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

Case No. 89-22385 CP10 (Judge Seay)

STATE OF FLORIDA,)
)
Plaintiff,)
)
vs.)
)
HOWARD S. BROOKS,)
)
Defendant.)
)
_____)

Fort Lauderdale, Florida

April 28, 1990

8:50 o'clock a.m.

APPEARANCES:

STATE ATTORNEY'S OFFICE
By SUSAN BAILEY, ESQ.
On behalf of the Plaintiff.

BRUCE H. LITTLE, P.A.
By BRUCE H. LITTLE, ESQ.
On behalf of the Defendant.

Also Present: SUSAN R. STEPHAN

+ + + + +

DEPOSITION OF

RICK A. SWOPE

+ + + + +

COPY

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I N D E X

Direct Examination by Mr. Little 3

EXHIBITS FOR IDENTIFICATION

Defendant's Exhibits 1 and 2 57

Defendant's Exhibit 3 75

Defendant's Exhibit 4 77

Defendant's Exhibit 5 82

+ + + +

Deposition of RICH A. SWOPE, a witness of
lawful age, taken by the Defendant, for the purpose of
discovery and for use as evidence in the above-entitled
cause, wherein STATE OF FLORIDA is the Plaintiff, and
HOWARD S. BROOKS is the Defendant, pending in the
Circuit Court of the Seventeenth Judicial Circuit, in
and for Broward County, Florida, pursuant to notice
heretofore filed, before WILLIAM C. BENT, a Shorthand
Reporter and Notary Public in and for the State of
Florida at Large, at 633 South Federal Highway, Fort
Lauderdale, Broward County, Florida, on the 28th day of
April, 1990, at 8:50 o'clock a.m.

+ + + + +

1 Whereupon:

2 RICK A. SWOPE

3 a witness named in the notice heretofore filed, being
4 of lawful age, and being first duly sworn, testified on
5 his oath as follows:

6 DIRECT EXAMINATION

7 Q. (By Mr. Little) State your name.

8 A. Rick Swope, S-W-O-P-E.

9 Q. Rick, prior to starting the deposition
10 this morning you gave me a copy of your C.V. which is
11 comprised of primarily a lot of letters and
12 certificates and whatnot.

13 Is the outlying portion of your C.V.
14 current?

15 A. Yes.

16 Q. You have not attended any further
17 educational schools or seminars since this was printed.

18 A. Well, they're current as of -- I think the
19 last one I attended was last month. It's not by date,
20 but the certificates have a date. The last one I
21 attended I believe was at Cape Kennedy in February.

22 Q. According to the Work Experience, first
23 page of the C.V., you are ~~currently employed~~ by the
24 ~~Broward County Sheriff's Office~~.

25 A. Yes. That's a full-time job also.

1 Q. You've also provided me with a business
2 card of Rick A. Swope & Associates, Accident
3 ~~Reconstruction Services Consultations.~~

4 A. Yes, sir.

5 Q. That's an independent business that you
6 operate?

7 A. Yes.

8 Q. Who are your associates?

9 A. I have several people that work for me.
10 They do things such as assisting me on the scenes,
11 putting together an accident scene, some computer work.
12 Some of that. I work with probably four or five
13 different people.

14 Q. Who do you work with?

15 A. Scott Barksdale.

16 Q. Barksdale is an instructor at the Criminal
17 ~~Justice Academy?~~

18 A. That's correct. Also a teacher at
19 Northeast High School.

20 I work with Dennis Davis.

21 Q. He's also an instructor.

22 A. That's correct.

23 Q. Former Fort Lauderdale police officer?

24 A. ~~Barnes Fort Lauderdale captain.~~ He also
25 has his own training and developing company.

1 I work with Byron Philipson. When I say
2 "work with," they work for me. He's a deputy with the
3 Sheriff's Office.

4 Q. What is his position with BSO?

5 A. He's a traffic investigator.

6 Larry Diamond. Spelled just like a
7 diamond.

8 Q. Like a rock.

9 A. Right. He's a police officer with the
10 City of Hollywood.

11 Q. What's his assignment?

12 A. I don't know.

13 That's pretty much it.

14 Q. Okay.

15 What would these individuals do as
16 associates for you?

17 A. It depends on what I've -- Scott Barksdale
18 usually assists me with diagrams and measurements, as
19 does Philipson. Then Larry Diamond and Philipson
20 usually do investigative things through me for somebody
21 else if we need things investigated like finding
22 witnesses or things like that.

23 Q. Has Scott Barksdale assisted you on this
24 case?

25 A. He went to the scene with me, but he

1 didn't do anything else. He just rode with me.

2 Q. You are aware of the fact that he's a
3 former client of mine?

4 A. No.

5 Q. Would it have any effect upon your
6 opinions or approach to this case?

7 A. No. He just rode out there with me. We
8 didn't have any real discussions on this case. He's
9 working on other matters for me.

10 I assume you worked on his divorce, right?

11 Q. How long has Rick Swope & Associates been
12 in existence?

13 A. About ~~two and a half years~~

14 Q. What is the purpose of Rick Swope &
15 Associates?

16 A. Basically I ~~provide accident~~
17 ~~reconstruction services to attorneys within the State~~
18 ~~of Florida, and nationally.~~ I do quite a bit of
19 civil. That's basically what I do.

20 Q. In the two and a half years that Rick
21 Swope & Associates has been in existence, approximately
22 how many cases has it handled for attorneys?

23 A. Probably about ~~60 to 80~~ Somewhere in
24 that ballpark.

25 Q. Do you keep statistics concerning those

1 cases?

2 A. I'm sorry?

3 Q. Do you keep statistics concerning those
4 cases?

5 A. No. I have usually all the records and
6 files, but I don't keep a running total.

7 Q. Of the 60 to 80 cases, you were retained
8 by an attorney?

9 A. An attorney or -- Most of them. I would
10 say ~~95 percent is by attorneys~~ Sometimes individuals
11 come in and hire me, and I work for them to a law firm.

12 Q. In this case you've been retained by the
13 State of Florida.

14 A. Yes, sir.

15 Q. How many prior cases have you had that
16 you've been ~~retained by the State?~~

17 A. Probably about ~~six to eight~~, somewhere in
18 that ballpark.

19 Q. Of the remaining cases, what percentage
20 were civil and what percentage were criminal?

21 A. I would say about ~~60 to 65 percent~~ are
22 ~~civil~~ and the ~~rest are criminal~~.

23 Q. Have you ever been retained by a criminal
24 defense lawyer in Broward County?

25 A. Not in Broward County, no.

1 Q. Have you been retained by a criminal
2 defense lawyer?

3 A. [REDACTED]

4 Q. Where?

5 A. Mostly Palm Beach County, for Lavelle,
6 Wocna & Rutherford. I've done [REDACTED] for them.

7 Q. You actually testified?

8 A. Yes.

9 Q. How many cases have you done for that law
10 firm?

11 A. I think about five.

12 Q. Name of the firm is what?

13 A. Lavelle.

14 Q. L-A-V-E-L-L-E?

15 A. Yes.

16 A. Wocna, W-O-C-N-A, I believe, & Rutherford.

17 Q. Where are they located? In Palm Beach?

18 A. I don't know -- I know where they're at.
19 Ken Ronin (phonetic) is the main attorney I work for at
20 that law firm. I think they're located -- Whatever the
21 first exit is in Palm Beach. Glades Road or Palmetto.

22 Q. You got me.

23 A. Then west off -- I think like Military
24 Trail or something like that. I could get you their
25 phone number if you want. I think maybe I have it. Do

1 you want it?

2 Q. I can look it up. If you would like to
3 look it up, go right ahead.

4 A. The office number that I have for them,
5 Broward line is 426-0070.

6 Q. Other than this particular firm, have you
7 been ~~retained by any other defense firms?~~

8 A. ~~Yes~~

9 Q. Who?

10 A. I can't think of their name.

11 Q. Okay.

12 A. I think in Dade County. I'm trying to
13 think of an associate of -- McCluskey? Jack McCluskey?
14 I think it's Jack McCluskey. I don't know the name of
15 his law firm. There's about 15 names on it.

16 Q. Of the five total cases where you've been
17 retained by a criminal defense firm, how many were done
18 with Lavelle, Wocna & Rutherford?

19 A. I've probably done, with them -- I've
20 probably done about ~~four or five cases~~ with them. I
21 would have to check, but I know I've ~~testified for them~~
22 ~~at least two or three times.~~

23 Q. What types of cases?

24 A. ~~DUI manslaughter~~

25 Q. Were you asked to testify with with

1 regards to any particular aspect of the case?

2 A. Yes.

3 Q. What?

4 A. Reconstruction. I reconstructed the
5 entire accident for them and testified as to blood
6 alcohol effects on operators and anything else
7 associated with the reconstruction.

8 Q. What type of case were you retained by
9 Jack McCluskey in?

10 A. I believe it was a ~~DUI manslaughter~~,
11 pedestrian. Again I'm not certain of the spelling of
12 the last name. You would have to look it up.

13 Q. Other than the firm in Palm Beach County,
14 Jack McCluskey, any other defense firms?

15 A. Yes, I worked for one in Sarasota. The
16 attorneys died in a plane crash a few months ago. The
17 name was Ron Cyral. C-Y-R-A-L. I know the office was
18 2070 Ringling Boulevard. The office name -- He was one
19 of the names, but I think it was Nelson, Hessey, Cyral
20 & Smith.

21 Q. What type of case was that?

22 A. ~~DUI manslaughter~~. And I also had several
23 civil cases with them.

24 Q. We're getting way above the five cases
25 that you thought were criminal defense cases to begin

1 with.

2 A. I guess I've had more.

3 Q. Any other criminal defense firms?

4 A. Well, I have a new one right now that I
5 just got in the State of Michigan. And I haven't been
6 up there yet, but I'm going up in two weeks.

7 It's for Jim Davis, D-A-V-I-S. He's in
8 Monroe, Michigan. I don't know his phone number.
9 That's a DUI manslaughter as well. However, I believe
10 that my client is deceased. Just died, I think.

11 Q. Can you think of anybody else?

12 A. Not right now.

13 Q. Of the cases that you have testified or
14 been retained by the State of Florida on, what type of
15 cases have those been?

16 A. All ~~DUI-manslaughters~~.

17 Q. How many would they total?

18 A. I'm sure ~~six to eight~~, somewhere in that
19 ballpark. I believe that's what I stated. Six to
20 eight. Somewhere in there. I'm not really sure.

21 I'm trying as to give you a low figure
22 rather than high figure.

23 Q. You keep revising up, though. That's the
24 problem.

25 A. Well, I keep remembering more as I go. I

1 would rather not give you over than under. I would
2 rather give you under.

3 Q. Of all the cases that you've been retained
4 on the 60 to 80, approximately what percentage have you
5 actually testified in court?

6 A. Out of those times the ones that I've
7 worked with my private firm I've probably testified
8 about ~~12 to 15 times~~. Somewhere in that ballpark. I
9 think I've actually ended up testifying ~~more on the~~
10 ~~criminal end than I have the civil end.~~

11 Q. Okay.

12 At the times that you've been retained or
13 testified or done work with regard to Rick Swope &
14 Associates you've been a full-time deputy sheriff for
15 the Broward County Sheriff's Office.

16 A. That's correct.

17 Q. When you go testify in these cases, how do
18 you reconcile that with your job responsibilities?

19 A. Well, when I testify out of the county
20 it's no problem, of course. When I testify inside the
21 county, I make it clear that I'm not there - if it's
22 asked. If they ask me my employment, generally I'm an
23 employee of Broward County. If they ask if I'm a
24 deputy, naturally I state that, that I am a deputy,
25 however, that I did not use my capacity to obtain

1 information in the case or whatever.

2 Q. That wasn't the direction of the question.

3 Do you take vacation time when you --

4 A. You mean am I on duty?

5 Q. Yes, sir.

6 A. Oh, anything I do I'm not on duty.

7 Q. How do you do that?

8 A. I work nights basically, 8:00 at night to
9 4:00 in the morning. I'm pretty much off during the
10 daytime.

11 If I happen to be on during the daytime
12 and I have something come up, then I do take vacation
13 time or comp time. I have I believe about 18 weeks
14 vacation on the books.

15 Q. Still?

16 A. Yes, sir. Or with comp time. I didn't
17 take a vacation for like three or four years. As you
18 know, we get about five weeks a year.

19 Q. Now, ~~your duties with the Broward~~
20 ~~Sheriff's Office are in the area of traffic homicide;~~
21 ~~correct?~~

22 A. Yes, sir.

23 Q. According to your C.V., it says you do ~~all~~
24 ~~Broward County Sheriff's Office vehicle~~
25 ~~investigations --~~

1 A. Including investigation, statements,
2 accident reconstruction.

3 Q. You can't obviously investigate all BSO
4 accidents.

5 A. Personally, no. Almost all the reports,
6 without exception, are run through me. That means for
7 review. ~~I pretty much review them all.~~

8 Q. Are you designated as a supervisor with
9 the BSO?

10 A. I was designated as Traffic Coordinator.
11 Right now I'm really the ~~accident review person and~~
12 ~~training officer for anybody new,~~ so it's the same type
13 of thing really.

14 Q. How long has BSO had a Traffic Homicide
15 Unit?

16 A. I was one of the first ones in it. We
17 started up in about ~~December~~ of 1984. Really didn't
18 get rolling until about March or April of '85.

19 Q. What is the criteria that BSO uses before
20 they involve themselves in investigating a traffic
21 homicide?

22 A. The criteria we use is -- Originally when
23 we started we only investigated Broward Sheriff's
24 Office vehicle accidents.

25 Now we've expanded to where we do

1 Sheriff's Office vehicle accidents, anywhere within the
2 county. That includes cities, municipalities. And we
3 do any fatalities that occur with our vehicles or that
4 are done within our contract cities. We do not do
5 fatalities in the unincorporated areas unless we're
6 requested by the Florida Highway Patrol.

7 Q. Unless it involves a BSO unit or happens
8 in one of your contracted cities, those accidents, the
9 homicide accidents are investigated by FHP. Correct?

10 A. Correct. Or the city that it occurs in.

11 Q. Okay.

12 The contracted cities that you're
13 referring to would include Dania, Tamarac --

14 A. Lauderhill, Lauderdale Lakes, Pembroke
15 Park, the airport and the Port.

16 Q. How many traffic homicides --

17 A. Deerfield, too.

18 Q. Deerfield is new.

19 A. Okay.

20 Q. How many ~~traffic homicide investigations~~
21 ~~have you conducted since 1985~~ for the Broward Sheriff's
22 office.

23 A. I, myself, have probably conducted about,
24 I would say, a ~~minimum of 10~~. I've been ~~at the scene~~
25 ~~of about 150 to 200 over that five-year period.~~

1 Q. You're also a ~~field training officer.~~

2 A. Yes, sir.

3 Q. Describe or define what a field training
4 officer does.

5 A. Field training officer would be a little
6 different throughout the department than it is in my
7 particular job, because I'm a specialized unit.

8 ~~As a field training officer, anyone who is~~
9 ~~assigned to the Traffic Unit, they're either trained by~~
10 ~~me for DUI detection and apprehension, or they're~~
11 ~~trained by me as an accident investigator.~~

12 Some of the guys go through the schools
13 that are taught out at the college or through IPTM.
14 They have to make a probationary period. And that
15 covers, I believe, about six months. They're evaluated
16 bi-weekly by me and another training officer. They're
17 given facts, circumstances, they assist at the scene of
18 accidents and basically those types things is what they
19 do. Then I evaluate them and recommend whether they
20 stay in the unit or not.

21 Q. When you're referring to "they," you're
22 talking about homicide investigators?

23 A. Homicide investigators or people assigned
24 to the Traffic Unit.

25 Q. Traffic Unit in general.

1 A. Yes, sir.

2 Q. Your C.V. refers to traffic homicide
3 investigators and the DUI Task Force?

4 A. That's correct.

5 Q. How long has BSO had a DUI Task Force?

6 A. Since April of 1985.

7 Q. What is the objective of the DUI Task
8 Force?

9 A. To arrest and apprehend possible or
10 suspected drunken drivers, to write traffic citations
11 as they see fit, and to assist other cities in things
12 such as road blocks, lane squeezes, blood draws, those
13 types of things.

14 Q. Have you actually been assigned to the DUI
15 Task Force?

16 A. Yes.

17 Q. While you were with the DUI Task Force you
18 made a substantial number of arrests; is that correct?

19 A. Yes.

20 Q. As a matter of fact, you held, I think,
21 the record for the number of arrests on DUI Task Force
22 for a long period of time.

23 A. Yes.

24 Q. ~~Do you still hold that record?~~

25 A. ~~Yes.~~

1 Q. How many traffic homicide investigators
2 does BSO have at this point?

3 A. Well, there's a slight distinction as to
4 what - just so you're aware - of the traffic homicide
5 investigators. We have probably ~~several hundred~~
6 ~~investigators~~. We only have ~~two reconstructionists~~
7 right now, currently.

8 Q. How would you distinguish between a
9 homicide investigator and a reconstructionist?

10 A. A homicide investigator is someone who
11 probably has not been qualified as an expert in a court
12 of law. They may have accident reconstruction schools
13 or they may not.

14 They're qualified and have been trained to
15 do traffic fatalities. However, if we have a
16 reconstruction or an accident, fatal crash involving a
17 Sheriff's Office vehicle, generally it's one of the
18 three people who are reconstructionists who do that
19 particular accident.

20 Q. Aside from you, who else is employed by
21 the Broward Sheriff's Office who is considered a
22 reconstructionist?

23 A. Hal Samuels. And I believe Van Hamlan,
24 H-A-M-L-A-N. However, he just got transferred last
25 week.