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

STATE OF FLORIDA,
PLAINTIFF,
vs.
SCOTT MICHAEL
WILLIAMS,
DEFENDANT.

:
:
:
: CASE NO: 90-8057 CF
:
:
:
:
:
: FORT LAUDERDALE, FLORIDA
January 9, 1990
Wednesday, 2:40 p.m.

COPY

APPEARANCES:

OFFICE OF THE STATE ATTORNEY
By: HOWARD SCHEINBERG, ESQUIRE,
Appearing on behalf of the Plaintiff.

H. DOHN WILLIAMS, ESQUIRE,
Appearing on behalf of the Defendant.

DEPOSITION
OF
RICK SWOPE

I N D E X

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WITNESS

PAGE

RICK SWOPE

Direct Examination by Mr. Williams 3

E X H I B I T S

Defendant's Exhibit 1 for Identification
(Marked at the conclusion of the Deposition.)

1 Deposition of RICK SWOPE, a Witness
2 herein, taken pursuant to the Rules and Notice
3 heretofore filed before SHELA K. ELLIS, C.S.R.,
4 R.P.R, and Notary Public, State of Florida at
5 Large, at 110 Southeast 6th Street, Fort
6 Lauderdale, Broward County, Florida, on the 9th
7 day of January, 1990, commencing at 2:40 p.m..

8

9 Thereupon:

10

 RICK SWOPE

11 a Witness herein, appearing at the instance of
12 the Defendant and having been first duly sworn
13 by the court reporter and cautioned to tell the
14 truth of his knowledge as to the within
15 matters, was thereupon examined and testified
16 upon his oath as follows:

17

18

 DIRECT EXAMINATION

19 BY MR. WILLIAMS:

20

 Q Give my your full name, please.

21

 A It's Rick Swope, S-w-o-p-e.

22

 Q It's my understanding you have been

23

retained to testify as an expert in the case

24

the State of Florida versus Scott Williams?

25

 A Yes, sir.

1 Q Who retained you?

2 A I think I originally spoke with Ben
3 Farrington, then the case was given to Ed Tobin
4 and then Howard ended up with the case.

5 Q How did it come about that you were
6 contacted?

7 A I was just called up and contacted by
8 Mr. Farrington and I met with him.

9 Q Are you being compensated?

10 A Yes.

11 Q How was your compensation determined?

12 A I have a governmental rate that I
13 charge the public defender's or state
14 attorney's office, it's 75 dollars an hour. I
15 charge the same rate for the state depositions,
16 whatever, and I charge 20 cents a mile, and
17 then any miscellaneous expenses, like
18 photography, anything like that.

19 Q How many hours have you put in so far?

20 A I believe on this case I put in
21 somewhere around 18 to 20 hours.

22 Q Do you have a curriculum vitae with you
23 and a business card?

24 A I don't have a business card, I have
25 this with my other information on it as well.

1 Q Have you ever testified as an expert
2 before?

3 A Yes, sir.

4 Q And how many times have you been
5 qualified as an expert?

6 A I have been qualified as an expert in
7 accident reconstruction in court, I believe,
8 about 14 times, or maybe 16 now, and I have
9 been qualified as a DUI expert about 18 or 20
10 times.

11 Q Let's start with accident
12 reconstruction. What courts have you been
13 qualified in as an expert?

14 A I have been qualified in Broward
15 Circuit Court and lower court, that's
16 misdemeanor court.

17 Q County Court?

18 A County Court, yes. I have been
19 qualified in Dade County Court.

20 Q Which court level?

21 A Circuit Court. I have also been
22 qualified in Palm Beach Circuit Court.

23 Q How many times in Dade County and how
24 many times in Palm Beach?

25 A Twice in Dade County. I believe four

1 times in Palm Beach. The rest of the times
2 would be in Broward.

3 Q All right. Now, can you tell me which
4 judges in Broward County have declared you an
5 expert?

6 A I believe I have been in front of Judge
7 Eade, E-a-d-e.

8 It's always hard to remember the
9 judges. Judge Sahe (phonetic).

10 Q Seay?

11 A Seay; I don't know if I'm saying his
12 name right.

13 I believe I have been in front of
14 Franza, as well.

15 Q Okay.

16 A I don't recall some of the others.

17 Q Who in Dade County? What judge in Dade
18 County?

19 A The Dade judge I don't recall. The
20 Palm Beach judge I do recall.

21 Q Who?

22 A Judge Miller.

23 Q The times you testified, you said,
24 what, approximately 16 times you have been
25 qualified as an expert, how many of those cases

1 were criminal cases and how many were civil
2 cases?

3 A I believe it's roughly in half. I
4 believe nine were criminal and eight were
5 civil.

6 Q Let's take the eight criminal cases.
7 The eight times you have been qualified as an
8 expert, how many times have you been testifying
9 where you were retained by the prosecution?

10 A I believe I have only testified for the
11 defense once. I have like several ongoing
12 cases now with the defense.

13 Q I'm actually talking about the times
14 you have been qualified, how many times have
15 you testified as an expert on behalf of a
16 defendant, been retained by a defendant in a
17 criminal case?

18 A One time.

19 Q What was the name of that case?

20 A I don't recall, I would have to dig
21 that out.

22 Q So, would it be fair to say, then, you
23 have testified as an expert in criminal cases,
24 as an accident reconstruction expert in
25 criminal cases seven times on behalf of the

1 prosecution or the state?

2 A Yes, sir.

3 Q Now, in the approximately eight civil
4 cases that you have testified as an expert, how
5 many of those cases have you testified as an
6 expert for the plaintiff?

7 A I believe six times.

8 Q Okay. And then the other two times you
9 would have testified as an expert for the
10 defendant in the civil case?

11 A Yes, sir.

12 Q Can you tell me the name of any
13 criminal case, the style of the case that you
14 have been qualified as an expert in?

15 A Yes. DUI manslaughter.

16 Q The style of the case, not the charge?
17 The style of the case; in other words, State
18 versus Jones or whoever?

19 A You mean the name of a suspect?

20 Q Yes.

21 A No. I remember all the current ones
22 I'm working.

23 Q Can you give me the names of any of the
24 civil cases that you have testified as an
25 expert, in other words, Althea Jones versus Joe

1 Now, can you tell me the style of any case,
2 whether it be Dade, Palm Beach or Broward
3 County, that you have testified as an expert?

4 A Yes. One would be Marilyn Smith versus --
5 that's a Palm Beach County case, Marilyn Smith
6 versus -- I'm not sure, but the attorney who
7 handled it was Howard Ehrlich.

8 Q Okay.

9 And was he the Plaintiff's attorney?

10 A Yes, sir.

11 Q And did you testify on behalf of the
12 plaintiff in the Marilyn Smith case?

13 A Yes, sir. That was plaintiff.

14 Q Now, you said you have testified as an
15 expert in the fields -- or a field other than
16 accident reconstruction?

17 A Yes, sir.

18 Q What other field have you been
19 recognized as an expert in?

20 A DUI, standard sobriety testing.

21 Q Meaning what?

22 A That means I'm qualified as an
23 instructor with the National Highway Traffic
24 Safety Administration and University of North
25 Florida in Jacksonville in administering

1 roadside tests. I train other officers.

2 I have been called in County Court,
3 basically to testify as to how officers are
4 trained in roadside sobriety testing. I have
5 also been called to testify in Federal Court
6 reference Broward Police Academy how recruits
7 are trained.

8 Q In what?

9 A Standard sobriety testing.

10 Q When you are talking about roadside
11 testing, are you referring to the performance
12 tests that officers administer to suspects at
13 the scene of the stop or on the side of the
14 road?

15 A The three standardized tests,
16 nationwide, that are used.

17 Q You're not referring to any mechanical
18 instrument such as a breathalyzer, anything
19 like that, are you?

20 A That would be correct.

21 Q Are you an expert in the field of
22 breathalizers?

23 A No, sir.

24 Q So, if I understand you correctly,
25 then, your field of expertise in terms of DUI

1 is the -- would be limited to the types of
2 tests that officers are trained to administer
3 to suspects at the scene of a stop?

4 A Yes, sir.

5 Q Now, you have been retained to testify
6 as an expert in this case. Can you tell me
7 each expert opinion that you intend to testify
8 to in this case?

9 A Yes, sir.

10 Q Okay.

11 A At this point, I will give you the
12 opinions that I have at this point. You want
13 me to list the opinions first?

14 Q Um-hmm.

15 A Number one would be, first, that an
16 accident occurred.

17 Q Go ahead.

18 A Number two, that the suspect in this
19 case, Mr. Williams, was, indeed, the driver of
20 the vehicle.

21 Q Okay.

22 A Number three, I'm going to testify as
23 to speeds such as impact speed, critical speed,
24 and I'm going to include distances in there,
25 such as the distance that the car traveled as

1 it slid across the median, those types of
2 things.

3 Q Okay.

4 A I will testify to it's my opinion that
5 there was no impact between the suspect vehicle
6 and the -- I will call it a phantom vehicle,
7 but allegedly black Datsun 280Z.

8 Q It was not a phantom vehicle, phantom
9 means that it did not exist.

10 A No, phantom is a non contact vehicle.

11 Q There was a black car at the scene
12 contemporaneous with this accident.

13 A It is still a phantom vehicle. By
14 state standard it is still a phantom. If
15 someone pulled out in front of you, you don't
16 hit them, you run into a tree, that is
17 considered a phantom vehicle even if it stops.

18 Maybe you didn't like that word, but
19 that is a word.

20 Q What else?

21 A Testify to any differences between my
22 report and the police report. And I will
23 testify as to my opinions based on the witness
24 statements as well.

25 Q Your what? Your opinions of what?

1 A I will testify to any opinions or
2 theories that I used from the witness
3 statements that correlate with mine or don't
4 correlate.

5 Q Go ahead.

6 A And I will basically be using the
7 police report, the homicide report, and the
8 state form accident report in my opinions.

9 Q You're not testifying, you're just
10 using that?

11 A I'm using information, but I am
12 advising you that I am using that.

13 Q We are going to get to that in a
14 minute, the next couple of hours that we are
15 here.

16 Let's go first with what opinion do you
17 intend to render concerning speed?

18 A Let me get to that.

19 Q First of all, have you prepared a
20 written report concerning this?

21 A No.

22 Q What then are you referring to?

23 A Well, I'm going to try to get to it
24 here. I'm going to look at the homicide
25 report.

1 Q And the homicide report that you are
2 referring to is the homicide report that was
3 prepared by the Fort Lauderdale Police
4 Department?

5 A Yes.

6 Q Specifically Faye Zullick?

7 A Yes, sir, and also the state form
8 accident report which was prepared by Jill
9 Brickman as well.

10 Q Okay. Which page are you referring to?
11 Where are you going?

12 A Referring to page 115, page 114, and
13 I'll be referring -- as we talk about this
14 particular question, I'll be referring to the
15 diagram sheets on pages 118, 119, and my page
16 is cut off, but I believe there is three or
17 four diagram pages.

18 Q Okay.

19 Do you have those, sir?

20 A I have two pages, 118, and 119, and the
21 next page is 120 which is a case summary form.

22 Q You are including the pages, let me see --

23 A I'm including the Jill Brickman's
24 accident diagram from the state form.

25 Q Okay. What are you going to testify as

1 to speed?

2 A I met with Officer Zullick in regards
3 to the measurements that she took at the scene
4 of the accident.

5 Q When did you meet with her?

6 A I met with her on 3/24 of '90.

7 Q 3/24 of '90.

8 So that would be almost a little over
9 three months after the accident?

10 A Yes, sir.

11 Q How did it come about that you met with
12 her on March 24, 1990?

13 A I had spoke with Mr. Farrington prior
14 to that date and he asked me to look at this
15 particular report and to render an opinion as
16 to the causation of the accident.

17 Q Just so the record is straight. Mr.
18 Farrington is an assistant state attorney;
19 correct?

20 A Yes, sir.

21 Q Apparently the state consulted with you
22 before any criminal charges were filed in this
23 case?

24 A I don't really know if the charges were
25 filed or not at this time.

1 Q But, you recall that you had spoken
2 with Mr. Farrington at least sometime before
3 March 24 of 1990?

4 A Yes.

5 Q Okay. You met Zullick on March 24,
6 1990, what transpired?

7 A Upon meeting with Faye Zullick, I spoke
8 with her about her homicide report and I asked
9 her to point out certain things for me.

10 Q What do you mean point out certain
11 things?

12 A Such as the zero point that she used,
13 where she measured from where the car struck
14 the pole. Any other information that she could
15 give me as far as the roadway conditions, if
16 the roadway had changed since she had been
17 there. And basically I wanted to know exactly
18 what she did when she was on the scene, and she
19 explained that to me.

20 Q Where did this meeting take place?

21 A At the scene.

22 Q You went to the scene of the
23 intersection where this occurred?

24 A Yes, sir.

25 Q What time of day was it that you went

1 there?

2 A I believe it was in the afternoon.

3 Q What, if anything, was Zullick able to
4 show you?

5 A She showed me where she measured from,
6 what I call -- where I call a zero point. She
7 showed me where the impact was with the pole.
8 Where the impact was with the fire hydrant.
9 And we discussed the length of the skid marks
10 from the vehicle, the suspect vehicle, sliding
11 sideways. And I wanted to know how she
12 measured them and exactly what the path of the
13 vehicle was versus the path of the vehicle in
14 the report, if it was accurate. And from our
15 discussion and from her showing me on the
16 scene, it appeared to be that her diagram was
17 accurate.

18 Q Did you conduct any independent
19 investigation to determine whether there had
20 been any other accidents at that intersection
21 in the intervening three month period before
22 you went there?

23 A No, sir.

24 Q Was Zullick able to provide you with
25 that information?

1 A I didn't ask her.

2 Q Okay. Go ahead.

3 Then, did you, yourself, physically
4 take measurements that day?

5 A Yes, sir.

6 Q Go ahead and tell me what you did that
7 day after she showed you the zero point and the
8 various skid marks; what did you then do?

9 A At that time, I began to measure the
10 radiuses of the curves, then draw a kind of a
11 sketch of the particular area. But, due to the
12 traffic at that time, traffic had picked up
13 quite a bit, I decided that rather than get run
14 over that we would come back, or I would come
15 back at night and finish measuring, which I did
16 about a week later, and finish just the roadway
17 measurements, and I was talking about lane
18 width and those type of things.

19 Q Did you take -- The measurements that
20 you took on your second time there, what
21 measurements did you take then?

22 A Those were, basically, of the roadway
23 itself, as to the width of the road, the width
24 of the white lines, I finished up any curves or
25 curvatures in the roadway, general description

1 of the area is basically what I did before I
2 drew a diagram.

3 Q What measurements then did you take the
4 day that she was with you?

5 A I started taking all the radius
6 measurements but because of the traffic
7 conditions I left, and I really only measured a
8 about a half hour, and if you are familiar with
9 that area it is one heck of an area to measure.

10 Q How long were you there that day with
11 Zullick?

12 A Probably two and a half hours.

13 Q How long were you there on the second
14 occasion?

15 A Four hours.

16 Q You said you made some sort of sketch
17 the day you were there?

18 A Yes, sir.

19 Q Do you have that sketch?

20 A Yes, sir.

21 Q Did that sketch aid you in rendering
22 opinions in this case?

23 A No.

24 Q Then what was the purpose of making it?

25 A The purpose of making it, it was to

1 come up with a scaled diagram.

2 Q And what's the purpose of the scale
3 diagram?

4 A The scale diagram is to show the area
5 of as it is.

6 Q What is the purpose of showing the area
7 as it is?

8 A Basically, for deposition or court
9 presentation.

10 Q Then I would ask that we be given a
11 copy of that.

12 Okay, now, after this second time there
13 what did you do?

14 A After the second time there I spoke
15 with Officer Zullick again a couple of times.

16 Q What was the purpose of speaking with
17 her?

18 A The purpose to speak with her was about
19 her computations for speed, and that's what I
20 spoke with her for.

21 Q What did you need to speak with her
22 about her computations for speed?

23 A Because I want to make sure of a couple
24 things. Number one, I wanted to see how she
25 arrived at the total skidding distance and how

1 she computed it into her formula, because I see
2 she used the minimum speed formula.

3 Q Did you disagree with her computations?

4 A Yes.

5 Q That was why you were calling her;
6 correct?

7 A Basically.

8 Q What about her computations did you
9 disagree with?

10 A On page 115, she lists a formula on the
11 top, which is --

12 Q That formula is S equals the square
13 root of 30 times D, times F.

14 A Yes, sir.

15 That formula is what's known as a
16 minimum speed formula, a skid to a stop.
17 However, in this case, we did not have a skid
18 to a stop, we had a vehicle that was being
19 stopped by a pole.

20 Q Correct.

21 A Therefore, it is not a skid to a stop.

22 Q Okay.

23 A And I asked her about that.

24 MR. WILLIAMS: Let's stop for a minute.

25 (Whereupon, an off the record

1 discussion was had.)

2 Q (By Mr. Williams) I believe you -- when
3 we stopped, there was not a car that was coming
4 from a speed to a stop, but a car that was
5 coming from a speed to an impact.

6 A That's correct.

7 Q Go ahead.

8 A At the time I asked her why she didn't
9 use the combined speed formula with an impact
10 speed.

11 Q Which formula were you suggesting that
12 she use?

13 A Well, at that point I was suggesting
14 that she use the formula for combined speed,
15 which is the speed one, speed two, and speed
16 three formulas.

17 Q Is that S equals the square root of S_1
18 plus S_2 plus S_3 ?

19 A Yes, sir. At that point she stated she
20 had not really worked the traffic homicide that
21 long at that point, and she was not totally
22 familiar with the formula and, therefore, she
23 did not use it, and she was using, therefore,
24 at that point what she knew to be correct, and
25 so she used that.

1 Q Is that the formula that you were of
2 the opinion what should have been used in this
3 case?

4 A Yes, sir.

5 Q Did you use any other formulas in this
6 case?

7 A The S1, S2, S3 is the formula.

8 Q How did you conclude that was the
9 formula to use in calculating speed?

10 A First of all, actually, we have the
11 vehicle travel over several different surfaces
12 as it goes to its collision with the pole. We
13 have it coming from the asphalt roadway --

14 Q Okay.

15 A -- over a sidewalk.

16 Q Sidewalk.

17 The asphalt roadway, what type of
18 surface --

19 A That's an asphalt surface, traffic
20 polished.

21 Q You characterize it as traffic
22 polished; correct?

23 A Yes, sir.

24 Q What is the sidewalk made of?

25 A Sidewalk is made of concrete.

1 Q Would that be akin to Portland cement?

2 A I don't know what kind of cement, but I
3 know it's cement.

4 Q How would you describe that surface?

5 A That surface, basically, we just
6 describe as concrete type surface, and
7 generally it is more abrasive than a roadway
8 surface, so the friction or coefficient of
9 friction is generally higher on that than it is
10 a roadway.

11 Q The cement can also become worn, so it
12 has the characteristics of traffic polish?

13 A Sure. However, cement is generally not
14 worn on a sidewalk unless it's there for many,
15 many years.

16 Q In terms of characterizing the first
17 cement sidewalk that the car went over, would
18 you characterize it as new, traffic polished,
19 or what?

20 A I would say it appeared to be new. It
21 was not worn down.

22 Q Then what's the next surface that the
23 car goes over?

24 A It would be grass and dirt.

25 Q And are there any other surfaces that