

1 (EXCERPT OF PROCEEDING, CROSS MR. ELRATH)

2 THE COURT: Thank you. Please be
3 seated, jurors.

4 Yes, Mr. Jones.

5 MR. JONES: Thank you, Judge.

6 CROSS-EXAMINATION BY MR. JONES:

7 Q. Mr. Elrath, I'm Timothy Jones. I represent
8 Diane Stantial. I'm going to have some
9 questions for you. First, do you have your
10 curriculum vitae with you, your list of
11 credentials?

12 A. I do.

13 Q. May I see it, please?

14 A. (handing)

15 Q. Take that out.

16 A. (handing)

17 Q. Thank you. You work for Robson Forensic?

18 A. Yes I do.

19 Q. You're employed by Robson Forensic, correct?

20 A. I am.

21 Q. And Robson Forensic is a company that hires
22 you out as a witness, correct?

23 A. No.

24 Q. Well, what are you being paid to testify here
25 today?

1 MR. CITRIN: Objection to just the
2 form of the question. He's being paid for his
3 time. Objection.

4 Q. Are you being paid to sit here in court today?

5 A. I'm being paid for my time involved in this
6 investigation and testimony.

7 Q. How much is that?

8 A. \$375 an hour, in the metro New York area 425.

9 Q. During the course of your investigation and
10 your testimony today how much is -- how much
11 are you being paid?

12 A. Billing to date, it doesn't include my time to
13 come here today, is \$11,213.

14 Q. \$11,213 without your in court testimony,
15 correct?

16 A. That's correct.

17 Q. And what's the approximate amount of your
18 in-court testimony?

19 A. Took me three-and-a-half hours to drive here
20 yesterday. I'm not sure how much time I'll be
21 in court today, but I can estimate it will
22 take me another three-and-a-half hours to
23 drive home today.

24 Q. So your billing for your travel time of seven
25 hours at 375 per hour?

1 A. 425 an hour, correct.

2 Q. 425. And you're in-Court time is 425 an hour
3 as well?

4 A. Yes it is.

5 Q. Have you already received a draft from
6 Plaintiff's attorney for your testimony here
7 today?

8 A. I'm not sure I understand what a draft is.

9 Q. A check?

10 A. I have not.

11 Q. And when a check is issued does it go to you
12 or Robson Forensic?

13 A. To Robson Forensic.

14 Q. Are you here on behalf of Robson Forensic; is
15 that -- are you working right now for Robson
16 Forensic?

17 A. I'm employed by Robson Forensic.

18 Q. All right. And Robson Forensic was hired by
19 plaintiff's counsel and they assigned this
20 case to you, correct?

21 A. I'm not really sure how the inner workings are
22 within Robson work as opposed to I spoke with
23 the attorney, we talked about the details of
24 the case, and I was retained.

25 Q. And were you assigned this case by somebody at

1 Robson Forensic?

2 A. I don't think so.

3 Q. No? Did you speak directly -- did the
4 attorney seek you out to investigate this case
5 or were you assigned this case by Robson
6 Forensic?

7 A. I spoke with the attorney.

8 Q. And where is Robson Forensic?

9 A. We have at least 15 offices in the United
10 States. The home office is in Lancaster,
11 Pennsylvania. I'm based in Philadelphia,
12 Pennsylvania.

13 Q. What do you do for them?

14 A. I'm an forensic investigator.

15 Q. So you investigate accidents, correct?

16 A. No.

17 Q. You examine bicycles; is that what you do for
18 them?

19 A. That is part of what I do.

20 Q. What else do you do for them?

21 A. I investigate the circumstances of incidents
22 primarily involving bicyclists and bicycle
23 riding and make an attempt to determine
24 causation.

25 Q. And how many times a year do you testify on

behalf of Robson Forensic?

A. Once or twice.

Q. Twice per year?

A. Correct.

Q. And how many case do you investigate on behalf of Robson Forensic for cases in litigation?

A. In what time period?

Q. In the course of one year.

A. Several dozen.

Q. Now when you're not investigating cases for

lawsuits what do you do for Robson Forensic?

A. That is my primary purpose as an employee of Robson Forensic.

Q. So you investigate cases that are involved in lawsuits for Robson Forensic, correct?

A. In addition to other duties, yes.

8. What other duties do you have?

A. At times I have consulted for with engineering concerns and for bicycle safety.

Q. In lawsuits as well, right?

A. And out of lawsuits.

Q. How much of your time is dedicated to examining cases that are involved in lawsuits for Robson Forensic?

A. 90 percent of my time.

1 Q. And out of 90 percent of your time how much
2 time do you spend in court testifying on the
3 cases that you reviewed?

4 A. Very small amount.

5 Q. So you're a professional witness, right?

6 A. No.

7 MR. CITRIN: Objection.

8 Q. You -- when you do testify you testify solely
9 on behalf of Plaintiff's, correct?

10 A. That is not correct.

11 Q. When is the last time you testified before
12 today.

13 A. Two weeks ago I was deposed.

14 Q. Bicycle case?

15 A. Three-wheel adult tricycle case.

16 Q. And your educational background if I heard you
17 correctly you're an electrical engineer?

18 A. I have a bachelor of science in electrical
19 engineering, yes.

20 Q. Did you ever work as an engineer?

21 A. Yes I did.

22 Q. For whom?

23 A. I began with a company called Tangibl,
24 T-a-n-g-i-b-l, which is an engineering design
25 consulting firm. I also worked at the Burns

1 Group in Philadelphia.

2 Q. And the Burns Group also assigned you out for
3 purposes of litigation as a witness didn't
4 they?

5 A. No.

6 Q. Now Mr. Elrath, if I heard you correctly in
7 addition to your bachelors and your work as a
8 witness you took two courses on accident
9 reconstruction, did I hear that correctly?

10 A. You did.

11 Q. All right. And have you ever been employed as
12 an accident reconstructionist?

13 A. Part of the duties that I serve at with Robson
14 Forensic are reconstructing accidents as they
15 involve bicycles and bicycling.

16 Q. Based upon these two courses you took?

17 A. Based upon many qualifications.

18 Q. Other than the two courses you took for
19 accident reconstruction where here on your CV
20 does it reflect that you have any other
21 educational background in the field of
22 accident reconstruction?

23 A. It also goes to my experience as a cyclist.

24 Q. That's not my question. I'm not talking about
25 your experience as a cyclists. You're giving

1 testimony to the jury today about accident
2 reconstruction. So what I want to know is in
3 addition to the two courses you took in the
4 field of accident reconstruction what other
5 educational background do you have in that
6 field?

7 A. My engineering degree from Temple University.

8 Q. Okay. So you're going to tell the jury that
9 your engineering degree from Temple University
10 in electrical engineering qualifies you as an
11 accident reconstructionist; is that what
12 you're telling us?

13 A. I do.

14 Q. Did you receive a certificate for having
15 completed those two courses?

16 A. I did.

17 Q. Is it part of your CV?

18 A. I completed and was certified by those
19 courses.

20 Q. When was that certification?

21 A. I'd have to look at the certificate.

22 Q. Do you know?

23 A. I don't recall. I have the years that I
24 attended those courses and was awarded the
25 certificates on my CV.

1 Q. Was it more than five years ago?

2 A. No.

3 Q. And do you go for periodic educational courses
4 in the field of accident reconstruction?

5 A. I have not to date.

6 Q. But you're testifying in front of this jury as
7 an accident reconstructionist today based upon
8 your two courses of accident reconstruction
9 that you took in a year you don't remember,
10 correct?

11 A. That's not correct.

12 Q. Now in the field of accident reconstruction
13 you told us that you learned the information
14 needed to reconstruct an accident. Did I hear
15 that correctly?

16 A. As far as deals with bicycle dynamics, yes.

17 Q. So I heard you correctly there's information
18 you need to conduct an accident
19 reconstruction, right?

20 A. There is.

21 Q. And this is a bicycle accident, right?

22 A. This is a bicycle/automobile collision
23 incident.

24 Q. Well did you forget to bring something today
25 to show the jury as part of your

1 reconstruction?

2 A. I'm not sure I understand your question.

3 Q. Where is the bicycle?

4 A. Which bicycle?

5 Q. I'm showing you what's marked as Defendant's
6 Exhibit L (handing). Aside from this
7 photograph right here have you ever seen that
8 bicycle before?

9 A. I have seen photographs of the bicycle.

10 Q. All right. So did you ever see this
11 photograph?

12 A. I have not.

13 Q. Do you know when that photograph was taken?

14 A. I do not.

15 Q. Do you know where the bicycle is located in
16 that photograph?

17 A. I do not.

18 Q. Do you know if this is the bicycle that was
19 involved in the accident?

20 A. The markings of it are consistent with the
21 information that I reviewed.

22 Q. Could you swear under oath having seen this
23 for the first time as to whether or not that
24 is the bicycle involved in this accident?

25 A. No.

1 Q. Could you swear under oath whether --

2 MR. JONES: I'm showing him
3 Defendant's Exhibit M.

4 Q. If this is the bicycle that was involved in
5 this accident?

6 A. No.

7 Q. And I'm going to show you exhibits N, O, P,
8 and Q. Could you swear under oath whether or
9 not these four photographs show the bicycle
10 involved in this accident?

11 A. No.

12 Q. Have you ever seen the bicycle involved in
13 this accident?

14 A. No, only pictures of it.

15 Q. The pictures -- what pictures did you see?

16 A. There were photographs of the bicycle in the
17 Genna report.

18 Q. Oh, so you looked at the photographs provided
19 by our expert to do your analysis, am I
20 hearing that right?

21 A. No.

22 Q. Well let me ask you this, as someone who
23 purports to be and is telling the jury that
24 you're an accident reconstructionist would you
25 agree if you're going to come into court and

1 accept money to testify and give an opinion
2 that you should have first examined the
3 bicycle that you're talking about?

4 A. No I would not agree.

5 Q. Would you agree, Mr. Elrath, that if you're
6 going to testify about a bicycle making
7 contact with a car that you should probably
8 examine the car as well?

9 A. I reviewed photographs of the automobile.

10 Q. So here's my question, did you examine,
11 physically examine, the vehicle involved in
12 this accident?

13 A. I did not.

14 Q. Did you physically examine the bicycle
15 involved in this accident?

16 A. I did not.

17 Q. Did you conduct an interview with Mr. Waldron
18 and ask him where the bicycle was?

19 A. I did not.

20 Q. Do you know what happened to the bicycle after
21 the accident?

22 A. I read --

23 Q. Do you know?

24 A. -- the deposition transcript about repairs
25 that were made to the bicycle after the

incident.

Q. Mr. Elrath, do you have firsthand knowledge of where that bicycle went after this -- after this accident?

A. I'm not sure I understand how you define firsthand knowledge.

Q. Well did you interview Mr. Waldron?

A. I did not. I read his sworn testimony.

Q. So do you recognize him as Mr. Waldron?

A. Today is the first day that I've met him in person.

Q. All right. So you're an accident reconstructionist. Let me get this straight. You didn't examine the car, you didn't examine the bike, and you met the plaintiff involved in this accident in Superior Court in Ulster County for the first time today; is that right?

A. That's correct.

Q. Would it be fair to say you have no idea where that bicycle went after this accident?

A. No.

Q. Now you gratuitously volunteered something you read about repairs to the bicycle. Now that would be something as an expert you would want

1 to know, right?

2 MR. CITRIN: Objection for the form of
3 the question, gratuitously volunteered.

4 Q. Mr. Elrath, would you want to know as an
5 expert performing an accident reconstruction
6 in a bicycle case which involved a car as to
7 whether or not there was any damage to the
8 bicycle?

9 A. I reviewed --

10 Q. Would you want to know it, yes or no. That's
11 a simple question.

12 A. It depends.

13 Q. So you may not want to know if there was any
14 damage to the bicycle?

15 A. It depends.

16 Q. Would you want to know if the bicycle made
17 contact with the car, yes or no?

18 A. I reviewed --

19 Q. Would you want to know that in a general sense
20 if a bicycle made contact with a car in a case
21 you are investigating?

22 A. It depends.

23 Q. You can't answer it yes or no?

24 A. I'd have to know all of the circumstances of
25 your hypothetical.

1 Q. Would you want to know if the wheel made
2 contact with the car?

3 A. It depends.

4 Q. You can't answer that yes or no?

5 A. I'd need to understand the circumstances of
6 your hypothetical.

7 Q. Did you ever make an attempt to contact Mr.
8 Waldron and find out exactly what the point of
9 contact was between him and the vehicle, yes
10 or no?

11 A. I did not make contact with him.

12 Q. Would you want to know as an accident
13 reconstructionist if Mr. Waldron made contact
14 with the vehicle? That's a yes or no.

15 A. I'm not sure I understand your question.

16 Q. Well have you read any testimony that suggests
17 that Mr. Waldron separated from the bicycle?
18 You don't know?

19 A. I did.

20 Q. All right. And as part of your materials you
21 have excerpts of testimony?

22 A. I have pages from the deposition transcripts
23 in my folder.

24 Q. Is everything you've reviewed contained in
25 that folder in front of you?

1 A. There is a digital copy of my entire case
2 file, the DVD in the front cover of this
3 folder, and that does include everything that
4 I've reviewed.

5 Q. But the paper copies are in your binder. So
6 you have additional on a disk which would be
7 paper, correct?

8 A. I have additional information on the disk than
9 what is in the folder.

10 Q. And when did you receive this case to review
11 for the first time?

12 A. I don't recall.

13 Q. July of '16, would that sound reasonable?

14 A. I don't recall.

15 Q. Take a look.

16 A. There's not any record here of when I first
17 spoke with the attorney.

18 Q. You have no idea?

19 A. I don't have it in front of me.

20 Q. Do you consider yourself someone that pays
21 close attention to detail, yes or no?

22 A. In what circumstances?

23 Q. What did you say?

24 A. In what circumstances?

25 Q. Well do you consider yourself someone who pays

1 close attention to detail when you're
2 investigating an accident?

3 A. Yes.

4 Q. And would you consider knowing when you were
5 retained to evaluate the case a detail you
6 should tell the jury, yes or no?

7 A. I have a case number. It starts with a one
8 six, so sometime during 2016 is when I was
9 retained.

10 Q. That's the best you can tell us?

11 A. Yes.

12 Q. All right. Would you consider -- withdrawn.
13 I'd like an answer to your question as to
14 whether or not you consider yourself a
15 detailed historian when you investigate the
16 conditions of an accident?

17 A. I don't understand what a detailed historian
18 is.

19 Q. Well do you pay attention to detail, Mr.
20 Elrath?

21 A. I do.

22 Q. All right. And would you consider examining
23 the bicycle and finding its whereabouts to be
24 an important detail? That's a yes or no.

25 A. If I simply gave a yes or no answer to that it

1 would not be the whole truth.

2 Q. You can't answer yes or no?

3 A. Not without --

4 Q. You can't say unconditionally to our jury that
5 in testifying on a bicycle case that you need
6 to see the bicycle, right? You're telling us
7 you don't need to see it?

8 A. It depends.

9 Q. But you didn't need to see it in this case,
10 right? Is that what you're telling us?

11 A. After I reviewed the evidence --

12 Q. Yes or no, sir.

13 A. Could you repeat the question.

14 MR. JONES: Would you read it back,
15 please.

16 (THE LAST QUESTION WAS READ BY THE
17 REPORTER)

18 Q. Did you need to see the bicycle in this case
19 to give an opinion?

20 A. Not for the conclusions that I drew.

21 Q. So you didn't draw any conclusions based upon
22 the condition of the bicycle; is that fair?

23 A. No.

24 Q. No? You have no firsthand knowledge as to
25 what happened to the bicycle, correct?

1 A. When what happened to the bicycle?

2 Q. Do you know what happened to the bicycle after

3 the accident, sir?

4 A. I do.

5 Q. Did you find that information from Mr. Waldron

6 yourself?

7 A. I reviewed his deposition transcript.

8 Q. I'm not going to go through that again. All

9 right. Now do you know if Mr. Waldron was

10 ejected from the bicycle, yes or no? Do you

11 know?

12 A. I know he landed on the ground.

13 Q. Do you know if there's a version of events

14 somewhere in the materials you reviewed that

15 suggests that he was ejected from the bicycle

16 that's a yes or no or if you don't know tell

17 me that?

18 A. I know there's a version of that events.

19 Q. So in order to be ejected from the bicycle as

20 a bicycle expert something has to happen with

21 his feet; would that be fair?

22 A. No.

23 Q. No? Well what type of pedals are on this

24 bicycle, were they Look pedals or Shimano

25 pedals; do you know?

1 A. It doesn't matter to my opinion.

2 Q. Did you investigate the type of pedals on this

3 bicycle before you gave your opinion to the

4 jury today? That's a yes or no.

5 A. Yes.

6 Q. And what pedals are on that bicycle, sir?

7 A. Clipless pedals.

8 Q. Show us in your report where it says there

9 were clipless pedals on this this particular

10 bille.

11 A. It's not in my report.

12 Q. You just made that up because I caught you,

13 right?

14 MR. CITRIN: Objection.

15 THE COURT: Sustained.

16 Q. Show us in your report where it says you know

17 what type of pedals that are on that bicycle?

18 A. The deposition transcript of him being clipped

19 in and they are shown Genna's photograph.

20 Q. Where is your photograph of the pedals, sir?

21 A. I did not take any photographs of any pedals.

22 Q. Now if one has a Shimano pedal or a Look pedal

23 they have to lock their feet in; would that be

24 correct?

25 A. Yes.

1 Q. All right. Did you ask Mr. Waldron whether
2 his feet were locked in while he was riding
3 his bicycle? That's a yes or no?

4 A. I did not.

5 Q. If someone has a clip pedal, sir, they have to
6 kick their heels out in order to disengage
7 from the pedal, correct?

8 A. Yes.

9 Q. All right. Did you account for that anywhere
10 in your report?

11 A. Yes.

12 Q. Where in your report does it refer to you
13 evaluating and putting in your accident
14 reconstruction anything about the feet being
15 kicked out and the type of pedal?

16 A. If he landed separate from his bicycle --

17 Q. Look at your report and tell us where you
18 evaluated that type of analysis?

19 A. I evaluated it in the deposition transcripts.

20 Q. Did you put it in your report, sir?

21 A. Absolutely.

22 Q. Show us in your report where you evaluated the
23 pedals.

24 A. The police report shows him on the ground.

25 Q. No, your report.

1 A. That is physics. It has to happen.

2 Q. You think this is funny, sir?

3 A. No.

4 MR. CITRIN: Objection.

5 THE COURT: Sustained.

6 Q. Mr. Elrath, I went through your 13-page
7 report -- 15-page report, particularly page
8 15, tell us where the word pedal appears?

9 A. It does not.

10 Q. And those are your conclusions there, right?

11 A. Those are my findings.

12 Q. Now certainly if you read in a transcript that
13 repairs were allegedly performed on a bicycle
14 would you as an accident reconstructionist,
15 someone who pays close attention to detail,
16 would you want to know that information?

17 That's a yes or no.

18 A. I do know that information.

19 Q. Do you have -- what information did you get
20 with respect to the actual repairs performed
21 from the bike shop, did you get any?

22 A. I did.

23 Q. What bike shop did he go to?

24 A. I do not know.

25 Q. Did he tell you what bike shop he went to?

1 A. No.

2 Q. Did you ever ask him at what bike shop these

3 repairs were performed at?

4 A. I didn't need to.

5 Q. It's a yes or no.

6 A. No.

7 Q. No. You didn't consider it an important

8 detail?

9 A. I had --

10 Q. Yes or no.

11 A. I had the details that I needed to draw my

12 conclusions.

13 Q. All right. Mr. Elrath, are you telling the

14 jury, it's a yes or no, that you don't need

15 any documentary proof of repair to the bicycle

16 when you're performing an analysis of a

17 bicycle accident; is that what you're telling

18 us?

19 A. No.

20 Q. Well what effort if any did you make to learn

21 the location where these alleged repairs were

22 performed or the type of repairs that were

23 performed? Other than reading the deposition

24 what else did you do?

25 A. I read the deposition.

1 Q. Nothing else, correct?

2 A. Correct.

3 Q. And you consider yourself a detailed analyst?

4 A. Yes.

5 Q. Now do you consider yourself somebody who is

6 trying to provide an objective opinion to the

7 jury?

8 A. That is exactly what I did.

9 Q. Or do you think that maybe you were just

10 taking out the information that supports the

11 plaintiff's case and ignoring everything else,

12 did you do that?

13 A. I did not.

14 MR. JONES: Mark this for

15 identification, please.

16 (Defendant's Exhibit .S)

17 Q. This is Defendant's S which has been marked

18 for identification, Mr. Elrath. And you

19 reviewed the police report as part of your

20 materials that you incorporated into your

21 analysis, correct?

22 A. I reviewed the police report, yes.

23 Q. And the reason you reviewed the police report

24 is because generally speaking police respond

25 to the scene and take statements sometimes,

1 correct?

2 A. That does happen.

3 Q. Incidentally, how many accident sites have you
4 ever responded to as an accident
5 reconstructionist, on-scene accident sites?

6 A. I don't think that I have.

7 Q. None?

8 A. Not that I can think of at this time.

9 Q. And you're telling the jury you're a accident
10 reconstruction expert?

11 MR. CITRIN: Objection.

12 Q. Let's take a look at the report there. You
13 had that report as part of your analysis we
14 agree, right?

15 A. I reviewed it, yes.

16 Q. And after reviewing it and as an objective
17 analyst did you consider an alternative theory
18 of how this accident happened other than what
19 you read in the transcript from Mr. Waldron?

20 A. I considered every possible theory.

21 Q. And did you ever ask Mr. Waldron what he told
22 the police officer at the scene if anything?

23 A. I did not.

24 Q. So as we sit here today when the accident
25 occurred July 29, 2014, over two years later

1 to this day you never asked that man what he
2 told the cop at the scene?

3 A. No.

4 Q. Now if Mr. Waldron had admitted going too fast
5 around the turn from Union Center Ave. onto
6 Esopus that would be inconsistent with your
7 theory of what you told the jury, correct?

8 MR. CITRIN: Objection, Judge, assumes
9 facts not in evidence.

10 THE COURT: Let's approach.

11 (BENCH CONFERENCE OFF THE RECORD)

12 Q. Did you read the deposition transcript of
13 Sheriff McGuire who responded to the scene?

14 A. I did.

15 Q. And did you read any testimony from a
16 Mr. McGuire, Sheriff McGuire, sorry,
17 suggesting that Mr. Waldron told the police
18 officer at the scene that he was carrying too
19 much speed on his turn, did you read that?

20 A. Could you tell me what page you're referring
21 to?

22 Q. Do you recall reading that?

23 A. I don't recall everything that I read so I'd
24 have to see what you're referring to.

25 THE COURT: Jurors, we'll break for

1 lunch. I haven't forgotten about you.

2 Q. Reading from page ten, line five, of Sheriff
3 McGuire's deposition, sir. Question: As a
4 sheriff was it your habit to make a
5 determination or conclusion like that?

6 Answer: Yes, it's part of the accident report
7 to list any contributing factors that may have
8 been present. Question: What did -- what did
9 you use to come to that conclusion? Answer:
10 Mr. Waldron's statement that he was carrying
11 too much speed into his turn. Did you read
12 that portion of his deposition, yes or no?

13 A. Yes.

14 Q. And did you consider that before you gave your
15 opinion to the jury today?

16 A. I did.

17 Q. Did you ask Mr. Waldron if he made such a
18 statement?

19 A. No, I reviewed his deposition transcript.

20 Q. So you dismissed the cop's statement in his
21 deposition testimony; is that correct?

22 A. I did not.

23 Q. Have you ever worked for a crime lab as an
24 accident reconstructionist?

25 A. I have not.

1 Q. Have you ever been invited to go to an
2 accident scene to help perform analysis,
3 measurements, and look at the points of
4 contact between vehicles?

5 A. Yes.

6 Q. When's the last time you did that?

7 A. In 2013 we simulated that during my accident
8 reconstruction courses.

9 Q. So during your course they took you to an
10 accident scene. Other than that one time how
11 many other times have you gone to accident
12 scenes, taken measurements, and performed an
13 analysis involving a bicycle and a car?

14 A. I have not.

15 Q. As someone who pays close attention to detail,
16 someone who is going to testify in front of a
17 jury, would you consider it prudent to
18 consider two versions of an event as the
19 information provides?

20 A. I consider every available fact that I have to
21 review.

22 Q. All right. Now you showed the jury this
23 portion of Mr. McGuire's diagram; do you
24 recall that?

25 A. I do.

1 Q. You realize there's one version of events, one
2 that says the Stantial vehicle was towards the
3 middle of the road when it was coming down
4 Esopus Avenue, you're aware of that, right?

5 A. I am.

6 Q. That version came from Mr. Waldron, correct?

7 A. Part of it did.

8 Q. All right.

9 A. In addition some of the information was from
10 Genna.

11 Q. Well Mr. Genna is not an eye witness, correct?

12 A. He is not.

13 Q. All right. So my question to you, sir, as an
14 expert don't you think it pursuant to consider
15 both sides of an event before you give
16 testimony?

17 A. Yes.

18 Q. And this diagram, sir, is consistent with --
19 this diagram, his version, right?

20 A. Parts, yes.

21 Q. All right. But Mr. Genna's conclusions, if
22 you continue to read it, and we'll hear later
23 in the trial, are not consistent with his
24 version, would that be fair?

25 A. Some of them are.

1 Q. Now you talked about speed coming into a turn,
2 you gave the jury your opinion that you think
3 that the turn was made under safe conditions
4 and safe speed. Did I hear that correctly?

5 A. That is a summary of my opinion, yes.

6 Q. Am I in sum and substance giving you a fair
7 analysis of what I think I heard you say?

8 A. Yes.

9 Q. All right. Now would it also be incumbent on
10 you as an accident reconstructionist to
11 consider the testimony of, you may have read
12 it, of where Mr. Waldron was looking as he
13 made the turn. Where in your report does it
14 say that?

15 A. In my listing of the review of his deposition
16 transcript.

17 Q. And, sir, how many feet did Mr. Waldron travel
18 from the time he made the turn up until the
19 time of impact?

20 A. I don't recall the distance.

21 Q. Look at Defendant's H. Do you see a red "X"
22 there?

23 A. I do.

24 Q. All right. Would that be about the
25 approximate spot where Mr. Waldron says the

1 impact took place or you don't know?

2 A. I can't say. This is the first time I'm
3 seeing this.

4 Q. The first time?

5 A. Yes.

6 Q. Have you seen this photograph before today?
7 I'm showing you Defendant's Exhibit J.

8 A. No.

9 THE COURT: Just for the record, J --

10 I think part of the photographs, this is just
11 for the jury's edification, down the line is a
12 photograph taken on Esopus Avenue pointing
13 towards the intersection with Union Center
14 Road.

15 Q. Just thumb through these Defendant's Exhibits
16 in evidence and tell us which of these before
17 today you've seen?

18 A. None of these.

19 Q. You read Mr. Waldron's transcript didn't you?

20 A. Yes.

21 Q. And you know they referred to photographs in
22 his deposition didn't you?

23 A. Yes.

24 Q. And you never asked for them did you?

25 A. I did.

1 Q. Did you get them?

2 A. No.

3 Q. Who did you ask?

4 A. I'm sorry?

5 Q. Who did you ask for them?

6 A. My client.

7 Q. You mean the attorney?

8 A. Yes, Andrew Sheeley.

9 Q. And when did you ask for them?

10 A. After I read the deposition transcripts.

11 Q. How many times did you ask?

12 A. Twice.

13 Q. And you knew you had to have the photographs

14 because they were important for your analysis,

15 right?

16 MR. CITRIN: Objection.

17 A. I perform my analysis with the available

18 evidence.

19 Q. Why did you ask for them? Because they're

20 important, right?

21 A. I wouldn't know until I reviewed them.

22 Q. Would you want to know if the bicyclist made

23 certain markings at his deposition on the

24 photographs? Would you want to know that?

25 A. It depends.

1 Q. You don't know?

2 A. I'd have to review them to determine that.

3 Q. Would it be fair to say, sir, that your
4 analysis at best at this point as of today is
5 woefully incomplete?

6 A. No.

7 Q. Did you review the deposition transcript of
8 Metelski?

9 A. Yes.

10 Q. Who is Mr. Metelski?

11 A. He's a gentlemen who lives at the house in
12 which the incident happened in front of.

13 Q. Did you read the portion of his transcript
14 where he said that the car was parallel to his
15 curb line right by his driveway?

16 A. I did.

17 Q. Did you read the portion of Mr. Zambito's
18 testimony where he says that immediately after
19 the impact that the car, the bicyclist, and
20 the bicycle were all in the car's lane; did
21 you read that?

22 A. I did.

23 Q. Did you consider that in your analysis?

24 A. I did.

25 Q. Show us where in your conclusions on your last

1 page you included that in your analysis.

2 A. It's not in my conclusions.

3 Q. You ignored it because it doesn't support his
4 case, right?

5 MR. CITRIN: Objection.

6 A. No.

7 Q. We talked before about a portion of Ms.

8 Stantial's testimony that she saw the vehicle
9 30 seconds before the actual accident took
10 place, right?

11 A. I did.

12 Q. Right. That's a startling number, isn't it?

13 That's a long time?

14 A. I don't really have any reference to determine
15 long or short.

16 Q. Well did you read further in the deposition on
17 page 114 where she said it was maybe just a
18 couple of seconds right above that, did you
19 read that?

20 A. I did read that.

21 Q. So it's inconsistent isn't it, thirty seconds
22 versus two seconds, that's a big discrepancy,
23 right?

24 A. There were inconsistencies that I reviewed.

25 Q. But you didn't say that on direct examination

1 did you?

2 MR. CITRIN: Objection.

3 A. I did.

4 THE COURT: Sustained.

5 Q. It's on the same page where she says 30
6 seconds isn't it, yes or no?

7 A. I believe the page is 113 where she said 30
8 seconds.

9 Q. Where she says a couple of seconds is also
10 page 113, correct?

11 A. I'm sorry, I thought you just told me 114.

12 Q. 113, my apologies, it was a couple of seconds,
13 right, page 113?

14 A. That is shown on page 114.

15 Q. That's 114. Above it would be 114. And
16 that's 113.

17 Q. Same page she references 30 seconds, right?

18 A. Quite close.

19 Q. You left that out this morning when you were
20 talking about it, right?

21 MR. CITRIN: Objection.

22 THE COURT: Sustained.

23 Q. Mr. Elrath, let's talk about diagrams. Let's
24 go through your report, okay? How many
25 photographs that are shown in your report are

1 actual photographs that you took?

2 A. Two.

3 Q. So you went to an accident site as an accident
4 reconstructionist and took a total of two
5 photographs. What pages are they on?

6 A. I did not take only two photographs.

7 Q. How many photographs did you take?

8 A. I took many dozen.

9 Q. Are they part of your report?

10 A. Yes.

11 Q. All right. Are they in your written report?

12 Go through my written report that was
13 exchanged by counsel. The pictures that you
14 took, are they in your report?

15 A. Yes.

16 Q. Show me here where your pictures are.

17 A. The second page of my report number 13 under
18 section B describes my inspection of the
19 collision site on July 26, 2016.

20 Q. Where are the dozens of photographs you took?

21 Are they in this report?

22 A. They're not in this report.

23 Q. On page three of your report one of your
24 photographs is there, correct? Is that your
25 photograph?

1 A. That is my photograph.

2 Q. There's a big circle on it, right? Can you

3 take that page out? That big circle, that's

4 where the accident took place, right? Is that

5 what it's supposed to represent?

6 A. No.

7 Q. What is that big circle supposed to represent?

8 A. The collision area.

9 Q. Is that different from the accident site?

10 A. Depends on your definition.

11 Q. And your circle, sir, we could agree covers

12 the entire roadway, right?

13 A. No.

14 Q. Does it go from -- cover part of Mr.

15 Metelski's house all the way to the other side

16 of the road?

17 A. It does.

18 Q. All right. And that's what you described to

19 the jury as the collision site, the entire

20 roadway?

21 A. The area, yes.

22 Q. So we're talking about a certain side of the

23 road in this case, and it's critical, isn't

24 it, that's a critical component of this case

25 isn't it? Can you agree?

1 A. Where it happened, yes.

2 Q. Yeah. Now which side of the roadway it
3 happened on is a critical component of this
4 case for the jury to consider; would you agree
5 with that?

6 A. I would.

7 Q. You drew a big circle on the entire road.

8 MR. CITRIN: Objection.

9 Q. Put that in your report.

10 MR. CITRIN: Objection.

11 Mischaracterizes what the picture shows.

12 THE COURT: Let me see the picture.

13 MR. JONES: (handing)

14 THE COURT: That's a reasonable
15 interpretation of the photograph.

16 MR. JONES: My interpretation?

17 THE COURT: Of where the circle is
18 located.

19 Q. So it covers the entire roadway, right?

20 A. It defines an area, yes.

21 Q. Now as an accident reconstructionist --

22 THE COURT: Just for the record, all
23 of this is going to be presented to you when
24 you deliberate. So ultimately it's going to
25 be your determination, okay?

MR. JONES: Subject to redaction I would like to offer that page into evidence, Your Honor.

MR. CITRIN: Can we approach?

THE COURT: Yes.

(BENCH CONFERENCE OFF THE RECORD)

Q. Did you read Mr. Zambito's testimony in detail?

A. I read Mr. Zambito's testimony.

Q. My question was did you read it in detail?

A. I'm not sure what your definition of detail is.

Q. Well did you find anything that was important as a purported accident reconstructionist that you think he said that would assist you in determining what took place here?

A. All of it.

Q. Now did you read the portion of Mr. Zambito's testimony where he said as soon as he heard a bang he turned around. Did you read that?

A. Could you show that to me? I'm not sure which page you're referring to.

○ . Okay .

THE COURT: Jurors, we are going to break at noon.

1 Q. Sir, I won't read it to you. I'm going to ask
2 you if you recall reading such testimony from
3 Mr. Zambito, yes or no?

4 A. I read he described a sound, a bang.

5 Q. And do you recall where he stated that he
6 turned around immediately; do you recall that
7 as well?

8 A. I don't recall the timeframe, no.

9 Q. All right. Well if he turned around
10 immediately and saw the car, the bicycle, and
11 the bicyclist all in the car's lane, that
12 would suggest that's where the accident took
13 place. Would that be fair as an accident
14 reconstructionist, that version?

15 A. That's consistent with the evidence, yes.

16 Q. All right. And did you put that in your
17 report?

18 A. I reviewed his deposition transcript and
19 listed it on page two of my report.

20 Q. Did you put it in your findings that more
21 likely than not based upon Mr. Zambito's
22 testimony the accident occurred in the car's
23 lane? Did you put that in there?

24 A. That's not in my findings.

25 Q. But you read his testimony?

1 A. I read everyone's testimony that's listed on
2 page two of my report.

3 Q. But you only put in your report and your
4 findings what happened to the plaintiff,
5 right?

6 MR. CITRIN: Objection.

7 THE COURT: Sustained.

8 MR. JONES: Nothing further, Judge.

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