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

CASE NO. F01-4855

STATE OF FLORIDA
Plaintiff,
vs.
YILEYMI SUAREZ
Defendant.

TRANSCRIPT OF PROCEEDINGS
Trial Proceedings
Volume 1
Pages 1 - 97

The above-entitled cause came on for hearing before
the Honorable DAVID C. MILLER, Presiding Judge, at 1351
N.W. 12th Avenue, Miami, Florida on JUNE 17, 2002
commencing on or about 10:30 a.m.

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APPEARANCES:

OFFICE OF THE STATE ATTORNEY
KATHERINE FERNANDEZ RUNDLE
STATE ATTORNEY
BY: Karen Kahgan
BY: Helen Page
Assistant State Attorneys
Appearing on Behalf of the Plaintiff.

LAW OFFICES OF ROBBINS, TUNKEY, ROSS, AMSEL,
RABEN, WAXMAN & EIGLARSH
BY: Frederick S. Robbins
Appearing on Behalf of the Defendant.

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1 THE COURT: Thank you. Please, be seated. Good
2 morning, everyone.

3 Ms. Kahgan, do you have your expert?

4 MS. KAHGAN: Yes, Dr. Freeman is seated in the
5 back of the courtroom.

6 THE COURT: Okay. Very good.

7 MS. KAHGAN: And of course, under the rules of
8 sequestration obviously he's permitted to sit in.

9 THE COURT: Absolutely.

10 MR. ROBBINS: Judge, just for the record, I am
11 going to -- the rule has been invoked and I don't think
12 it's proper for Dr. Freeman to sit here during my
13 witness's testimony. Because it's not proper.

14 THE COURT: Okay, I don't think the rule applies
15 to experts anyway and I don't, especially, don't think
16 it applies to a witness after they have testified. So
17 if that's an objection, it's overruled.

18 Ready to call Mr. Swope?

19 MR. ROBBINS: Yes.

20 THE COURT: Let's bring in the jury.

21 MS. KAHGAN: Judge, I just have a couple of
22 preliminary matters before Mr. Swope testifies. I just
23 want to make sure that he has done nothing in addition
24 to what he has already done and explained in his two
25 depositions.

1 MR. ROBBINS: Judge, we're under no obligation to
2 explain anything. She's taken two depositions of him.

3 THE COURT: Let's proceed.

4 MR. ROBBINS: Thank you.

5 THE COURT: All right, call in the jury.

6 MS. KAHDAN: Judge, here's the problem, if
7 Mr. Swope gets on the stand now and says things or he
8 doesn't say, it may affect my cross-examination.

9 THE COURT: That's what happens. That's what
10 happens with experts. That's all any expert can
11 basically do whatever they want to do.

12 MS. KAHDAN: The discovery rules are a little bit
13 different, Judge. And actually it's my position that
14 if he's says something different then I'm going to ask
15 him for a longer delay before I cross-examine him. To
16 me, I think that is a violation of the discovery rules.

17 THE COURT: I don't agree, but I'll give you a
18 few moments to consider it.

19 (Thereupon, the jury entered the courtroom.)

20 THE COURT: Be seat. Good morning ladies and
21 gentlemen of the jury.

22 THE JURY: Good morning.

23 THE COURT: You know the question I have to ask.
24 First, have you seen, read or listened to any news
25 broadcasts of any kind regarding this case, if so,

1 please raise your hand. Okay, I don't see any hands.

2 Have you spoken to anyone or have you allowed
3 anyone to speak about this case in your presence since
4 we last met, if so, raise your hand. No. Good jurors.

5 Okay, I think we are ready to begin.

6 MR. ROBBINS: Your Honor, at this time defense
7 would call Rick Swope to the witness stand.

8 THE COURT: Mr. Swope.

9 RICK SWOPE

10 being first duly sworn in the above cause, testified on
11 his Oath as follows:

12 DIRECT EXAMINATION

13 BY MR. ROBBINS:

14 Q Would you please tell the ladies and gentlemen of
15 the jury your name?

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

17 Q And what is your occupation?

18 A I do primarily accident reconstruction. That's
19 about 90 percent of the work that my business does.

20 Q And what is the name of your business?

21 A It's called Swope Reconstruction and DUI
22 consultants.

23 Q And how long have you been an accident
24 reconstructionist?

25 A Since 1974.

1 Q Now, can you please the tell the jury about your
2 education?

3 A Well, I have a Bachelor's Degree in Criminal
4 Justice from St. Thomas University. I have a Masters of
5 Science degree in Technology and Engineering from the
6 University of Miami. I'm currently working on a Ph.D
7 program, and I have other things with instructors.

8 MS. KAHGAN: I'm sorry, I can't hear if you'll
9 just speak up a little bit.

10 THE WITNESS: I'm sorry, I'll speak up.

11 BY MR. ROBBINS:

12 Q Okay, and you have other what?

13 A Well, I do also hold certificates from the
14 National Highway of Traffic Safety Administration as an
15 instructor. I have taught --

16 Q We're going to get there.

17 A I'm sorry.

18 Q Can you tell the jury a little bit about your
19 practical experience?

20 A I was a police officer for 15 years. During
21 almost the entire time with the exception of about a year
22 I did traffic investigation or traffic homicide during
23 that time.

24 I investigated several thousand accidents during
25 that period of time. The last six years I was an officer

1 four of the six years I was with the Broward County
2 Sheriff's Office in Ft. Lauderdale.

3 And my primary job was as an administrative
4 coordinator of the unit to investigate traffic homicides
5 or traffic fatalities in the county, to assist cities,
6 those type of things during that period of time, and make
7 sure that the reports were proper and that they were
8 presented to case filing to the State depending on the
9 charges recommended.

10 MR. ROBBINS: Judge, if I may ask, can all the
11 jurors hear Mr. Swope? Mr. Swope, I know I'm a little
12 hard of hearing, but if you can just talk -- is the
13 microphone on because I don't --

14 THE COURT: It is. Why don't you move it over in
15 front of you and we don't put it on top of the papers?

16 THE WITNESS: I'm sorry, I just got over a cold.
17 I'm having a little trouble.

18 MR. ROBBINS: Judge, if any of the jurors can't
19 hear if they could raise their hand. I'll ask Mr. Swope
20 to talk louder. Thank you.

21 BY MR. ROBBINS:

22 Q Did you also do police work in the military?

23 A Yes.

24 Q And what kind of police work did you do in the
25 military?

1 A I was a military police officer for three years.
2 During that period of time I did just about everything.
3 Actually, I did work in the stockade. I did work on the
4 road. I did administrative work. Basically maintaining
5 the records and making sure that the military police
6 officers were on the road properly staffed, had the proper
7 training etcetera.

8 That was actually called S-1 Section and I was in
9 charge of that. I believe, it about 1100 men at the time
10 in the MP Corp.

11 Q Mr. Swope, said you investigated approximately
12 how many accidents in your career as a police officer?

13 A Well, I probably personally investigated
14 somewhere around 4,000. But I have actually meaning
15 investigated over 10,000.

16 That would mean reading the reports, assisting
17 other officers, making sure that they filled out the
18 paperwork properly, assisting on traffic fatalities that
19 they got the evidence, the photographs, those types of
20 things, and overseeing that and then either signing the
21 documentation or making sure that the paperwork was
22 properly when it went into the case file.

23 Q How many accident homicide cases do you feel you
24 personally investigated?

25 A I've been on the scene of approximately 700

1 traffic fatalities over the years. And anywhere from one
2 to multiple people over the years.

3 Q What kind of training have you had to become an
4 accident reconstructionist?

5 A Well, the initial training in the military was a
6 little different at the time. Obviously, through the
7 years it gets enhanced, but I had initial training on how
8 to do accidents and how to do accident reconstruction in
9 the military. I then attended a school put on through the
10 military by the Kansas Highway Patrol. That was an
11 accident reconstruction school, at that time it was called
12 that.

13 I then attended the basic police academies and
14 did the basic requirements. I then attended about 2500
15 hours of course work involving accident investigation or
16 accident reconstruction and those were put on by a variety
17 of schools.

18 One of the schools would be the University of
19 North Florida. I also took other courses Society of
20 Automotive Engineering, those type of things during that
21 period of time.

22 Around 1987, I believe it was, then I took
23 addition courses involving accident reconstruction. And
24 they had what was called specialized courses those are the
25 industrial accidents, trucking, motorcycles, those kind of

1 things. Then I took some work after that to be an
2 instructor.

3 Q Have you also taught accident reconstruction?

4 A Yes.

5 Q Can you tell the ladies and gentlemen of the jury
6 where you've taught?

7 A I taught primarily at Broward County Community
8 College. That was what I called my home base. In other
9 words, officers from around the state would come to --
10 there basically was only, I believe at that time, three
11 training sites that you could actually certified to be an
12 accident reconstructionist or to be a traffic homicide
13 investigator.

14 One of those sites was Broward County and I
15 taught there, I believe I taught approximately seven and a
16 half years, at least accident courses, where people could
17 be certified, officer could be certified and then move on
18 through all the steps of training that they needed.

19 Basically those were called contract courses
20 meaning that you had to be approved by the State. Your
21 outline had to be approved and then you would teach those
22 classes. I taught them at night basically from 6:00 to
23 10:00 for a four week period.

24 Q How many police officers do you believe that
25 you've taught during that time period in accident

1 reconstruction?

2 A Well, for accident reconstruction somewhere 400
3 during that period of time.

4 Q Have you taught anywhere else in reference to
5 accident reconstruction?

6 A Yes.

7 Q Where else would that be?

8 A Well, I've given seminars basically and lectures
9 around the state and to other different cities where I
10 went. Atlanta, San Francisco, places like that. Where
11 attorneys would come, sometimes police officers would
12 come; and at that point basically come in and I would just
13 give a lecture for an hour or two depending on the type of
14 class it was. And advise them on what to look for in
15 reconstruction cases or traffic homicide cases.

16 Sometimes they would delve on criminal type
17 aspects, sometimes civil. It just would depend exactly on
18 what the course was for.

19 Q Have you been hired by any law enforcement
20 agencies to either assist them or testify on their behalf
21 involving accident reconstruction?

22 A Yes.

23 MS. KAHGAN: Object as to the time frame, Judge.

24 THE COURT: You may follow that up on cross.

25 Overruled.

1 MR. ROBBINS: You may answer the question.

2 THE WITNESS: Yes, I have.

3 BY MR. ROBBINS:

4 Q Just tell the jury some of the law enforcement
5 agencies that you've been asked to assist or help in
6 reference to accident reconstruction?

7 A Well, the actual law enforcement agencies per se
8 don't hire you. It would be their law offices or whoever
9 they retain to work for them. I have been hired by
10 Florida Highway Patrol through attorneys for the Florida
11 Highway Patrol for Metro-Dade, Martin County. I have done
12 cases for the Broward County Sheriff's Office through
13 their law firms.

14 That would be the primary. And I've done a lot
15 of work for the U.S. Government. And that would be
16 primarily cases where, again, I've done cases where
17 officers either from Secret Service or the Marshal Service
18 are involved in accidents. And I'm ask to reconstruct
19 that particular case for them.

20 Q Have you ever been hired by the Broward's State
21 Attorney's Office to either be a consultant or testify in
22 reference to an accident reconstruction?

23 A Yes.

24 Q Have you ever been hired by the U.S. Attorney's
25 Office to either testify or be a consultant in accident

1 reconstruction?

2 A Yes.

3 Q Do you have any publications that you have done
4 in reference to accident reconstruction?

5 A Yes.

6 Q And give us an example of some of them?

7 A Well, basically the publications I call them two
8 tiered. In other words, there's publications that I have
9 done I've written chapters in books which are basically
10 vehicle homicide books for Robert Reiff who I believe is
11 one of the attorneys for the Nisei Corporation. I think
12 they changed names recently to Lexus or something.

13 I have written two chapters, two different books
14 on that. And I have written training outlines and
15 authored training outlines which are used for the police
16 officers or others in involved in accident reconstruction
17 work and I'm also currently working on an outline with
18 John Tucson who's one of the instructors at the Miami-Dade
19 Criminal Justice Institute.

20 Q How many times would you say you've testified in
21 the courts of law as an accident reconstructionist?

22 A Close to 500 times now.

23 Q And just the State of Florida or where?

24 A No, I've testified in approximately 17 different
25 states.

1 Q And during that time period, during the times
2 that you have testified have you been declared an expert
3 in accident reconstruction?

4 A Yes, on the cases that I worked at, yes.

5 MR. ROBBINS: Your Honor, at this time I would
6 ask that Mr. Swope be declared an expert in the field of
7 accident reconstruction.

8 MS. KAHDAN: I don't agree. I object.

9 THE COURT: The Court will allow Mr. Swope to
10 testify and state his opinions.

11 MR. ROBBINS: Thank you, Your Honor.

12 BY MR. ROBBINS:

13 Q Did you have an opportunity to investigate the
14 case that occurred, the case we're here for in court for
15 today?

16 A Yes.

17 Q And approximately when was it that you first were
18 retained to get involved with this particular case?

19 A That I have to look up.

20 Q Fine.

21 A I believe sometime in January of 2002. I
22 received paperwork. I might have been contacted by you
23 earlier, but I received paperwork around that time.

24 Q By the way, Mr. Swope, tell the ladies and
25 gentlemen of the jury how many times you have been

1 declared an expert as a accident reconstructionist in the
2 courts of law?

3 MS. KAHGAN: Objection. Asked and answered.

4 THE COURT: Sustained.

5 BY MR. ROBBINS:

6 Q Now, once you're hired in January what is it that
7 you did to familiarize yourself with this particular case?

8 A Well, basically I asked you to send me all of the
9 materials that you received in discovery and that you
10 would forward them to me and I would read all the
11 materials. And basically, you and I probably had 15, 20
12 discussions over, I suppose, a several month period.

13 Generally, material comes in at certain times. I
14 might not receive it all. I receive material over a
15 several week period. I would review that material and
16 either ask you for additional information or talk with you
17 about it.

18 Q And can you just give the jury an idea of what
19 material it was that you reviewed so that you could be
20 knowledgable about this case?

21 A Yes. I received the traffic homicide report and
22 all of the attachments to it which were prepared by Deputy
23 Sammelson, I believe, or Officer Sammelson, I'm sorry. I
24 received several different depositions. One was from a
25 Mr. Robert Williams who I believe works for Dade County.

1 I received signal patterns or signalization
2 patterns for that particular intersection. I received a
3 probable cause affidavit. Depo of Officer Sammelson. A
4 depo of Officer Frommer. Depo of Officer Guerra. I
5 apologize if I'm saying the names wrong. A depo of Shaun
6 Patton. A depo of Jason Cantor.

7 I reviewed police photographs and vehicle
8 statistics. And I believe sometime I received amended
9 discovery which I believe was the officer's formula sheets
10 or something like that. That was the bulk of what I
11 looked at.

12 Q You said you looked at the affidavit of arrest on
13 Yileymi Suarez?

14 A That's correct.

15 Q And when you reviewed these documents was Yileymi
16 Suarez arrested the day of the accident?

17 A No.

18 Q How much time after was she arrested?

19 MS. KAHGAN: Objection. Relevance.

20 MR. ROBBINS: I'll tie it in, Your Honor.

21 THE COURT: Well --

22 (Thereupon, the following was heard sidebar.)

23 THE COURT: How are you going to tie it in?

24 MR. ROBBINS: The purpose of the testimony or the
25 way I'm going to tie it in, Your Honor, is that he

1 already answered that she had was not arrested that
2 day. And because he is a prior police officer, as an
3 accident reconstructionist, he's going to be able to
4 explain that what work was done between the time a
5 person is arrested between the time the accident
6 occurred and the time the person is arrested.

7 So that various things can be investigated by
8 actual reconstructionists, see if alcohol, drugs are
9 involved, things of that nature. I think the jury has
10 a right to know that it is -- to see the overall
11 picture.

12 MS. KAHDAN: To his work, assist her to testify?
13 He's not here to talk about police procedure. He
14 hasn't been a police officer since 1990. It is
15 improper for him to offer some kind of opinion of what
16 should have happened as a traffic accident
17 reconstructionist.

18 If he wants to ask Officer Sammelson, fine. It's
19 not for this witness to talk about what was done or
20 should have been.

21 MR. ROBBINS: I'm just --

22 THE COURT: I don't know why you want to use it.

23 MR. ROBBINS: Because I want him to be able to
24 testify about things that were done between the arrest,
25 or between the crash and the time of the arrest.

1 THE COURT: Is there an issue about her not
2 surrendering herself?

3 MS. KAHGAN: Actually, there was a report in the
4 media when she was supposed to surrender herself and
5 her sending in a decoy. And quite candidly, Judge --

6 THE COURT: I don't want to get into this.

7 MS. KAHGAN: So what. It doesn't effect his
8 opinion as a traffic accident reconstructionist.
9 That's all he is. Put her on to testify if he's
10 claiming some kind of defective cross-examination of
11 Officer Sammelson about that.

12 THE COURT: If there's any issue regarding the
13 period between the accident and arrest, then are we
14 going to get into the business about sending in a decoy
15 and the fact that she evaded arrest and didn't
16 surrender herself.

17 MR. ROBBINS: We won't get into that.

18 THE COURT: Does the delay have to do with
19 anything?

20 MR. ROBBINS: It's during that time period in
21 which the officers, what I want him to testify to is,
22 what was done. What was done to investigate this
23 particular case during that time period.

24 THE COURT: What difference is it whether she was
25 arrested or not.

1 MR. ROBBINS: To show because they didn't arrest
2 her at the scene they arrested her at a later time
3 after they determined what evidence they have against
4 her.

5 THE COURT: How is that relevant?

6 MR. ROBBINS: I just think the jury has a right
7 to know that.

8 THE COURT: I haven't heard anything to make this
9 relevant. Objection sustained.

10 (Thereupon, the following was heard in open
11 court.)

12 BY MR. ROBBINS:

13 Q Did you have an opportunity to go out to the
14 scene?

15 A Yes.

16 Q And when you went out to the scene what was your
17 purpose of going to the scene?

18 A Initially it was to just view the area, to locate
19 the location that the accident occurred at, look at the
20 roadway lay out, the roadway design, see if there's
21 anything unusual I could see at the intersection, review
22 the traffic patterns, the traffic signals, those type of
23 things. That was just kind of my initial type look.

24 Q Did you ever receive in the packages that you
25 acquired the reports from Officer Sammelson?

1 A Yes.

2 Q And what are some of the things that you looked
3 at in reference to Officer Sammelson's work in this
4 particular case?

5 A Well, I looked at his point of measurements. In
6 other words, where he measured from, what particular areas
7 he measured. I eventually became aware of a two page
8 measurement sheet that he listed several different
9 measurements, I believe 35 to 40, I am not sure.

10 And I just kind of eventually went back to see
11 exactly where he began his measurements and what he was
12 looking for, where his point of collision was, those type
13 of things. So just to kind of give me an initial overview
14 of what actually occurred or what the Officer believe
15 occurred at the time.

16 Q Did you ever go out to the scene with Officer
17 Sammelson's measurement report?

18 A Yes.

19 Q Did you check to see if Officer Sammelson's
20 measurements were correct at the scene in connection with
21 his report?

22 A Yes.

23 Q Did you agree with Officer Sammelson's
24 measurements?

25 A The majority of his measurements I did. As a

1 matter of fact, almost all of them with the exception of,
2 I believe, one or two.

3 Q Which measurements in particular did you disagree
4 with in reference to Officer Sammelson's measurements?

5 A Well, the initial point would be the reference
6 point that the officer took all of his measurements from.
7 In other words, I went out there and I basically attempted
8 to locate that point that he used to make all of his
9 measurements from. So I went out there and it appear to
10 me that that point was off a couple of feet using the
11 lateral lines of the intersection. I can probably show
12 you on the board, but.

13 Q We're going to get to that.

14 A Okay.

15 Q Explain to the jury exactly what a reference
16 point is?

17 A Well, a reference point simply is just a point
18 that's selected. It could be a variety of things. It
19 could be traffic pole. It could be, the officer could
20 make his own point by putting a nail in the road or
21 something like that.

22 It's a point that you can measure in all four
23 direction north, south, east and west off of that point.
24 The purpose of that is so that you can come back 10 years
25 later, one year later, whatever, and locate that identical

1 spot.

2 If you need to, for whatever reason, you could
3 actually go back and take the measurement sheet and go
4 back again and say this is where I saw this evidence and
5 this is where I saw this evidence.

6 So you can actually go back years later and lay
7 out that same point and be able to go back identify
8 anything that you needed to identify if that's the case.

9 Q How does an accident reconstructionist use a
10 reference point in order to make measurements to determine
11 the eventual speed?

12 A Well, it could done a variety of ways. The most
13 common would be just extending the lateral lines of the
14 intersection. Meaning you just lay the tape along the
15 curb or along the line or something like that. You do one
16 in one direction and one in the other and where your tapes
17 cross that would be a point that you could use.

18 Or again, you can use a stationary point or a
19 fixed point. Sometimes people use buildings. Sometimes
20 they use the traffic poles, those kind of things.

21 Q If a reference point is incorrect, will that
22 effect the final determination as to what the speed was at
23 the point of impact?

24 A It can, yes. If that's what you're using for
25 your points, correct.