

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

LETITIA BECKLES, et al,

Plaintiffs,

-against-

INDEX NO. 1460/14

ERIK FRED, et al,

Defendants.

Jury Trial - Testimony of Gregory Witte

HELD AT: Orange County Courthouse
285 Main Street
Goshen, New York 10924
September 25, 2018

HELD BEFORE:

APPEARANCES: HON CRAIG STEPHEN BROWN, AJSC

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BY: CHARLES MAILLOUX, ESQ.

CHANEL BATTEY

Senior Court Reporter

1 DIRECT EXAMINATION BY MR. SLANE:

2 Q. Mr. Witte, what do you do for a
3 living?

4 A. Accident reconstructionist.

5 Q. Is that with a particular group
6 or?

7 A. Currently I have my own company,
8 Forensic Crash Specialist.

9 Q. How long have you been an accident
10 reconstruction specialist?

11 A. I obtained the title advanced
12 accident investigator with the police
13 department back in 1998 I believe. At that
14 point they kind of thrush you into the field
15 of accident reconstruction. I actually
16 obtained my reconstruction certification in
17 2000.

18 Q. What is entailed to get a
19 certification in that area?

20 A. It's a series of three courses
21 that you have to take, two weeks each. The
22 hours comprise first one is basic accident
23 investigations. The next series is the
24 advanced class. Then you have your accident
25 reconstruction course.

1 Q. Did you take any tests as part of
2 that certification?

3 A. Yes, to proceed from one to the
4 next, you have to take a test at the end.

5 Q. Aside from being an accident
6 reconstruction specialist with your own
7 company, do you have any other jobs currently?

8 A. Yes, I am also -- well, I am a
9 retired police officer. I retired back in
10 2009. I still work part time for Suffern
11 Police Department doing their accident
12 investigations.

13 Q. Currently you are a police officer
14 with Suffern Police Department?

15 A. Correct.

16 Q. As part of your current job with
17 the Suffern Police Department, you do accident
18 reconstruction?

19 A. Yes, that is my sole job with
20 them. I come out for accidents.

21 Q. What type of accidents?

22 A. Anything that will be considered
23 serious personal injury with the possibility
24 of death or extreme property damage of
25 government vehicles.

1 Q. When did you first become a police
2 officer?

3 A. 1989.

4 Q. When did you become a detective?

5 A. 1999.

6 Q. Once you became a detective, what
7 were your responsibilities?

8 A. Well, with my agency I worked out
9 of Monroe. They really wanted the detective
10 there to work on criminal matters. So I was
11 doing that for a year. I kind of knew what I
12 wanted to do. I was really interested in
13 accident reconstruction. We had a highway
14 unit. I just really wanted to do that.

15 So I kind of was put in a position
16 where I had no choice. I went off and became
17 the accident investigator for my agency.

18 Q. How long were you doing that in
19 that particular role?

20 A. I started doing that from 2000 to
21 my retirement in 2009.

22 Q. At any point in time, were you an
23 accident reconstruction specialist instructor?

24 A. I teach now. I get hired to go
25 out to like trucking companies and teach their

1 drivers the aspects of accident
2 investigations, how they are done, how they
3 can aid themselves in the investigation.

4 I was also retained by back then
5 it was ARAS 360. I was one of their
6 instructors for their software of the use of
7 computer aided diagram software that applies
8 all of the physics that we use in accident
9 investigations, put into the software for
10 accident investigators use and I also taught
11 how to use a total station, because a total
12 station you take that data and put it in the
13 accident software.

14 So I would go out. I would go to
15 the police department and teach officers how
16 to use that equipment.

17 Q. Other than what you testified to,
18 did you have other training and courses?

19 A. Yes, I have a host of training.
20 One of the things that we are required to do
21 is maintain CEUs, continuing education units.
22 I have a list of them here, if I may.

23 Q. If you can.

24 A. Again back in '96 is when I
25 decided to do accident investigations. So I

1 did a class in '96, '98 the advanced accident,
2 interview interrogations. In '99, accident
3 reconstruction. I completed that in 2000.

4 I then went on to forensic mapping
5 and diagramming, bicycle accident
6 investigations, critical curve in roadways,
7 court preparation, energy methods and damage
8 analysis.

9 You may have heard the term crush
10 analysis. That is what that class is where
11 you are able to obtain speed through crush,
12 commercial motor vehicles, motorcycle crash
13 investigations, advanced animation and
14 drawing, spin analysis, crash data.

15 You might hear of black box. We
16 get crash data and do the analysis on that.
17 Photo investigation class. We take photos and
18 apply the prints of the photograph to that
19 where you convert 2D photograph into the 3D
20 environment.

21 I became the crash animated
22 instructor, accident reconstruction in the
23 first class I took. Human factors, another
24 accident reconstruction refresher class I
25 took, another accident reconstruction class,

1 HD version of the ARAS 360 crash animations,
2 traffic signal design and operations.

3 Part of our CEU is to go to crash
4 conferences around the country. We attended
5 one in Jacksonville, Florida in 2012. In
6 there it contains many units of construction,
7 occupants kinematics, GPS, forensics
8 investigations, boating accidents, event data
9 recorder update, night and low light digital
10 photography, high speed pedestrian fatalities
11 with EDR data, alternate fuel vehicles.

12 You may have heard 3D scanner.
13 Those are devices we put into a room and goes
14 around and created this environment in 3D for
15 us. I took that class down in Florida.
16 Another special problems class is 37 hours of
17 instruction there. I became 360 reality
18 instructor back in 2014.

19 THE COURT: Just try to keep your
20 voice up.

21 THE WITNESS: Yes, sir.

22 A. Heavy vehicle ECM download and
23 analysis, the same thing as crash data in cars
24 but for trucks. PC crash analysis training
25 course. This is a physics based simulation

1 software that we use. I have taken two class
2 in that; distracted driving, roadside
3 barriers, another update with events crash
4 data, another one with crash data utilizing
5 human factors, crash trauma and bio mechanics,
6 post crash forensic mechanical inspections.
7 We would go into cars and try to figure out
8 what happened.

9 Then excel spreadsheets. These
10 are advanced to help calculate calculations.
11 It does millions of calculation to try to weed
12 out the things that can't be and help identify
13 what is the most probable. That is where I am
14 at now.

15 CEU now becomes very important to
16 us much like attorneys. We have to maintain
17 for ACTAR certification which I obtained in
18 2016. ACTAR is a federal standard. It was
19 first introduced had by NHTSA.

20 It was a committee formed back in
21 '85 consisting of engineers, accident
22 reconstructionist, police officers, civilians.
23 In 1991, it was instituted. They set the
24 standard for accident reconstructionists. So
25 I guess if you think the way it is, we

1 maintain ACTAR kind of like the PhD of
2 accident reconstruction now as set by the
3 Feds.

4 Q. When did you obtain that?

5 A. It's been in existence for a
6 while. It wasn't dominant in that area; but
7 2016.

8 Q. For the past 27 years, you have
9 been investigating traffic collisions,
10 correct?

11 A. Yes, I actually been working crash
12 scenes since I was 16 with the fire department
13 and ambulance corp where I volunteered.

14 Q. At some point in time, my office
15 reached out to you and you began an
16 investigation?

17 A. Yes.

18 Q. What did you review as part of
19 that investigation?

20 A. Your office sent several documents
21 and photos. We had transcripts, one from
22 D W , one from Erik Fred, another
23 one from Erik Fred, one from Officer McKenna,
24 New York State incident report prepared by
25 Officer McKenna, affidavit from D.

1 W. , the accident investigation report
2 from Robert McKenna, the blog report from the
3 Town of Newburgh police department and several
4 photos.

5 Q. Did you also conduct an on-site
6 inspection?

7 A. Yes, we did.

8 Q. What did that entail?

9 A. We go to the scene. We walk
10 around the scene. We took out the total
11 station which you may have seen surveyors
12 using on the side of the road. It allows us
13 to measure angles left or right, up and down.
14 It allows us to capture the topography,
15 anything that we find of interest to us; so
16 the curves of the roads, the slopes of the
17 road, the radius of the roads, the house, the
18 driveway in this case, curb cuts. We are able
19 to shoot those with a very high degree of
20 accuracy, take that data into that ARAS 360
21 software and create a 3D scale diagrams to
22 work with.

23 Q. During that site inspection, is
24 that what you did?

25 A. That is what we did, along with

1 taking a series of photos.

2 Q. Did you take measurements?

3 A. Yes, the measurements are coming
4 from the total station work.

5 Q. Did you examine the roadways?

6 A. Yes.

7 Q. Did you come to an opinion to a
8 reasonable degree of scientific certainty
9 regarding the causes of this accident?

10 A. Yes.

11 Q. What is that opinion?

12 A. When we got done walking around
13 the scene and we realized where everything
14 was. We are actually seeing, looking at it.
15 Right away we kind suspected a phenomenon
16 called target fixation.

17 Q. Can you explain that.

18 A. You guys probably all experience
19 this or have witnessed it not even realizing
20 that you did. It's very common with children
21 only because they lack life lessons. So you
22 see it a lot. Examples of it are seen on TV
23 or reality TV shows like America's Funniest
24 Video. It's simply a person sees something
25 and they identify that it as a hazard or

1 overly obsessed with whatever that may be.
2 It's more susceptible to people riding two
3 wheel vehicles, such as bikes or motorcycles,
4 because they can lean and change your
5 direction on a motorcycle or bicycle where in
6 a car it's actually putting your hands to the
7 steering wheel. We see it more often there.
8 These example you can watch a little boy going
9 down the road and he sees a tree or something
10 and there is nothing else out there and he
11 crashes right into that tree. My own son did
12 it, crashed right into a mailbox. He had a
13 whole thirty foot wide open road, found the
14 mailbox. Laws have been enacted now because
15 of this phenomenon. You may have seen it
16 recently, the move over law. That law is
17 simply -- all it is people are so obsessed
18 with what they are seeing that when they are
19 looking, they don't realize that their eyes
20 are steering to they are looking at which is a
21 natural human response. We are not picking up
22 that what we are doing that. The next thing
23 you know they go off the road and crash right
24 into the police car. Across the country
25 hundreds of these accidents have occurred

1 resulting in the death of many officers. That
2 law has been expanded now because of what it
3 is to protect the fire department, tow
4 operators, police vehicles, anybody who is
5 operating on the side of the road to make you
6 think you should move over and give them
7 space. Back in my days with the fire
8 department when I was working on a crash on
9 Interstate 87 in the Town of Tuxedo --

10 MR. MAILLOUX: Objection.

11 THE COURT: Sustained.

12 Do you ever another question?

13 Q. What about target fixation causes
14 someone to steer into an object?

15 A. Could you phrase the.

16 Question: Again.

17 Q. Can you explain target fixation
18 relative to this occurrence?

19 A. Yes, in this occurrence the
20 bicycle operator, she is coming down a hill.
21 She is looking to make a right-hand turn. She
22 sees this Jeep sticking out into the roadway.
23 She becomes fixated. It's not supposed to be
24 there. She perceives this as a hazard. Just
25 like that little boy we watch crash into a

1 tree, rational thought is not there through
2 due to lack of life experience where you are
3 supposed to be looking out ahead of you. She
4 is focused on it. As hard as she tries, she
5 is just looking at it and steers right into it
6 and that is exactly what happened in this
7 crash.

8 Q. Were there studies relative to
9 this phenomenon?

10 A. Yes, if you look it up, there are
11 many, many articles about it. Wikipedia has a
12 great reference about it, Dr. Mark Green who I
13 researched his paperwork discusses it.
14 Actually he ties it into target fixation and
15 the incident with the move over law in police
16 vehicles. I cite three references, but there
17 are many, many out there. Idrivesafely.com
18 has a great article about it. Glenn Edmond's
19 performance driving school, he discusses it.
20 Target fixation actually became really
21 recognized back in World War II I believe it
22 was. It was when fights were coming in doing
23 safety runs, they are firing at something.
24 They get so fixated at the target that they
25 actually crash into it because their fixation

1 overrides what the rational thought should be.

2 Q. In relative to the experience of
3 the operator, how does target fixation play in
4 if at all?

5 A. I am sorry.

6 Q. Relative to the experience of the
7 driver, how does target fixation play in at
8 all into a given circumstance?

9 A. Again, it's just irrational
10 obsession with the thing that you are focused
11 on. In this case a vehicle obstructing her.
12 It's a hazard. She is concerned about this.
13 She is so focused on trying to avoid it
14 actually her hands or steering, it's a two
15 wheel bicycle. Her body movement is just
16 taking her right at it. Again, it's a life
17 experience thing. She is very young. She
18 doesn't have life experience. So she is
19 focused at it instead of looking where you
20 want to go. In fact, instructors talk about
21 look to where you want to go, not where you
22 are at. Otherwise you drive right into it.
23 It's also taught in motorcycle schools about
24 target fixation.

25 Q. Is that something that you learn

1 as time goes by?

2 A. It's something that you get better
3 at. It still happens to adults. As we see
4 people drift over to the shoulder and crash
5 into the police cars, everyone is susceptible
6 to it. You just get better with age
7 experience.

8 Q. I am going to show you what has
9 been marked for identification as Plaintiffs
10 Exhibits 21 through 27.

11 Let me direct your attention to
12 Plaintiff's Exhibit 21. Is that a rendering
13 -- what is in Plaintiff's Exhibit 21?

14 A. This is a rendering of what we
15 created with our 3D software utilizing total
16 station data. We compile that with the
17 deposition testimony. There is a rendering
18 showing the bicyclist heading down the road
19 and preparing to make the right-hand turn.

20 Q. In Plaintiff's Exhibit 21, how did
21 you create this rendering?

22 A. It's inside that ARAS 360 SOFTWARE
23 that I discussed earlier.

24 Q. How does that software work?

25 A. It's a 3D cad software designed

1 for reconstructionists. In this case we took
2 out our total station. We surveyed a whole
3 bunch of points out there. The best way to
4 describe the point, you remember when you are
5 a kid you had connect the dots. Picture that
6 in a 3D environment. Then we take all those
7 points and put it to the software. It
8 essentially connects the dots matching it with
9 the descriptions. In this image here, it's a
10 curb. So we have several dots we measure to
11 create that curb and all the curbs around. We
12 shot the location at the driveway at the
13 house, everything there we see, location of
14 trees and rocks and lampposts. We use the
15 software to recreate that in 3D.

16 Q. If you look at Plaintiff's
17 Exhibits 21, 22, 23, 24, 26 and 27, were those
18 renderings created during that process?

19 A. Yes.

20 Q. Were they done to scale?

21 A. Yes, by initially being out there
22 with the total station, that process alone has
23 to set the scale.

24 Q. Are these rendering a fair and
25 accurate depiction of the area of the

1 accident?

2 A. Yes, they are.

3 Q. Are these depictions a fair and
4 accurate representation of the accident area
5 itself?

6 A. Yes.

7 MR. SLANE: Your Honor, at this
8 time, we move to admit Plaintiff's 21, 22,
9 23, 24, 36 and 27 into evidence.

10 THE COURT: Counsel?

11 MR. MAILLOUX: May I voir dire.

12 THE COURT: You may.

13 VOIR DIRE BY MR. MAILLOUX:

14 Q. Good afternoon, Mr. Witte.

15 A. Good afternoon.

16 Q. When you are taking the photos
17 with the hardware at the location, what
18 hardware do you bring with you?

19 A. I believe you are referring to the
20 Nikon MPR 352 total station. It's not
21 actually taking photographs. The way you are
22 referencing is, it's simply sending out -- if
23 this microphone is a total station and I want
24 to hit that corner of the room over there, it
25 sends a laser out, hits that, reflects back

1 and depending where I hit that corner, it will
2 tell me the height that I am shooting at and
3 the angles. If I were to keep spinning around
4 that corner this one that one, I have the
5 exact length of this room; heights, widths.

6 Q. Does it operate in a similar way
7 to sonar?

8 A. No, using laser.

9 Q. Using laser, the laser is
10 measuring how far the laser goes?

11 A. Yes.

12 Q. Do you bring one of those devices
13 or multiple devices?

14 A. Just one.

15 Q. So you are using that device at
16 various locations and it's measuring what you
17 are pointing it at?

18 A. The way our devices work, our
19 device has the ability to shoot laserless or
20 with a prism. So we set the units up.
21 Hopefully we are able to it in one setting.
22 In this case, we were able to. Whatever I can
23 shoot prismless where I don't need my partner
24 out there, we are trying to do it that way
25 when we can. A lot of surfaces won't reflect

1 very well. In those cases we have a prism
2 pole. My associate will go out there and
3 literally put that pole on the point we are
4 trying to measure. He has a mirror about that
5 big. We shoot that and that takes the place
6 of it and sends that beam back to the total
7 station and records that measurement.

8 Q. When this is happening, are you
9 actually with the machine operating it or did
10 you set the machine on a stand and leave it or
11 something else?

12 A. My machine, I am actually with it.
13 There are actually newer versions that do what
14 you are talking about.

15 Q. Does it have to be done in one
16 shot?

17 A. You try if you can. In this case
18 we were able to. Depending on crash scenes
19 involved, there may be corners we can't see
20 around. So we will have to take the total
21 station down, put it in another spot so we can
22 get around that corner, but we didn't have
23 that problem here.

24 Q. Did you inspect the machine the
25 morning you went up to do the inspection of

1 the action location?

2 A. Do a visual inspection of it, if
3 that is what you are referring to.

4 Q. Did you check to make sure it was
5 operating correctly?

6 A. Yes.

7 Q. Do you remember where you placed
8 the machine at that location?

9 A. I think I do actually. I think we
10 had it on the corner. I think it is Exhibit
11 26.

12 Q. I am just asking you do you have a
13 recollection of where you placed it?

14 A. I am pretty sure we are in this
15 corner here where the right hand turn is,
16 inside of that. We had it sitting in here.
17 We could see everything from here.

18 Q. You did this shoot in one take?

19 A. Yes.

20 Q. Does the machine register colors?

21 A. No.

22 Q. Does it take photos?

23 A. No.

24 Q. It's merely measuring the distance
25 from the laser?

1 A. Yes, measures height and distance.

2 Q. Those photographs are depictions
3 that are as a result of the device that you
4 used that day?

5 A. Yes, I don't call these photos.
6 It's not a photograph. It's a computer
7 generated diagram of what we created that day.

8 Q. That is using the information
9 received in the device?

10 A. Yes, correct.

11 Q. But the device doesn't register
12 colors?

13 A. No.

14 Q. How are the colors inputted on
15 that?

16 A. We took tons of photos. I think
17 for the most part there are some things that
18 we know what they are. Asphalt would be some
19 shades of gray. Grass is usually green unless
20 it's burnt out brown. The colors really came
21 from samples we took in our photos and just
22 common knowledge.

23 Q. Those are entered by you and
24 someone that you work with afterwards?

25 A. Entered by me.

1 Q. The points indicating the path of
2 those were entered by you as well?

3 A. What do you mean by path?

4 Q. Indicating some of those
5 animations or some of those images indicate
6 the path of the bicycle?

7 A. The path, no. The path is not
8 from the points. The path is from testimony.

9 Q. But you are the one who enters
10 that into the animation?

11 A. Yes.

12 Q. So you use the images done on the
13 devices sort of the base then you fill it in
14 with other information?

15 A. Yes, I guess that will be
16 accurate.

17 Q. These were done in connection with
18 your investigation for this case?

19 A. Yes.

20 MR. MAILLOUX: No further
21 questions; no objection.

22 THE COURT: Received into evidence
23 on consent without objection.

24 (LUNCHEON RECESS.)

25 MR. SLANE: Based on the prior

1 witness' testimony, plaintiffs move to
2 have the witness recognized as an expert
3 in accident reconstruction.

4 THE COURT: Counsel, any voir dire?
5 Let's start with that.

6 MR. MAILLOUX: I will start with
7 voir dire, Your Honor.

8 THE COURT: Okay.

9 VOIR DIRE BY MR. MAILLOUX:

10 Q. Good afternoon, Mr. Witte. You
11 don't have any degrees in the field of
12 forensic science, correct?

13 A. Actual reconstruction would be my
14 degree if you want to call it that, not in the
15 college level; if that is what you are
16 referring to.

17 Q. What is your degree in?

18 A. Degree in what field?

19 Q. In any field.

20 A. I am an accident reconstructionist
21 ACTAR accredited.

22 Q. You have an accredited degree from
23 a college in the field of accident
24 reconstruction?

25 A. Well, the accreditation comes

1 through the National Highway Traffic and
2 Safety Administration. Reconstruction came
3 through the Institute of Police Technology and
4 Management out of the University of North
5 Florida.

6 Q. So you don't have a master's in
7 the field of accident reconstruction, correct?

8 A. No, sir.

9 Q. You don't have a college degree in
10 the field of accident reconstruction, correct?

11 A. I don't believe that exists.

12 Q. You don't have a master's in the
13 field of forensic science, correct?

14 A. No.

15 Q. You don't have a college degree in
16 the field of forensic science, correct?

17 A. No.

18 Q. In terms of your certifications in
19 accident reconstruction, there are
20 certifications that you receive through taking
21 training classes after you were admitted into
22 the police department; is that correct?

23 A. Correct.

24 Q. Have you written any studies in
25 the field of accident reconstruction?

1 A. No studies, no.

2 Q. In terms of your curriculum vitae,
3 what is the organization that has accredited
4 you in the field as an accident reconstruction
5 expert?

6 A. ACTAR.

7 Q. What is the name of that?

8 A. ACTAR.

9 Q. A-C-T-A-A-R?

10 A. I think it's one "A," A-C-T-A-R.

11 Q. That is not referenced in your CV;
12 is that correct?

13 A. What version do you have there,
14 sir?

15 Q. I have the version -- well, let me
16 ask you this; you place your credentials on
17 your website?

18 A. I think it's on there, yes.

19 Q. You place your CV on the website?

20 A. Yes, I couldn't tell you if it's
21 updated or not, but yes.

22 Q. Do you have a copy of the CV which
23 has an accreditation in the field of accident
24 reconstruction?

25 A. I do.

1 Q. That is from the institution
2 ACTAR?

3 A. Yes.

4 Q. ACTAR is a private institution?

5 A. Yes, again it's created by NHTSA,
6 but it now operates as a private entity.

7 Q. It's not affiliated with any
8 university?

9 A. I don't think so.

10 Q. You received that accreditation
11 once again in connection with continuing
12 education classes in connection with your
13 police work?

14 A. Well, ACTAR sets the standards for
15 accident reconstruction and we have to take
16 all these classes to maintain that standard
17 similarly to like attorneys have to take
18 continuing education credits.

19 MR. MAILLOUX: I will offer an
20 objection.

21 THE COURT: Okay. So actually what
22 I will do is I will excuse the jury for a
23 moment. We have some legal discussions.

24 (Legal discussions held).

25 CONTINUED DIRECT EXAMINATION BY MR. SLANE:

1 Q. Mr. Witte, during the course of
2 your career, have you worked on accident cases
3 that involve target fixation?

4 A. Not directly the way it has
5 happened in this case, but other accident
6 involve drifting over and striking things that
7 they get focused on, but not specific as to
8 what we have in this case.

9 Q. In other cases in the past, have
10 you worked on cases that involved the concept
11 of target fixation?

12 A. Yes.

13 Q. In what capacity did you work on
14 those cases?

15 A. Those are very common to happen in
16 rear end accidents where people see the
17 vehicle slowing in front of them, but they do
18 not get the concept of depth that they are
19 closing in on it. They think it's still
20 rolling. They do not realize it stopped.
21 That's an area of fixation that occurs as
22 well.

23 Q. Is that an area of target
24 fixation?

25 A. Yes.

20

1 Q. How many of those types of cases
2 have you worked on through the years?

3 A. I don't even know. It would be a
4 guess thirty or so, forty maybe.

5 Q. I don't want to you guess. Can
6 you give an approximation?

7 A. I really can't. I don't
8 categorize in that way. It's hundreds of
9 accidents that we work on.

10 Q. Is it more than five?

11 A. Yes.

12 Q. Was it a sum more than ten?

13 A. Yes, I would think so.

14 Q. Did you work on other cases
15 involving target fixation?

16 A. Those are the ones that stand out.
17 That is a very common thing that happen in
18 those accidents. There is perception of
19 what's happening in front of them.

20 Q. As an accident reconstructionist,
21 when have you come across this phenomenon
22 aside from what you just mentioned regarding
23 target fixation?

24 A. Human factors, it's one of the
25 topics that was covered, human factors. In

1 the human factors class, it's one of the
2 topics that they cover.

3 Q. So this is a course that you took
4 relative to target fixation?

5 A. I mean not specifically that.
6 That is one of the many things that deal with
7 human factors. The whole visual acuity,
8 contrast, all these things dealing with depth
9 perception is all part of that.

10 Q. Did it fully cover the concept of
11 target fixation?

12 A. Yes, I guess. I don't know how to
13 explain. It's kind of a simple thing, to be
14 honest with you.

15 Q. Has your role as a police officer
16 in the past in relation to target fixation
17 other than those accident cases that you
18 mentioned, did they come across in your field?

19 A. I would have to think so, but I
20 can't specifically remember one. That is
21 going back a long time.

22 Q. I don't want you to guess; but as
23 you sit here right now, you don't have a
24 specific instance other than the ones that you
25 testified, but you are aware that you came

1 across it in your accident reconstruction in
2 the past?

3 A. Yes.

4 Q. What are some things other than
5 that course that enables you to testify here
6 today about the phenomenon of target fixation?

7 A. Well, besides just in that class
8 alone, accident reconstruction is really a
9 field we get involved in many, many topics;
10 surveying, mapping, photographs.

11 We explained the whole list of
12 stuff that I gave you. One of the big tests
13 is perception and reaction, which is commonly
14 covered in that class. We talk about the
15 things that slow down a person's ability to
16 identify what's going on in front of them,
17 take appropriate response of what's going on
18 in front of them.

19 It could be alcohol. I am sure
20 you heard of that. There are different human
21 factors, how the lighting is, how many things
22 are moving around in their field of view,
23 contrast of different ratios of lighting.

24 So it all just kind of boils down
25 to visual acuity. You will identify and

1 react. So we are kind of hit with this whole
2 visual thing repeatedly throughout training in
3 human factors class which covers many
4 different aspects of how human beings trigger
5 to their own accident.

6 It's just one of those things we
7 talk about.

8 Q. Aside from what you testified, you
9 received other training in the concept of
10 target fixation?

11 A. Yeah, I guess that would be fair
12 to say.

13 Q. You testified about numerous
14 courses that you took. Were there concepts of
15 target fixation in those courses?

16 A. Yes, again it's just what I was
17 discussing. Some of these courses are always
18 going back to perception and reaction. One
19 class, specifically a human factors class
20 taught by Dr. Jeff Mutard (phonetic), he's one
21 of the leading doctors in the field of
22 everything to deal with visual.

23 He produces a program called IDOR.
24 Again, it takes in all these concepts, things
25 that people see, how they react, how they

1 don't react. So it's just kind of a renewing
2 topic throughout the years of training.

3 Q. Is it fair to say that you have
4 extensive experience in the field of target
5 fixation?

6 A. Yes, I would say so, yes, I think
7 so.

8 MR. SLANE: At this time, Your
9 Honor, plaintiff would like to make a
10 motion.

11 THE COURT: Counsel, any further
12 voir dire.

13 MR. MAILLOUX: On the issue of
14 target fixation, yes, Your Honor.

15 THE COURT: Okay.

16 VOIR DIRE BY MR. MAILLOUX:

17 Q. Mr. Witte, isn't it true that the
18 concept of target fixation affecting the
19 operator of a vehicle in motion is actually in
20 dispute?

21 A. As I believe you guys were arguing
22 here, I think so.

23 Q. So it's not generally accepted
24 science, correct?

25 A. I don't know. I read a lot of

1 material on it. It's taught in my class. So
2 I think it's accepted science. The military
3 has acknowledged it.

4 Q. You referenced Mark Green before?

5 A. Yes.

6 Q. In fact, you referenced one of
7 Mark Green's writings in your report that you
8 generated for this case?

9 A. Yes, sir.

10 Q. The report that you reference for
11 Mark Green indicates in numerous places that
12 the concept of target fixation is not settled,
13 correct?

14 A. I know that is of his opinion,
15 yes.

16 MR. MAILLOUX: Your Honor, I would
17 object to certifying anyone in the field
18 of target fixation.

19 THE COURT: Counsel?

20 MR. SLANE: I have some more
21 questions for the witness.

22 CONTINUED DIRECT EXAMINATION BY MR. SLANE:

23 Q. What are some of the things in
24 relation to your testimony where some of the
25 concepts of target fixation might be

1 unsettled? What are you referring to?

2 A. I know that there are people that
3 argue the issue whether or not this is a true
4 and involuntary reaction. If I am staring at
5 the gentleman there with the black shirt, if I
6 am worried about hitting him, I know there is
7 a dispute whether or not there is an
8 involuntary reaction to steer directly into it
9 or it's a cognitive just like a lockup and the
10 car goes right into it.

11 I am doing the best I can of what
12 I know. As I understand, it's an involuntary
13 response action, rational response to a threat
14 of some type of a hazard that the person
15 perceives and I know in the science world they
16 dispute this involuntary thing, but I know
17 there are just so many examples out there.

18 Military research, they are the
19 first ones to identify and give the term.

20 Q. In relation to when you say this
21 dispute whether it's involuntary, can you
22 explain that further?

23 A. Again, the way that I understand
24 it, me as an adult if I am heading right
25 toward that gentleman, I will say he's in my

1 way. I will turn.

2 Younger people when they see that,
3 they get so worried about that that the
4 thinking process of looking beyond him isn't
5 matured yet. So they don't look past to steer
6 it towards corrective action and they get so
7 fixated on it that they rationally drive right
8 into it.

9 You have probably all seen it,
10 experienced it, watch your own kids do it as I
11 did. It happens all the time.

12 Q. What you are saying might be at
13 dispute is that what's going on in the child's
14 mind or the individual's mind at the time of
15 this happening?

16 A. That is my understanding what the
17 dispute is over. It just depends on what you
18 read. I would think there has to be a very
19 scientific finding conclusion for states to
20 pass a law called Move Over law based on this
21 phenomenon.

22 Q. In relation to whether or not
23 target fixation causes accidents or not, is
24 that in dispute?

25 A. No.

1 MR. SLANE: I renew my application.

2 MR. MAILLOUX: Same objection, Your
3 Honor.

4 THE COURT: So I will allow him to
5 continue. I will note your objection and
6 exception for the record. You can
7 continue at this point.

8 I have noted defense attorney's
9 objection for the record.

10 MR. SLANE: Thank you, Your Honor.

11 CONTINUED DIRECT EXAMINATION BY MR. SLANE:

12 Q. Let me direct your attention to
13 what's been marked as Plaintiff's Exhibit 1.
14 For the record, it's being displayed on the
15 screen as well.

16 Do you recognize that photograph?

17 A. I do.

18 Q. What is your understanding of how
19 that photograph was obtained?

20 A. The police department took this
21 photograph I believe and it came well after
22 the accident had actually occurred.

23 Q. I will go through some photos with
24 you. I will direct your attention to what's
25 been marked as Plaintiff's Exhibit 18. Before

1 I ask you questions relative to that
2 photograph -- well, actually what do you see
3 in that photo?

4 A. Can I get up?

5 THE COURT: You can just speak from
6 there if you want.

7 Counsel, are you asking permission?

8 MR. SLANE: Yes, with permission of
9 course.

10 THE COURT: Okay. He can get down.

11 A. In this photograph, you can see
12 the debris from the front reflector or bicycle
13 is white and mounted where the handlebar goes
14 down to the frame. There is a piece here,
15 piece right in there. There is a little piece
16 right there. There is some bloodstains right
17 here dripping down. This whole area here is
18 full of blood.

19 The reflector backing is usually
20 like a black plastic or something. That is
21 this piece right there and those are the
22 notable things that I see in that one.

23 Q. I would like to show the witness
24 what's been marked for identification as
25 Plaintiff's Exhibit 25. That is just for

1 identification. So if you want to take your
2 seat, I will ask you some questions about
3 that.

4 A. Okay.

5 Q. What do you recognize that photo
6 to be?

7 A. It's the same photo, just the
8 photo that I had in my report where I put a
9 label identifying where everything was.

10 Q. Those labels, those are the labels
11 that you created?

12 A. Yes.

13 Q. That would be the same photo as in
14 Plaintiff's 18?

15 A. I believe so, yes, the one we just
16 had up.

17 Q. Other than those labels that you
18 put on it, is anything different about that?

19 A. Not that I am aware of, no.

20 Q. Those labels that you put on that
21 photograph, would that be helpful in
22 explaining to the jury about the accident?

23 A. Yes.

24 MR. SLANE: At this point in time,
25 Your Honor, we move to admit what's been

1 marked as Plaintiff's Exhibit 25 into
2 evidence as Plaintiff's Exhibit 25.

3 THE COURT: Any voir dire?

4 MR. MAILLOUX: No, Your Honor, no
5 objection.

6 THE COURT: Okay, received in
7 evidence on consent without objection.
8 Plaintiff's 25 is now in evidence.

9 COURT OFFICER: So marked.

10 Q. On Plaintiff's Exhibit 25, you
11 have that in front of you?

12 MR. SLANE: For the record, it is
13 depicted on the screen as well.

14 Your Honor, may I ask the witness
15 to come down to the screen?

16 THE COURT: He can.

17 Q. You made several markings on that
18 photograph?

19 A. Yes.

20 Q. What did you mark?

21 A. Again, this photograph, you have
22 the blood marking. So again we have the big
23 blood pool here with streaks of blood here. I
24 labeled that reflector.

25 Then again, I don't believe it is

1 labeled, but we have the pieces of the front
2 reflector.

3 Q. What does this photo tell you
4 about the accident?

5 A. This photograph is kind of key in
6 that the big thing was where the blood was
7 pooled. It's kind of a considerable distance
8 from where the Jeep is; but most importantly
9 these little pieces of the reflector are on
10 the backside of the curb.

11 Like if this is my car, the Jeep
12 is over here. They are sitting back here
13 almost in the shadow of the Jeep if you are
14 looking at it from the Jeep. When I am
15 looking at that, the Jeep had to have been
16 this way further out in order for those pieces
17 to get there. It wouldn't have happened if
18 the Jeep is back up here.

19 This is a very important thing we
20 saw in the photos.

21 Q. Based on your experience, if the
22 Jeep was parked in that manner, where would
23 the blood be?

24 A. If the Jeep was parked here?

25 Q. Yes.

1 THE COURT: By "here," indicating
2 where the Jeep is parked appears in the
3 photograph, Plaintiff's 25 in evidence.

4 MR. SLANE: Yes, Your Honor. Thank
5 you very much.

6 A. In this photograph, the Jeep is
7 fully into the driveway, the curb-cut. As the
8 curb-cut recesses down the driveway, that goes
9 on an angle, on a curve and the back tire is
10 also into the paved area.

11 In accident reconstruction, one of
12 the things we look for is debris field. That
13 is where cars hit and they drop all of the
14 debris on the ground. It's one thing we look
15 for to help identify where impact occurred.

16 If you have like a head-on
17 collision where the forces are fairly equal,
18 the vehicle hits and comes to a mutual share
19 of energy right there before they separate.
20 Then debris drops down on to the ground. One
21 thing you look for here up here.

22 If the Jeep was up here, I would
23 have expected to find this debris especially
24 these pieces behind the curb to be in this
25 area up where the Jeep is. Because the Jeep

1 is not moving, there is nothing to send debris
2 anywhere else. They should hit. As those
3 pieces break, they should fall down where
4 impact occurred.

5 We don't have that in this case.
6 The debris is back here on the road. To me
7 that did not make sense when computing. This
8 Jeep had to be further out in order for this
9 debris to get where it is, especially with
10 these pieces behind the curb over here.

11 Q. When you have two children on a
12 bicycle as what occurred in the incident in
13 question, in your experience as an accident
14 reconstruction specialist, what happened at
15 the point of impact?

16 A. Well, in this case, we have the
17 little boy sitting on the front pegs. If you
18 are not familiar with the front pegs, you see
19 a lot of kids that do freestyle biking. They
20 have the big pegs that stick out that far on
21 each side coming off out the axle of the front
22 wheel.

23 He is sitting there according to
24 the testimony. He is standing on those pegs
25 and sitting up on the handlebar frame. Then

1 when they go into this, the front tire goes
2 right there. Actually there are other photos
3 you see where the tire goes underneath the
4 rear bumper of the Jeep.

5 So that is telling me okay this
6 bicycle was able to penetrate and get
7 underneath and it will come to a pretty rapid
8 stop right there. It's just where this spare
9 tire is.

10 So the boy is going to hit and
11 since his energy is getting matched or
12 everything is equaling out, all of a sudden
13 his sister will come in and squish him there.
14 So he's going to more or less drop right
15 there.

16 Anything that he would bring as
17 far as rebounds will get cancelled out by his
18 sister coming in hitting him. I should expect
19 to find him dropping and this blood I would
20 expect to be here, but it's not. It's right
21 out here.

22 Q. Let me direct your attention to
23 what has been marked as Plaintiff's 8.

24 THE COURT: This is in evidence?

25 MR. SLANE: In evidence.

1 For the record, it's also displayed
2 on the screen.

3 Q. What do you see in that picture?

4 A. Can I go up again?

5 THE COURT: Why don't we see if he
6 can talk from where he is.

7 A. If you look about center of the
8 photograph, there is just off to the right
9 center there is a tire scrub mark you will see
10 at the very bottom edge. That is the gray
11 rear bumper there.

12 What's unique about this is there
13 is a taller left front tire wall and almost a
14 nonexistence right side tire wall. You can
15 see the tread which is curving across the top
16 of this.

17 So we know that just prior to
18 impact, either they were bailing off the
19 bicycle or letting go, but the bicycle leaned
20 a little bit of an angle. You can also see
21 just to the left right along the edge there is
22 a chip in the paint.

23 Then I don't know if you could see
24 it on the screen or not. I know it exists,
25 but I don't see it well on my photo which is

1 also impact marks. If you are familiar with
2 the brakes on a bicycle, the cable comes down
3 from the handlebar and pulls on the arms that
4 the cable ties into. When you pull that up,
5 it makes the brakes squeeze. You see that
6 impact on the left side.

7 So again, it could raise the fact
8 that you have the left side tire wall with the
9 left side brake arm.

10 Q. Let me direct your attention to
11 Plaintiff's Exhibit 12.

12 THE COURT: Again, this is in
13 evidence?

14 MR. SLANE: Yes, Your Honor. For
15 the record, Plaintiff's Exhibit 12 is also
16 displayed on the screen.

17 Q. What do you see in that
18 photograph?

19 A. This is a photograph that
20 underside of the bumper, so that the silver
21 part where you first see in the top right we
22 actually call the bumper cover. It's the part
23 of the car that makes your bumper look nice.

24 Then it goes underneath and
25 actually strikes the bumper rail. That is the

1 square black structure you see underneath
2 there. So it shows the direction you could
3 see the bicycle coming in. It's heavier on
4 the left side. It goes in and puts a big mark
5 underneath the bumper rail itself.

6 So it's telling us how deep the
7 front wheel of the bicycle was able to
8 penetrate straight under the back of the Jeep.

9 Q. What, if any, significance is
10 that?

11 A. Just showing us that it goes
12 underneath there. So I will not expect that
13 bicycle to really go anywhere else. It will
14 hit, get stuck, then fall down.

15 Q. I will direct your attention to
16 what's been received in evidence as
17 Plaintiff's Exhibit 24.

18 MR. SLANE: For the record, it's
19 also displayed on the screen.

20 Q. What's depicted in Plaintiff's 24?

21 A. Again, from testimony and from the
22 evidence that we were able to see and the
23 photos we just looked at, this is a rendering
24 showing how this debris field would lineup to
25 the Jeep being parked in the position it's at

1 in this photograph and the bicycle striking
2 it.

3 Q. You created that rendering based
4 on the photos in your accident site visit?

5 A. Yes, a combination of that.

6 Q. Let me direct your attention to
7 what's in evidence as Plaintiffs' 22. For the
8 record, it's also displayed on the screen.
9 What does that image show?

10 A. Again, a combination of testimony
11 or scene work created this diagram depicting a
12 path that the bicycle was taking to make a
13 right-hand turn and impact into the Jeep.

14 Q. That's based on your
15 investigations and your review and the EBT
16 transcripts; is that correct?

17 A. Yes, correct.

18 Q. Is there anything of note in this
19 photograph?

20 A. From my view in looking at this,
21 you can't really -- you can't see the depth of
22 where the Jeep is pertaining to it's
23 surroundings. So at this point where we are
24 looking at it, I don't know if you could in
25 fact, say that the Jeep would be received as a

1 hazard just yet.

2 They will come along a few seconds
3 as you are going down the road.

4 Q. Let me direct your attention to
5 what's in evidence as Plaintiff's 21; what
6 does that show?

7 A. Again it's the same view. We are
8 just pulled back a little bit further in the
9 diagram. I am just going to show the
10 perspective as it's coming down the road.

11 We have visual noise. There is a
12 tree, a rock, things there that will take
13 definition away from the other objects, in
14 this case being the Jeep.

15 Q. In reference to that tree, what,
16 if any, significance does that tree hold?

17 A. It just obstructs the view a
18 little bit. Again it would play a role in the
19 operator of the bicycle being able to see past
20 that tree and see there is a possible issue
21 for her as she comes around the curve.

22 Q. Let me direct your attention to
23 what's in evidence as Plaintiff's 3.

24 A. Okay.

25 Q. In that photograph, Plaintiff's 3,

1 do you see the tree?

2 A. Yes.

3 Q. If you were up the hill further on
4 West Meadow Wind Lane, based on your version,
5 what, if any, significance would that tree
6 have?

7 A. Again, as printed in the previous
8 diagram we did, that tree would become an area
9 of focus to whoever is coming down the road
10 and take away from the details of the Jeep
11 that would be sitting behind it.

12 Q. I would like to direct your
13 attention to what's been marked into evidence
14 as Plaintiff's 26; what do you recognize in
15 that photograph?

16 A. Again, this is the software we can
17 spin around, take a screen shot or captures
18 from any angle. This is a top-down view of
19 the same diagram that we saw before.

20 Q. Is that a recreation of a path
21 based on the testimony?

22 A. Yes, it is.

23 Q. That is the path of how D
24 W. went on the day in question?

25 A. Yes.

1 Q. Anything significant about that
2 other than what you testified to?

3 A. Just again, we are matching the
4 Jeep location to where the debris field is.
5 So we have the Jeep backed up to lineup with
6 the blood, the debris, where I would expect
7 the debris to fall and that is how we came to
8 the position of the Jeep.

9 Q. Let me direct your attention to
10 what's in evidence as Plaintiff's 11; what do
11 you recognize in that photograph?

12 A. This is one of the police
13 department photographs and it's showing a
14 single piece of bike reflector, front
15 reflector on the driveway near the curb-cut.

16 Q. Do you see anything else in that
17 photograph?

18 A. Well, one of the things that we
19 look for when we look for evidence is the
20 physical evidence stuff that we see. We also
21 look for things that aren't there in this case
22 where I am expecting to find debris. I don't
23 see debris besides one little piece in there.

24 Q. Do you see any blood?

25 A. No, no blood.

1 THE COURT: Plaintiff's 28 now in
2 evidence.

3 Let the record reflect Plaintiff's
4 28 has been given to the witness.

5 Q. You reviewed that accident report
6 as part of your investigation?

7 A. Yes, this is a Town of Newburgh
8 police department what they call incident
9 report.

10 Q. That was part of your
11 investigation?

12 A. Yes.

13 Q. Anything significant about that
14 incident report?

15 A. Here it discusses a delay in how
16 the photos finally came to be. Initially the
17 police responded to the location where the
18 children were brought after the accident. It
19 was quite a bit of time that elapsed from the
20 time from where the accident occurred and
21 where the car was, then responded back to the
22 police station to get the camera and come
23 back.

24 As I recall, I think it was
25 somewhere near an hour and nothing was done

1 about maintaining the continuity of where the
2 Jeep was. So there was a big window here
3 about where we are finding it, where it could
4 have been and where it's actually captured in
5 the photograph.

6 Q. What is your opinion as to what
7 the substantial factors of the cause of this
8 accident were?

9 MR. MAILLOUX: Objection.

10 THE COURT: Sustained.

11 Q. What's your opinion as to the
12 cause of the accident?

13 MR. MAILLOUX: Objection.

14 THE COURT: Sustained.

15 Q. Did you have an opinion, did you
16 develop an opinion as to the cause of the
17 accident on June 2nd, 2013?

18 A. Yes.

19 Q. What is that opinion?

20 A. There are several factors. Target
21 fixation, young mind is a big one. That is
22 brought on by the issue of this vehicle being
23 parked the way it was protruding onto the
24 roadway.

25 That is an issue because that

1 community has a rule that you are not allowed
2 to be parked on the roadway. There was an
3 issue with the brakes. They weren't able to
4 stop and they were able to arrest their speed.
5 They stopped going faster and faster. They
6 were able to control it, but wasn't able to
7 stop. So I think in totality, this kind of
8 came together and created this accident.

9 Q. In relation to the evidence in
10 which you testified about in relation to where
11 the Jeep was parked in relation to the manner
12 it was out of the driveway, was that a trivial
13 factor of this accident?

14 A. I wouldn't call it trivial. The
15 issue of fixation, that vehicle is perceived
16 to have become a threat. It was something
17 that the child worried about. If it was
18 recessed into the driveway, I think it would
19 make sense to conclude it wouldn't be seen as
20 such. I think if you go out there and you see
21 in the photos such as I explained the child
22 hitting the only tree in the yard, they had
23 this huge front yard they could have steered
24 into.

25 They were truly out of control.

1 They could have steered in the yard and fell
2 into the grass, but this fixation was right on
3 the Jeep and because of it's position, it
4 became a problem for them.

5 Q. Was that portion of the Jeep a
6 substantial factor in the accident?

7 A. I would say a substantial one. If
8 it wasn't there, it won't have happened.

9 Q. Was it in your opinion a proximate
10 cause of the accident?

11 A. Yeah.

12 Q. As an accident reconstructionist,
13 do you get paid to be here?

14 A. Yes.

15 Q. How much are you earning today?

16 A. I don't know what time is it.
17 It's going up. I get paid by the hour.

18 Q. How much would that be?

19 A. \$215 an hour.

20 Q. You have done some work on this
21 case before today, correct?

22 A. Yes.

23 Q. You went to the scene of the
24 accident. You spent a while at the scene of
25 the accident, correct?

1 A. Yes.

2 Q. You got compensated for that?

3 A. I did.

4 Q. That would be at your going rate?

5 A. I believe so, yes.

6 MR. SLANE: I have no further
7 questions at this time.

8 THE COURT: You may inquire.

9 MR. MAILLOUX: Thank you, Your
10 Honor.

11 CROSS EXAMINATION BY MR. MAILLOUX:

12 Q. Good afternoon, Mr. Witte.

13 A. Good afternoon.

14 Q. I would like to start off by
15 turning your attention to what was marked as
16 Plaintiff's Exhibit 28. Your Honor, may I
17 approach and take a look at it?

18 THE COURT: You may.

19 Q. I would like you refer to that
20 report, Mr. Witte. Your testimony on direct
21 you had indicated that the report had a
22 discussion with regard to the time of the
23 photos.

24 Could you please tell me where in
25 that report it discusses the time?

1 A. On this report it talks about they
2 arrived at 1:47 when the female was sitting at
3 13:03 hours. Then they talk about how they
4 found the vehicle at 156 Delafield Lane
5 sometime afterwards. So my conclusion is this
6 is one tool that was used.

7 There is other paperwork that lays
8 out the full timeline, but this has the
9 beginning of it.

10 Q. Mr. Witte, you just told this jury
11 ten minutes ago that this report has a full
12 discussion of the alleged delay in the photos.
13 Could you point where in that report the delay
14 taking the photos is?

15 A. I don't believe I used the word
16 "full." I just said it approaches it.

17 Q. Isn't it true there is no
18 discussion of when the photos were taken in
19 that report?

20 A. If you are talking, I think I
21 understand the problem you are talking about
22 natural verbal communication. That is not
23 what I was referring to. What I am referring
24 to is what I use is typed or reported in here
25 as beginning time 13:03 hours or 1:03.

1 Q. 13:03 hours is when the incident
2 occurred, correct?

3 A. It says when officer responded to
4 the call, to the events.

5 Q. The time of the incident is about
6 that time, correct?

7 A. Yeah, pretty close.

8 Q. The one notation of 147 is an
9 address, not a time, correct?

10 A. Correct.

11 Q. So would it be fair to say that
12 nowhere in that report is there any discussion
13 as to when the photos were taken?

14 A. Not in this report, no.

15 Q. Now, you indicated before that you
16 are being compensated at \$250 an hour for your
17 time here today.

18 A. 215.

19 Q. 215; is that correct?

20 A. That's correct.

21 Q. What time did you arrive today?

22 A. Ten o'clock.

23 Q. In terms of the time that it took
24 you to prepare this report, how many hours did
25 it take to you prepare this report?

1 A. Off the top of my head, I don't
2 know.

3 Q. Would it be fair to say that in
4 connection with preparing this report, you
5 went down to the scene or the location of 156
6 Delafield; is that correct?

7 A. Yes.

8 Q. It took sometime when you were
9 there to gather the information that you
10 needed, correct?

11 A. A few hours, yes.

12 Q. You also had to put time into
13 preparing the materials you would need to go
14 there that day, correct?

15 A. Correct.

16 Q. Then after that it indicates that
17 you read the deposition transcript for
18 D. W , correct?

19 A. Yes.

20 Q. Then you read a deposition
21 transcript for Mr. Fred, correct?

22 A. Yes.

23 Q. You read another deposition
24 transcript for Mr. Fred?

25 A. Correct.

1 Q. Did you read the actual deposition
2 or someone else's summary?

3 A. No, I actually read it.

4 Q. So in your report, it indicates
5 the word "summary"?

6 A. Yes.

7 Q. What is that a reference to?

8 A. That is something that I learned
9 over the years. Crafty attorneys will try to
10 jam you up because I didn't quote it exactly
11 as it is in the deposition. So that is my
12 note to myself. I am reading the deposition
13 and I am taking what they are saying there and
14 have a little bit of freedom of wording so it
15 makes sense.

16 Q. You also read the deposition
17 transcript for officer McKenna?

18 A. Yes.

19 Q. And you read the deposition
20 transcripts -- I am sorry. You read the
21 incident report as well as another affidavit
22 that was generated for Ms. W. ?

23 A. Yes.

24 Q. You read the report that was
25 prepared by an expert on behalf of the

1 defendants?

2 A. Yes.

3 Q. How much time did it take to you
4 review those reports?

5 A. I honestly don't really know. I
6 would have to look at my log; at least several
7 hours.

8 Q. The time that you put into those
9 reports would also be \$215 an hour?

10 A. I was trying to remember. We had
11 a rate increase a little while ago. I don't
12 know where it applied. It was only a few
13 dollars different.

14 Q. Roughly the same rate at that
15 time?

16 A. Pretty close.

17 Q. Would you say that you put ten
18 hours into review for your report?

19 A. Honestly I would be guessing.

20 Q. Could it be less than ten?

21 A. I am being honest. I would be
22 guessing if I give you a time.

23 Q. Did you put five hours into your
24 review in preparing the report?

25 A. The same answer. I would be

1 guessing. I would think it's more than that,
2 but I would be guessing.

3 Q. So somewhere between five and ten
4 hours?

5 A. I'm not saying that.

6 Q. Was it a hundred hours?

7 A. No.

8 Q. You generate reports in connection
9 with litigation?

10 A. Yes.

11 Q. The reconstructionist work that
12 you do is solely aimed at litigation?

13 A. For the most part. Every once in
14 a while I will get a private entity that just
15 wants an answer to a question, but not going
16 to court. It happens a lot with private
17 people.

18 Q. Now, in terms of target fixation,
19 in your report you review some of the academic
20 literature regarding target fixation, correct?

21 A. Correct.

22 Q. In fact, you presented three
23 sources of academic discussion of the issue,
24 correct?

25 A. Yes.

1 Q. The first one that you printed was
2 Wikipedia, correct?

3 A. Yes.

4 Q. In fact, you cited the entire
5 Wikipedia article on the issue of target
6 fixation, correct?

7 A. Correct.

8 Q. You are aware that anyone can edit
9 any Wikipedia entry?

10 A. That is not true.

11 Q. So when you are viewing Wikipedia,
12 they have a button that says "edit" next to a
13 line. It's your testimony that doesn't mean
14 that someone can edit that?

15 A. I know you can submit edits to it
16 so it gets reviewed. I cannot just make an
17 edit to Wikipedia. It's actually a pretty
18 good screening process for it.

19 Q. Is Wikipedia considered an
20 academic source?

21 A. Yes, I have personally used it
22 myself widely in courts.

23 Q. When you attend the classes that
24 you attend, do they cite to Wikipedia?

25 A. Yes, again one of the things we

1 use Wikipedia a lot is for is determining
2 generation of vehicles when they are produced,
3 like a Jeep first generation, second
4 generation. So we will use it to help us
5 identify that information.

6 Q. That is not why you were using
7 Wikipedia with your investigation in this
8 case, correct?

9 A. I don't think so, no.

10 Q. You were citing it to define what
11 target fixation is?

12 A. Yes.

13 Q. The second source, academic source
14 regarding target fixation you cited was an
15 article by Glenn Edmonds from the Performance
16 Driving School?

17 A. Correct.

18 Q. But that article was referenced in
19 the Wikipedia page, correct?

20 A. Yes, it is.

21 Q. So the only citation on theory of
22 target fixation that you submitted was an
23 article by Mark Green that you discussed
24 before, correct?

25 A. That is one, yes.

1 Q. That article's title is the MOTH
2 effects real, correct?

3 A. That's correct.

4 Q. You can correct me if I am wrong,
5 but it was your testimony before to this jury
6 that that article discusses the connection
7 between the Move-Over laws and the theory of
8 target fixation, correct?

9 A. Correct.

10 Q. If I were to tell you that the
11 Move-Over laws are not referenced anywhere in
12 that article, would that surprise you?

13 A. The actual law, no; because I
14 believe it predates that.

15 Q. His article predated the laws?

16 A. I believe so.

17 Q. So it would have been impossible
18 for his article to discuss the Move-Over laws,
19 correct?

20 A. I think so.

21 Q. In fact, the idea of target
22 fixation is most closely associated with
23 pilots or motorcycles, correct?

24 A. Yes, a lot of the stuff that I
25 have read, those are the big things.

1 Q. The theory goes back to World War
2 II with fighter pilots, correct?

3 A. Correct.

4 Q. The article that you cite for
5 Mr. Green discussed the effects of a light
6 drawing a vehicle to that light, correct?

7 A. Exactly, yes.

8 Q. In fact, it discusses whether or
9 not emergency lights could draw someone to
10 them, correct?

11 A. Correct.

12 Q. Or lights at night that a plane
13 could see, correct?

14 A. Correct.

15 Q. So we are not dealing with a
16 situation where there was a light that was
17 activated on the Fred's Jeep on the date of
18 this incident, correct?

19 A. No.

20 Q. So aside from the two articles
21 related to Wikipedia that you cited and the
22 article on MOTH effects, you didn't cite other
23 academic information on the theory of target
24 fixation, correct?

25 A. Correct.

1 Q. Now, in terms of your preparation
2 for this matter, you had indicated in your
3 report that the bicycle in question was a
4 Mongoose style bicycle?

5 A. I believe that is what came from
6 testimony, yes.

7 Q. That would be a BMX bicycle?

8 A. Yes, like the off-road type.

9 Q. What investigation did you do to
10 figure out what type of Mongoose BMX?

11 A. I think it just came from
12 testimony. I know we made an effort to try to
13 identify it better. It escapes me how we
14 actually came to the model.

15 Q. Do you know if the bicycle
16 involved in this incident was a BMX Legion
17 L-10?

18 A. I don't know.

19 Q. Do you know if it's a BMX Legion
20 L-16?

21 A. Again, sir, I couldn't tell you
22 which one it is.

23 Q. What about BMX Legion L-18?

24 A. I don't know.

25 Q. BMX Legion LSS?

1 A. Same answer.

2 Q. Legion L-20?

3 A. Same answer.

4 Q. You didn't take any effort to find
5 out which type of bicycle was actually
6 involved in this matter?

7 A. We did try to make an effort.
8 Going back several years now, I don't remember
9 what the actual issues were. We routinely try
10 to inspect every vehicle involved in an
11 accident.

12 Q. You would agree with me that the
13 different types of BMX Mongooses could have
14 different measurements?

15 A. Yes.

16 Q. Different lengths?

17 A. Yes.

18 Q. Would you agree with me different
19 heights?

20 A. Yes.

21 Q. Would you agree they would have
22 different wheel sizes?

23 A. Yes.

24 Q. Would you agree with me that the
25 opinion that you gave would be better informed

1 if you had known the actual make and model of
2 the Mongoose involved in this incident?

3 A. No, I don't think so. I don't
4 think the model makes a difference. As we
5 know, motorcycles are subjected to these
6 issues.

7 Q. In your investigation in this
8 matter, did you learn the height of D
9 W at the time of this incident?

10 A. I don't think so.

11 Q. Is there anything in your report
12 that would refresh your recollection?

13 A. I don't believe that I cited his
14 height. I would take a look if you like.

15 No, I don't see a citation unless
16 you are aware of something.

17 Q. Isn't it true that you formed an
18 of opinion on the question as to whether or
19 not D 's presence on the bicycle, on the
20 front of the bicycle contributed to the crash?

21 A. Yes.

22 Q. What was that opinion?

23 A. That it did not based on

24 D 's testimony.

25 Q. Now, you also didn't perform an

1 investigation into D 's height at the
2 time of the incident, correct?

3 A. Correct.

4 Q. Wouldn't your opinion as to
5 whether or not D 's presence on the front
6 pegs of the bicycle contributed to the crash
7 had been better informed if you had
8 investigated and found out the heights of both
9 D and D ?

10 A. Again, going by their testimony,
11 she demonstrated she was able to successfully
12 negotiate turns prior to this accident. So I
13 didn't have any reason to believe it was
14 causing her a problem.

15 Q. Do you operate in the field of
16 accident reconstruction?

17 A. Yes.

18 Q. It's your job to take a look at a
19 number of factors and determine what happened,
20 correct?

21 A. Correct.

22 Q. In connection with the field of
23 accident reconstruction, you look for physical
24 signs in order to draw your conclusion,
25 correct?

1 A. Largely, yes.

2 Q. Would it be fair to say that just
3 because an individual says something doesn't
4 necessarily mean that is how it was?

5 A. Everything we look at, we
6 scrutinize.

7 Q. So when you read the transcript of
8 Ms. W and she said it didn't affect her,
9 you didn't perform any followup investigation
10 to determine whether or not that was a cause
11 of this accident?

12 A. Well, what we did is we took her
13 statement. We actually went up and drove her
14 route. So we now the turns she made and she
15 did this all with D on the front. So it
16 wasn't a reason to inspect it that it was good
17 here, here, here then bad there.

18 We all drive cars. We have these
19 "A" pillars that separate the windshield from
20 the side windows. The way we drive is we look
21 around the "A" pillar when we are making our
22 turns. I would suspect she is doing the same
23 thing with Donovan in the front. She does a
24 head bob so she can see where she is going.

25 Q. She said she could see over the

1 top of his head, correct?

2 A. I can't recall that statement, but
3 I will accept it.

4 Q. So you replicated the route that
5 Ms. W. took on the date of the accident?

6 A. Yes, we drove it.

7 Q. You went to the lengths to
8 replicate that, correct?

9 A. Again, we drove it.

10 Q. Did you purchase a BMX Mongoose
11 bicycle?

12 A. No.

13 Q. Did you do anything to replicate
14 the seating conditions of both D. and
15 her brother D. at the time of the
16 incident?

17 A. No.

18 Q. You accepted D. 's testimony
19 without question?

20 A. In regards to her operation, it
21 appeared credible. We drove the route and she
22 negotiated like two considerable turns with no
23 trouble.

24 Q. You drove the route in a car,
25 correct?

1 A. Yes.

2 Q. On the basis of driving that route
3 in a car, you determined that D 's
4 statement that she rode a bike with her
5 brother on the front handlebar in front of
6 her, but it didn't affect her ability to steer
7 the bicycle was credible?

8 A. Again, the vehicle makes no
9 difference.

10 Q. It's a "yes" or "no".

11 A. I can't answer it "yes" or "no."

12 Q. Now, you prepared these electronic
13 animations to show her path up to the contact,
14 correct?

15 A. Correct.

16 Q. The purpose of those animations is
17 to provide almost a reconstructed view of the
18 incident itself, correct?

19 A. Yes, visual representation, an
20 accurate visual representation, yes.

21 Q. As we discussed earlier, you are
22 the one who puts in the relevant points; the
23 path, the location of the Jeep, everything
24 like that?

25 A. Well, we are just copying what's

1 in the scene. Her path was generated from her
2 statement.

3 Q. So you are taking her statement
4 and then you are putting it in there. Then
5 that is how you determine the animation?

6 A. The path, yes, correct.

7 Q. Now, Mr. Fred, you read his
8 deposition testimony?

9 A. Yes, I did.

10 Q. When reading Erik's testimony, he
11 indicated that the vehicle was parked within
12 the driveway and you are aware of that claim,
13 correct?

14 A. Yes.

15 Q. Did you prepare an animation with
16 the Jeep in the driveway?

17 A. No, I don't think so.

18 Q. So you prepared a reconstruction
19 on the basis of what Ms. W stated, but
20 you didn't prepare an alternate reconstruction
21 on the basis of what Erik Fred stated,
22 correct?

23 A. No.

24 Q. No, that is correct?

25 A. That is not correct. It was

1 generated on the evidence that we saw in
2 photos in combination with the statements.
3 Again, all things is a combination of
4 everything that we know.

5 Q. You ignored Mr. Fred's testimony
6 because when you generated this report, you
7 put the Jeep in the roadway, correct?

8 A. No.

9 Q. You might not agree with it, but
10 you ignored his testimony. You would agree
11 with me on that?

12 A. No, I considered his testimony
13 very seriously. I looked at it, but it's not
14 consistent with the evidence.

15 Q. You didn't prepare an alternate
16 model with a vehicle in the driveway to say
17 what the path would have been in that
18 instance?

19 A. No, because it's not consistent
20 with the evidence.

21 Q. You didn't think it would be
22 helpful to compare the two versions and look
23 at them to come to a better opinion in
24 connection with this matter?

25 A. Not at all. I already know what

1 the issue is.

2 Q. Did you make your determination
3 before you started preparing this report?

4 A. Determination to what?

5 Q. As to what your opinion would be?

6 A. No, we went to the scene first.

7 Q. Then you made your determination?

8 A. We had a very strong idea what
9 might have happened at this point once we were
10 able to put our eyes on the area.

11 Q. Now, looking at the theory of
12 target fixation, the theory of target fixation
13 is predicated I think you would agree with me
14 on an idea that the hands follow the eyes;
15 correct?

16 A. Exactly.

17 Q. That's in one of the writings that
18 you referenced in your report, right?

19 A. Correct.

20 Q. The reason why the theorist of
21 target fixation draws that theory is because
22 it indicates it will be susceptible in
23 motorcycles and planes because in those type
24 of vehicles, the hand controls is a little bit
25 more significant than a car which has power

1 steering and things like that, correct?

2 A. Well, it's more significant
3 because the body plays a large role into it as
4 well.

5 Q. That is fair.

6 So in order for an individual to
7 be subject to target fixation, you would agree
8 with me that the individual would have to have
9 control over the operation of the bicycle, the
10 car, plane or something else?

11 A. Yeah, I have to start out that
12 way.

13 Q. You have to have control because
14 when your eyes look at something, the hands
15 are in total control to steer the item to that
16 location, correct?

17 A. Yes.

18 Q. If there was a problem with the
19 vehicle, bicycle, car, plane or something else
20 and they couldn't properly steer it, then
21 target fixation would not apply; would you
22 agree with me?

23 A. Yes, if you have something like a
24 plane for example and all of a sudden the
25 aileron acted up and you had a voluntarily

1 mechanical failure happened that would put a
2 permanent steer to it, yes, that would be an
3 issue for them.

4 Q. You are aware in this instance
5 that the brakes were not working on the
6 bicycle that the children were riding,
7 correct?

8 A. The brakes were working, just were
9 not sufficient as they should have been.

10 Q. It's your testimony to this jury
11 that on the day of this accident, the brakes
12 on that Mongoose were working?

13 A. I said they were working, just not
14 as effective as they should have been.

15 Q. I just want to know; it's your
16 testimony that the brakes were working?

17 A. They were operational. They were
18 not applying the pressure that they should
19 have been.

20 Q. You made that statement being
21 aware that various individuals over the course
22 of testimony given in connection with this
23 case testified that the brakes were not
24 working at the time of the incident?

25 A. Yes, I am aware of that; but

1 again, these investigators missed some key
2 statements that were made and that was they
3 didn't pick up any speed. They were at a
4 speed and couldn't slow it down anymore, but
5 wasn't picking up any speed either.

6 If you were at the scene, this
7 hill is pretty steep. So I would expect them
8 to be picking up continuous speed and they
9 didn't. They were able to hold the speed, but
10 couldn't bring it to a stop.

11 Q. I want you to assume that there
12 has been testimony that the bicycle
13 accelerated only when it was going down the
14 hill and not when it came to level surface. I
15 want you to further assume that the bicycle in
16 question did not have brakes that were
17 working.

18 Would it be consistent with the
19 bicycle that did not have brakes working that
20 it would pick up speed as it went down the
21 hill and then maintain the same speed when it
22 reached a level area?

23 A. Well, once it hit the level area,
24 it will begin slowing down, because the force
25 would change. The angle would change. You

1 are on level ground. So it will start slowing
2 down on a level area all by itself.

3 Q. If we were to assume that the
4 bicycle accelerated downhill and that it
5 maintained the same speed or leveled out when
6 it got to level ground, that would be
7 consistent with a bicycle whose brakes didn't
8 work if we assume all of the factors are
9 equal?

10 A. If I understand your question,
11 what you are asking me is the same bicycle
12 that is going down the hill hits a level area.
13 It starts slowing down after it hits that
14 level area, yes, that would be consistent with
15 the laws of physics, absolutely.

16 Q. The bicycle, the Mongoose in
17 question would have front brakes and rear
18 brakes, correct?

19 A. It should, yes.

20 Q. Did you do any investigation as to
21 which brakes were allegedly affected?

22 A. It's discussed in the deposition.
23 I don't remember, but I know that the uncle if
24 I'm not mistaken I forget which relative it
25 was did some brake work on it. I guess he

1 felt he had done it significantly well and
2 sent it out, but obviously it wasn't working
3 as well as it should have been.

4 Q. You are indicating the plaintiff's
5 uncle?

6 A. I am trying to memorize to speed
7 this up. I don't remember exactly who that
8 person was, but I believe it was a relative.

9 Q. Does it indicate in your report
10 that you reviewed anything relating to
11 testimony from the plaintiff's uncle?

12 A. Again, do not pin me to uncle. I
13 am taking a stab at that. But yes, I have it
14 here in my notes believe it's covered.

15 Q. Could you please point that out to
16 me?

17 A. I will try.

18 THE COURT: In terms of the
19 question that you just asked, the document
20 he is looking at isn't in evidence, right?

21 MR. MAILLOUX: Correct.

22 THE COURT: So you are just asking
23 whether or not he did review that, not
24 whether or not he was pointing something
25 out in the document?

1 MR. MAILLOUX: Yes, Your Honor.

2 THE COURT: Thank you.

3 A. Page 4, transcript of D. ,
4 she states on Page 10 J 's dad fixed the
5 brakes. I'm not sure what the relationship
6 is.

7 Q. My question to you is whether or
8 not you reviewed anything in relation to the
9 plaintiff's uncle, his testimony?

10 A. Again, counselor, I already took
11 that back. I am not actually certain it was
12 an uncle. I was trying to remember real
13 quick. Whoever J 's dad is, that is the
14 person.

15 Q. You are referring to testimony of
16 D W. , correct?

17 A. Yes.

18 Q. I want to know if you reviewed the
19 testimony of another relative who inspected
20 the brakes of the bicycle?

21 A. I don't know of anything else. I
22 don't know it.

23 Q. I want you to assume that a
24 bicycle BMX Mongoose was proceeding downhill
25 with brakes that did not work in the rear but

1 brakes that worked for the front of the
2 bicycle. I want you to further assume that
3 the driver of the bicycle would attempt to
4 activate the brakes as it was proceeding
5 downhill.

6 In your professional opinion and
7 expertise, how would a bicycle in those
8 circumstances respond?

9 A. It's going to brake. It's not
10 going to brake as well as it should. If it
11 was just a rear brake that was being applied,
12 the bicycle will start fishtailing and
13 eventually go out of control. If the front
14 brake is applied and working well, it could
15 stop the bike and cause the person to flip
16 over the handlebar.

17 Q. Would it be fair to say that if
18 the front brakes only was working, it's
19 possible depending on the speed of the bicycle
20 that if the front brake was activated, the
21 individuals would be thrown forward and the
22 rear of the bicycle would potentially be
23 kicked up over the front of the bicycle?

24 A. Depending on the scenario, yes, of
25 course.

1 Q. Now, I want you to assume that
2 there was testimony that the day before this
3 incident one of the users of the bicycle was
4 spotted using the bicycle and only able to
5 brake while putting their feet on the ground.
6 Assuming that scenario, would you agree with
7 me that the brakes would not have been in
8 operation the day prior?

9 A. Was it on a hill or flat ground?
10 Do we know where that was occurring?

11 Q. In any area. I want you to assume
12 that the only way the brakes could be
13 activated is if the driver put their feet on
14 to the ground as opposed to using the brakes
15 on the handle.

16 A. Again, I think it depends on the
17 force that is involved here. If he's coming
18 down the hill doing all that, yes, it's
19 telling me that the brakes aren't working so
20 well. If he's on flat ground doing that, then
21 I would say okay the brakes probably are not
22 working; but I don't know that scenario the
23 way you are putting it out there.

24 Q. Other than the testimony of
25 D W that you reviewed, did you

1 review anything else in your investigation
2 about the repair of the bicycle?

3 A. I believe that is all that I had.
4 I know there was work done to it. He worked
5 on the brakes and the kids took it out and
6 went for a ride.

7 Q. When you were presented with
8 preparing an opinion in this case, you knew
9 that the condition of the bicycle would be a
10 key issue; is that correct?

11 A. Well, I know it's a contributing
12 factor to the crash of course. If they could
13 stop, they could stop. So obviously it's
14 involved.

15 Q. You knew there was an allegation
16 that the brakes had been broken, then an
17 allegation they may have been repaired,
18 correct?

19 A. I just know they were fixed.

20 Q. You knew that there was an
21 allegation that the brakes were broken. Then
22 at some point in time they were repaired,
23 correct?

24 A. I assume, yes. Otherwise you will
25 not fix them for no reason. Yes, they were

1 repaired.

2 Q. What steps did you take to verify
3 that the bicycle was repaired?

4 A. Again, all I have is coming
5 through deposition statement. No material was
6 given.

7 Q. Did you ask for material regarding
8 the repair of the bicycle?

9 A. I don't think so, no.

10 Q. Would it be important to you in
11 your investigation to know which part of the
12 bicycle was repaired?

13 A. I know he worked on the brakes.

14 Q. How do you know that?

15 A. It's in the statement.

16 Q. You know that someone claimed that
17 the bicycle was repaired, correct?

18 A. Counselor, I don't know how to
19 answer this.

20 My understanding is there was work
21 done on the bicycle. They tried repairing the
22 brakes. Apparently they didn't repair them
23 very well.

24 Q. I want you to assume that there
25 has been testimony that the individual who was

1 responsible for repairing the brakes never
2 repaired the brakes. Would that affect the
3 conclusions that you came to in this case?

4 A. Not really, because we know that
5 she was able to maintain her speed. She said
6 herself that she was slowing -- not slowing.
7 She was holding her speed. Then they tried
8 making this turn.

9 Like I laid out before, she had
10 many places to go. She could have gone right
11 in the front yard and didn't.

12 Q. I want you to assume there has
13 been testimony that the point where D
14 began to maintain speed at the bicycle was the
15 point where the ground leveled.

16 Knowing that, would your opinion
17 be affected in any way in connection with this
18 manner?

19 A. If I understand your question, if
20 she stated that she was at a level location
21 where she was maintaining speed, yes, it's
22 just telling me that the brakes aren't working
23 all that great, but it doesn't change all the
24 other issues involved here.

25 Q. One of the conclusions that you

1 drew in connection with this matter is that
2 the brakes weren't a factor when the accident
3 happened; is that correct?

4 A. I mean, not the sole factor, no.
5 I think I said this earlier. It was a
6 combination of the brakes, the issue with the
7 Jeep sticking out, fixation issues. All of
8 them is like the perfect storm for this to
9 happen.

10 Q. It's your professional opinion
11 that the primary cause of this accident was
12 how Mr. Fred parked his vehicle?

13 A. I would say it's significant if
14 you look at the whole thing. If you take one
15 of the issues out, the accident doesn't
16 happen; but put it all together, I think it's
17 a fair statement.

18 Q. Using your report, would that
19 refresh your recollection as to whether or not
20 you formed an opinion as to whether or not
21 Mr. Fred's parking was the primary cause of
22 this accident?

23 A. Okay.

24 Looking again, I will say again a
25 very significant part of it. If it wasn't

1 there, the accident would not have happened.
2 I would backtrack a little bit and say it's
3 really a combination of things.

4 Q. So you are changing the opinion
5 that you gave at the time that you rendered
6 this report, correct?

7 A. Yes, I think the word "primary" is
8 a little severe. Substantial would be a
9 better word.

10 Q. Would your opinion had been better
11 informed if you had more information as to
12 whether or not the brakes were repaired at the
13 time of this incident?

14 A. No, if they were actually working,
15 again as I said the accident wouldn't happen.
16 She could have stopped. They were dragged
17 maintaining the speed and we have the Jeep in
18 the wrong location. Then we have fixation
19 taking over.

20 Again if you were there, if you
21 look at it, gosh, she could have gone
22 anywhere. She crashed into the one thing that
23 was a problem and that is the location of the
24 Jeep.

25 Q. In the course of your

1 investigation, were you able to identify the
2 location where plaintiff was when the fixation
3 began?

4 A. I know about. That is why we use
5 those diagrams here. We can start to see the
6 Jeep even in the pictures you are losing depth
7 in the computer screen. You could see depth
8 because it's a 3D environment. Those are
9 trying to tell us about here is where the
10 fixation would occur. It could have been a
11 little further, little back, but somewhere in
12 that general area.

13 Q. So you know where the fixation
14 occurred?

15 A. In the general area. I couldn't
16 tell you exactly.

17 Q. Where would that be?

18 A. I need a diagram to show you.

19 MR. MAILLOUX: May I approach the
20 witness with the exhibits that were
21 marked?

22 THE COURT: You may.

23 Q. Mr. Witte, I am going to show you
24 what has been marked as Plaintiff's Exhibits
25 22, 24, 26.

1 Those are the exhibits relating to
2 the animations that you generated in
3 connection with this matter?

4 A. Yes.

5 Q. I am going to ask that you take a
6 look at those exhibits and if you could tell
7 me which one best shows the location where the
8 plaintiff would have been when the fixation
9 came into play?

10 A. I would use 22. I think that is
11 26; any of these.

12 Q. Can you show me, because I have
13 them?

14 A. Again, counselor, that is
15 generally. I can't enter her mind to see what
16 she was seeing. The reason we pick this spot
17 is because it gets her past the visual
18 obstruction created by the tree.

19 Q. Which one is that?

20 A. 22.

21 Q. Looking at Plaintiff's Exhibit 22,
22 where on that image would you note where the
23 fixation started?

24 A. Exactly where this bicyclist is.
25 Again counselor, this is an approximation. I

1 can't tell you exactly where she was looking
2 at this moment, but we are picking this spot
3 because it gets us past that tree. So there
4 is nothing obstructing her view of the Jeep.
5 She would be able to see it, identify it,
6 decide whatever issues it is for her.

7 Could she have done this earlier,
8 maybe. I don't know, but we decided that
9 there is a tree in the way. Let's get past
10 the tree. So we are only dealing with the one
11 hazard and that's the Jeep.

12 Q. I am not clear. Do you know where
13 the fixation started or didn't?

14 A. Sir, I will answer exactly the
15 same way. This is an approximation. We are
16 reasonably picking this area because it gets
17 us past the visual obstruction.

18 Q. Can you point to me what's your
19 estimation or approximation as to where
20 Ms. Wl was when the fixation started?

21 A. Again, it's an approximation. If
22 you look right at this image here, this here
23 looks like a pretty good spot. We cleared
24 this tree here. We are past it. So now she
25 can see the Jeep with no obstruction in the

1 way.

2 Q. In your professional experience,
3 what would you estimate the distance where she
4 was in this photo to where the Jeep was?

5 A. It looks like about 85, 90 feet
6 away.

7 Q. Now, would you agree with me --
8 let me ask you this, Mr. Witte, you used the
9 example of kids going into trees, flagpoles,
10 mailboxes, correct?

11 A. No flagpoles.

12 Q. Trees and mailboxes?

13 A. Point made, yes.

14 Q. So you would agree with me if
15 target fixation was in play at the time of
16 this accident, it's possible that the target
17 could have been the tree; would that be
18 possible?

19 A. I don't think so, because we are
20 well past the tree. The tree is no longer in
21 play here. Just like I showed you in that
22 diagram, we are past it. It's out our field
23 of view. She is preparing to make her
24 right-hand turn. Then she comes across this
25 Jeep.

1 Q. You investigated the whole road
2 leading up to that incident, correct?

3 A. Correct.

4 Q. You told us that you drove that
5 road?

6 A. Correct.

7 Q. So it would be possible -- I am
8 just asking if it's possible that as she was
9 coming down, she became fixated on the tree
10 coming from higher up on the hill; is that
11 possible?

12 A. I mean, I guess you could make the
13 argument. I don't think so, because she knows
14 she is driving on the road. She knows that
15 those trees are on the roadway.

16 Q. It's possible?

17 A. If you want to stretch a guess. I
18 wouldn't consider that.

19 Q. You think it's impossible that she
20 was fixated on the tree?

21 THE COURT: Objection sustained. I
22 think he has answered that question.

23 Q. You would agree with me that it's
24 possible that other items in that area could
25 have been the subject of any target fixation?

1 A. Well, there are some sign posts
2 that are there. Again, when she is past a
3 tree, yes, that is no longer an issue.

4 Remember target fixation, the one
5 thing about it you hit the things you are
6 fixated on. She didn't hit the tree.

7 Q. Well, would it be possible someone
8 with target fixation may actually miss their
9 target?

10 A. Yes, sure.

11 Q. I want you to assume
12 hypothetically that someone who is the subject
13 of target fixation who was riding a vehicle
14 that was defective in some way, you would
15 agree with me in this instance that they may
16 not come into contact with the subject of
17 their fixation, correct?

18 A. If we are going back to the idea
19 of a pilot and the aileron takes off on them,
20 I am sure it would change your path.

21 Q. So it's possible that the stop
22 sign that was at that location could have been
23 the subject of any alleged target fixation?

24 A. I don't think so, because it's a
25 pretty good distance away from where the

1 collision occurred. It looks like it's
2 roughly 35 feet away and that is a pretty big
3 miss.

4 Q. Now, I want to draw your attention
5 to Plaintiff's Exhibit 24.

6 A. Yes.

7 Q. In this exhibit which is in
8 evidence, you have prepared a diagram of
9 probably the moment right at impact; is that
10 fair to say?

11 A. Yes.

12 Q. Now, if we were to assume
13 hypothetically that the Jeep was in the
14 position as it's shown in the photos and we
15 assume that it's in that photograph, in this
16 diagram that you prepared, you would agree
17 with me that the accident still would have
18 happened, correct?

19 A. I am sorry. Can you say that one
20 more time.

21 Q. If we were to assume using this
22 diagram --

23 THE COURT: "This diagram" being?

24 MR. MAILLOUX: Plaintiff's Exhibit

25 24.

1 Q. That the Jeep would have been in
2 the same position as it is in the photos taken
3 by Lieutenant O'Connell as opposed to the
4 position that you have it in?

5 A. Okay. I understand your question
6 now.

7 Q. Based on the diagram that you
8 prepared with the trajectory of the
9 individuals, that the accident still would
10 have occurred, correct?

11 A. I think they probably still would
12 have collided. The bicyclist would now have
13 time to keep going laterally across the
14 driver's side to the passenger's side. I
15 think it maybe would have caught the bumper on
16 the passenger's side.

17 I couldn't say with any certainty,
18 but it looks like it.

19 Q. The contact occurred on the
20 driver's side of the mounted spare tire,
21 correct?

22 A. Correct.

23 Q. So let me ask you this; let's talk
24 a little physics, because you use physics in
25 terms of your reconstruction, correct?

1 A. Yes.

2 Q. So in the course of your
3 expertise, if an individual is standing on the
4 ground, there is a force that is being exerted
5 down on the ground and a force that is exerted
6 from the ground back up; is that correct?

7 A. Correct.

8 Q. In the course of your expertise,
9 when accidents are reconstructed like for
10 instance a car accident with test dummies,
11 based on Newton's first law of motion, an
12 object moving into an object, there has to be
13 some type of transfer of energy, correct?

14 A. Correct.

15 Q. If we were to have a contact with
16 the transfer of energy and I am thinking of
17 like these tests with the cars that we see on
18 the commercials where they test dummies, when
19 the contact happens, if the object that is
20 crashed into remains stationary --

21 A. Like a wall?

22 Q. Like a wall.

23 -- you would agree with me that
24 the object that crashes into that would
25 eventually bounce back?

1 A. Yes, what you are referring to is
2 called restitution.

3 Q. In this instance in your
4 professional opinion, did the bicycle push the
5 Jeep forward?

6 A. No.

7 Q. So based on your professional
8 opinion since the Jeep did not move following
9 the contact, the bicycle would have to be
10 pushed backwards due to restitution, correct?

11 A. I don't think any significant
12 restitution happened in this case.

13 Q. The force has to go somewhere,
14 correct?

15 A. It does.

16 Q. The force would be directed
17 backwards, correct?

18 A. It will try as long as there is no
19 other overcoming forces.

20 Q. Now, let's talk about turning
21 while operating a bicycle.

22 A. Okay.

23 Q. As a bicycle is turning, the force
24 or the velocity of the individual on the
25 bicycle is still projecting forward; is that

1 correct?

2 A. If I understand your question,
3 everything moves. If we were moving in one
4 direction, you will always keep going in that
5 direction until occupied by another force.

6 Q. That's Newton's first law of
7 motion?

8 A. Yes.

9 Q. Now, using hypotheticals.
10 If we are driving a car and we
11 suddenly turn the car to the left, the
12 occupants inside the car would go in which
13 direction?

14 A. Initially they will continue going
15 straight.

16 Q. Eventually as the car turns?

17 A. They start turning with the car.

18 Q. Wouldn't the force push them to go
19 right?

20 A. Well, you are going to feel it. I
21 think we are getting to typical forces.
22 Everything is going at a relative speed. If
23 you do a real hard left turn, anything on your
24 seat might go crashing into the door. That is
25 because your vehicle has now changed

1 direction.

2 Q. Typical force would be the force
3 directed towards the imaginary center of a
4 circle?

5 A. Yes.

6 Q. Centrifugal force would be the
7 force that exerts in the other way?

8 A. Yes.

9 Q. In fact, centrifugal force we
10 would describe that through like an amusement
11 park ride with swings that go around and
12 around, correct?

13 A. Yes.

14 Q. As the ride goes around and
15 around, the swings go outward?

16 A. Correct.

17 Q. So it would be important for
18 someone riding a bicycle as they were turning
19 the bicycle to lean into the turn to counter
20 centrifugal force?

21 A. Correct.

22 Q. So in this instance as D
23 W. was turning the bicycle to the right,
24 it will be fair to say that there was a force
25 pushing both her and D. to their left; is

1 that correct?

2 A. I would say more accurately said
3 as they are trying to turn right, the law says
4 I want the bodies to keep going straight until
5 they are overcome by tire friction and wheels
6 as they force them to go right.

7 Q. It would be possible in this
8 instance that in connection with those forces,
9 as D turned the bicycle, that D
10 may have been dislodged from the bicycle even
11 before they got to the Jeep. That is a
12 possibility, correct?

13 A. I don't think so, only because of
14 where he landed and the injuries that he
15 sustained and everything pretty much points he
16 was intact with the bicycle when the collision
17 occurred.

18 Q. You would agree there was a force
19 pushing D in the opposite direction of
20 the turn that D was making at the time
21 of this incident?

22 A. Yes, but it's a very slighted
23 point. She is not taking a very sharp turn.

24 Q. In your investigation, you didn't
25 conduct any type of inquiry into objects being

1 displaced at the scene, correct?

2 A. How do you mean "displaced"? What
3 kind of objects?

4 Q. Following the contact, the bicycle
5 would have been in a location, correct?

6 A. Correct.

7 Q. In the photos that we have, the
8 bicycle is not in those photos, correct?

9 A. Correct.

10 Q. So at some point in time, someone
11 moved the bicycle. You would agree with me
12 with regard to that?

13 A. Yes.

14 Q. When the bicycle was moved, it
15 would be possible that some of the debris that
16 you pointed to was also moved; is that
17 correct?

18 A. Yes, I would say sure.

19 Q. You didn't conduct any
20 investigation as to whether or not anything
21 was moved at the scene just in the course of
22 the normal moving of the bicycle?

23 A. No.

24 Q. Now, in terms of the forces on the
25 bicycle, did you conduct any type of

1 investigation as to D 's posture?

2 A. I know that he was standing on the
3 front pegs and seated at the bottom of the
4 handlebar according to the testimony.

5 Q. Would it be significant to you if
6 there was testimony that at some point in time
7 D raised one of his legs off the pegs?

8 A. I think I remember that just prior
9 to impact.

10 Q. I am just asking if it would be
11 significant to you.

12 A. No, not really. If he starts
13 going off to the sides, he is going to start
14 to disrupt the balancing of the bicycle.

15 Q. As they are coming downhill and
16 accelerating speed, would it be significant if
17 he removed one of his feet from the pegs at
18 that time?

19 A. Just removing it? Again, if he is
20 staying in line with the bike, it's not doing
21 anything.

22 Q. What if he would not stay in line
23 with the bicycle?

24 A. If he start flailing, then he
25 would start disrupting it.

1 Q. If D were to disrupt the
2 bike, that would have an affect on the path of
3 the bike, correct?

4 A. Sure.

5 Q. That could affect everything that
6 you talked about; target fixation, the forces,
7 everything like that?

8 A. It could, yes.

9 MR. MAILLOUX: No further
10 questions.

11 THE COURT: Redirect?

12 MR. SLANE: Yes.

13 REDIRECT EXAMINATION BY MR. SLANE:

14 Q. Let me direct your attention to
15 Plaintiff's Exhibit 18. Actually let me
16 direct your attention to Plaintiffs Exhibit 25
17 and Plaintiffs Exhibit 24.

18 Taking a look at Plaintiff's
19 Exhibit 25. In that exhibit, you see where
20 the blood is?

21 A. Yes.

22 Q. You see in relation to where the
23 car is parked?

24 A. Yes.

25 Q. Based on what's depicted where the

1 blood is and the car is parked, does the laws
2 of physics support that the car was in that
3 spot at the time of the collision?

4 A. No, they don't.

5 Q. Based on Newton's Law of Physics,
6 could it be possible that the car is parked in
7 that spot at the time of the collision?

8 A. No.

9 MR. SLANE: I have no further
10 questions, Your Honor.

11 THE COURT: Any recross?

12 MR. MAILLOUX: No, Your Honor.

13 THE COURT: The witness is excused
14 with the thanks of the Court. Thank you
15 very much.

16 * * *

17 C E R T I F I C A T I O N

18

19 I hereby certify the foregoing to
20 be a true and correct transcript of the
21 within proceeding to the best of my
22 ability.

23

24

25

Chanel Battey

Chanel Battey
Senior Court Reporter

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