

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO: 97-09230 CA 1

MARLA E. GONZALEZ,

Plaintiff,

vs.

FRED O. DICKINSON, III,
ETC.,

Defendants.

DADE COUNTY COURTHOUSE
73 WEST FLAGLER STREET
MIAMI, FLORIDA
10-18-99 - 10-25-99

JURY TRIAL

EXCERPT OF RICK SWOPE

Transcript of the proceedings had and taken
before the Honorable BERNARD SHAPIRO, Judge of the
above-entitled court, at the time and place stated in
the caption above.

APPEARANCES:

DAVID J. FINGER, ESQ.
JAY LEVINE, ESQ.
LEVINE & FINGER
ON BEHALF OF THE PLAINTIFF

REGINALD J. CLYNE, ESQ.
SIMMONS & CLYNE, P.A.
ON BEHALF OF THE DEFENDANT

PETER N. STOUMBELIS, ESQ.
DEPARTMENT OF HIGHWAY SAFETY AND
MOTOR VEHICLES

STEPHEN K. TALPINS, ESQ.
ASSISTANT STATE ATTORNEY
ON BEHALF OF THE DEFENDANT

ALSO PRESENT: Marla Gonzalez
Chief Christopher Knight

1 MR. FINGER: The only difference is
2 it's .08 instead of .01 on the alcohol.

3 MR. CLYNE: I'd like to publish this to
4 the jury.

5 (Publishing to the jury.)

6 MR. FINGER: Objection.

7 THE COURT: Next witness.

8 MR. FINGER: May I go get him, Judge?

9 THE COURT: Or the bailiff will get
10 him.

11 MR. FINGER: Okay. The bailiff will
12 get him.

13 THE COURT: Mr. Clyne, I'm a little
14 concerned about the stuff you have.

15 I don't have a problem with passing
16 pictures, but if a lot of documents to
17 re-say it, I don't want them reading while
18 the witness is testifying; all in evidence.
19 They're going to see them all.

20 MR. CLYNE: Okay. Okay.

21 Thereupon:

22 RICK SWOPE

23 was called as a witness and having been duly sworn, was
24 examined and testified, as follows:

25 DIRECT EXAMINATION

1 BY MR. FINGER:

2 Q Will you tell the jury your name, please.

3 A My name is Rick Swope, S-w-o-p-e.

4 Q Mr. Swope, what do you do for a living?

5 A I do primarily accident reconstruction.

6 That's primarily what I do in my work. I have a
7 business in Fort Lauderdale. I also have an office
8 in Atlanta, Georgia.

9 That's primarily what I do.

10 I do some teaching and consulting in
11 other areas, but that's primarily what I do.

12 Q Do you also have experience in the field of
13 police procedure?

14 A Yes.

15 Q That would include supervision of
16 discipline of police officers?

17 A Yes.

18 Q Would you tell the folks in the jury what
19 your background is in law enforcement?

20 A I was a police officer for 15 years. The
21 first three years I was in the military police in the
22 United States Army. My responsibility was to --
23 after I obtained rank after -- before I think it was
24 18 months to reach an E5 position, a Sergeant
25 position at that time I was responsible for

1 approximately 1000 military police officers and
2 worked in the S1 section. I had about 25 individuals
3 that worked with me. My responsibility at that time
4 was to assign personnel to the five companies.

5 I was responsible for doing
6 procedures, reports, disciplinary actions, getting
7 those disciplinary actions and see if they should go
8 forward or not.

9 Those are known as Article 15 in the
10 military.

11 That's initially where I got my
12 training or background in that.

13 Upon leaving there, I completed the
14 last six years I was a police officer; four of those
15 six years administrative coordinator for traffic
16 homicide DUI unit.

17 I had a specific amount of
18 responsibilities dealing with policies and
19 procedures.

20 During that period of time the
21 department requested to become accredited under the
22 combined accreditation of law enforcement agencies.

23 At that time I think there was only
24 about 20 or 30 departments in the United States that
25 fell under that, and I was given the responsibility

1 of writing policies and procedures for not only the
2 assisting of the special operations group but also
3 with the department review and accident investigation
4 reports, and the reason that was was because we had
5 approximately 300 patrol car accidents per year at
6 that time.

7 I don't know how many now there is,
8 but I was responsible to ascertain that people had
9 hearings and boards and those type of things based on
10 a number of accident progressive discipline those
11 type of things, seeing what their accident record,
12 what their I rate was those types of things.

13 I also received -- I would do some
14 work, and, again, because I was known at that as
15 special operations group. We had, I believe, about
16 140 people in that unit, and the traffic homicide
17 unit DUI task force unit fell amongst myself and
18 David Fry and also under Lieutenant Kramer.

19 At that particular point in time, any
20 complaints that came in, or generally if they came in
21 on the shift, I was on, I would handle the complaint
22 primarily rather than put it in writing.

23 We would, at that point, speak to the
24 citizen whether it was -- Obviously, if more serious
25 complaint, put in writing and forward it and have the

1 review board -- and that's where I got my initial
2 training.

3 I have taught at the police academy,
4 also, for ten years, and, during that time, also for
5 each class that I have taught -- or each class that I
6 was involved in, I was responsible for seeing that
7 students met the criteria of the class.

8 I had to write out papers if
9 someone -- if I had to dismiss someone or request
10 that they failed the course; depending on the
11 situation.

12 I also assisted with policies and
13 procedures on other agencies. After we became
14 accredit -- I'm just guessing -- I think it was '87.

15 CALEA stands for Combined
16 Accreditation of Law Enforcement Agencies; again I'm
17 not sure if '87 or '88. It took us about 16 months
18 to write the policy.

19 So, during that time I was frequented
20 by probably -- I got the policies and procedures from
21 probably about 100 separate police departments either
22 in the State or around the country, and so all they
23 did as far as policies and what their disciplinary
24 actions were, if necessary, and that's basically how
25 I initially got involved in that.

1 Q So you familiarized yourself with the
2 policy and procedure and discipline throughout law
3 enforcement through various law enforcement agencies
4 throughout the State and country?

5 A Right. Mostly any departments that were
6 going to do disciplinary actions or policies and
7 procedures always either contact the Broward Police
8 Academy, because that's where every policy and
9 procedure manual was there for the whole country at I
10 would assist them verbally or go to their agency and
11 work with them if necessary.

12 Q Is there any other -- anything else in your
13 background concerning police procedure, disciplinary
14 supervision?

15 A Well, I guess in a nutshell, that's kind of
16 it.

17 We really -- Disciplinary actions was
18 not a big problem in my unit. The unit that I worked
19 with, it wasn't a major thing. It was basically
20 traffic type complaints. You know, people got a
21 traffic ticket; they weren't happy; come in and
22 complain; those kind of things.

23 We had one individual that I worked a
24 full investigation on for over a year period of time
25 where he was found to have falsified a traffic

1 homicide report.

2 That individual was subsequently fired
3 and terminated by the agency based on recommendations
4 of myself and others of the chain of command, and
5 that was because he was falsifying official police
6 documents which we later found to be those documents
7 were falsified, and that was his first offence, and
8 he was fired.

9 Q You indicated that you primarily do
10 accident reconstruction.

11 Is that of your own choosing rather
12 than rendering opinions on police procedures?

13 A Yes. I generally don't get involved in
14 this kind of stuff. I have done it probably three or
15 four times in the past ten years. I don't do it very
16 often. I look at things. Sometimes I can help.
17 Sometimes I can't. Primarily I work with mathematics
18 and engineers.

19 Q Have you rendered and testified in the pack
20 and rendered opinions in the past in the court on
21 police procedures discipline?

22 A Yes. Although may not be broken down in
23 areas like that. Each case is different.

24 Q Have the opinions that you have given in
25 the past in courtroom settings called for you to be

1 familiar with policy and procedures and discipline of
2 police officers of various type of law enforcement
3 agencies?

4 A Yes.

5 Q In this case we are dealing with FHP?

6 A In this case, correct.

7 Q Do cases in which you're called upon to
8 review material on questions of police procedure, is
9 that generally more work intensive than accident
10 reconstruction?

11 A Sometimes, yes. Actually, it could be very
12 intensive to read all the policies and follow
13 papertrails are very hard to follow, and in some
14 cases very time consuming.

15 Q So your dedication to accident
16 reconstruction is personal?

17 A Yes.

18 Q As opposed to any reluctance on your own
19 part as far as your abilities go?

20 A Yes, I prefer to do the engineering part.

21 Q That doesn't mean in your mind that you
22 feel you're unqualified to opine police procedure?

23 A No. I probably could do a lot more of this
24 work. I just don't do it. Plus, I'm not in the
25 community for doing reconstruction.

1 Q Did I retain you for purposes of reviewing
2 certain IA files of Florida Highway Patrol
3 specifically those of one Jacqueline Gipson?

4 A Yes.

5 Q Am I paying you for your time?

6 A I bill for my time, just like I do on every
7 case.

8 Q What arrangement do we have?

9 A I am charging you \$125 per hour on the file
10 \$175 for court or deposition.

11 Q Did I ask you to review -- I sent you some
12 IA files which you reviewed, and then, I guess you
13 returned them to me?

14 A Yes.

15 Q With your deposition a couple of weeks ago?

16 A Right.

17 Q Did you -- Well, preliminary, let me ask
18 you a few questions before we get into the IA files.

19 Are you familiar with law enforcement
20 collection of evidence?

21 A Yes.

22 Q Are police officers supposed to collect
23 evidence at the scene specifically, for example, a
24 State Trooper, if there is evidence at the scene?

25 A Any office will collect any evidence, yes.

1 Q Are police officers called upon to
2 photograph evidence or photograph an individual if
3 they think that there's permanent evidence on the
4 individual?

5 A Yes.

6 Q Are you familiar with FHP ever making use
7 of any sort of cotton or cotton swab for purposes of
8 collecting Cocaine -- well, for purposes of
9 collecting suspected Cocaine that may be visible on
10 an individual?

11 A I have seen them collect Cocaine with
12 evidence bags; could be cotton swabs; could be
13 something else. Primarily, I have seen troopers
14 collect that while I was working with them, yes.

15 Q To your knowledge, are cameras available
16 for State Troopers to use if they want to photograph
17 a particular suspect?

18 A Certainly.

19 Q When I'm talking about at a police station,
20 not even on the scene, at the police station, to your
21 knowledge FHP equips their individuals with cameras,
22 if they're available?

23 A Some individuals at FHP, specifically,
24 homicide, but cameras in facilities -- I mean, every
25 jail has a camera. Every jail in the State of

1 Florida has a camera. So there are facilities to go
2 to if you don't have it on the scene.

3 Q Are you familiar with TGK here?

4 A Yes.

5 Q That is a jail facility?

6 A It is.

7 Q And it's also a place where FHP conduct
8 testing; is that correct?

9 A That's correct.

10 Q I asked you to review the IA files of one
11 Jacqueline Gipson for purposes of rendering an
12 opinion, if you would, concerning the supervision
13 and/or discipline of her on the part of Florida
14 Highway Patrol --

15 A Correct.

16 Q -- correct?

17 Did you formulate any opinions?

18 A Yes.

19 Q What are those opinions?

20 MR. CLYNE: I object; witness is not
21 qualified.

22 THE COURT: Overruled.

23 BY MR. FINGER:

24 Q I am interested only in what opinions you
25 have formulated from the Florida Highway Patrol.

1 A Right.

2 Basically, I have a few opinions and
3 it kind of goes all into one really, but based on the
4 facts that there were numerous past complaints or
5 past incidents, by the volume, the sheer volume of
6 the complaints made and similar in nature of all the
7 complaints made, there is a determinate pattern of
8 lying, perjury and unethical conduct by this officer.

9 The department was responsible and is
10 responsible for further and greater investigation
11 based on the volume of complaints and the nature of
12 all the complaints of the department did not, in my
13 opinion, follow any kind of police custom.

14 There was no discipline, and even if
15 the allegations were true or false, the department
16 has a duty to proceed and complete any investigation
17 where one of their officers are accused of criminal
18 or any other type of conduct -- misconduct.

19 In reading all the files that I was
20 provided with, the department was fully aware and
21 participated in the negligent retention of this
22 employee. The agency was on notice. They knew that
23 this problem occurred. They were fully aware it
24 occurred. They were aware of all of the complaints.
25 In fact, they investigated all of the complaints, and

1 basically they're aware that this employee was
2 basically a time bomb waiting to go off.

3 There was a definite pattern regarding
4 incidents of insubordination, perjury and lying. It
5 was also foreseeable that this officer was going to
6 testify in the court of law.

7 There also was some problems I saw
8 with the department in failing to properly train the
9 officer or else have her in for some type of
10 counselling or some type of work.

11 The department was fully aware, as I
12 indicated, that the officer was untruthful, was
13 written up numerous times for lying and other
14 untruthful acts, and, basically, the principal or
15 practice of not disciplining this officer or removing
16 her from the force is a direct cause as to the
17 allegations of false arrest in this case.

18 Q Does that summarize your opinions that you
19 have formulated in terms of Florida Highway Patrol's
20 discipline or supervision of Trooper Gipson?

21 A Yes, basically.

22 MR. FINGER: May I have a moment?

23 You may inquire?

24 MR. TALPINS: Thank you.

25 CROSS EXAMINATION

1 BY MR. TALPINS:

2 Q When you were with BSO, were you Sherriff?

3 A Deputy Sherriff.

4 Q It wasn't Sherriff; right?

5 A No. We only have one out have 3000
6 deputies.

7 Q That wasn't you?

8 A No.

9 Q You weren't major?

10 A No.

11 Q Not the captain?

12 A No.

13 Q Not the lieutenant?

14 A No.

15 Q You weren't the sergeant?

16 A No.

17 Q Why don't you tell us what the lowest rank
18 in Broward Sherriff's Office is for police officer?

19 A I don't know if lowest rank. Obviously a
20 deputy sheriff, I don't know if the lowest rank.

21 Q I'm talking about within police personnel,
22 what is the lowest rank for a sworn police officer?

23 A Deputy Sheriff.

24 Q What were you?

25 A Deputy Sherriff, but I was administrative

1 coordinator.

2 Q But your official rank was the lowest rank
3 in Broward County Sherriff's Office; is that correct?

4 A Well, if you want to go by rank, I guess
5 so.

6 Q So the answer is yes?

7 A I don't consider -- consider that to be the
8 lowest rank. I did a position -- I did probably 150
9 positions simply, and you were picked for that
10 position.

11 Q Let's talk about rank. That's what my
12 question is. I understand your job here is to answer
13 my questions; right; you understand that's what
14 you're supposed to do?

15 MR. FINGER: I object to him trying to
16 browbeat him.

17 His job is to respond to questions put
18 by anybody either me or Mr. Talpins.

19 BY MR. TALPINS:

20 Q Your job during Cross Examination is to
21 answer the questions.

22 There are questions; correct?

23 A I have to answer your questions in the way
24 I see fit; that's correct.

25 Q I'm going to ask you again: Isn't it true

1 that the lowest rank, the lowest official rank at the
2 Broward Sheriff's Office, is Deputy Sherriff; isn't
3 that true?

4 A Yes; although, I certainly don't see it
5 that way. There is no such thing as lowest rank.

6 Q That's how they see it; right?

7 A What?

8 Q That's how they see it?

9 When they talk about rank, Deputy
10 Sherriff is the lowest ranking sworn police
11 personnel; isn't that how they see it?

12 A I don't know how they see it now. At that
13 particular time, no.

14 Q Now, you're testifying regarding police
15 disciplinary procedure; is that correct?

16 A Correct.

17 Q During your career as police officer, did
18 you ever take the sergeant test?

19 A No.

20 Q Now, you submitted a rather lengthy resume
21 in this case; is that correct?

22 A I didn't submit anything. I suppose
23 Mr. Finger has a copy of my curriculum vitae.

24 Q You gave Mr. Finger what you would refer to
25 as your CV; correct?

1 A Correct.

2 Q That's your professional resume?

3 A Yes.

4 Q When you gave it to Mr. Finger, you knew
5 that resume was going to be used in this case?

6 A Sometimes they mark it for evidence.
7 Sometimes they don't; obviously up to the attorney.

8 Q You submitted the resume for his use or
9 consideration in this particular case?

10 A Everyone has it that asks for it.

11 Q In this case?

12 A Yes.

13 Q Now, the resume you submitted to Mr. Finger
14 is what -- nine pages?

15 A I think so. The new one is nine pages.

16 Q Are you sure?

17 Do you want to see it? Would that
18 help refresh your recollection?

19 A I'm sure it's nine.

20 Q You obviously put a lot of time into it; is
21 that correct?

22 A I didn't put it together. My secretary
23 did.

24 Q You give her something to put it together
25 with, I assume?

1 A She will look over the years, obviously,
2 that they put it together with, yes.

3 Q You reviewed it to make sure it is
4 accurate, didn't you?

5 A Well, at one point, yes.

6 Q Well, it's still accurate, I assume?

7 A It is now, yes.

8 Q Did you also review that resume to make
9 sure it fairly represented your experiences?

10 A Well, everybody's in the field that I work
11 in, sure. I don't put in everything; otherwise,
12 four -- over 500 pages long; just the items that deal
13 with reconstruction and --

14 Q Now, in this particular case, you were
15 retained as an expert as Mr. Finger said in the field
16 of police discipline; is that correct?

17 A That was one of the things that he wanted
18 me to look at this particular case; that's correct.

19 Q You understood that, obviously?

20 A Sure.

21 Q Let's go through your resume.

22 Under the section entitled,
23 "Educational Background," you list a series of
24 academies and courses you have attended; is that
25 correct?

1 A Either attended or taught, depends on where
2 you're referring.

3 Q Educational background.

4 A Okay.

5 Q Is that the academies you attended, the
6 courses you yourself would have attended?

7 A Right.

8 Q And you listed nine of them?

9 A Whatever is there.

10 Q Correct?

11 A Right.

12 MR. TALPINS: May I have this marked,
13 please?

14 MR. CLYNE: Everything goes in as an
15 exhibit; agreed. You agreed; State
16 stipulated to the exhibits.

17 MR. FINGER: I never stipulated to
18 every single exhibit.

19 Can I see what he is offering?

20 MR. TALPINS: Judge, I am just marking
21 it for ID at this point.

22 THE CLERK: Defendants' A-1 for
23 Identification.

24 MR. TALPINS: Any objection to putting
25 it into evidence?

1 MR. FINGER: Do I have an objection to
2 putting it into evidence?

3 After you have laid the predicate --

4 MR. TALPINS: I will lay a predicate;
5 no problem.

6 BY MR. TALPINS:

7 Q Mr. Swope, I'm showing you A-1 for
8 Identification (indicating).

9 Do you recognize this document?

10 A Let me look at it.

11 Yes, I do.

12 Q Is that your CV?

13 A Yes, it is.

14 Q You know that because your name is on it,
15 and you have seen it before; correct?

16 A That's correct.

17 Q Is this a true and exact copy or an
18 original?

19 A That's a copy, an exact copy.

20 Q Is it an accurate copy of your CV?

21 A I would say so.

22 MR. TALPINS: At this time I move A-1
23 into evidence.

24 MR. FINGER: No objection.

25 MR. TALPINS: Mark this.

1 THE CLERK: Defendants' Exhibit C into
2 Evidence.

3 BY MR. TALPINS:

4 Q Let's talk about Defendants' Exhibit C.

5 I'd like to direct your attention to
6 the portion entitled, "Educational Background."

7 Why don't you take a look at that so
8 we can make sure we are accurate here.

9 A Go ahead.

10 Q Under the portion, "Educational
11 Background," you listed the courses you attended; is
12 that correct?

13 A Yes.

14 Q Nine of them; correct; nine courses and
15 seminars?

16 A I believe that's what this is, yes.

17 Q Now, none of those cases you dealt with
18 police management and discipline; is that fair to
19 say?

20 A As I indicated before, all these courses
21 deal with accident reconstruction or road testing.

22 Q There are courses obviously on police
23 discipline and management?

24 A There are some courses.

25 Q You haven't attended any of them?

1 A As far as, like, supervisory courses, no, I
2 haven't attended any of those, no.

3 Q Let me direct your attention to the part
4 entitled, "Professional Experience."

5 Under that you write, "Professional
6 Traffic Accident Reconstructionist."

7 Next you list as a consultant to
8 various municipalities on investigating criminal
9 collisions, or complex nature; consultant to the
10 Broward State Attorney's Office, accident
11 reconstruction; consultant to various insurance
12 companies, reference opinions of technical nature;
13 consultant to prosecution and defense attorneys,
14 criminal cases and civil proceedings for both
15 plaintiff and defendant;" do you see that?

16 A Where are you at, what page?

17 Q Under "Professional Experience."

18 A Oh, okay. I'm sorry.

19 Q Do you see that?

20 A Sure.

21 Q You don't say a single thing there about
22 any experiences you have in consulting or testifying
23 on police management or discipline, do you?

24 A No.

25 Again, I already indicated what I

1 testified to mostly, and I have already indicated
2 that to the jury.

3 Q Under the section, "Practical Experience,"
4 you summarized your duties as a police officer; is
5 that correct?

6 A That's correct.

7 Q And there is not a single thing in there
8 about police management and/or techniques mentioned?

9 A Nothing mentioned in there. The only thing
10 would be the training division yearly where I was an
11 assistant instructor for the department where we
12 would talk to the students, to all the officers.

13 Q You're resume doesn't say anything about
14 discipline, does it, under that section?

15 A No.

16 Q Under the description of "Teaching
17 Experience and Seminars," you have listed a dozen
18 seminars you taught and instructed?

19 A Yes.

20 Q You list 40 of them, I believe?

21 A Whatever is there is there. I don't know
22 how many, but if 40, 40.

23 Q None of those 40 courses and seminars you
24 listed in your resume, none of them have anything to
25 do with police discipline and management; is that