

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

STATE OF FLORIDA,

Plaintiff,

vs.

No. 92- 22072CF
Judge Zack

RAFFAELE ESPOSITO,

Defendant.

EXCERPTS OF THE PROCEEDINGS

THEREUPON, the above-entitled cause came on for
Jury Trial before the Honorable ROBERT S. ZACK,
Presiding Judge, at the Broward County Courthouse, Fort
Lauderdale, Florida, Room 336 on the 6th day of May,
1993.

COPY

APPEARANCES:

MICHAEL J. SATZ, STATE ATTORNEY'S OFFICE
BY: KATHLEEN GEORGE, Esquire,
Assistant State Attorney,
Appearing on behalf of the Plaintiff.

SULLIVAN, BAILEY, BAILEY & BAILEY
BY: DENNIS BAILEY, Esquire,
Appearing on behalf of the Defendant.



I N D E X

<u>Defense Witnesses</u>	<u>Direct</u>	<u>Cross</u>
MARGARET TURNER	3	17
RICK SWOPE	28	90

Defense Exhibits for Identification

A	p.9	Photograph
E	p.6	Diagram

Defense Exhibits in Evidence

1, 2, 3, 4	p.11	Photographs
5	p.44	Diagram

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THE COURT: You can all be seated. The State's rested. Defense care to call any witnesses?

MR. BAILEY: Yes, Margaret Turner.

Thereupon:

MARGARET TURNER

was called as a witness by the Defendant, and having been first duly sworn, was examined and testified as follows:

THE CLERK: You may be seated. Please state your name for the record.

THE WITNESS: My name is Margaret Turner.

DIRECT EXAMINATION

BY MR. BAILEY:

Q. Good afternoon, Ms. Turner.

A. Good afternoon.

Q. Please tell us your training and experience.

A. My training and experience is 200 hours accident investigation and 240 hours in traffic homicide at the scene and reconstruction investigation.

Q. Under whose training?

A. Under Criminal Justice Institute.

Q. And are you employed presently?

1 A. By the Broward Sheriff's Office.

2 Q. In what capacity?

3 A. As an accident investigator and community
4 service aid.

5 Q. How long have you been involved in
6 accident investigation?

7 A. Two and a half years, almost three years.

8 Q. And can you estimate approximately how
9 many accidents you have investigated in that time?

10 A. Yes, I have done approximately two
11 thousand two hundred accidents.

12 Q. Were you working on July 28th of 1992?

13 A. Yes, sir, I was.

14 Q. And what shift did you work at that day?

15 A. That shift I was working from 11:00 in the
16 morning until 7:00 in the evening.

17 Q. Shortly after coming on duty then on July
18 28th, did you respond to an accident scene?

19 A. Yes, sir, I did.

20 Q. Where was the scene?

21 A. In Century Village.

22 Q. Do you recall what time you got there?

23 A. No, sir, I do not.

24 Q. When you arrived on the scene, were there
25 any other law enforcement persons present?

1 A. Yes, sir, there were.

2 Q. What did you do on the scene?

3 A. What I did on the scene, I asked the
4 other, I asked the deputies that were on the scene to
5 please handle traffic control. I attempted to talk to
6 the witnesses that were around to find the witnesses
7 that were around.

8 I spoke with the driver of the trolley,
9 Mr. Esposito and asked what happened. I spoke with the
10 lady and asked her what happened. There were two
11 females that were standing to the left front of the
12 trolley that were hysterical. They thought the lady
13 that had been hit was their mother.

14 At that point I spoke with another man who
15 was, I thought was driving a cab. It turns out he
16 wasn't, it was just a white cab. It was there to pick
17 up somebody, I think, and asked them what happened.
18 From then I went back to my unit that was parked
19 between the trolley and sat down to do the initial
20 accident reports.

21 Q. The two women that thought that the
22 deceased might have been their mother, did it turn out
23 it was?

24 A. No, it was not their mother.

25 Q. And did you get the name and address of

1 the woman and the man you spoke to?

2 A. Yes, I do.

3 Q. Do you recall their name and address?

4 A. No, sir, I don't.

5 Q. Would seeing your reports help refresh
6 your memory?

7 A. Yes, sir, it would.

8 Q. Please take a look at the bottom of page
9 two. Read it to yourself and see if your memory is
10 refreshed.

11 A. Yes, sir.

12 Q. All right. Who did you speak to?

13 A. Lorna Nelson and Ken Brooke. Lorna Nelson
14 was the lady she was standing with the two females that
15 thought that the victim was the mother.

16 Q. Let me show you what's been marked as
17 Defense E for identification and ask you to take a look
18 at Defense E for identification.

19 A. Yes, sir.

20 Q. Do you recognize what is depicted in
21 Defense E for identification?

22 A. Yes, sir, I do.

23 Q. How do you recognize it?

24 A. As Century Boulevard and Century Village
25 as you come off Hillsboro Boulevard.

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Q. Defense E for identification fairly and accurately depicts the scene as you recall it on July 28th, 1992?

A. Yes, sir.

MR. BAILEY: I would move Defense E for identification into evidence.

THE COURT: Any objection?

MS. GEORGE: I object to that.

THE COURT: Based on what?

MS. GEORGE: There's been no testimony as to who prepared it. There's been no testimony as to whether this is accurate. There's no testimony as to how it was scaled and there's been no foundation for her to testify that it fairly and accurately represents the scene.

MR. BAILEY: She testified she was there and it fairly and accurately depicts the scene as she recalls it.

MS. GEORGE: Judge, this is not a photograph.

THE COURT: I don't know it has to be a photograph.

MS. GEORGE: There's no testimony as to who made this.

1 THE COURT: Who cares as long as she says
2 it accurately depicts the scene the day she was
3 there and she's been there, she's seen it. I
4 don't see that anyone has to tell you who
5 prepared it.

6 MS. GEORGE: Can I voir dire it?

7 THE COURT: Sure.

8 VOIR DIRE

9 BY MS. GEORGE:

10 Q. Have you ever seen this before?

11 A. No, I have not.

12 Q. You had an opportunity to look at it for a
13 very short time?

14 A. Just now.

15 Q. Okay. And you never took the
16 measurements, correct?

17 A. No, I did not.

18 Q. You don't know if these measurements
19 fairly and accurately depict the scene, correct?

20 A. No, I do not.

21 Q. You have no idea, correct?

22 A. No.

23 Q. You have no idea where the drawings are
24 trees or bushes that they fairly and accurately depict
25 the scene, correct?

1 A. No, I do not.

2 Q. And you have no idea if their scale of how
3 wide those lanes or the median or anything is fairly
4 depicted, correct?

5 A. Not if I didn't take the pictures.

6 MS. GEORGE: Now I object to this
7 being introduced.

8 THE COURT: Now I sustain the objection.

9 MS. GEORGE: Thank you.

10 BY MR. BAILEY:

11 Q. Were you present when -- Ms. George, do
12 you want to straightened that out, please.

13 MS. GEORGE: I'm sorry.

14 BY MR. BAILEY:

15 Q. Were you present when marks were put on
16 the roadway depicting where items were found?

17 A. Yes, sir, I was.

18 Q. Let me show you what's been marked -- I'll
19 do it one at a time, Defense A for identification and
20 ask you to take a look at that photograph. Do you
21 recognize what's contained in Defense A for
22 identification?

23 A. Yes, sir.

24 Q. What do you recognize it to be?

25 A. The bloodstain from where the lady was

1 laying on the road.

2 Q. Did you personally observe the
3 bloodstains?

4 A. Yes, I did.

5 Q. Did you personally observe the orange
6 markings put on the road?

7 A. Yes, sir, I did.

8 MR. BAILEY: I move Defense Exhibit A into
9 evidence at this time.

10 MS. GEORGE: Can I see it?

11 MR. BAILEY: It's the same Defense A as
12 before.

13 THE COURT: Any objection?

14 MS. GEORGE: No, Judge, not to A, just
15 taking a look at the other ones.

16 BY MR. BAILEY:

17 Q. Take a look at Defense B, C and D, please.
18 Tell me if you recognize what's contained in Defense B,
19 C and D for identification.

20 A. And D?

21 Q Yes, ma'am.

22 A. Yes, sir, I do.

23 Q. What do you recognize it to be?

24 A. Orange markings and the bloodstains where
25 articles are dropped on the road after the accident

1 happened and where the bloodstains are where the victim
2 was.

3 Q. How about C?

4 A. C is yes, I do identify it as the
5 intersection on the south end of the crosswalk coming,
6 going onto Century Boulevard.

7 Q. And B?

8 A. Yes, sir, I identified that as a
9 southbound lane of Century Boulevard.

10 MR. BAILEY: I offer B, C, D into
11 evidence.

12 THE COURT: Any objection?

13 MS. GEORGE: No.

14 (Thereupon, Defense 1, 2, 3 and 4 were
15 marked into evidence.)

16 BY MR. BAILEY:

17 Q. When you arrived on the scene, Ms. Turner,
18 was the body of Mrs. Berman still present?

19 A. Yes, sir, it was.

20 Q. Were you on the scene when Deputy Wagoner
21 arrived?

22 A. Yes, sir.

23 Q. Was the body of Mrs. Berman still present?

24 A. No, sir.

25 Q. Who transported the body of Mrs. Berman?

1 A. It was airlifted to Broward General.

2 Q. Where was the trolley when you arrived on
3 the scene?

4 A. From the victim in the street
5 approximately eight to 12 feet north of the victim
6 laying in the street.

7 Q. And where was the trolley in relation to
8 the crosswalk?

9 A. The back of the trolley was on the
10 crosswalk. The back rear fender of the trolley was on
11 the crosswalk.

12 Q. Where were the rear wheels of the trolley?

13 A. On the other side of the south white line.

14 Q. South of the white line or north?

15 A. South.

16 Q. South of the crosswalk itself?

17 A. Right.

18 Q. Any part of the rear wheels in the
19 crosswalk?

20 A. Not in the crosswalk at the time, no.

21 Q. How much of the trolley was sticking out
22 into the crosswalk?

23 A. The fender.

24 Q. Approximately how many feet?

25 A. Maybe two to three at the most.

1 Q. The rest of the trolley was south of the
2 crosswalk?

3 A. Yes, sir.

4 Q. And Mrs. Berman was an additional eight to
5 ten?

6 A. Eight to ten to 12 feet lying in the
7 street ahead of that.

8 Q. South of the trolley?

9 A. Yes, sir.

10 Q. How long is the trolley?

11 A. Thirty-three feet.

12 Q. Is it your testimony, Ms. Turner, that the
13 body of Mrs. Berman was more than three feet south of
14 the crosswalk?

15 A. Yes, sir.

16 Q. If the body of Mrs. Berman was 13.9 feet
17 south of the crosswalk at the final arrival, where
18 would that place the body in relation to the trolley?

19 A. Under.

20 Q. Between?

21 A. In the middle of it.

22 Q. In your police report is there a box for
23 pedestrian accident?

24 A. Yes, sir.

25 Q. What is the purpose of that box?

1 A. It states what the pedestrian does,
2 whether they walk at a crosswalk or intersection, if
3 they cross there, if they cross after the intersection.
4 It asks did they have a shopping cart that they were
5 pushing, that is if it's a pedestrian versus a vehicle
6 there's a reference for this box.

7 Q. Were you able to fill out that box?

8 A. Yes, sir, I did.

9 Q. What information did you use to fill out
10 that box? What were you basing your answers on?

11 A. On what I saw at the scene.

12 Q. What did you answer?

13 A. That she did not cross at the crosswalk.

14 Q. What do you base that on? What did you
15 see at the scene that gave you that answer?

16 A. I based that on the amount of accidents
17 that I have done. I base that on my schooling and when
18 I arrived at the scene, where her body lay, the damages
19 that were done to her body, whether or not along with
20 Mrs. Berman's body, let's say was carried somewhere by
21 this trolley her damages would have been --

22 MS. GEORGE: Objection to her opinion,
23 Judge.

24 THE COURT: That's what he's asking for
25 based on her --

1 MS. GEORGE: Yeah.

2 THE COURT: That based on her training and
3 experience.

4 MR. BAILEY: Yes.

5 THE COURT: Overruled.

6 MS. GEORGE: Your Honor, I'm objecting to
7 her giving an opinion. She has not been
8 qualified as an expert.

9 THE COURT: I don't think he asked
10 to qualify her as an expert. He hasn't asked to
11 qualify her as an expert, have you?

12 MR. BAILEY: Yes, sir.

13 THE COURT: I --

14 MR. BAILEY: No, sir. I think people that
15 are not experts are trained in certain areas can
16 give an opinion.

17 MS. GEORGE: I'm objecting to the
18 foundation of this opinion. This witness has
19 not testified that she's talked with the medical
20 examiner, that she has reviewed the medical
21 examiner's report, that she's in any way
22 qualified to testify regarding this type of
23 incident.

24 THE COURT: Well, I think having
25 investigated 2200 accidents qualifies her

1 to answer this question. Overruled.

2 MS. GEORGE: Judge, could I voir dire
3 the witness with regard to that?

4 THE COURT: Sure.

5 MR. BAILEY: At this point or on cross?

6 THE COURT: You know, you can have a
7 chance. She's not qualified as an expert. You
8 can cross examine her, that's what cross
9 examination is. He's not trying to qualify
10 her as an expert. It's no different than a
11 police officer giving an opinion as far as this
12 Court is concerned, so you will have a
13 chance to cross examine her.

14 BY MR. BAILEY:

15 Q. What about the body of Mrs. Berman led you
16 to that conclusion. You mentioned the body of Mrs.
17 Berman. What was it that you observed on the body of
18 Mrs. Berman that led you to that conclusion?

19 A. The injury that Mrs. Berman sustained were
20 not injuries that would have warranted Mrs. Berman
21 being carried anywhere or thrown anywhere by that
22 trolley. Those injuries sustained were by direct hit
23 and a direct stop. It's only in my opinion.

24 Q. Thank you, ma'am.

25 A. That is what I base that on.

1 MR. BAILEY: Thank you. Your witness.

2 CROSS EXAMINATION

3 BY MS. GEORGE:

4 Q. You have been reprimanded for several
5 accidents, for bad accident reports and bad accident
6 investigations?

7 A. No, ma'am.

8 Q. You have been investigated by the Broward
9 Sheriff's Office for poor work.

10 MR. BAILEY: Objection. Side bar.

11 (Thereupon, a side bar was had.)

12 MR. BAILEY: Judge, prior bad acts are not
13 grounds for impeachment, Florida Rules of
14 Evidence. I object to the whole line of
15 questioning, further that the fact that a
16 witnesses has been investigated is not probative
17 evidence of the lack of credibility of the
18 witness. I object to the line of questioning
19 and move for a mistrial.

20 THE COURT: Response.

21 MR. BAILEY: Judge, this is not prior bad
22 acts. You gave the State permission to cross
23 examine her with regard to her capabilities to
24 testify.

25 THE COURT: Why don't you ask her about

1 her training instead of asking her about things
2 you know that are inappropriate. I'm going to
3 reserve ruling on the mistrial. I don't want to
4 hear anything about any prior bad act unless she
5 has been convicted of something. If she has
6 been fired and you have someone to testify to
7 that.

8 MS. GEORGE: To what?

9 THE COURT: To her being fired.

10 MS. GEORGE: I didn't say that.

11 THE COURT: Or being in any way
12 reprimanded. You want to talk about her
13 qualifications, that's fine, let's stay away
14 from things you shouldn't be asking.

15 (Thereupon, the side bar was concluded.)

16 BY MS. GEORGE:

17 Q. Did you talk to the medical examiner?

18 A. No, ma'am, I did not.

19 Q. You didn't even see the victim with her
20 clothes off, did you?

21 A. No, ma'am, I didn't.

22 Q. You didn't even attend the autopsy, did
23 you?

24 A. No, I did not.

25 Q. And you didn't examine the victim's body

1 by any kind of means other than seeing her with her
2 clothes on, correct?

3 A. That's correct, right.

4 Q. You didn't go to medical school, did you?

5 A. No, I did not.

6 Q. And you're a community service aid,
7 correct?

8 A. Yes.

9 Q. And as a community service aid you're not
10 a deputy, correct?

11 A. No, I'm not.

12 Q. Tell the jury what would make you
13 qualified as a deputy.

14 A. What would make me qualified?

15 Q. Yeah.

16 A. To go to an academy and carry a gun.

17 Q. You failed to go to the academy?

18 A. Did I fail to go to it?

19 Q. Yeah.

20 A. I don't choose to go to it.

21 Q. You don't have the training then?

22 A. I have more training than the deputies do.

23 Q. Let me ask you something, you testified on
24 direct examination about 30 feet, correct?

25 A. What's 30 feet?

1 Q. That's what I want to know. You
2 testified. What is 30 feet?

3 A. I don't remember.

4 Q. You testified you saw where the body was
5 laying, correct?

6 A. Yes, I did.

7 Q. Did you make measurements of that?

8 A. No, I did not.

9 Q. Did you make any measurements how far the
10 crosswalk was to the body?

11 A. No, I did not.

12 Q. Did you make any measurements how wide the
13 crosswalk is?

14 A. No.

15 Q. How wide the street is?

16 A. No.

17 Q. You mentioned the trolley.

18 A. I have the measurements of the trolley. I
19 asked for the measurements.

20 Q. You didn't do it yourself?

21 A. No.

22 Q. You didn't make any personal measurements
23 of yourself?

24 A. Uh-uh.

25 Q. You're in here giving your opinion about

1 where the victim was walking, correct?

2 A. Uh-huh.

3 MS. GEORGE: I have no more questions for
4 this witness.

5 MR. BAILEY: Thank you, ma'am.

6 THE COURT: You can step down, ma'am.

7 THE COURT: Defense have any other
8 witnesses?

9 MR. BAILEY: Defense calls Rick Swope.

10 THE COURT: I need you to take the jury
11 out in the jury room for a minute. I have
12 something to discuss with the attorneys.

13 (Thereupon, the jury left the courtroom.)

14 THE COURT: I don't know why it didn't
15 come to my mind earlier, but it just popped into
16 my mind a moment ago. Approximately 1986 or '87
17 Mr. Swope was an accident investigator or I
18 think hired as an accident reconstructionist by
19 either Southern Bell or Florida Power and Light
20 on a case where I was representing the
21 plaintiff. I don't even know if he remembers.

22 MR. BAILEY: He was the accident
23 reconstructionist for your opposing party?

24 THE COURT: Yeah.

25 MR. BAILEY: Your question is whether I

1 have a problem with that?

2 THE COURT: Yes.

3 MR. BAILEY: No, sir.

4 THE COURT: I settled the case for two
5 point four million dollars. I just wanted
6 everybody to know that I have had prior contact
7 with him and I mean aside from in the
8 courthouse, this was back in '86 or '87 and I
9 don't even recall. I know we took his
10 deposition. I wasn't taking it, the other sides
11 were taking it.

12 MS. GEORGE: Judge, I'm sorry, but this
13 was in 1987?

14 THE COURT: Yeah.

15 MS. GEORGE: And it was the opposing --

16 THE COURT: He was an expert hired on the
17 other side in a civil case. The name of the
18 case was Brown versus Florida Power and Light.
19 I don't know if he remembers it. A kid got
20 electrocuted. He was holding a power line and
21 he lost his arm.

22 The only reason I'm bringing it for is it
23 just came to me to avoid any appearance of
24 impropriety. I'll also tell you that I have no
25 problem there that I can faithfully pursue my

1 duties as the Judge on this case and not be
2 influenced one way or the other by the fact that
3 he testified. The case never went to trial.

4 MS. GEORGE: Judge, could we ask that the
5 witness be excused from the courtroom?

6 THE COURT: Sure can.

7 (Thereupon, the witness left the
8 courtroom.)

9 MS. GEORGE: Judge, you said it was in
10 1987?

11 THE COURT: Eighty-six or '87.

12 MS. GEORGE: Was Mr. Swope working for BSO
13 at the time?

14 THE COURT: I have no idea. And whether
15 he was or wasn't, anything I'm telling you now
16 has nothing to do with him testifying as far as
17 you bringing anything up I'm talking about. You
18 can write down all you want. You can't talk to
19 him and say by the way, did you testify against
20 the Judge. We're not doing things like that.
21 I'm strictly giving you this information --

22 MS. GEORGE: I'm trying to --

23 THE COURT: -- strictly giving you this
24 information so you can say whether you feel I
25 can still be fair and impartial as the trier of

1 the law. I don't want to make a big deal out of
2 it.

3 MS. GEORGE: I just want it to be known
4 not the only reason I ask, I'm not planning on
5 asking him questions about the trial, but I want
6 to know whether or not he was still working for
7 BSO because it was my intention --

8 THE COURT: I don't know whether he was or
9 wasn't, but this was a Dade County case, so I
10 tend to believe even if he was working on his
11 own on his own time --

12 MS. GEORGE: I want you to know the reason
13 for my questions is that my understanding of Mr.
14 Swope is that he was investigated by Internal
15 Affairs.

16 THE COURT: So is everybody else in BSO.

17 MS. GEORGE: As far as whether or not any
18 of this information came up at deposition or if
19 you recall any of this.

20 THE COURT: I had nothing to do, no,
21 absolutely not.

22 MS. GEORGE: So in other words, that will
23 not enter into any argument we might make?

24 THE COURT: Absolutely not.

25 MS. GEORGE: That's the only thing I

1 wanted to ask.

2 THE COURT: The only thing I'm interested
3 in telling you is that I have had prior contacts
4 with that gentleman when I was practicing law,
5 end of story. You have a choice, you can ask me
6 to recuse myself or say gee, Judge, I think you
7 can be fair and impartial.

8 MS. GEORGE: I think you could be fair and
9 impartial. I apologize for asking the
10 questions. I wanted to know if anything came up
11 as it often does regarding his background during
12 deposition.

13 THE COURT: Not that I recall, I can't
14 remember what I did yesterday, never mind what I
15 did in 1986 or '87.

16 MR. BAILEY: Since the prosecutor brought
17 up the investigation by Internal Affairs and
18 given what happened on the last witness, I would
19 ask for this mid-trial motion in limine, those
20 questions not be directed by Mr. Swope and
21 direct --

22 THE COURT: Okay

23 MR. BAILEY: She's got to abide by the
24 rules of evidence what she can and can't do.

25 THE COURT: Let's take care of that now.

1 MS. GEORGE: I think I'm entitled to ask
2 Mr. Swope what were the circumstances of his no
3 longer working with Broward Sheriff's Office,
4 what were the circumstances of his leaving, his
5 Internal Affairs investigation.

6 MR. BAILEY: I have no problem with what
7 were the circumstances upon your departure at
8 Broward Sheriff's Office, but the Internal
9 Affairs investigation is more prejudicial than
10 probative on the impression it leaves to the
11 jury.

12 MS. GEORGE: Judge, I disagree completely.

13 THE COURT: I'm sure you do.

14 MS. GEORGE: If it's prejudicial, this
15 witness, it's something that is very probative.
16 If defense counsel is asking them --

17 THE COURT: Tell me what the outcome of
18 this Internal Affairs investigation was.

19 MS. GEORGE: That he resigned while he was
20 being investigated.

21 THE COURT: What was the outcome of it,
22 what were they investigating him for, maybe he
23 was cleaning the lady's locker room instead of
24 the men's; do you know what it was?

25 MS. GEORGE: Dishonesty, theft.