

State of Florida)
County of Broward)

:ss J. WILLIAM P. DIMITROULEAS

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

STATE OF FLORIDA,)

Plaintiff,)

vs.)

Case No. 91-139 CF

JOSEPH CLARK,)

Defendant.)

Fort Lauderdale, Florida

April 30, 1991

9:15 o'clock a.m.

DEPOSITION OF
RICK SWOPE

APPEARANCES:

HOWARD M. SCHEINBERG, Esquire,
Assistant State Attorney,
Appearing on behalf of the State of Florida.

HOWARD FRIEDMAN, Esquire,
Appearing on behalf of the Defendant.

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Witness: RICK SWOPE

Direct Examination

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By Mr. Scheinberg

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Deposition of RICK SHOPE, a witness herein,
taken on behalf of the Defendant herein, for the
purpose of discovery and for use as evidence in this
cause, pending in the Circuit Court of the Seventeenth
Judicial Circuit, in and for Broward County, Florida,
before MARIA REEDER, a Notary Public within and for the
State of Florida at Large, pursuant to notice
heretofore filed, at Broward County Courthouse, Suite
660, Fort Lauderdale, Florida, on the 30th day of
April, 1991, commencing at the hour of 9:15 o'clock
a.m.

Thereupon,

RICK SHOPE,

having been first duly sworn, was examined and
testified upon his oath as follows:

DIRECT EXAMINATION

BY MR. SCHEINBERG:

Q. State your name, please.

A. Rick Shope. S-W-O-P-E.

Q. You have been retained in the case of
State versus Joseph Clark?

A. Yes.

Q. When were you retained?

A. In March of, I believe it was the first

1 week of March of '91.

2 Q. Were you referred by anybody in particular
3 or were you contacted by somebody?

4 A. I was contacted by Howard Friedman. I
5 think I was referred by someone, but I am not sure who
6 it was.

7 Q. Was there any letter of retention or
8 contract that you entered in existence? Is there any
9 in existence at this point?

10 A. Yes.

11 Q. And do you have it with you?

12 A. No.

13 MR. FRIEDMAN: You mean this?

14 THE WITNESS: Yes.

15 MR. FRIEDMAN: That has not been signed or
16 filled out?

17 THE WITNESS: Yes.

18 MR. SCHEINBERG: Can I look at that?

19 MR. SWOPE: It is a standard contract.

20 BY MR. SCHEINBERG:

21 Q. In other words, there was no written
22 letter of retention?

23 A. That's correct.

24 Q. And how much are you charging for your
25 duties?

1 A. I charge \$100 an hour for accident
2 reconstruction, \$125 for depositions, and \$150 for court.

3 Q. And how much time do you have in on this
4 case to this date?

5 A. Probably twelve hours or so, not counting
6 this time.

7 Q. Did you do an accident reconstruction of
8 this case? Let me ask you this before you get to that.
9 What areas were you requested to investigate as a
10 reconstructionist by the Defense in this case?

11 A. I was asked to review the police homicide
12 report and to determine if it was possible that Mr.
13 Clark was indeed driving the truck or could be a
14 passenger or another person in the vehicle.

15 Q. You mentioned that you asked to review the
16 homicide report. Were you asked to do a
17 reconstruction?

18 A. Yes.

19 Q. And what did it consist of?

20 A. Yes, I was asked to do that. And
21 basically what that consisted of was review of the
22 police reports, doing the vehicle inspection of the
23 vehicle, and reviewing all evidence that was available
24 to me or that I could review at this time.

25 Q. And you've done that in a number of

1 different occasions since the first day you were
2 retained, correct?

3 A. Yes, it is ongoing. As depositions come
4 in, I generally read them.

5 Q. Okay. Did you interview the Defendant,
6 Joseph Clark?

7 A. No, sir.

8 Q. Did you ever meet with Joseph Clark to
9 examine his injuries or scars or remnants of any crash
10 involved?

11 A. No.

12 Q. Did you go to the scene?

13 A. Yes.

14 Q. Did you yourself measure the scene?

15 A. Yes.

16 Q. Are your measurements consistent with that
17 of Officer Burgess and Lohbauer in their actual
18 investigation?

19 A. Yes.

20 Q. Do you have any reason to question the
21 veracity of their measurements?

22 A. No.

23 Q. I think you said that there was a question
24 with respect to the scale drawing that is part of the
25 Accident Traffic Homicide Report?

1 A. Yes.

2 Q. And what problem did you find with that?

3 A. The measurements listed on the police
4 diagram there is a - basically what is called a Legend
5 Sheet. I believe Mr. Burgess has a list of his diagram
6 explanations. The scale of this diagram is not exactly
7 to scale. It does list on it that it is not to scale,
8 but I attempted to take his measurements with his
9 diagram and entered it into the computer.

10 And apparently it did not come out correct, so I
11 had to go back and recheck the scene to make sure the
12 measurements were totally on. It is not unusual to
13 prepare a diagram not to scale. But for court purposes
14 I prepare one to scale. So in order not to make a
15 mistake from either point, I go back and recheck it.

16 Q. When you first reviewed the diagram, it
17 was mentioned that it was drawn not to scale, correct?

18 A. That's correct.

19 Q. Did any of your investigation involve the
20 review of any records concerning the functioning of
21 that traffic device at the intersection of Northeast
22 66th Street and Sheridan?

23 A. I believe that was contained in the
24 Homicide Report.

25 Q. You reviewed Officer Burgess' statement

1 that he checked with traffic engineering and it was his
2 opinion that the light was working correctly at the
3 time?

4 A. That's correct.

5 Q. Do you have any reason to question that?

6 A. No.

7 Q. Have you done an investigation yourself to
8 corroborate that or to contradict that statement?

9 A. No, I have no reason to believe that would
10 not be true.

11 Q. And you said that you reviewed the Traffic
12 Homicide Report in, I imagine, in pretty much detail,
13 correct?

14 A. Yes.

15 Q. What in particular did you find in the
16 Traffic Homicide Report that was important to you in
17 conducting your investigation?

18 A. Well, since we are talking -- The Homicide
19 Report itself basically has everything in it, which
20 includes everything that Mr. Burgess does including the
21 collection of evidence, the mention of photographs
22 taken, and the initial State Farm accident report, and
23 the conclusion phases, and what Larry has listed as
24 sequence of events. So basically the entire report was
25 important as to the description of the area, the

1 description of the accident scene. Pretty much
2 everything was important in the report, and I reviewed
3 all of it as such.

4 Q. Was there anything of more extreme
5 importance than anything else in that report, such as
6 measurements versus weather conditions, that type of
7 question?

8 A. I would say it is all important, but I
9 would not say that there is something that I would pick
10 out. I think it is all definitely important.
11 Everything including roadway characteristics,
12 signalization, vehicles - everything is important that
13 I have to check.

14 Q. Did you also -- As part of the Homicide
15 Report, did you also review witness statements
16 contained in the Homicide Report?

17 A. Yes.

18 Q. And whose statements did you review?

19 A. Well, I reviewed all of them that were
20 contained in the report. I have them here.

21 Q. Well, is it safe to say that you reviewed
22 all of the witness statements that Officer Burgess
23 took?

24 A. Yes, I can give you the names of those
25 people if you want.

1 Q. No.

2 A. They were all contained in the report.

3 Q. Is any team of more importance than any
4 others to you in your investigation?

5 A. I really can't put a weight on it. I
6 would say that all witness statements are important as
7 to the conclusion of the reports. So they are all
8 taken into context.

9 Q. What information did you receive from the
10 statements themselves that may have directed you to an
11 investigation or assisted you in coming to your
12 opinions?

13 A. Well, in all the - in the statements
14 themselves, I believe --

15 Q. You would agree that there are many
16 conflicts in the eye witness statements, correct?

17 A. Yes, there are many conflicts, correct.

18 Q. And you investigated accidents as a police
19 officer yourself, correct?

20 A. That's correct.

21 Q. Do you find it uncommon for eye witnesses
22 to give different recounts or accounts of an accident
23 that they observed all at the same time or different
24 times of the accident?

25 A. That is not unusual, no.

1 Q. Okay. And based on your experience, what
2 would you attribute that to?

3 A. Well, you can attribute it to a lot of
4 things. You can attribute it to the fact that possibly
5 the witnesses - there have been witnesses that had been
6 drinking. People have perception of what they see.
7 Different angles that they are in. It is dark out. In
8 this particular accident it was dark out at the time of
9 the accident.

10 Also probably the biggest, I should say, the
11 thing that affects witnesses is other witnesses at the
12 scene. Generally the police are not there within
13 thirty seconds of the accidents and the witnesses have
14 time to get together and say, did you see that, and
15 that kind of stuff, and sometimes statements are based
16 on that.

17 Q. Did you review the statements from a
18 witness, Chris Maddeux, and also the depositions of
19 Michael Jones and Chris Maddeux?

20 A. I believe I was just provided with those
21 depositions. I have not reviewed them, no.

22 Q. What information, if any, did you glean
23 from Chris Maddeux's statement that would have assisted
24 you in your investigation?

25 A. Was that contained in the Homicide Report?