disclosed, so, I need that,
21 I need that well in advance of trial, which I'm not
22 going to get, so I need it by first thing Monday
23 morning.

24 And anything else you intend to use at trial
25 that has not yet been provided in discovery?

1 A. Well, again, I don't have anything to do with
2 discovery. I provide -- you know, I provide information
3 based on when I'm asked for it --

4 Q. Well --

5 A. -- I was not asked for anything prior to the
6 deposition, at least I wasn't. I received a subpoena
7 from your office for the deposition, but there was no
8 request for any documents on there, but I would be
9 glad --

10 Q. Well, sir, I mean, again, I understand you
11 were not requested, but counsel was, and they have an
12 obligation under the rules of discovery to provide what
13 you're going to be using in your testimony.

14 So what else, if anything, besides the aerial
15 photograph and overlay are you going to be using?

16 MR. RICHARDS: By the way, hold on, let's
17 just be clear, we do not have that -- that aerial
18 photograph, unless it's one of the 64 pictures I
19 turned over to you.

20 MR. ADRIEN: We'll provide whatever he
21 provides to us.

22 MS. MARZANO: How nice.

23 MR. RICHARDS: For record clarification, on
24 April -- I have an E-mail that I just sent over
25 to Ms. Marzano from -- I think it's from the

1 office, I think it's some notes or something. I
2 said: For your information, I listed some items
3 for you to review -- this is Ian Richard
4 speaking -- for you to review or discuss with me
5 as soon as possible, I went ahead and I'm
6 providing that, I E-mailed you that and I'm
7 forwarding you any other items in terms of bills
8 from Mr. Swope.

9 MS. MARZANO: Okay. I don't see any E-mails
10 yet, but I'll look for it.

11 BY MS. MARZANO:

12 Q. Anything else you're going to use, sir?

13 A. Well, I'm obviously going to use the police
14 measurements, everything in the police report. I don't
15 know which of the police photographs I'll use, but I'm
16 certainly going to use some of them, I don't know how
17 many. I don't intend on using any of my photographs at
18 the scene, although I do intend on using the aerial
19 photographs I told you about.

20 I intend to overlay, like I said, the
21 measurements, which you already have, I just intend to
22 overlay them on an exhibit. I'm using 0005, which I'll
23 overlay on an exhibit, I'm probably going to PowerPoint
24 0030, 0031 and 0005.

25 I'm going to use the two NHTSA reports, I

1 have an example of vehicles -- I have three exhibits of
2 vehicles, of the Jaguar hitting the Jeep with a
3 different -- with the angle of approach and angle of
4 departure, I'll just probably use those as
5 demonstratives.

6 I have a printout of the officer's momentum
7 calculations, which were provided -- I'm sorry, I used
8 the information he had in the police report and put that
9 into the momentum program and printed that out so that I
10 would have a visual view of the -- the impulse and the
11 vector analysis of both vehicles at collision and post.

12 I printed out the officer's information that
13 he used, I don't know if I'm going to use that as an
14 exhibit, but I may. Obviously, I might use selected
15 pages of the police report, the traffic homicide report.

16 Q. Sir, have you looked at the scaled
17 reconstruction diagram?

18 A. No. Well, unless it was in the report, no, I
19 have -- I have the diagrams I indicated to you, I have
20 the field sketches, I have the measurements.

21 Q. I understand, but there are -- there is a --
22 I'm asking about the scaled reconstruction diagram.

23 Okay. Anything else that you're going to be
24 testifying to?

25 A. Well, first of all, I don't know that there's

1 a scaled diagram, I haven't seen one.

2 Q. You received a complete traffic homicide
3 report to your knowledge; is that right?

4 A. I did.

5 Q. Okay.

6 A. I did, but there's no scaled diagram in
7 there. I don't know if that was a supplement, but I
8 certainly don't have it.

9 Q. Well, I can't help what you have, I didn't
10 provide it to you, sir, but, okay. Does it have a table
11 of contents, the copies that you have?

12 A. Yep. Well, the copy I have in front of me,
13 no. But I'm sure that --

14 Q. Okay.

15 A. -- I'm sure it has a table of contents. I
16 think I might have the field note pack one, but not the
17 THI report.

18 Q. That wasn't provided to you?

19 A. Well, I have the THI report; I did not see
20 any scaled diagram.

21 Q. All right.

22 A. It doesn't mention anything in the report
23 about a scaled diagram.

24 MS. MARZANO: Okay. I really don't have
25 anything else I want to ask you.

1 I would like to have every single document
2 PowerPoints, photographs or piece of papers that
3 you intend to use and present to the jury at
4 trial, I need it before 9:00 on Monday morning,
5 and that's all I have, I'm done. So, I mean,
6 Mr. Adrien usually has a lot of things he needs
7 to talk about, but I'm waiting for him.

8 MR. ADRIEN: Well, one thing I would like to
9 just put on the record, I already had a chance
10 to, which is basically, you have asked all
11 open-ended questions, you have not asked specific
12 questions. So, if you're going to go into court
13 and say, oh, but you didn't say that, you
14 didn't --

15 MS. MARZANO: That's what a deposition is
16 for. So do you have any questions you want to
17 ask of your witness?

18 MR. RICHARDS: I think at this point,
19 we're going to end the deposition -- no, not
20 "we." If you wish to end the deposition, then
21 you can.

22 Would you like to ask any other questions?
23 This is Ian Richard, for the record.

24 MS. MARZANO: I don't have any other
25 questions, Ian. I'm asking you and Mr. Adrien,

1 do you have any questions you would like to ask
2 the witness. I'm done.

3 MR. RICHARDS: I do not have any questions at
4 this point, I don't believe Mr. Adrien has any
5 questions either.

6 MS. MARZANO: Okay.

7 MR. RICHARDS: Mr. Swope, if you want to, you
8 can what's called read or waive, you have the
9 option at your discretion as to whether or not
10 you'd like to read the deposition.

11 THE WITNESS: I'll read.

12 MS. MARZANO: Ma'am, I'm ordering this
13 expedited and I need it by end of business day
14 Monday.

15 THE COURT REPORTER: Okay.

16 Mr. Richards, do you want a copy?

17 MR. RICHARDS: Madam Court Reporter, we're
18 trying to get permission from the Court for a
19 copy of this deposition, and, therefore, my best
20 answer to you is, can we have your telephone
21 number so we can figure it out.

22 (Discussion held off the record.)

23 (Witness excused.)

24 (Deposition was concluded at 1:22 p.m.)

25

DEPOSITION ERRATA SHEET

Assignment no: J3994282

State of Florida

vs.

Kiereek Lemwell Seymour

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the entire transcript of my deposition/examination under oath taken in the captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

Signed on the _____ day of _____,
2019.

Rick Swope, Ph.D.

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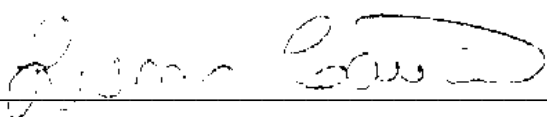
C E R T I F I C A T E O F O A T H

STATE OF FLORIDA)

COUNTY OF BROWARD)

I, the undersigned authority and Notary Public certify that Rick Swope, Ph.D., personally appeared before me and was duly sworn on April 18th, 2019.

Sworn to before me this 19th day of April, 2019.



Lynn Cantin, RMR, CRR
Notary Public - State of Florida
My Commission No. GG 207789
My Commission Expires 5/12/2022
J3994282

REPORTER'S CERTIFICATE


I, LYNN CANTIN, Registered Merit Reporter, Certified Realtime Reporter, and Notary Public in and for the State of Florida at Large, do hereby certify that I was authorized to and did report said deposition in stenotype; and that the foregoing pages are a true and correct transcription of my shorthand notes of said deposition.

I further certify that said deposition was taken at the time and place hereinabove set forth and that the taking of said deposition was commenced and completed as hereinabove set out.

I further certify that I am not an attorney or counsel of any of the parties, nor am I a relative or employee of any attorney or counsel of party connected with the action, nor am I financially interested in the action.

The foregoing certification of this transcript does not apply to any reproduction of the same by any means unless under the direct control and/or direction of the certifying reporter.

DATED this 19th day of April, 2019.



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J3994282

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22:6,15	1986	3	29:16	accept
33:12	9:25		61	15:12
36:2	1990	3	31:10	accident
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