

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

R. Fawc

STATE OF FLORIDA,)
)
 Plaintiff,)
)
 vs.)
)
 SCOTT MICHAEL WILLIAMS,)
)
 Defendant.)
-----x

No. 90-8057CF10A

COPY

110 Southeast 6th Street
Fort Lauderdale, Florida

5:00 o'clock P.M.

DEPOSITION

OF

RICK SWOPE

APPEARANCES:

RODNEY FAVER, ESQUIRE,
ASSISTANT STATE ATTORNEY,,
Appearing on behalf of the State of Florida.

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

I N D E X

WITNESS

DIRECT

Rick Swope

3

EXHIBITS:

FOR IDENTIFICATION

DEFENDANT'S:

Nos. 1-9

14

No. 10

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No. 11

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Deposition of RICK SWOPE, a witness herein,
taken by the Defendant herein, for the purpose of discovery
and for use as evidence in the above-entitled cause,
wherein the STATE OF FLORIDA is the Plaintiff and SCOTT
MICHAEL WILLIAMS is the Defendant, pending in the Circuit
Court of the Seventeenth Judicial Circuit, in and for
Broward County, Florida, before GEORGE CALDWELL, JR.,
Notary Public in and for the State of Florida at Large, at
the Offices of Associates/Certified Reporting, 110 Tower,
110 Southeast 6th Street, Fort Lauderdale, Broward County,
Florida, on June 29, 1992, commencing at 5:00 o'clock P.M.

Thereupon:

RICK SWOPE

a witness herein, being of lawful age and being first duly
sworn in the above-entitled cause, testified on his oath as
follows:

DIRECT EXAMINATION

BY MR. WILLIAMS:

Q Mr. Swope, give us your name and business
address and all that kind of stuff.

A My name is Rick Swope, S-w-o-p-e. My business
address is 8014 Southwest 29th Street, Davie, Florida.
Post Office Box 2905047 in Davie, Florida.

Q I'm here trying to understand actually whether

1 or not there has been a change in your position, in your
2 opinions, since we took a deposition in January of 1990,
3 some two and a half years ago. Doesn't seem like it has
4 been that long.

5 A Yep.

6 Q It's my understanding at some point in time that
7 you and Fay Zulick went out to the scene and there was
8 apparently some different measurements made, or something,
9 that we need to go over with you further. Can you remember
10 what that whole thing is about?

11 A I remember meeting Fay Zulick and I went to the
12 scene and spoke with her and made Mr. Faver aware of it.
13 As a matter of fact, I don't remember if he was out there
14 or not. But, we had a couple of feet difference and I made
15 him aware of that. It's my understanding that he made you
16 aware of the difference.

17 Q Right. And, I'm ignorant when it comes to
18 understanding this stuff. So would it be helpful if I
19 showed you the original accident report diagram that was
20 done and maybe you can tell me where the change was? Or,
21 tell me how the change came about or if you have your own
22 drawings? Do you have something we can use at this time?

23 MR. FAVER: Do you have her supplement that

24 I gave you?

25 MR. WILLIAMS: You know, I was looking all

1 over for that thing and I cannot find it.

2 MR. FAVER: I didn't bring my file, but I
3 gave you a supplement that she did.

4 MR. WILLIAMS: Is this it (indicating)?

5 MR. FAVER: Let me see it.

6 MR. WILLIAMS: That's probably it.

7 MR. FAVER: Yes. This is it. You have two
8 copies of the same page.

9 THE WITNESS: Can I look at this one and I'll
10 give you the other copy.

11 MR. WILLIAMS: Sure.

12 THE WITNESS: Okay? Is there a question you
13 want to ask about this?

14 Q (By Mr. Williams) Let me show you the
15 originally drawing. I know I have it somewhere in all
16 this. Now is that a different one or a new one she did,
17 or, is that her original one?

18 A That may be off of her field notes. I'm not
19 sure.

20 Q That one?

21 A That would have been this case.

22 Q Can you show me on there what you all calculated
23 it was?

24 A Can I look at your diagrams too?

25 Q Sure. In fact I even brought this. I brought

1 this down, if you need to look at that too. Take a minute
2 to take a look at that there, if you want.

3 A Can I go ahead and answer that? She used this
4 point on, I guess, we were using Page 118 of her diagram.
5 You can see that she has a point drawn out from the curb
6 with a zero with an X in it.

7 Q I want to mark that in pink. All right.

8 A All right. So what she did was when we went out
9 there she took the measurements from this particular point
10 and she added on. She added nineteen feet six inches to
11 the thirty-eight to get one five eight four. And she
12 already included the one thirty-eight ten in her initial
13 measurement. But what she did was she added back from this
14 point, which means going from the zero point that you
15 marked in pink, heading back south. Well, I say south but
16 it's not true south. But we will say south from that area.

17 Q Can we look on the aerial photograph where that
18 point might be here? Can you show me?

19 A That point would be, I guess, Number 650 on your
20 diagram.

21 Q So recognizing obviously we know this drawing is
22 not to scale because you didn't have the exact --

23 A Right. Taking your big diagram where you marked
24 the pink, all you would do is extend the curb line out like
25 she did, and that will give you the position exactly that

1 she was at.

2 Q Where is that one thirty-eight measurement you
3 two had? From where to what is what I don't understand.

4 A Well, the one thirty-eight would be if you look
5 on Page 119 and that would have been the beginning of the
6 skid marks until the impact with the pole.

7 Q So roughly we are talking about on the aerial
8 diagram the pole is somewhere right around in here
9 (indicating)?

10 A Let me pull this towards me.

11 Q Sure.

12 A I can't tell on this. It's too high. It looks
13 like there is trees over it. It's easily discernable on
14 the ground.

15 Q Right. Let's see if we've got it on the
16 diagram. In any event, the pole is to the inside of the
17 through traffic lane; right?

18 A I can't tell for sure. But it appears to be
19 where it crosses the line C in curve Number 1, giving the
20 radius, and it appears to be at 20.0.

21 Q I'll put a pink dot here, and recognizing this
22 is approximate and that you cannot discern it.

23 A I don't see a legend for that pole. So maybe it
24 isn't on here. I don't see a designation for it.

25 Q So I understand what you're saying, is she

1 originally measured the two pink dots that we've got on the
2 aerial photograph? That she measured between these and
3 originally calibrated that at one five eight?

4 A That's right. And it should be one five eight
5 feet point four inches.

6 Q And when you remeasured it it came out to be?

7 A One three eight ten.

8 Q Now what other changes, if any, were made or
9 calibrated?

10 A I believe that that was the only incorrect thing
11 that was on this. Actually it was probably just a
12 transposition of numbers and everything else checked out.

13 Q Given if you change that particular measurement
14 from one hundred fifty-eight feet four inches to one
15 hundred thirty-eight feet ten inches, how does that impact
16 on your opinions in this case? Or, how does it change your
17 opinions, if it does?

18 A What was the date of my original deposition?

19 Q January 9th of 1990.

20 MR. FAVER: That can't be right.

21 MR. WILLIAMS: No. You know, this would have
22 been '91. The court reporter didn't get the
23 correct year. They didn't change the year. So
24 it was only a year and a half ago.

25 THE WITNESS: Yeah. That's what I thought.

1 I thought so. I was just checking. But I'm
2 looking at my deposition and on Page 25 if I
3 remember correctly, I had found the difference when
4 I initially went to the scene, and I believe the
5 measurements I used in my deposition were at
6 one hundred thirty-eight feet and not one
7 hundred fifty-eight feet four inches. I think
8 I found that right away because if you look at
9 my deposition I'm using the thirty-eight feet. I
10 rounded it off. Rather than being at thirty-eight
11 ten I rounded it off at thirty-eight.

12 Q (By Mr. Williams) You said the first thirty-
13 eight feet.

14 A That's correct. Then additionally I added as
15 Speed 2, then I added impact speed, and I believe I found
16 that later on, or some time along the line.

17 Q Show me on this thing what you're talking about.
18 You said the first thirty-eight feet, then the next one
19 hundred feet. Where would roughly the first thirty-eight
20 feet be?

21 A First thirty-eight feet would be on the
22 trafficway. It would go up on the sidewalk.

23 Q You mean from this point (indicating)?

24 A Well, no. That's where everything is measured
25 from.

1 Q So from this point towards this direction?

2 A No. It would be -- I don't know how far from
3 the zero point it would be, but from the pole back one
4 hundred thirty-eight feet.

5 MR. FAVER: So the first mark, was that what
6 you were confusing? One thirty-eight has to do
7 with the first mark. One fifty-eight from point
8 zero to the pole.

9 Q (By Mr. Williams) So what I have right here
10 from point zero to the pole is one fifty-eight or whatever
11 it was that she did, instead of putting a total distance?
12 She put one hundred thirty-eight where it's really one
13 hundred fifty-four, from her figures, from the zero point
14 to the pole? She got confused because she was thinking
15 about from this mark to the pole instead of the zero point
16 to the pole?

17 MR. FAVER: So the zero point to the pole is
18 still one five four eight?

19 THE WITNESS: Right.

20 Q (By Mr. Williams) First mark meaning what?

21 A First twenty feet north of the zero point up in
22 here is the one thirty-eight foot mark. Now, to finish
23 your question? To try to make it easy for you, what I did
24 was we broke it down and I know it's one hundred thirty-
25 eight feet from the first mark and technically you can

1 break it down where the tire went across the sidewalk, and
2 you would have a different coefficient than another one
3 when it hit the grass. You would have a different
4 coefficient for each.

5 So it goes through the grass, curb, roadway,
6 back up on the curb. So technically you could have eight
7 or so different factors going through this. So that would
8 make the speed higher. So I took a lower factor. I only
9 used two instead of breaking it down to --

10 Q I think you used three factors. S-1 and S-2 and
11 S-3?

12 A No. That third factor -- I'm talking about the
13 coefficient.

14 Q So the coefficient is you went one --

15 A Using a .51 at first, then I used .77. That was
16 the only factors I used.

17 Q Slow down, because you know that I don't
18 understand this. I'm an absolute moron when it comes to
19 the factors you used. Now you're talking about the drag
20 factor; right?

21 A Yes.

22 Q And that was going across the sidewalk or across
23 the street or whatever?

24 A It was the road and the sidewalk.

25 Q And that was what figure?

1 A .51.

2 Q Then the car coming across the grassy, dirt area?

3 A Yes.

4 Q You used what factor for that?

5 A Second factor I used for an average for the
6 entire distance to the pole was .77.

7 Q So when it left the grassy area and went across
8 the sidewalk, street, sidewalk, you didn't factor in a
9 different drag factor for the sidewalk, street, sidewalk?

10 A That's correct.

11 Q You used the same point?

12 A .77 yes, sir.

13 Q Now where does this S-1 and S-2 and S-3 factor
14 into it?

15 A That would be what is called the combined speed.
16 What I did is I took the first thirty-eight feet and I
17 arrived at a speed.

18 Q You mean from the first mark thirty-eight feet?

19 A Yes, sir. Then I took the second distance which
20 would be one hundred, arrived at a speed for that, which is
21 Speed 2. Then I used the impact speed, which is Speed 3.
22 Then I square rooted those, came out with a final speed.

23 Q The first thirty-eight feet, the reason you used
24 two is because you were using two drag coefficients? In
25 other words, why did you break it down thirty-eight and one

1 hundred, I guess, would be my question?

2 A Because the first thirty-eight feet dealt with
3 pavement and sidewalk, which was all that type of
4 substance. Then I used the road factor and I averaged
5 that, because it was basically a straight line impact,
6 rather than breaking it down into individual distances. So
7 I averaged it in, which would have made the speed a few
8 miles an hour slower. If you combined more speed factors,
9 the speed will be higher. So I used that to make it flat
10 and easy so to speak and that's how I arrived at that.

11 Q I guess I need to ask a predicate question.
12 What is Ed Crash and Ed Smack?

13 A That's a computer program.

14 Q Do you have or do you utilize those programs?

15 A Yes, sir.

16 Q What is the Ed Crash program? I guess what I'm
17 asking is the difference between Ed Crash and Ed Smack.
18 Or, what are they designed to prove or disprove?

19 A All the programs are developed and maintained by
20 Engineering Dynamics. They have six different programs.
21 Ed Crash is a computer simulated program that combines
22 anything you want to put in it such as momentum, crush
23 damage, vehicle data, and it simulates a crash for you.

24 Ed Smack is the program where you may not have
25 much information at all, but you put it in anyway and you

1 ask Ed Smack to take a fling at it, see what you come up
2 with. So Ed Smack may give you four or five different
3 printouts to say this is how it may have happened.

4 Q Did you run either of those two programs or both
5 on the data from this accident?

6 A I didn't run the data I had. No.

7 Q Do I understand that you ran the program but you
8 ran it using someone else's figures?

9 A Yes.

10 Q Did you use Moss's figures or did you use
11 Zulick's figures?

12 A I used Moss's figures.

13 Q When did you run that and which of the programs
14 did you run? Or, did you run both of them?

15 A I ran Ed Crash. I can't tell you if I ran Ed
16 Smack or not because I don't know.

17 Q You ran Ed Crash as opposed to Ed Smack?

18 A Yes, sir.

19 Q Did the data that Myles Moss supplied, was there
20 sufficient data to be able to run or operate the Ed Crash
21 program, as opposed to the Ed Smack program?

22 A I don't know how to answer that. There is
23 always data to run. Would it be sufficient data? I really
24 don't know how to answer that because I just basically ran
25 some numbers that he did.

1 Q I guess I should rephrase my question. He ran
2 the Ed Smack program. You know that?

3 A I have got the Ed Crash program that he ran.

4 Q I understand it says Ed Crash at the top, but in
5 the deposition he said he ran the Ed Smack program. So I'm
6 trying to ask you why you ran Ed Crash as opposed to Ed
7 Smack, if he was running Ed Smack? Why did you run the Ed
8 Crash when he in fact ran the Ed Smack program I guess is
9 what my question is?

10 A All I can tell you is the program that I have
11 been provided was Ed Crash. It's not Ed Smack.

12 Q I understand that's the name it says at the top.

13 A I'm familiar with the programs. This is the Ed
14 Crash program. It's not Ed Smack. It's Ed Crash. It's
15 not the Ed Smack program.

16 Q I guess I need to reread his deposition because
17 he was saying Smack. He was saying he ran the Ed Smack
18 program and that's why I'm confused at this point.

19 A He may have. I don't recall exactly what he
20 said. All I can go by is the printout I was given by Mr.
21 Faver, and they are from Ed Crash. They are not from Ed
22 Smack.

23 Q Mr. Faver had given Mr. Moss some pages from the
24 manual, the Ed Crash manual, and he had introduced them in
25 Moss's supplement deposition as Exhibits 1 through 9. Let

1 me show you those and we will discuss them as Exhibits 1
2 through 9 in this deposition. Mr. Faver went through each
3 of these I guess there is 60 questions or inputs that the
4 program asked you for.

5 A Yes?

6 Q Can you go through that, if you would, and tell
7 me which ones you put inputs in for, so I can understand
8 how you are running the program and how it differs with his
9 running of the program?

10 A Well, I can't do that because I didn't print it
11 out. I just took whatever information that he's got.

12 Q You took his information; right?

13 A Right.

14 Q So from that you used that to answer certain
15 questions when you ran the computer program; right?

16 A Yes.

17 Q So what questions would you have answered on
18 this computer program using the information that he gave
19 you?

20 A I don't know. I don't have the book with me.
21 It's very many in depth things that you have to go through
22 and it takes a long time. I would have to see what each
23 one of these things matches up with on his sheet. That's
24 why it takes so long to do it. There's a lot to do in this
25 thing and the book is about three inches thick. I've not

1 memorized this, if that's what you're asking. I can tell
2 you what you need to arrive at a particular program, but I
3 can't tell you --

4 Q Obviously to arrive at a particular program you
5 would want the input for all 60 questions; right?

6 A Right. If you can get them. Sure.

7 Q In other words, how am I going to determine that
8 you and he analyzed using the same program, analyzed the
9 same data in the same way, if in his deposition he's saying
10 he used Ed Smack and you're saying you used Ed Crash? I
11 don't know if I'm comparing apples and oranges or what.

12 A I don't know how to answer the question without
13 telling you that I cannot do it here without my books. I
14 didn't run this program for myself and any discussions I
15 had would have been with Mr. Faver and --

16 Q No. I don't want to know what discussions you
17 had. I just want to know whether you and he -- obviously
18 you two men differ in your opinions. I'm trying to as a
19 layman come to an understanding of whether or not you all
20 even ran the same program. I have to know that so I can
21 understand. Maybe I'm comparing apples and oranges or
22 whatever, but what information did you put in as opposed to
23 what information he put in? See? That's the only thing
24 I'm trying to ascertain, because I will tell you quite
25 candidly, he said there were certain questions that is in

1 those 60 or so inputs that he said he didn't put data in
2 for. So I'm wondering whether you did or didn't.

3 A To my knowledge anything that's over and above
4 what he did, I wouldn't have put in.

5 Q Because in his deposition for instance, looking
6 at Page 2 I guess it would be, he says that in running the
7 program he did not answer Questions 6 through 37, which
8 pretty well takes in over half of the 60 inputs. That's
9 why I'm wondering did you in fact have information in those
10 6 through 37 questions that he didn't? In other words,
11 having the manual with you, the manual is not going to tell
12 you whether you did or didn't put those inputs in; will it?

13 A It may trigger my mind and what was asked for
14 and what I would have put in.

15 Q Because all I'm trying to do is to get an idea
16 as to how each man arrived at their opinions, because if a
17 lay person is sitting there listening to this --

18 A Well, I didn't arrive at my opinions from this.
19 I mean, my opinions were arrived at --

20 Q No. I understand. But you ran that program for
21 a purpose. I mean it wasn't just an academic exercise that
22 you ran this program.

23 A Well, I just ran the program basically to see
24 what numbers would come up with the numbers that he put
25 into it, and --

1 Q Well, that's what you're saying. But I don't
2 know that. I said, "What numbers did you put in," and you
3 say, "I don't know." So how do I know that you and he put
4 the same numbers in, I guess, is my next question?

5 A I don't know how to answer that. If I would
6 have been asked to provide something I would have. But I
7 do this on a lot of my cases. If someone runs something, I
8 may run it and look at it and maybe comment on it to the
9 attorney that I'm working for, or for whatever reason. I
10 may not use the program because they didn't ask me for it,
11 or didn't want it or whatever. But usually it's my
12 experience if someone runs it I'll run the program too,
13 since I have it.

14 Q So I guess the question is: You ran the
15 program. Did you come up with the same results he did?

16 A No. I don't believe I did.

17 Q Then what results did you come up with in your
18 running of the Ed Crash program?

19 A I came up with a lot higher speed than he did.

20 Q Then how do I discern between the two? How do I
21 know how you arrived at that answer if you don't know which
22 of the 60 questions you had inputs for?

23 A I guess we don't. I mean, I don't know.

24 Q Do you know what speed you came up with?

25 A No. I don't remember.

1 Q In other words, when you get on the stand at
2 trial are you all of a sudden going to now remember the
3 speed that you came up with in running the Ed Crash
4 program?

5 A To my knowledge I'm not going to be asked
6 anything about Ed Crash, because I didn't run it for Mr.
7 Faver or his office.

8 Q I understand that. And, it doesn't matter who
9 you ran it for.

10 A If I'm asked I may bring the program to court.
11 You may ask me a question about it or Mr. Faver may. I may
12 add data in it in court. But other than that, I have no
13 intention of using the program.

14 Q All I want to know is what you're going to
15 testify to, just like he wants to know what Moss is going
16 to testify to.

17 A Right.

18 Q And now you're going to say you put in Moss's
19 figures and you came up with a higher number.

20 A No. I'm not going to say that unless someone
21 asks me that specific question.

22 Q Well obviously you have to answer in response to
23 the question. But I don't know what questions you're going
24 to be asked by the prosecutor. If he does ask you that,
25 theoretically you're going to say, "I came up with a higher

1 figure." If you testify to that and I say, "How did you
2 arrive at that figure," then your answer is going to be, "I
3 don't remember."

4 A All I can tell you is what I assumed. I would
5 assume Mr. Faver is not going to ask me the question,
6 unless he calls me up saying he wants me to come up with
7 the figures that he used, and I have not been asked to do
8 that. I have not been asked to do anything different.

9 Q Then as we sit here today taking this deposition,
10 is there any way for you to ascertain which of the 60 inputs
11 or questions in connection with the Ed Crash program that
12 you put information in, as opposed to --

13 A No.

14 Q Can you tell me from looking at the reports that
15 you were provided of Moss, and that would be Defense
16 Exhibits 10 for the purpose of the deposition, a six page
17 composite exhibit which you have a copy of that; right?

18 A Yes, sir.

19 Q Where would you begin deciding where the data in
20 that document should be plugged into the Ed Crash program?

21 A I would just go through the questions 1 through
22 60 or whatever and I would look for information for the
23 question. For instance, on Question Number 1, title, I
24 don't have to worry about that. Question Number 2, class
25 of weights, we only have one vehicle. We don't have two.

1 So I would look on here and if it has the weight --

2 Q Did you find the weight in the data that you
3 were provided?

4 A I think he may have said it in the deposition is
5 where he got the weight. But if the weight is not on here,
6 no. I don't believe so.

7 Q Is that something different?

8 A That's impact factors. See, this is very, very
9 tough, without the book to go through.

10 Q But the book is not going to tell you what
11 weight he used; is it?

12 A I can take his deposition and there were certain
13 things in his deposition that I used as well. Now what I'm
14 saying is certain things do not print out on this program.
15 If you ask me about the weight, I know Mr. Moss, and he
16 would do the same thing that I would do. He would go to
17 the book, the NATA book and get the weight of the car.

18 Q So that gives us the answer to Question Number
19 2. Is the data that you needed for Question 3 in that
20 composite No. 10?

21 A Yeah, it is. But I don't know which one right
22 off the bat.

23 Q What is Question 3?

24 A Asked for the CDC which is the central point and
25 I believe direction of force, which would be vehicle Number