

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

STATE OF FLORIDA, )  
Plaintiff, )  
vs. )  
DIANALO FUGON, )  
Defendant, )

CASE NO. 99-13023CF10A  
JUDGE: GOLD

COPY

Proceedings had and taken before the Honorable  
MARC GOLD, one of the Judges of said Court, at the Broward  
County Courthouse, 6th floor, commencing at or about  
8:30 a.m., on March 20, 2003, in the City of Fort  
Lauderdale, County of Broward, State of Florida.

APPEARANCES:

MICHAEL J. SATZ, STATE ATTORNEY,  
By: STACEY ROSS, ESQUIRE,  
ASSISTANT STATE ATTORNEY,  
Appearing on behalf of the Plaintiff.

LAW OFFICE OF JUNE LOCKHARTT, P.A.,  
By: JUNE LOCKHARTT, ESQUIRE,  
Appearing on behalf of the Defendant.

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STATE ATTORNEY  
17TH JUDICIAL CIRCUIT  
CENTRAL  
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## I N D E X

	DATE	PROCEEDINGS	PAGE
1			
2			
3	3-20-03	Rule to Show Cause	1 - 15
4			
5			
6			
7			
8			
9			
10			
11			
12			
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1 (Thereupon, the following proceedings were had:)

2 MS. LOOCKHARTT: Judge, can you call Fugon?

3 THE COURT: I thought we were waiting for the  
4 state attorney?

5 MS. LOOCKHARTT: She's here, Judge.

6 MS. ROSS: Everyone's here, Judge.

7 MS. LOOCKHARTT: June Loockhartt on behalf of the  
8 defendant, Mr. Fugon. Good morning, Your Honor. Page 22.

9 MS. ROSS: Stacey Ross for the State.

10 THE COURT: Good morning.

11 MS. ROSS: May I approach briefly and hand you  
12 the motion I prepared, a motion for order to show cause on  
13 Rick Swoke, or in the alternative, motion to strike.

14 Judge, the last time we were here before Your  
15 Honor on March 6th, Your Honor told us we were the number  
16 one case up for Monday, which is a couple days from now.  
17 I still haven't taken the deposition of the accident  
18 reconstructionist, Rick Swoke. In this case, Your Honor,  
19 causation is gonna be a major factor as far as the DUI  
20 manslaughter and SBI. It's imperative that the State take  
21 Rick Swoke's deposition before trial.

22 THE COURT: Did you serve him?

23 MS. ROSS: A mandatory subpoena to appear this  
24 morning at ten a.m. He did not show. He actually called  
25 me ahead of time and told me that he wasn't gonna show.

1 THE COURT: All right.

2 MS. LOOCKHARTT: Judge, if I may, before the  
3 Court rules, I had filed yesterday an emergency motion for  
4 protective order filed on March 19th at 1:38. I had gone  
5 --

6 THE COURT: On behalf of Mr. Swoke?

7 MS. LOOCKHARTT: On behalf of Mr. Swoke. I  
8 contacted your JA and she added it on today. What had  
9 happened, Your Honor, was my office and Ms. Ross' office  
10 had had a conversation and tried to coordinate the  
11 deposition of Rick Swoke prior to the date which was  
12 originally set for trial on March 17th, because I had  
13 spoken to Mr. Swoke and he had advised me due to a  
14 different case he had ongoing, he would be unavailable.  
15 He would be unavailable until the week of March 24th.

16 Subsequent to that I received a notice of  
17 deposition, and subsequently Mr. Swoke was served two days  
18 before the scheduled depo for today for a deposition in  
19 which the State, I believe, was aware that he would not be  
20 able to attend. Because of that I filed an emergency  
21 motion for protective order.

22 I spoke to Mr. Swoke. He also advised me that he  
23 contacted Ms. Ross to try to reschedule but that I guess,  
24 you know, at that point she was not willing to do so,  
25 Judge.

1 THE COURT: The case is how old now?

2 MS. LOOCKHARTT: Four years old, practically.

3 THE COURT: Four years old?

4 MS. ROSS: Yes. At some point this case has to  
5 be on Mr. Swoke's priority list. You know, I understand  
6 he's been very busy --

7 THE COURT: I want you here at 9:15 -- Where is  
8 the defendant? I want you here at 9:15 on Monday. If  
9 he's not available, he's not available. I can't help you.  
10 Is he under subpoena for trial?

11 MS. LOOCKHARTT: Judge, I have him -- I don't  
12 think I have him under subpoena as my witness. But is the  
13 Court ruling on my emergency motion for protective order?

14 THE COURT: How much notice did you give him?

15 MS. ROSS: Judge, he claims that he only got  
16 notice on the 18th when I've actually served him. But I  
17 have the investigator who served him in the courtroom  
18 today, and Mr. Swoke was made aware of the deposition well  
19 before the 18th.

20 THE COURT: Quite often people are told  
21 something's gonna happen and I can only rely on the 18th.

22 MS. ROSS: I know, Your Honor.

23 THE COURT: Did he agree to it?

24 MS. ROSS: He was contacted by our investigator,  
25 told the date of the deposition, told it was March 20th.

1 Then my investigator made several attempts to make  
2 arrangements for him.

3 THE COURT: Better have him here Monday morning  
4 otherwise --

5 MS. LOOCKHARTT: Judge, may I just respond by way  
6 of response? Judge, he did not agree. He accepted the  
7 subpoena because I believe he has a relationship only --

8 THE COURT: I don't care if he agrees to it.  
9 It's a court order. It's not for him to agree to.

10 MS. LOOCKHARTT: The rules require under 3.228  
11 coordination and --

12 THE COURT: How many times have you tried?

13 MS. ROSS: I have tried to -- I have been trying  
14 to --

15 THE COURT: Four years.

16 MS. LOOCKHARTT: Judge --

17 MS. ROSS: Judge, I have been trying to since  
18 July of 2002 to set up this deposition. I went on  
19 maternity leave for three-and-a-half months. It's a valid  
20 reason for not setting it during that time period. But  
21 when I came back in December of 2002, I started even  
22 trying to set it up and this man does not want to show up  
23 for my depositions.

24 MS. LOOCKHARTT: Judge, I'm gonna object.

25 THE COURT: How many times did you serve him?

1 MS. ROSS: I served him only, I think, one time  
2 in this particular case.

3 MS. LOOCKHARTT: Once.

4 THE COURT: That's not good.

5 MS. ROSS: No, it's not good, because every  
6 single time I tried to serve him he said he's out of town,  
7 he's not here, he's not gonna be here and I haven't served  
8 him. On two other cases he's failed to show up for my  
9 depos after he's personally served.

10 MS. LOOCKHARTT: Judge, I can tell the Court --

11 THE COURT: As long as I've known Mr. Swoke it's  
12 been a problem with him. I mean, I don't know how much  
13 money he's making but he's away all the time. Maybe he's  
14 got too many cases, but he is a very hard man to latch on  
15 to.

16 MS. LOOCKHARTT: Judge, I don't have any dispute  
17 with that. The dispute that I have is the deposition was  
18 set where I'm the attorney. I, in good faith, either my  
19 office or my secretary talked to Ms. Ross. I'm being told  
20 by an expert who's gonna testify to causation in this case  
21 that he's not available. We appeared before the Court and  
22 discussed this on the record, both of us, on March the  
23 6th. Subsequent to that without any --

24 THE COURT: I can hear you.

25 MS. LOOCKHARTT: Judge, without --

1 THE COURT: I'll ask you to quiet it down.

2 MS. LOOCKHARTT: Judge, and without any  
3 notification I'm stuck between a rock and a hard place.  
4 I've got a witness who is unavailable. He's out of town  
5 on Monday. Judge, the first time that they serve him for  
6 deposition is two days before the deposition scheduled for  
7 the 28th on the 18th. They're saying that, you know, he  
8 knew about it. He's not here to defend himself, Judge.  
9 I'm stuck between a rock and a hard place.

10 THE COURT: That's his choice.

11 MS. LOOCKHARTT: Now years -- Sorry, Judge?

12 THE COURT: That's his choice. I mean, he  
13 doesn't honor a subpoena. Right or wrong, you don't  
14 ignore it.

15 MS. LOOCKHARTT: I didn't.

16 THE COURT: You're here on his behalf.

17 MS. LOOCKHARTT: I filed an emergency motion for  
18 protective order, which I think the Court needs to rule  
19 on.

20 THE COURT: When is he gonna be available? You  
21 tell me.

22 MS. LOOCKHARTT: I can tell the Court he's gonna  
23 be giving, I think it is here, on a separate case, a  
24 deposition for Wednesday.

25 MS. ROSS: Judge, that's --



1 THE COURT: I didn't ask that. I asked when is  
2 he going to be available in this case? You tell me.

3 MS. LOOCKHARTT: Judge, I believe he's gonna be  
4 available probably Wednesday. I know he's gonna be in  
5 Broward County, according to my conversation with him,  
6 next Wednesday afternoon at 5:30.

7 THE COURT: Is he available for deposition?

8 MS. LOOCKHARTT: Yes, because he advised me he's  
9 giving a deposition in a different case on another --

10 THE COURT: I don't want to hear that. When is  
11 he going to be available in this case?

12 MS. LOOCKHARTT: Judge, I think he's available  
13 Wednesday afternoon at 5:30.

14 MS. ROSS: It's convenient he would be here for  
15 the defense and we're set for Monday to start picking a  
16 jury. I wouldn't want to take his deposition in the  
17 middle of trial when causation is such a major element,  
18 Your Honor.

19 MS. LOOCKHARTT: Judge, he's available possibly  
20 Wednesday. He's gonna be here. I spoke to him yesterday.

21 THE COURT: A week from yesterday?

22 MS. LOOCKHARTT: I spoke to him yesterday.

23 THE COURT: A week from yesterday? If he's  
24 available on Wednesday it's a week from yesterday.

25 MS. LOOCKHARTT: Yes. Yes.

1 THE COURT: A week from yesterday.

2 MS. LOOCKHARTT: It would be the 26th, Judge.  
3 March 26th.

4 THE COURT: Okay. Monday, March 31st, trial.

5 MS. LOOCKHARTT: What time?

6 THE COURT: If you don't make him available,  
7 that's your problem. All right. You got it. Monday,  
8 March the 31st.

9 MS. LOOCKHARTT: Are you deferring on the rule to  
10 show cause until he shows for depo?

11 THE COURT: If you don't make him available, you  
12 can't use him. That's what I said.

13 MS. ROSS: Thank You, Your Honor.

14 MS. LOOCKHARTT: As far as my emergency motion  
15 for protective order, is the Court ruling on that?

16 THE COURT: I'm not going forward on the order to  
17 show cause. I'm telling you that at this time if this man  
18 is not made available to the State before the 31st, you  
19 can't use him.

20 MS. ROSS: Judge, I appreciate your ruling. I'm  
21 just concerned with Mr. Swoke on what he's gonna do Friday  
22 afternoon when I won't have time to prepare and talk to my  
23 experts about his testimony, he'll probably make himself  
24 available on Friday afternoon.

25 THE COURT: Well, because it's a good long

1 weekend. You said he's gonna be here on Wednesday?

2 MS. LOOCKHARTT: Judge, I know he's gonna be here  
3 in Broward County on Wednesday afternoon.

4 Judge, I have to take dispute with the Court.  
5 The Court's saying that it's deferring on the State's rule  
6 to show cause or failure to --

7 THE COURT: I'm not even gonna consider it. That  
8 is my ruling. Make him available. I'm not gonna  
9 sanction. If he doesn't want to make himself available,  
10 you can't use him.

11 MS. LOOCKHARTT: That's sanctioning the defense  
12 on something that hasn't happened.

13 THE COURT: If he's not made available to the  
14 State, that's it.

15 MS. LOOCKHARTT: Okay, Judge.

16 THE COURT: You've got this witness. You don't  
17 make him available, you can't use him.

18 MS. LOOCKHARTT: Judge, is the State gonna make  
19 their witnesses available on their two experts, Montgomery  
20 and Stevens --

21 MS. ROSS: Yes, I did.

22 MS. LOOCKHARTT: -- that live outside of Broward  
23 County, and this is an indigent case. I'm unable to  
24 travel to Jacksonville.

25 MS. ROSS: I called and told you repeatedly

1 whenever you wanted to take the depositions --

2 THE COURT: I know about Swoke's. What --

3 MS. ROSS: Two depositions on experts. She's  
4 been told repeatedly whether she wants to take the  
5 depositions she could take them. From what I understand,  
6 she hasn't wanted to drive to Jacksonville or fly to  
7 Jacksonville. I told you they're available whenever you  
8 want. Montgomery will be available for deposition if she  
9 wants to take his deposition next week. He's gonna be  
10 here anyways. But from what I understood, she's not  
11 wanted to travel. I've said they're available by phone.

12 MS. LOOCKHARTT: This is an indigent case.  
13 Ms. Ross had advised me on March 6th that one of her  
14 experts would be unavailable until the 24th. My expert  
15 would also be unavailable, because that was continued  
16 originally from the 17th, when it was set, until the 24th.

17 THE COURT: I'm hearing all these problems on the  
18 day of trial. I don't want to hear about it. You people  
19 gotta get ready. I don't care if you have to camp out. I  
20 don't care just get it done. I want to see you here  
21 Monday the 31st.

22 MS. LOOCKHARTT: Judge, I have one --

23 THE COURT: How long will the trial take?

24 MS. LOOCKHARTT: Two weeks.

25 MS. ROSS: Probably a week-and-a-half.

1 THE COURT: Okay, about two weeks. It doesn't  
2 matter to me. I'll be here.

3 MS. LOOCKHARTT: Is the Court ruling on my  
4 emergency motion for protective order?

5 THE COURT: What is your motion?

6 MS. LOOCKHARTT: My emergency motion lays out the  
7 argument that I've narrated to the Court as to the  
8 deposition having been served upon Mr. Swoke knowing that  
9 he would not be available. She failed to coordinate with  
10 it with my office. I know they allege they've been trying  
11 to since July. I disagree with that.

12 THE COURT: What are you seeking from the Court  
13 in the motion?

14 MS. LOOCKHARTT: I want to coordinate a time. I  
15 don't want a subpoena being served on Mr. Swoke at the  
16 time when he's in West Virginia at a different trial.

17 THE COURT: I'm granting the motion. When was  
18 this set for now, the 18th?

19 MS. ROSS: It was set for this morning.

20 MS. LOOCKHARTT: It was set for today, Judge.

21 THE COURT: All right. So I'm granting it. I've  
22 ordered you to make him available before the trial.

23 MS. LOOCKHARTT: Prior to.

24 THE COURT: What is that Friday?

25 MS. LOOCKHARTT: It's the 28th.

1 THE COURT: Before the 28th.

2 MS. ROSS: It's granted as to today?

3 THE CLERK: The week after March 24th is a  
4 hearing week. They're saying that the trial could be more  
5 than a week.

6 THE COURT: Can anything else go wrong? All  
7 right. Another judge will hear it then. I'll see you on  
8 the 31st at 9:15. The pool is available.

9 MS. LOOCKHARTT: Thank you, Judge. So by March  
10 28th.

11 THE COURT: Before the 28th.

12 MS. LOOCKHARTT: Before the 28th, which is  
13 Friday.

14 MS. ROSS: Judge, I hate to readdress this case.  
15 But as far as the pool goes, my situation with that is  
16 that I do have the victim's family that live out of town  
17 and I want to fly them in and it's kind of difficult when  
18 we're in the pool.

19 THE COURT: I'll start the trial. If I don't  
20 finish it, we'll just continue it for a week and come back  
21 then.

22 MS. ROSS: Okay.

23 THE COURT: I'll tell you right now, in May I'm  
24 going out of town. May 4th. If it goes that long, I'm  
25 not gonna be here.

1 MS. LOOCKHARTT: Thank you, Judge. I'm gonna  
2 follow the Court's order.

3 (Whereupon, the above proceedings were concluded  
4 approximately on or about 12:30 p.m.)

5  
6 REPORTER'S CERTIFICATE

7 STATE OF FLORIDA,  
8 COUNTY OF BROWARD,

9 I, AUTUMN CAPTAIN, certify that I was authorized  
10 to and did stenographically report the foregoing  
11 proceedings and that the transcript is a true and complete  
12 record of my stenographic notes.

13 Dated this 10th day of April, 2003.

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16 Autumn Captain  
17 Court Reporter

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