

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA  
CIRCUIT CRIMINAL NO. 15-00226CFANO

STATE OF FLORIDA,

vs.

JOHN N. JONCHUCK,

Defendant.

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PLACE: HILLSBOROUGH COUNTY PUBLIC  
DEFENDER'S OFFICE  
700 East Twiggs Street, 5th Floor  
Tampa, Florida 33602

DATE: April 25, 2017

TIME: 11:12 a.m. - 11:24 a.m.

REPORTED BY: Marcy K. Guincho  
Registered Professional Reporter  
Notary Public at Large

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TELEPHONIC UNSWORN STATEMENT OF DAMIAN DIVITA  
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Pages 1 - 14

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St. Petersburg, Florida 33701  
(727) 8984-7407

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## APPEARANCES

DOUGLAS ELLIS, ESQUIRE  
PAUL BOLAN, ESQUIRE  
Assistant State Attorneys  
Office of Bernie McCabe, State Attorney  
Pinellas County Justice Center, Room 1000  
14250 49th Street North  
Clearwater, Florida 33762

Attorneys for the State

JANE McNEILL, ESQUIRE  
GREGORY WILLIAMS, ESQUIRE  
Assistant Public Defenders  
Office of the Public Defender, Bob Dillinger  
Pinellas County Justice Center  
14250 49th Street North  
Clearwater, Florida 33762

Attorneys for the Defendant

1 DAMIAN DIVITA,  
2 was examined and testified as follows:

3 DIRECT EXAMINATION

4 BY MS. McNEILL:

5 Q. Mr. Divita, this is Jane McNeill with the  
6 Public Defender's Office calling back again. Are you  
7 ready for your deposition?

8 A. Yeah, sure. Let me make one thing clear though.  
9 This is one of those computer phones. It's the only one  
10 I got. So sometimes the call gets dropped for some  
11 reason, if you can just call me back.

12 Q. You're not hanging up because you're tired of  
13 answering questions?

14 A. I'll let you know. I'm gonna tell you the next  
15 sound you hear will be the click of the phone. Then  
16 you'll know I've hung up.

17 Q. So you know I do have you on speaker. Also  
18 present in the room with me is Greg Williams from the  
19 Public Defender's Office and from the State Attorney's  
20 Office in Pinellas we have Paul Bolan and Doug Ellis.  
21 And in addition to that the court reporter is here who  
22 is taking down everything that we say. Okay?

23 A. Okay.

24 Q. Since we switched this to a phone deposition have  
25 you received an oath form in the mail from my office?

1 A. What is that, dear?

2 Q. A piece of paper that says that you swear to tell  
3 the truth or affirm to tell the truth during the depo  
4 today?

5 A. No, I have not.

6 Q. Okay. We will send you one of those and in it  
7 then you will. Are you okay with saying that you're  
8 going to affirm that you're going to tell the truth  
9 today?

10 A. Absolutely, yes.

11 Q. Okay. What address should we send that form to?

12 A. 3931 Dockers Drive, Ruskin.

13 Q. Zip?

14 A. 33570.

15 Q. Thank you. Okay. Have you ever given a  
16 deposition before?

17 A. Maybe once or twice many, many -- 20, 30 years  
18 ago.

19 Q. Okay. Just a couple things about it. I'm gonna  
20 be asking you some questions to find out what you know  
21 about this case and if I ask something that's confusing,  
22 doesn't make sense, please ask me to rephrase it. I am  
23 not trying to trick you. I am just trying to find out  
24 what you know about the case, okay?

25 A. Understood.

1 Q. And are you under the influence of any medical  
2 problems or any medications such that you don't have a  
3 clear mind this morning?

4 A. No.

5 Q. Okay. All right. Where do you work?

6 A. I am unemployed. Basically I filed for  
7 disability in September 2015.

8 Q. I'm sorry to hear that.

9 A. That's why I can't make it. My health  
10 deteriorated to the point it's hard for me to move  
11 around.

12 Q. Prior to your disability where did you work?

13 A. At Sunshine Skyway north toll plaza in  
14 St. Petersburg.

15 Q. How long did you work there?

16 A. Approximately five years.

17 Q. Did you have any employment prior to that?

18 A. I was unemployed for a couple of years before I  
19 got that job and before that I was a dispatcher.

20 Q. For whom?

21 A. Working for a company called Tradewinds  
22 Environmental Restoration out of New York.

23 Q. Did you live in New York?

24 A. Well, I actually did live in New York. I'm from  
25 New York. But after Hurricane Katrina they set up a

1 base of operations in Denham Springs, Louisiana near  
2 Baton Rouge. I was there for a couple years running the  
3 show down there.

4 Q. How long have you lived in Florida?

5 A. Since February 2009.

6 Q. What's your date of birth?

7 A. October 7, 1955.

8 Q. '55?

9 A. '55.

10 Q. Something I have to ask all the witnesses is have  
11 you ever been arrested for anything?

12 A. Never.

13 Q. When you were working at the Skyway who was your  
14 employer?

15 A. I worked for a contractor called -- name of the  
16 company was Faneuil, like Faneuil Hall in Boston. They  
17 were out in Virginia but they kept an office in Tampa.

18 Q. Was that like an agency that placed people at the  
19 Skyway or something?

20 A. No, it's a service company and basically they bid  
21 the contract for supplying toll collectors and  
22 supervisory personnel to the Florida DOT.

23 Q. Okay. You're listed as a witness in the case  
24 against John Jonchuck out of Pinellas County. Do you  
25 know why you're listed in this case?

1           A.   Probably because I spoke to a state trooper or  
2 two or three and they took my name down because I was on  
3 duty that night at the plaza.

4           Q.   Can you tell me what, if anything, you remember  
5 about what happened that night?

6           A.   The best of my recollection I heard tires screech  
7 and I turned around from the computer, looked out the  
8 window and I noticed a vehicle backing out of the lane  
9 and then moving, let's say, one lane over to the left,  
10 which had traffic cones out because the lane was closed.  
11 And I believe he ran the cones and just continued  
12 southbound and then -- I don't know -- within half a  
13 minute there was -- I believe it was a Statey that came  
14 down in pursuit with the lights and sirens going.

15          Q.   Do you recall what the vehicle was?

16          A.   I remember it was beige colored.  That's all I  
17 can tell you.  That's all I remember.  I didn't pay too  
18 much attention.  Something like that happens at least  
19 three times a week.  There was somebody else at the toll  
20 booth.  They either don't want to wait so they'll back  
21 up, then they'll run the cones or they'll just run the  
22 cones for the sake of running the cones.  They don't  
23 want to pay.

24          Q.   When you saw the car change lanes were you  
25 looking out the window to see that or were you looking

1 on a computer monitor?

2 A. I saw it out the window. I turned around and  
3 looked out the window. I couldn't tell you what kind of  
4 car it was. I couldn't tell you who was driving. I  
5 have no idea. All I saw was the car. It was pretty  
6 much a blur because I'm going through thick glass and it  
7 was probably 50 feet away or more.

8 Q. The Skyway, the toll booth, how many total lanes  
9 were there, including the SunPass lane, at that time?

10 A. Six lanes including SunPass. There were two  
11 lanes that were open and manned. And again, I don't  
12 remember because we have two collectors on duty at night  
13 in lanes one and two. And it's very possible that the  
14 second lane might have been closed for a break. The guy  
15 might have been inside on a break. I don't remember.

16 Q. Where in relation to the actual toll booths is  
17 your office or wherever you were sitting at the time  
18 this happened?

19 A. It's pretty much right there, you know. You have  
20 the building, then you have the toll lanes. Like I  
21 said, my distance line of sight might have been 50 to  
22 75 feet, something like that, through a glass window.

23 Q. Okay. As you're going south on 275 is your  
24 building on the right just before the toll booths?

25 A. It's on the right at the toll booths.



1 Q. Okay. You said there were six lanes total. Do  
2 you remember if you're standing on 275 facing  
3 southbound, facing the toll booth lanes, do you remember  
4 what lane sort of right to left the car was in?

5 A. No. I wanna say lane two.

6 Q. Are the lanes numbered from right to left so like  
7 lane one would be the furthest to the right?

8 A. Actually lane one would be the closest to the  
9 building and the numbers go out toward the opposite side  
10 of the road.

11 Q. So lane one would be the left most lane?

12 A. If you're approaching the toll booths heading  
13 southbound lane one would be to the right. It's the  
14 widest lane and it's the closest one to the building.

15 Q. Okay. Oh, that's right because you said your  
16 building was on the right. I'm sorry. Got it. Did you  
17 make any video recording for the police of whatever  
18 surveillance would have picked up?

19 A. As far as I know the cameras are basically  
20 pointed to activity within the lanes. We have no  
21 control over those. There is like a control room with  
22 all these camera banks -- I don't want to say banks --  
23 but the computers are set up and basically somehow, but  
24 I'm not sure, the Internet or whatever it goes and it is  
25 monitored someplace else off site and we have no access

1 to any backups. We have the ability to see the cameras  
2 at different angles live, but we have no ability to  
3 rewind or check or whatever.

4 Q. Okay. So I think if I understand you correctly  
5 then you would not have been able to go back and review  
6 the video of the car going through after it happened?

7 A. I would not, no, and that ability does not exist  
8 at the plaza.

9 Q. Okay. Did you provide the police with a  
10 statement the night that this happened?

11 A. Yes, they came in and they asked that question  
12 about the videos and I did give them a phone number of  
13 the guy who was in charge of the security at the time  
14 and they said that he would be able to help them out.

15 Q. Did you provide a written statement for the  
16 police?

17 A. I don't believe so. I think they just, you know,  
18 talked to me verbally, whatever. They asked me a couple  
19 of questions and I gave them some answers.

20 Q. After that night when you talked with police did  
21 you have any other time where you were asked questions  
22 about the event by police or anyone else?

23 A. No. Other than conversation that took place  
24 amongst workers at the plaza once everybody knew what  
25 was going on.

1 Q. No formal statements to lawyers or investigators  
2 or anybody else?

3 A. No, none whatsoever.

4 MS. McNEILL: I'm gonna turn it over to the  
5 State Attorney for questions.

6 THE WITNESS: Okay.

7 CROSS-EXAMINATION

8 BY MR. BOLAN:

9 Q. Ask a couple follow-up questions. You said that  
10 you went to a lane, then you saw him when you looked out  
11 the window backing out of that lane?

12 A. I heard a screech. I heard tires screeching. So  
13 to me that's a warning sign somebody is jamming on the  
14 brakes for whatever reason. I turned around because I  
15 heard that noise and once I turned around -- and I had  
16 to slide maybe five or six feet to get in front of the  
17 window -- and by that time all I saw was a car in  
18 reverse backing out of the lane I think. And now I'm  
19 thinking it might have been lane two that he was backing  
20 out of because he did run the cones in lane three to  
21 continue south.

22 Q. Okay. Were there cones in front of lane two  
23 also?

24 A. No, the cones are put out to lanes that are  
25 closed. So there was no cones put out. They were there

1 but they weren't across the lanes. Lanes one and two  
2 were open. Just so happened that there was a car  
3 stopped at the toll booth in lane two or else he would  
4 have just continued to drive through I'm assuming.

5 Q. That's what I was trying to figure out, why he  
6 would be backing out of lane two.

7 A. There was a car there.

8 MR. BOLAN: That's all I have.

9 MR. ELLIS: Put him as a read please.

10 (Unsworn statement concluded at 11:24 a.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA        )  
COUNTY OF PINELLAS    )

I, Marcy K. Guincho, RPR, certify that I was authorized to and did stenographically report the foregoing unsworn statement; and that the transcript is a true record of the testimony given by the witness.

I FURTHER CERTIFY that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or counsel connected with the action, nor am I financially interested in the action.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
MARCY K. GUINCHO, RPR

