

Stepfather blames light, gate for girl's death in train crash

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WEST PALM BEACH — An attorney for Scott Wynkoop told jurors on Tuesday that a poorly designed traffic light and railroad crossing gate, not his client's driving, are to blame for Wynkoop's collision with a train that killed his 9-year-old stepdaughter in 2005.

"The people who should be sitting here are the ones who designed the light, the gate," defense attorney **Kenneth Lipman** said before Circuit Judge Lucy Chernow Brown cut him off and told the jury to draw no inferences from the attorney's comment.

Lipman's remarks came during opening statements in Wynkoop's trial on charges of vehicular homicide and manslaughter by culpable negligence. Wynkoop, 42, drove his Mazda RX-8 into the path of a freight train at the intersection of Dixie Highway and Hidden Valley Boulevard in Boca Raton in May 2005. The resulting crash killed Samantha Rosales, who was sitting in the back seat.

"He tried to beat that train instead of protecting his precious cargo in the back," Assistant State Attorney Adam McMichael said in his opening statement, as Wynkoop continually shook his head side to side. "She died in the crash because of what the defendant did."

Samantha was the daughter of Wynkoop's wife from an earlier marriage.

Wynkoop was about to accept a plea deal nearly two weeks ago that would have given him 10 years' probation and a suspended driver license for three years.

The deal collapsed when Samantha's biological father showed up from Mexico for the court hearing. He said he thought Wynkoop should spend time in prison if he's guilty. Wynkoop then rejected a new, on-the-spot plea offer of five years in prison and five years' probation, placing his fate in the hands of a jury.

On the day of the crash, Wynkoop was northbound on South Dixie Highway and the train also was headed north. Wynkoop turned left or west on West Hidden Valley Bou-

levard and skirted a crossing gate, and the train hit him.

"I remember thinking, 'there's no way that guy's going to make it,'" said James Scala, a Delray Beach lifeguard supervisor who was stopped at the intersection.

After the collision, Scala tried to assist Samantha. He and other witnesses said Wynkoop had gotten out of the car and was talking on his cellphone.

Another motorist, Marilyn Hughes, said she was behind Wynkoop at the intersection. She said she saw him drive toward the railroad tracks at an angle to avoid the crossing gate. The crash lifted the Mazda in the air, she said.

"It spun like a Frisbee and landed on the other side of the tracks," Hughes said.

Defense attorney **Lipman** told jurors that Wynkoop's car was ahead of the train while they were both northbound. "Unless he had eyes in the back of his head, he couldn't have seen the train," he said. And with his windows up, air conditioning on and talking to his daughter, he didn't hear the train either, he said.

He also contended that his client turned on a green light, and that, although the crossing gate was down, it is short and blocks only a portion of the intersection.

"He's got less than a second to decide what to do," **Lipman** said.

Lipman maintains that traffic lights at the intersection should be red when a train is approaching, and that the crossing gate should extend to all lanes when it is down.

The train's engineer, Randall Walker, testified that he saw Wynkoop's car parallel to him, until it speeded up as it turned in front of the train in an apparent attempt to cross the tracks before he got there. That contradicts the story of the motorist Hughes, who said that Wynkoop had been stopped at the intersection before trying to get across the tracks.

Other motorists gave differing accounts of what they saw and heard. But those same witnesses agreed on this: They all knew a train was coming.

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