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IN THE CIRCUIT COURT OF THE
SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY
STATE OF FLORIDA

CASE NO.: 06-001591CFAWS
Criminal Division

STATE OF FLORIDA,)
)
 Plaintiff,)
 vs.)
)
 SHANNON STEPHEN,)
)
 Defendant.)
-----)

DEPOSITION OF JOHN A. MURDOCH
(Via conference Call)

DATE: June 3, 2008
TIME: 3:15 p.m.
PLACE: 305 N.E. 1st Street
Gainesville, Florida
TAKEN BY: Defendant
REPORTER EILEEN J. WILEY, RMR, Notary Public
of State of Florida at Large

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A P P E A R A N C E S

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1 JOHN A. MURDOCH

2 called as a witness on behalf of the
3 Defendant herein, after having been first duly sworn,
4 was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. FOOTE:

7 Q. Good afternoon, Mr. Murdoch.

8 A. Good afternoon.

9 Q. This is attorney Ken Foote on behalf of
10 Shannon Stephen. How are you?

11 A. I'm doing good.

12 Q. Can you hear me okay?

13 A. Yes.

14 Q. Mr. Jensen is sitting here with me and we
15 got the phone in between us. I'm going to be asking
16 you questions about your involvement in the case.
17 All right?

18 A. Yes.

19 Q. If you don't hear me ask a question or the
20 phone fades out or something, just ask me to repeat
21 the question. All right?

22 A. I mean one thing I notice it seems to be
23 cutting off the first syllable of your words. So you
24 might have to say ah before you start talking.

25 Q. Okay. All right. Why don't you go ahead

1 and give me a little bit about your background?

2 A. I have a bachelor of science degree
3 mechanical engineering from the University of
4 Florida. I've owned my own business of Murdoch
5 Engineering for -- I'm going into 28 years now. I
6 specialize in forensic engineering and accident
7 reconstruction. Have done so for 28-27 years now.

8 I'm a member of the National Academy
9 of Forensic Engineers. I'm a diplomate in forensic
10 engineering. I sit on four ASTM standards
11 committees. I don't know what else you want to hear.

12 Q. Do you have any other degree besides a
13 bachelor's degree?

14 A. No.

15 Q. And what school did you obtain the BS? Was
16 that at UF?

17 A. UF.

18 Q. All right. You were asked to be involved
19 with this case by the office of the state attorney?

20 A. That's correct.

21 Q. Can you tell me over the years I guess just
22 approximately -- do you testify also for defense
23 attorneys?

24 A. Yes, I do.

25 Q. In criminal cases?

1 A. Yes, I do.

2 Q. Can you just tell me the percentage roughly
3 between state attorneys to percentage of your
4 testifying for defense attorneys?

5 A. Are you talking criminal only?

6 Q. Criminal only.

7 A. I'm guessing, but it's probably going to be
8 75 defense, 25 prosecution.

9 Q. Seventy-five for the defense, 25 for the
10 prosecution?

11 A. Yes.

12 Q. And what were you asked to do in this case,
13 the State of Florida versus Shannon Stephen?

14 A. To review the file to see if there was some
15 way that we could independently calculate the speed
16 of the vehicle, to review the dynamics of the
17 accident, determine how the pedestrians were struck.
18 Pretty much it at the moment.

19 Q. Can you tell me what documentation was
20 provided to you for your review to render an opinion
21 in this case?

22 A. I was provided with copies of the Florida
23 Highway Patrol photographs. I was provided with some
24 photographs from -- they were reported to be
25 defendant photographs. I have a copy of the traffic

1 homicide report which include copies of the
2 autopsies. It's more complete than normal traffic
3 homicide reports. So it's probably the field note
4 package, is what I've really got.

5 Q. Did that also include a page 26 and 27
6 which include a diagram of the accident scene as
7 completed by the highway patrol?

8 A. Yes. I think I have a completed report
9 that just hasn't been signed. No. I take that back.
10 It has been.

11 Q. And you have that present with you today?

12 A. Yes.

13 Q. You also have photographs with you?

14 A. Yes.

15 Q. When you said autopsy you have an autopsy
16 report?

17 A. Yes.

18 Q. You have autopsy photos?

19 A. No, not that I know of. I've looked
20 through both CDs and I don't see anything.

21 Q. Were you provided anything else besides the
22 photos by FHP, the autopsy report, the crash
23 investigation report and including the field note
24 package?

25 A. No. That notes from the traffic homicide

1 did contain a copy of the CDR readout.

2 Q. Do you have the crash data report?

3 A. Yes.

4 Q. And the photographs you received them on CD
5 medium?

6 A. Yes.

7 Q. You don't have any printed out photographs?

8 A. No. I printed out what I got.

9 Q. Were those photographs numbered in any way
10 or documented in any way so that we can refer to them
11 or --

12 A. I numbered them as they were numbered on
13 the CD, which the numbers are all P like in poppa,
14 326. And then 0001 is the first one through --

15 Q. Those were numbers that were provided on
16 the CD?

17 A. Those were numbers that were on the CD,
18 yes. And it goes through 238.

19 Q. All right. We're just discussing what we
20 have here as far as photographs in case we need to
21 refer to them. All right. Let's move on a little
22 bit before we get to that area. So this
23 documentation -- did you have an opportunity to
24 actually see the vehicle itself at impound?

25 A. Yes, I did.

1 Q. Where did you see the vehicle?

2 A. At the Land O' Lakes Highway Patrol station
3 when they had it in the impound there.

4 Q. And do you know what date you visited the
5 vehicle?

6 A. May 2, 2007.

7 Q. In preparing for your testimony and/or
8 deposition did you prepare any written reports that
9 were submitted to the office of the state attorney?

10 A. No, I did not.

11 Q. Are you in possession of notes that are
12 assisting you in rendering your opinion in this case?

13 A. I would say no.

14 Q. Are you testifying from memory as to what
15 you saw in this case?

16 A. Yes.

17 Q. Okay. So you stated earlier that you were
18 going to calculate the speed of the vehicle, the
19 dynamics of the accident and how the pedestrians were
20 struck; correct?

21 A. That's correct.

22 Q. Any additional opinions you were asked to
23 render with regard to this case?

24 A. Not that I can think of at the moment, but
25 I'm not going to rule out anything else at this

1 point.

2 Q. Well, when would you be able to find out if
3 you were asked to do something else?

4 A. As we talk today if anything comes up, I'll
5 tell you about it, that it was something additional
6 that I was asked to do or I'm going to do. But as I
7 sit right now you have the complete list.

8 Q. Right. I just want to know, because
9 obviously we're set for trial June 16. And I don't
10 want to hear something the first time sitting in the
11 courtroom. So I'm going to try to cover everything
12 that you were asked to do.

13 A. I understand.

14 Q. Okay. All right. Tell me how you
15 proceeded to investigate the case in preparation to
16 render an opinion.

17 A. Well, first thing I did was read through
18 the traffic homicide report and examine the
19 photographs that the highway patrol had taken, both
20 the nighttime and the daytime photographs. And again
21 looking at the diagram that Trooper Styres produced,
22 I went through it to try to determine distances, if
23 there was any way I could calculate example throw
24 distance of a pedestrian. This vehicle is not the
25 kind that's going to allow you to do that. About all

1 we have is the crush damage. And it's extremely
2 unreliable with pedestrians to try to do a crush
3 damage calculation. So I did not do one, which means
4 that we have to go back to what was in the CDR to
5 determine speed at impact, which is in my opinion
6 consistent with what I see in this accident, that the
7 pedestrians attempted to go over the hood but because
8 of the shape of the front couldn't. Stuck to the
9 front and then went down underneath the vehicle.

10 Q. Is it your opinion that both of the victims
11 went down and underneath the vehicle?

12 A. I would say yes. I don't see any evidence
13 that either one of them went up and over.

14 Q. Okay. Let's go right to page 26, the
15 diagram that was provided by the highway patrol.

16 A. Okay.

17 Q. Page 26 and 27. And what we've been doing
18 with other witnesses to differentiate these two is to
19 call them scene A and scene B, if that's all right
20 with you. Page 26 will be called scene A and page
21 27, the final rest of the vehicle, we'll call scene
22 B.

23 A. Okay.

24 Q. Let's start with scene A. I'm looking at a
25 diagram of V1 on the bottom of the page which

1 indicates a diagram of a motor vehicle traveling
2 southbound on Grand Avenue. Do you see that?

3 A. Yes.

4 Q. V1. And then we have an A and B where the
5 actual point of impact was at. And it looks like the
6 vehicle is off of the road. You see that?

7 A. Yes.

8 Q. Do you agree with that diagram, that the
9 vehicle was completely off of the road?

10 A. Whether it's completely off the road,
11 possibly that the left tire may have been on the
12 asphalt, but I don't know any better than that.

13 Q. From the documentation and photographs that
14 you were provided is there any indication to you in
15 your opinion that would lead you to believe or any
16 physical evidence that would lead you to believe that
17 this vehicle went entirely off the road at this
18 point?

19 A. What's entirely? You're talking about both
20 wheels on the shoulder, not one on the asphalt and
21 one on the shoulder? Is that what you're
22 differentiating?

23 Q. Yes. Completely off of the paved roadway.

24 A. I can't say that it was completely off, no.
25 And I don't see any physical evidence that would tell

1 me one way or the other.

2 Q. What sort of evidence would you look for to
3 be able to answer that question in the affirmative to
4 say that the vehicle went completely off the road?
5 What would you be looking for as an expert?

6 A. I would be looking for marks where the
7 pedestrians were, where they were struck, shoes,
8 clothes. People tend to get knocked out of their
9 shoes in pedestrian accidents, where those kind of
10 things were found. They would tell me pretty much
11 where the individuals were located. And the
12 information that I have is that the left shoe was
13 three feet west of the edge marker, I'm sorry, the
14 fog line. That would put the right side of the
15 vehicle about two feet to the right of the
16 pedestrian. The vehicle is about five and a half
17 feet wide. The left tire is going to be somewhere
18 around the fog line when that occurs.

19 Q. Is the fog line on or off of the paved
20 roadway?

21 A. The fog line is on the asphalt. It's the
22 white line on the outside of the road I'm talking
23 about.

24 Q. So you see no evidence from the materials
25 that were provided to you that would indicate whether

1 or not this vehicle was entirely off the road?

2 A. I can't say that it was entirely off the
3 road. And I see no evidence that would indicate
4 otherwise.

5 Q. Let's look continuing on page 26. We have
6 the point of impact A and B. Let's move up the page
7 a little bit to the other diagram of the vehicle
8 where we start C, D, E and F. Do you see that?

9 A. Yes.

10 Q. The corner of Pasadena Avenue and Grand
11 Boulevard. From the diagram there's a south pointing
12 arrow that shows a direction of travel for this
13 vehicle. And it appears from my observation that
14 Corporal Styres is saying the vehicle is completely
15 off of the roadway and continues completely off the
16 roadway all the way to that point at Pasadena Avenue
17 and Grand Boulevard. Do you see that?

18 A. Yes.

19 Q. Is there any physical evidence that you
20 reviewed that would lead you to believe that that
21 statement would be accurate?

22 A. I've seen no physical evidence that would
23 tell me one way or the other.

24 Q. Now you also are in possession of
25 photographs of this actual intersection and the point

1 of impact; is that correct?

2 A. Yes.

3 Q. In reviewing those photographs did you see
4 any types of obstructions or -- I guess we'll just
5 use the word obstruction, that would be in the
6 pathway of this vehicle in the vicinity of Pasadena
7 and Grand right where that next diagram that we're
8 talking about -- do you recall seeing any
9 obstructions like that?

10 A. Yes. There's for lack of a better word I'm
11 going to call it bus stop seat or a bus stop bench.
12 I don't know how far that bus stop is off the
13 roadway, but the vehicle would be partially off the
14 road as it went by that bus stop, maybe all the way
15 off. I don't know the answer to that.

16 Q. You do see a bus stop bench?

17 A. I guess there's a sign next to it also that
18 says bus stop. I can't read the sign in the
19 photographs, but yes.

20 Q. Does it appear that the sign in the
21 photograph is closer to the roadway than the bus stop
22 bench?

23 A. No.

24 Q. And I don't have the picture in front of
25 me. What relation do you see the bus stop sign to

1 the bench?

2 A. I'm only going to refer to the last four
3 numbers on these photographs so I don't have to read
4 the whole number, but I'm looking at photograph 16.
5 It shows me that the sign is about a third of the way
6 back from the front of the bench, that part where
7 your knees would bend over. It's about a third of
8 the way back on that seat. So the bench would be
9 closer to the road than the sign.

10 Q. That's fine. And does the bench appear to
11 you to be one of the standard concrete benches that
12 are put out for bus stops?

13 A. I would say the support for it is concrete.
14 The other part of it may be wood. I haven't seen
15 close enough of the other part to tell you what the
16 bench itself is made out of.

17 Q. That's what I mean. The base appears to be
18 concrete and the top appears to be the standard wood
19 slats for a bench?

20 A. As I sit here today I would agree with
21 that, yes.

22 Q. Did you have an opportunity to actually go
23 out to scene A that we're talking about?

24 A. Yes, I did.

25 Q. So you actually were on the ground where

1 this bench is and where the point of impact was?

2 A. Yes, but I was there almost a year after
3 the accident.

4 Q. And you were in possession of the
5 photographs before going out to the scene?

6 A. Yes.

7 Q. Would it be fair to say that what you saw
8 in the photographs that were taken at the time of the
9 accident pretty much fairly depicted what you saw a
10 year later as far as the placement of the bench and
11 the sign?

12 A. I'll say yes with a slight hesitation.

13 Q. And I understand your hesitation. We have
14 no indication that anyone made any adjustment to that
15 street or Department of Transportation, to our
16 knowledge. And I think the state will agree there
17 have been no adjustments to that corner as far as
18 construction or the movement of any objects. So it's
19 not a trick question. I just want to know if it
20 pretty much fairly depicts what you saw when you went
21 out in reference to the photographs?

22 A. I'll agree with pretty much. I just don't
23 want to get painted in saying that it was exactly the
24 same in the photographs as the day I was out there,
25 but it's a good, fair resemblance of what I see in

1 the photographs.

2 Q. If you would have went out to the scene a
3 year later and saw things that were different than
4 the physical evidence you were provided by the state,
5 i.e. photographs and diagrams, would you have made
6 some notation of that or reference to that in
7 preparation for your testimony?

8 A. Yes, I would have. And I have no notes of
9 anything that jumped out at me as being different.

10 Q. And you're trained from your training
11 experience to look for details and measurements and
12 things that may look out of place?

13 A. That's correct. I generally only record
14 anomalies. I don't record all of the things that are
15 the same or normal. I tend to record anomalies. And
16 I don't have any notes or anything and I don't recall
17 having seen anything that told me the scene was
18 different from what I saw in the photographs.

19 Q. So is it fair to say that from your
20 experience and going out to this particular scene
21 there was nothing majorly different with the scene
22 than the way you saw it first in the photographs?

23 A. I will agree.

24 Q. And in the photographs you were provided
25 you saw no type of damage to the physical structures

1 that were there on that corner, i.e. the bench or the
2 sign?

3 A. I don't recall physical damage to anything
4 while I was out there, or I would have photographed
5 it. And I don't have any photographs.

6 Q. And from the photographs that were provided
7 by the highway patrol, the ones that were freshly
8 taken after this incident, did you observe any
9 obvious damage to those physical structures right
10 there on the corner of Pasadena and Grand?

11 A. No.

12 Q. All right. Moving along on that same page,
13 26, the southbound arrow continues across the roadway
14 of Pasadena on to the other side, the southern side
15 of the street. And looks like the vehicle from the
16 diagram around where it says H and V1 appears to
17 still be off of the roadway. Do you see that?

18 A. Yes.

19 Q. Did you find any physical evidence that
20 would lead you to believe that this vehicle at this
21 point where the H is, to the left of the H -- that
22 the vehicle was completely off the roadway?

23 A. I saw no evidence either way. And in the
24 photographs I see there's plenty of room for it, for
25 the vehicle to be completely off the road. And the

1 distance of the physical evidence of the final rest
2 of the second pedestrian being 12 foot west of the
3 fog line would tend in my mind to put the vehicle
4 over closer to the final rest of the second
5 pedestrian than it would be to being on the road. So
6 in my opinion that's physical evidence that would
7 indicate the vehicle was completely off the road.

8 Q. So that's the first time you can say with
9 physical evidence that the vehicle was completely off
10 the road, right where the H -- in the vicinity of the
11 H?

12 A. Yes.

13 Q. Okay. Would it be fair to say that there's
14 more room for the vehicle to be off the road around
15 the vicinity where the H is than where the vicinity
16 of the E and the F are?

17 A. I would agree.

18 Q. Now these diagrams you had no hand in
19 preparing these diagrams or submitting any
20 measurements to compile these diagrams; is that true?

21 A. That's correct.

22 Q. And you relied on the documents along with
23 other physical evidence to render your opinion in
24 this case?

25 A. I rely on them to a point, yes. I don't

1 take them as gospel. I never do. But also I have no
2 other evidence, so I have to rely on them, yes.

3 Q. When you say you don't take them as gospel
4 why is that?

5 A. I would like to do things myself.

6 Q. I understand. Have you had occasion before
7 in your many years of experience -- I'm sure you've
8 seen diagrams like this hundreds and hundreds of
9 times; correct?

10 A. Yes.

11 Q. Have you had occasion to look at these
12 diagrams and they were inconsistent with other
13 evidence that you saw in rendering an opinion?

14 A. Yes.

15 Q. Is that what you mean when you say you
16 don't take them as gospel, that's the reason why?

17 A. That's correct, just like the attorneys I'm
18 working for and working against. I never take what
19 they say as gospel either.

20 Q. So is it fair to say that -- well, do you
21 know how these documents are created, this diagram on
22 26 and 27, how they come up with these diagrams?

23 A. From my experience I think they do now have
24 a computer program that draws it, but just like I do
25 they measure the width of the road so that you know

1 the width of each travel lane. If there's anything
2 else in particular like the turn lane that you see in
3 the area where the accident first occurred, the width
4 of Pasadena Avenue, you can put those things in,
5 create a curb corner to corner. It's not a surveyed
6 diagram, but it's a reasonable proximity of, lack of
7 a better word, a conceptual diagram of what happened.

8 Q. I understand. Certain things are to be
9 taken as fact and true, for example the width of
10 Grand Boulevard, the width of Pasadena Avenue. We
11 would all agree that those things have not changed
12 from the time of the accident to the time when the
13 diagram was compiled and created. So some of those
14 things are physical items that are just there. I
15 would like to talk about the variables though, for
16 example the path of vehicle one. Those are things
17 that are inputted -- those are human inputs; aren't
18 they?

19 A. Yes.

20 Q. And from what I've learned so far in this
21 case from the highway patrol they take not only
22 physical evidence that they see, but they take
23 witness statements from eye witnesses that may be
24 standing around to compile a diagram such as this.
25 Are you aware of that?

1 A. Yes.

2 Q. Would you agree with me that if the
3 assumption of one of the supposed eye witnesses is
4 inaccurate, then that could possibly render the
5 diagram inaccurate?

6 A. If they take the witness as gospel,
7 especially to the detriment of anything else, I would
8 agree. Most of the time I haven't -- I'll have to
9 say I have never found them to take a witness at face
10 value that way though, in my experience anyway.

11 Q. About how many cases do you think you've
12 done?

13 A. Over the years I think I'm working on 2900
14 cases now.

15 Q. That's criminal and civil?

16 A. Yes.

17 Q. So you're saying within the 2900 cases,
18 give or take whatever, it's not normal practice for
19 them to take an eye witness' account as gospel?

20 A. That really defies what the physical
21 evidence is showing them. Sometimes they can shade
22 it one way or the other, but I've never seen anything
23 that was completely out of whack with the physical
24 evidence. Maybe leaning one side or the other, but
25 I've never seen it completely out of whack.

1 Q. Okay. And is it fair to say that -- let's
2 say if there was one of those rare occasions where an
3 eye witness' observations were relied on heavily to
4 create one of these diagrams, would it be fair to say
5 that you relied on that diagram, and that witness was
6 incorrect, that would affect the ultimate outcome of
7 your opinion?

8 A. Sure. It always could, yes.

9 Q. Because obviously you're never there when
10 these thing happen of course?

11 A. That's correct. And I was not there to see
12 the physical evidence. But I do see the physical
13 evidence that's in the photographs.

14 Q. And the only physical evidence that you see
15 is what was provided to you by the highway patrol and
16 the state attorney's office?

17 A. That's correct.

18 Q. In reviewing the photographs, the daytime
19 photographs, were you able to observe any type of
20 tire marks or skid marks on the grassy shoulder that
21 would indicate to you that this vehicle was
22 completely off the road?

23 A. No. I could not see marks in the
24 photographs anywhere.

25 Q. Did you see any type of marks, whether it

1 was just the right side tire in the grass, as far as
2 recent tire marks or skid marks?

3 A. No.

4 Q. And you're especially trained to be able to
5 observe some of these type of tire marks and skid
6 marks? You're trained to look for those particular
7 items; aren't you?

8 A. Yes.

9 Q. You either see them or you don't. And
10 you're saying in this case you don't see that type of
11 physical evidence?

12 A. Well, I see some marks in a couple places.
13 There's one that's shown in 117 but closer in 119.
14 There seems to be a scrape mark of some kind that's
15 on the seam between the asphalt on Grand Boulevard
16 and Pasadena Avenue.

17 Q. A scrape mark that's on the asphalt edging?

18 A. I would say yes. It's right on that seam
19 where Pasadena Avenue -- the asphalt on Pasadena
20 Avenue blends into Grand Boulevard.

21 Q. I understand. I'm specifically though
22 talking about the grassy area. I believe there's
23 some grass and dirt that's on the shoulder around
24 where vehicle V1 is at A and B and where vehicle 1 is
25 at C and D. Did you see anything in those

1 photographs that show any type of tire marks in the
2 grassy dirt area?

3 A. There's a lot of marks, but I can't tell
4 whether they came from this accident or not.

5 Q. And that's a big open field at that point
6 between point of impact and Pasadena Avenue. It's an
7 open grassy area. Do you see that?

8 A. Yes.

9 Q. And I guess neither one of us were there,
10 but probably safe to assume that vehicles have driven
11 through there either intentionally or
12 unintentionally, but vehicles have either parked
13 there or driven through there on that grassy area.

14 A. I would agree. And I would especially say
15 the night when the emergency people responding to the
16 call of two pedestrians down, they tend to want to
17 get as close as they can to them and get them out as
18 quickly as possible. And lot of times they'll run
19 over evidence doing it.

20 Q. Have you been able to look at any evidence,
21 including photographs that were provided to you in
22 this case, that would allow you to differentiate any
23 type of tire marks between different types of
24 vehicles, i.e. emergency vehicles and the suspect
25 vehicle?

1 A. No.

2 Q. All right. Let's talk about, you mentioned
3 at Pasadena and Grand there was some type of scuff
4 mark there where I guess the grassy shoulder area or
5 the dirt area merges into the pavement. You
6 mentioned something a few minutes ago about that,
7 that there were possibly some marks there?

8 A. No. I said where the asphalt blends from
9 Pasadena. There's a seam between Pasadena and Grand
10 Boulevard.

11 Q. Okay. There's just a seam? You don't see
12 any -- so you're saying you see some physical
13 evidence that may have come from the suspect vehicle?

14 A. That came from this accident. There's a
15 scrape mark of some kind in the right direction
16 located in the westbound lane of Pasadena, but it's
17 actually on the edge of Grand. And Corporal Styres
18 put a white, I'm sorry, an orange arrow marking to
19 it.

20 Q. And does it look like a scrape into the
21 ground or does it look like something that was left
22 by a tire with rubber?

23 A. I'd say it was more of a scrape.

24 Q. And in your opinion you believe that that
25 came from this particular accident?

1 A. It's in the right direction and it could
2 have, yes.

3 Q. Well, when you say could have you mean it's
4 possible, but you're not 100% certain?

5 A. That's correct.

6 Q. If you were to believe that that scrape
7 mark came from this accident, I don't see that from a
8 tire or rubber mark. Where do you believe that may
9 have come from?

10 A. Without knowing how deep it is, one of the
11 pedestrians could have a belt buckle or something on
12 them, that I've seen that occur before, that they get
13 scraped at that point and leaves a mark. I don't see
14 anything on the vehicle that would have come down to
15 make a mark like that.

16 Q. Can you give me one minute? All right.
17 Let's talk about a point of impact. Were you able
18 to -- or do you concur with diagram 26, that the
19 point of impact I believe is depicted by a circle on
20 that diagram?

21 A. Yes, I do.

22 Q. What leads you to that opinion?

23 A. The location as Corporal Styres recorded
24 the debris which he located as B. And if you look at
25 photograph -- I don't have it in front of me now, but

1 there was a photograph that showed debris. I'm
2 trying to find it right now, that would indicate that
3 I would agree with that. And he says it's the left
4 shoe of the second pedestrian located three feet off
5 the edge of the roadway, which would be very typical
6 of a -- I think it's photograph number 13.

7 Q. Can you say definitively from the evidence
8 that you were asked to review that these pedestrians
9 were completely off of the roadway at the time of
10 impact?

11 A. Based on the evidence I see, yes.

12 Q. And what would that evidence be?

13 A. Number one, the location of the shoe in
14 photograph 13 and 14 would be where the pedestrian
15 would be knocked out of her shoe when it hits.
16 Looking at the damage on the front of the vehicle the
17 pedestrian in question that we're talking about was
18 struck just inside the right front wheel of the
19 pickup pretty much in line with the inside of the
20 front headlight, I'm sorry, the left front corner.

21 Q. Left front corner of --

22 A. Wait a minute. That's turned around. Let
23 me start all over again. That would be where the
24 pedestrian one would be hit just inside the left
25 front headlight. The second pedestrian, one we're

1 talking about that left the shoe, would be struck
2 pretty much just to the right of the center of the
3 vehicle, and then went backwards, basically bent over
4 backwards over the front of the truck, and then came
5 down and went underneath the vehicle. But she got
6 knocked out of her shoe at that point. So I would
7 agree that the A would be the vicinity of the point
8 of impact, yes, and off the road the way it is.

9 Q. And the physical evidence that you're
10 talking about is the placement of the shoe of
11 pedestrian two; is that right?

12 A. Yes, in addition to the damage to the front
13 of the truck.

14 Q. Now from the diagram I'm looking at two
15 arrows between the A and the B. Says P1 and P2.
16 Does it appear to you that P1 is further to the left
17 and P2 is to the right?

18 A. Yes.

19 Q. Now on page 28, the final rest of object B,
20 the left shoe, is three feet west from the reference
21 line.

22 A. Yes. And the reference line is the white
23 painted line on the edge of the road that I've been
24 referring to as the fog line.

25 Q. So that's only three feet in from the edge

1 of the roadway; right?

2 A. Yes.

3 Q. And you're aware there were three
4 individuals walking side by side together?

5 A. Yes.

6 Q. And it's your testimony from the
7 observation that you can conclusively say that all
8 three of these individuals were totally off the
9 roadway?

10 A. Yes.

11 Q. From the diagram it appears that the final
12 resting place of pedestrian number two was at the
13 point of impact?

14 A. No, at H.

15 Q. Okay, I see. And P1, the pedestrian one,
16 is just south of that?

17 A. Yes. At I that was.

18 Q. Can you state in your opinion what you
19 believe occurred to bring both pedestrian one and two
20 to their final points of rest from the point of
21 impact?

22 A. Both pedestrians on initial impact
23 attempted to go up and over the vehicle, which is
24 typical. But their center of gravity is below the
25 top of the hood. So they were basically pinned to

1 the front of the hood as the truck went down the
2 roadway. But gravity will pull them down and
3 underneath the front bumper. Somewhere in the area
4 of when they crossed Pasadena Avenue they would come
5 off the front and go under the vehicle to be drug
6 further down the road until they came out south of
7 Pasadena Avenue in the area of where they were
8 finally located.

9 Q. When you look at the placement of vehicle
10 one between H and G across Pasadena Avenue and when
11 you look at H, which is the final resting place of
12 pedestrian two, what does that tell you?

13 A. I would have put the vehicle farther to the
14 west, without having seen any of the tracks left from
15 the vehicles, just from the final rest of the second
16 victim. I would have put the vehicle farther off the
17 roadway as it traveled past there. Even if the
18 victim went up and over on the hood and then came off
19 the side on the side by the passenger door, the
20 vehicle would still have to be farther to the west
21 for the victim to end up where they did, because
22 that's showing it to be 12 feet off the roadway. And
23 the vehicle's only five and a half feet wide. It's
24 too far between the edge of the vehicle and H. I
25 would have put the vehicle farther to the west.

1 Q. So from the way the diagram is written
2 would that from your training and experience be a
3 little unrealistic?

4 A. The way the diagram is written now?

5 Q. Correct.

6 A. Sure, but it's still for the most part a
7 conceptual diagram.

8 Q. Well, we have exact measurements that are
9 written on here; right?

10 A. For certain points. But there's a lot of
11 the path and placement of the vehicle over the top of
12 the path, in some ways it's only approximate.

13 Q. I understand. So there's certain constants
14 there on this diagram which are indicated by the
15 alphabetical letters and placement of certain
16 evidence including the victims?

17 A. Yes.

18 Q. But the vehicle itself that's kind of a
19 variable. That's not certain based on these
20 diagrams?

21 A. I would agree with that. And it is to give
22 you, how do I say this, a general concept of how the
23 vehicle traveled through the scene, but it's not
24 intended to give you an exact path of travel that
25 would show you to the inch where the vehicle was at

1 all times at the scene.

2 Q. And that's your opinion. I mean the
3 highway patrol authored this diagram.

4 A. Yes.

5 Q. And if someone from the highway patrol were
6 to state, "No, that's exactly how it was and that's
7 exactly what we intended," then you would say you
8 would have to disagree with that?

9 A. Yes.

10 Q. Did you have an opportunity to examine the
11 undercarriage of this vehicle?

12 A. I did, but by the time I examined it I
13 could find nothing that would be of any value.

14 Q. Did you review any type of report or review
15 any type of photograph that would lead you to believe
16 that there was something there at some point of
17 evidentiary value?

18 A. Corporal Styres took some photographs of
19 the undercarriage while they were having the brakes
20 inspected. And it shows evidence that there were,
21 how do I put this, body parts left underneath the
22 vehicle. I'm trying to keep our court reporter with
23 us.

24 Q. Based on that last answer you gave me do
25 you see any reference to that in the homicide report?

1 A. At the moment I'm going to have to say I
2 don't know, but I don't recall seeing one.

3 Q. Did you actually see photographs
4 referencing what you just mentioned?

5 A. Yes. Particular photograph that's labeled
6 200, 201, it shows a body mount that appears to have
7 some kind of material stuck to it.

8 Q. I'm sorry. I didn't hear you.

9 A. It shows a body mount with some kind of
10 material stuck to it that's on the frame rail part.
11 Photographs number 98 and 99 also show marks on the
12 frame in the vicinity of the exhaust pipe. And there
13 appears to be things on the exhaust pipe that don't
14 belong there.

15 Q. And that's -- your opinion that's human
16 tissue?

17 A. It would be my opinion it was caused by the
18 human going underneath it, yes.

19 Q. Not caused by the -- you told me before it
20 was body parts under there. Are you saying that
21 there was human tissue found on these photographs,
22 200, 201, 98 and 99?

23 A. 200 and 201 positively. And then you can
24 see it in 98. There are marks in 99. One looks like
25 a scuff mark from a black shoe or rubber shoe. And

1 the other there's a burn mark on the exhaust pipe
2 that could be anything. To go back to the question
3 you asked me earlier on page 14 Corporal Styres notes
4 blood splatter, body tissue on the underside of the
5 right front bumper and right side tow hook.

6 Q. Are those the photographs that you just
7 referenced as the 200 and 201?

8 A. No. These are different parts further
9 underneath the vehicle.

10 Q. Because he appears to be pretty detailed
11 with what we see on page 14 of his narrative report,
12 but he's very specific as to where he found those
13 pieces of evidence.

14 A. I understand what you're saying. And I
15 don't know what else to tell you at this point.

16 Q. Well, my point is you're looking at a
17 photograph. Do you have any way of identifying that
18 substance as being human tissue? I mean you didn't
19 conduct any tests or anything?

20 A. That's correct. I'm looking to see if I
21 can find the ones that show the tow hook. He might
22 be calling this the tow hook because it's shaped
23 somewhat like a tow hook. We might have a problem of
24 terminology too.

25 Q. Okay.

1 A. I don't see any other photographs. We
2 might have a problem of terminology.

3 Q. Okay. The only terminology I'm concerned
4 with is when someone says human tissue, I just like
5 to know how they come to that conclusion unless it
6 was tested or it's something obvious.

7 A. I understand what you're saying. I'm
8 giving you the best I can give you right now.

9 Q. Okay. So you're just giving me your
10 opinion as a lay person, because that's what you
11 think it is?

12 A. Based on my experience from having looked
13 at numerous of these accidents that's my opinion of
14 what it is, yes.

15 Q. Did you have an opportunity to talk to any
16 of the lay witnesses in this case?

17 A. No. And that reminded me. I have some
18 witness tapes that I did listen to. One says --
19 well, they don't say which witnesses are on them. I
20 thought I had it written down. I don't. They're the
21 tapes that Florida Highway Patrol took of their taped
22 interviews.

23 Q. Did that also assist you in reaching your
24 opinions in this case?

25 A. I'm not going to say they didn't assist me,

1 but I didn't find them too helpful.

2 Q. Is it fair to say that you reviewed all the
3 materials that were given to you in this case, the
4 homicide report in its entirety, photographs, autopsy
5 report and those tapes?

6 A. Yes.

7 Q. Did you find any inconsistencies with the
8 evidence that was provided to you, anything that kind
9 of raises a red flag based on your professional
10 experience?

11 A. No. I would say no.

12 Q. None at all?

13 A. No.

14 Q. Did you find any conflicting statements
15 between the witnesses in this case?

16 A. I don't recall any. And I usually don't
17 rely too much on what witnesses say unless I have
18 physical evidence to back it up.

19 Q. That's a good practice.

20 A. I use the witness statements to kind of
21 give me a general idea, but I don't narrow it down
22 unless I have physical evidence.

23 Q. Did you find anything unusual, out of the
24 ordinary with the investigation that was conducted by
25 the highway patrol? I'm sure you've dealt with them

1 on hundreds, possibly thousands of occasions. Did
2 you see anything that was standing out in this
3 particular investigation?

4 A. Only thing I would say that I wish they did
5 a better job of documenting the path of the vehicle.
6 Other than that, no.

7 Q. Do you have any knowledge as to the
8 operation of a motor vehicle by a person who's under
9 the influence of alcohol or controlled substances?

10 A. First off I'll say that's out of my area of
11 expertise, but I don't know how to answer your
12 question.

13 Q. Well, when you go to a scene that may have
14 criminal connection to it based on a person using
15 alcohol and/or drugs, are you able to look at the
16 path of a vehicle and how it traveled and it would
17 lead you to believe that that person either was sick
18 or impaired by the evidence that's left behind?

19 A. I could go to the point of saying if the
20 path or the evidence showing the path was somewhat
21 erratic and didn't make sense. But to say that
22 person was impaired based on the driving, no.

23 Q. All right. Let's talk about page 27, what
24 we called scene B earlier, the final rest of the
25 vehicle in question. Were you able to determine from

1 the evidence that was provided to you the distance
2 between point A and point B? That answer might be on
3 page 28. I'm sorry.

4 A. It says it's at K, which means it's going
5 to be a mile south of the zero point, which would be,
6 well, 21 feet short of a mile.

7 Q. Just under a mile?

8 A. Yeah. Yes.

9 Q. Did you have an occasion when you came out
10 to the scene -- did you go to scene B?

11 A. Yes. I went through it, completely through
12 it, but I was there a year later. So there would be
13 nothing. Other than to say I drove through it to see
14 what it was, there was nothing there that I could --
15 like the fluid trail and that kind of stuff.

16 Q. So you drove the 5280 feet yourself?

17 A. Or I drove further than that, but yes.

18 Q. In your opinion Grand Boulevard would you
19 say that's a narrow street?

20 A. I wouldn't say it's any narrower than any
21 other street that I have occasion to be on.

22 Q. Well, what I mean is at the point leaving
23 point A when you drive down it, it's a one lane south
24 and one lane north in different directions until you
25 get down to State Road 54. So it's one lane of

1 travel in opposite directions; right?

2 A. I would agree.

3 Q. When you drove that street did it appear to
4 be a narrow street to you or just a regular normal
5 street like anywhere else?

6 A. Appeared to be normal to me.

7 Q. Let's talk about scene B, page 27. It has
8 vehicle one indicating a fluid trail. Then there's a
9 traffic control box where it indicates -- it looks
10 like there's a dot, the arrow where someone may have
11 either entered or exited the vehicle. And then the
12 final rest is at point K. You see that?

13 A. Yes.

14 Q. Are you familiar with a vehicle when it's
15 involved in a front end impact, what it takes to
16 seize that type of vehicle, what type of engine
17 processes are going down to shut that vehicle down?

18 A. Yes.

19 Q. From the point of impact at point A it's
20 been indicated in the reports that there's a solid
21 fluid trail following from Pasadena Avenue and Grand
22 at the point of rest for the victim all the way down
23 that complete mile down to point K at point B. Would
24 that be consistent with a front end crash such as
25 this?

1 A. Yes.

2 Q. And the fluids that would be leaking that
3 would be what -- antifreeze, motor oil, transmission
4 fluid?

5 A. Motor oil in all likelihood, no, but it
6 very well could be transmission fluid and/or
7 antifreeze, yes.

8 Q. Did you have -- you said you had an
9 opportunity to examine the vehicle itself at the
10 highway patrol yard?

11 A. Yes.

12 Q. Did you find any indication of what fluids
13 actually leaked from the vehicle?

14 A. The radiator was extensively damaged, so
15 it's going to be predominantly radiator fluid. I
16 could not tell if the lower portion of the radiator,
17 which would be transmission fluid, was damaged. It
18 did not appear to be, but I couldn't tell for sure.

19 Q. From your training and experience at
20 nighttime what type of fluid trail would be left that
21 could be observed by the human eye at any time
22 without any extraordinary lighting?

23 A. Either one would be visible.

24 Q. Radiator fluid?

25 A. Yes, radiator fluid and/or transmission

1 fluid.

2 Q. And I'm talking about a single stream from
3 a moving vehicle going approximately 47 miles an
4 hour.

5 A. That's correct. The integrity of that mark
6 is going to depend on how fast it's coming out of the
7 engine.

8 Q. Well, based on what you observed from the
9 damage to the vehicle I mean did it look like there
10 was -- I mean what did you see? Was there a small
11 little hole in a pipe or was there significant fluid
12 coming out of this vehicle?

13 A. There was significant fluid coming out. I
14 wouldn't be surprised if the vehicle by the time it
15 got to its final rest was completely devoid -- well,
16 for all practical purposes devoid of any coolant.
17 And the vehicle would have started overheating long
18 before it got to that point. And depending how long
19 it took him to go from the traffic control box to the
20 final rest, the engine could very well seize by the
21 time he gets to point K.

22 Q. So over a mile traveling, do you believe
23 that in your opinion from the evidence that the
24 vehicle continued to travel approximately 47 miles
25 per hour to final rest?

1 A. No.

2 Q. What leads you to believe that it did not
3 maintain that speed?

4 A. I think one of the witnesses said that it
5 stopped in the vicinity of the traffic control box
6 and he got out. The driver got back in and then
7 drove again. In the meantime the vehicle would be
8 either idling or he'd have to start it again. But it
9 wouldn't have any chance to cool down, and the fluid
10 that would cool it down would be leaking there.

11 Q. So if the vehicle was stopped at the
12 traffic control box or anywhere before that, would
13 you agree that there would be a pool of that fluid
14 that was leaking?

15 A. Could possibly be, yes.

16 Q. Wouldn't that be likely? If that vehicle
17 were to stop and it's continuously leaking fluid from
18 point A at the point of impact, is there any physical
19 process that would prevent that fluid from leaking
20 from the vehicle?

21 A. Potentially, yes. If it was just coming
22 from the radiator, the fan blade could be in the
23 exact position where it plugged the hole until he
24 tried to start it again, and then it would undo it.
25 You would essentially have no additional leaking

1 there at the traffic control box.

2 Q. Corporal Styres indicates in the report
3 from point A to final rest that there's a continuous
4 straight line of fluid for that one mile. Are you
5 aware of that?

6 A. Yes.

7 Q. What would that indicate to you as far
8 as -- well, let me ask you this. A straight line on
9 that road that you traveled yourself would that
10 indicate to you that the vehicle did not go off the
11 roadway at any time?

12 A. From the time that the fluid began to
13 appear on the road until it got to final rest I would
14 agree.

15 Q. So the vehicle continued in a straight line
16 on the roadway?

17 A. I don't like the use of the word of
18 straight line, because the road at that point starts
19 to turn to the west. I would say if you want to
20 refer to straight as following the road, fine.

21 Q. Right. The fluid trail would be following
22 the middle of the roadway. And there are no
23 indications that this vehicle left the roadway?

24 A. That's correct. I'll agree with that.

25 Q. Do you have any opinion as to whether or

1 not an impaired driver would be able to do that?

2 A. I have no opinion one way or the other in
3 that regard.

4 Q. I mentioned the speed of 47 miles per hour.
5 I think I got that from the crash data recorder
6 information that was provided. Would you concur that
7 that was the approximate speed?

8 A. Yes.

9 Q. Let's talk about the crash data report.
10 Are you familiar with how that information is
11 retrieved from a motor vehicle?

12 A. Yes, I am.

13 Q. Have you actually been trained to do that
14 type of work yourself?

15 A. Yes.

16 Q. There's a certification type class or some
17 type of training to be able to do this on different
18 types of vehicles with different types of software?

19 A. There's only one type of software. You
20 have to have the black box with all of the different
21 cords to attach to the different vehicle black boxes,
22 but the training consists of how to install the
23 software, how to bring it up, how to put the number
24 into it. And then you tell the computer to do it.
25 You don't need to be trained to make it work.

1 Q. There's electricity required to download
2 this data from the black box?

3 A. Expand your question a little bit. I want
4 a definition of what you mean by electricity.

5 Q. Does the vehicle need to have working
6 electricity in it to download the data from the black
7 box?

8 A. No.

9 Q. Is it customary to have the ignition on the
10 on position to download the material?

11 A. If you're using the OBE-II type of the
12 download, yes. You have to turn the ignition on.
13 And you have to have the vehicle electrical system
14 energized to do that.

15 Q. Was that an older type of version for this
16 program, the OBE-II?

17 A. No. That's how -- when you go to your
18 dealership and they plug in their computer to see how
19 your car's running or to see what you're complaining
20 about they plug it into the OBE-II outlet. That's
21 the industry standard, so that they can get at the
22 computer in the car to see what's going wrong with
23 it. And we can connect into that same one and read a
24 black box if there's no compromise, significant
25 compromise, on the electrical system due to the crash

1 in the vehicle. If there's a compromise, then we
2 have to get at the black box itself and connect the
3 computer directly into the black box.

4 Q. Do you know what was done in this case?

5 A. I have not talked to Sergeant Frye
6 (phonetic) to see how he did it, no.

7 Q. And nothing on the report would indicate
8 what method he used to download the data?

9 A. No. And from having looked at the vehicle
10 I could very well see that he could download it
11 without having to resort to taking the vehicle apart
12 to get at the black box, because the only electrical
13 compromise on this vehicle was the headlight circuit.
14 So as long as you leave the headlights off, you could
15 put a jumper battery on this vehicle and turn the
16 ignition on and download it fine.

17 Q. Did you check the electrical system of the
18 vehicle?

19 A. I was there a year afterwards. There would
20 be no reason for me to do so.

21 Q. How can you make that statement that the
22 only electrical compromise was the headlight?

23 A. Looking at the damage.

24 Q. You're just talking about external
25 observation of the vehicle?

1 A. Yes.

2 Q. So you can't say you're 100% certain that
3 the electrical system was completely operational just
4 by an outward superficial observation?

5 A. I just told you it wasn't completely
6 operational. I told you the parts necessary to be
7 able to read this. I could see no problem why they
8 wouldn't work.

9 Q. I'm not talking about the black box. You
10 made a statement. Maybe I misunderstood you. You
11 stated the only thing that was compromised in the
12 electrical system was the headlight and you know that
13 because you observed it.

14 A. Yes. You used the word completely, and I'm
15 not going to agree that using that word --

16 Q. Well, my point is do you know if the
17 electrical mirrors were working or if the taillights
18 were working, or did you know if the motorized seats
19 were working?

20 A. That's inconsequential to what my point of
21 looking at it for. All I need to know is if they can
22 turn the ignition on and have a battery, jumper
23 battery, connected across where the battery should
24 be, if it's going to blow fuses. And I can tell you
25 it will not blow the fuses necessary to do it. We

1 can read the black box that way.

2 Q. Let's leave the black box for a minute and
3 just determine on your examination of this vehicle
4 what was the purpose of your examination and what was
5 the extent of the examination of the vehicle?

6 A. To look at the damage to the front of it to
7 see if I could come up with a way to calculate speed
8 based on body damage.

9 Q. So you're looking at structural damage to
10 the vehicle?

11 A. Yes.

12 Q. So you didn't run any type of diagnostic
13 test on the engine systems or electrical systems of
14 this vehicle?

15 A. No.

16 Q. So we don't expect any testimony from you
17 with regard to any type of circuits or switches that
18 were working in the electrical system in the internal
19 operations of the vehicle, outside of the black box
20 testimony?

21 A. I'll agree with that statement now.

22 Q. We were on two different pages. I thought
23 you were talking about something else.

24 A. No.

25 Q. Let's talk back on the black box. The CDR

1 report on page -- it starts page two of five of mine,
2 systems status at non deployment.

3 A. Okay.

4 Q. What's SIR warning lamp status mean?

5 A. That's the General Motors terminology for
6 the supplemental restraint system.

7 Q. Do you know what SIR means?

8 A. To give you the exact meaning of their
9 terminology, no, but that's their terminology for the
10 black box.

11 Q. But you're saying that that has to do with
12 the restraint system?

13 A. Which is what we're reading in this case.
14 We're reading the air bag computer to see whether it
15 would have deployed the air bag or not.

16 Q. That's what SIR warning lamp status means?

17 A. Yes, that warning lamp that comes on in
18 your car when you start the vehicle and it says air
19 bag.

20 Q. So when it says off and -- let's look at
21 from my limited knowledge of this data. This is a
22 snapshot of what was happening a few milliseconds
23 after impact; is that correct?

24 A. No.

25 Q. Tell me what we're looking at, this data

1 here.

2 A. I think you're on page three of five
3 instead of two. Well, no. You're right, two of
4 five. I'm on the wrong page, okay. SIR warning
5 status means at the time this is going on. And we're
6 talking of five seconds before impact through 80
7 milliseconds after crash, which is .08 seconds after
8 the impact.

9 Q. So this box is registering material all the
10 time. It's not recording it like an aircraft, but
11 it's registering material. And if need be at the
12 point of some type of crash or some type of I guess
13 trauma to the vehicle, it will take a snapshot. Is
14 that true?

15 A. Yes. What happens is that there's a
16 monitor in the -- the black box is monitoring it.
17 And when they feel a deceleration in excess of a
18 certain amount, and I can't tell you off the top of
19 my head what that is, but it's less than required to
20 deploy the air bag, the computer wakes up and starts
21 to record the information. That's what we got on
22 here. And it will take the last five seconds before
23 that point. So at times zero on this, which you
24 don't see on the chart below on page two -- but at
25 times zero is the point when the pedestrians were

1 struck. And it will record the five seconds before
2 that because the computer woke up. And then it goes
3 through the next 80 milliseconds and determines that
4 the deceleration isn't sufficient enough to need to
5 deploy the air bag. At that point it shuts off the
6 recording.

7 Q. All right. Looking at that diagram where
8 you said zero and going horizontally up that side, it
9 goes up in increments of 10, 20, 30, 40, 50?

10 A. That's not the zero I was referring to.
11 Zero would be to the right of where you see minus one
12 in the lower right hand corner. Minus one is a
13 second before impact.

14 Q. I'm on page two of five.

15 A. Yes. We're looking at the same diagram. I
16 don't know why these diagrams never do it, but they
17 never seem to put zero in it. Because if you look at
18 the diagram, I'm sorry, the diagram on page -- no
19 wonder. I got two page twos in here. On page three
20 of five, you look at that diagram.

21 Q. Okay. Now we're on the same page
22 literally.

23 A. You got two diagrams. We got two pages to
24 be looking at here. That is the 80 milliseconds
25 after the event that woke up the computer.

1 Q. I understand. I see that.

2 A. And you go back to the diagram on page two
3 of five. That's the five seconds before the event
4 that woke up the computer.

5 Q. I understand. I see that now. When it
6 says brake switch circuit status 100 equals 0, what
7 does that mean?

8 A. That means that you got either an on or off
9 indication. If it's at zero, the brake switch is
10 not -- this would be the same switch that when you
11 stood behind the car and when you step on the brakes
12 your brakelights come on. It's that same switch that
13 they're talking about. And if it's in the on
14 position, that line that you see with those diagrams
15 would be at the top of the page, running across the
16 top of the page at the 100% mark. If it's bottom,
17 which is in this case, means that the brakes were
18 never applied during those five seconds.

19 Q. Got you. I understand. Looking at the
20 vehicle speed in miles per hour on that same diagram
21 it looks like it's around 48 or 47, 48?

22 A. If you look at the bottom chart at the
23 bottom, it gives you the exact number that it was
24 measuring.

25 Q. Right. On during each of seconds --

1 A. At each point on the seconds. You look at
2 the top of the chart minus five seconds. It was 47
3 with an engine RPM of 1408 RPMs, which is 15%
4 throttle, and the brake switch was off.

5 Q. So the five seconds preceding everything is
6 still constant in the system of this vehicle?

7 A. Yes.

8 Q. Now do we see a velocity change at the
9 point of impact?

10 A. Very minimal, yes. Got a deceleration
11 velocity change. At 20 milliseconds after the event
12 I see a 1.3. It's feet per second change because
13 they say velocity change. Then we have a 1.78, 1.78,
14 1.78.

15 Q. I think that's a six.

16 A. 76, okay. Mine's a little blurry. But
17 anyway it's basically talking at most two miles an
18 hour change in velocity over that 80 milliseconds.

19 Q. Let me ask you a question then. From your
20 training and experience a vehicle traveling 47 miles
21 an hour that hits two pedestrians causing the frontal
22 structural damage that you observed, that vehicle
23 then going off the roadway completely into a dirt
24 and/or grass road for about one city block, it's
25 possible to maintain the exact same speed?

1 A. You're misinterpreting the data.

2 Q. Okay.

3 A. If we go back to -- let's go back to the
4 diagram on page 26. Everything that you see on the
5 diagram on page two occurred prior to the point
6 that's marked A on page 26.

7 Q. I understand.

8 A. And after A you got 80 milliseconds, which
9 is .08 of a second, which in all likelihood brings it
10 to the vicinity of where point B is at six feet in
11 regard to -- 7.5 feet per second. We're in the
12 vicinity of where the point B is when this thing quit
13 recording.

14 Q. So you're showing that a slight velocity
15 change, but it's only recording a very small fraction
16 of time?

17 A. Yes. And it would get the vehicle -- if we
18 take the point A and B as gospel for the sake of this
19 answer, from the time it takes to go from A to B on
20 that diagram is about what you're recording on that
21 page three.

22 Q. I understand. Therefore there's nothing in
23 the CDR report that would indicate that the final
24 mile that this vehicle traveled to get to Grand and
25 54, which is our scene B -- there's nothing in this

1 report that gives any type of data with regard to the
2 operation of this vehicle; is that true?

3 A. Yes.

4 Q. So only thing that crash data report is
5 telling us, a snapshot of what happened just shortly
6 before impact and very shortly after?

7 A. I would agree.

8 Q. After a crash when the vehicle notices a
9 rapid deceleration and the box turns on as you say,
10 does it reset itself for the next deceleration?

11 A. I'm trying to think of a way to describe
12 this because you're not sitting in front of me. If
13 we were to take a piece of paper and roll it into a
14 tube so that you could look down the tube like a
15 scope, like a spy telescope, the data, the memory in
16 this computer, is built something similar to that
17 piece of paper that you got rolled. And it will
18 write on that piece of paper from the top of the
19 paper down for each event that it records.

20 And it just keeps going around that
21 piece of paper. So when it gets to the end it starts
22 writing over again. That's why we have to read these
23 non deploy events, which is what we have here -- we
24 have to read them within, off the top of my head, 250
25 ignition cycles or they're lost. In other words the

1 new data will begin to write over the old on a non
2 deploy event. If there's a deploy event where the
3 air bags are deployed, then the memory in the air bag
4 computer are frozen in time. And they have to be
5 replaced, but we can still read the memory, but
6 they're no longer useable beyond that point.

7 Q. So let me ask you this then. In a non
8 deployment event where we retrieve data such as this
9 case and the machine turns on based on I guess the
10 impact in this case -- is that right? The machine
11 turns on on a rapid --

12 A. No.

13 Q. Why did you say the machine turns on?

14 A. It senses in the sensors that are in it --
15 there's a sensor in the part of the vehicle that
16 holds the radiator in place. And when that sensor,
17 accelerometer, senses that there's a deceleration --
18 I'm just going to use some numbers to make it
19 clearer. If we have a .7 g as required for
20 deployment, when this gets to somewhere in the
21 vicinity of a .25 g the computer will wake up and
22 start recording the data. And it will always record
23 five seconds before through the point where it was
24 told to wake up. And it will continue to monitor it.
25 But if that deceleration does not go up to the area

1 of the .7 after a given time, and in this case it
2 looks like 80 milliseconds, the computer says false
3 alarm and shuts down the recording device. But it
4 still continues to monitor it, which means if he were
5 then to run into a telephone pole a second later, we
6 would have two. We'd have a non deploy event and a
7 deploy event on the same computer.

8 Q. Assuming that the air bag deployed?

9 A. I'm just using that as an example, yes.

10 Q. So let me ask you this. Based on that
11 answer if the vehicle were to let's say hit two other
12 people, would it begin to record again five seconds
13 before and the 80 milliseconds after?

14 A. Yes.

15 Q. What would happen to the original data from
16 the first victims?

17 A. Depending on how the data was written you
18 might be able to show how they were connected
19 together, because it will -- it records the data on
20 that circular data base. It would not have been
21 written over the other data. So you'd have two sets
22 of non deploy data, which is all it will record. If
23 you get a third one, the first one's going to
24 disappear.

25 Q. So you can get at least two but not three?

1 A. That's my understanding. I've never tried
2 it.

3 Q. And that's for non deploy events?

4 A. Yes. Now you've peaked my interest. I'm
5 going to go out with my wife's car and stomp on the
6 brakes three times and see if I can record three of
7 them.

8 Q. Okay. All right. I'd be interested in
9 that answer. Let's go back to page two of five of
10 the CDR report, ignition cycles at non deployment,
11 ignition cycles at investigation. You see that
12 number, the first one 12,299 and investigation at
13 12,306?

14 A. Yes.

15 Q. Just about seven ignition cycles from the
16 time of impact to the time this data was retrieved?

17 A. That's correct.

18 Q. Any opinion is to why that is? I heard
19 several so far.

20 A. Well, if Mr. Stephen turned off the
21 vehicle -- and let's take the events as shown on B as
22 gospel for the sake of my answer -- stopped at the
23 traffic control box, turned off the vehicle, got out
24 and then got back in and turned it on and then drove
25 up to the point K when his vehicle died, if he

1 attempted to start it three or four times, that would
2 account for many of them. Wrecker drivers sometimes
3 will turn the key. Why they do this, I don't know.
4 Will sometimes turn the key on and off to see if they
5 have any electrical system. I guess they're trying
6 to figure out whether they need to have lights on the
7 back of it when they tow it. I do not believe the
8 highway patrol turned the ignition on and off until
9 they had the box connected to it to read the air bag
10 computer, though they may have turned it on to record
11 the mileage, because I don't know what kind of a
12 dashboard it has. But if it's got a digital
13 speedometer, you have to turn it on to get the
14 mileage of the vehicle.

15 Q. What makes you think the highway patrol
16 didn't do that?

17 A. It's been my experience in dealing with the
18 highway patrol now that we have the ability to read
19 the air bag computers that they're somewhat cognizant
20 of the need to preserve what's on them. And
21 sometimes if you turn the ignition on with power
22 involved, you short the vehicle out. You could set
23 it on fire.

24 Q. Are you familiar with the GM product, the
25 2001 Chevy Silverado truck?

1 A. About as familiar as anything else. I mean
2 be more specific in your question I guess I'm saying.

3 Q. Do you know about the schematic diagrams
4 and the engine systems and operations systems, the
5 electrical systems?

6 A. Yes.

7 Q. You're familiar with them?

8 A. I'm not intimately familiar with them no,
9 but I'm familiar enough with them to tell you to go
10 on with your question yet.

11 (An off-the-record discussion was had.)

12 Q. With regard to the 2001 Chevy Silverado did
13 you pull any type of schematics for this particular
14 vehicle?

15 A. No.

16 Q. Is that something you customarily do?

17 A. Not really, no, unless there gets to be an
18 issue of whether the lights were on or off and
19 looking at, you know -- unless there's some kind of
20 an issue with it. And I have not seen one on this.
21 I haven't pulled it.

22 Q. All right.. I'm almost done. I just wanted
23 to briefly go back to your conversation regarding the
24 photographs, actually had them brought to me, and the
25 issue about the human tissue or something that you

1 see. I have the undercarriage view of photograph 200
2 in front of me.

3 A. Actually it would be 201, would be a better
4 one.

5 Q. Okay. I'm looking at some type of -- looks
6 like two pieces of metal that are protruding from a
7 broader base piece of metal.

8 A. The broader base piece of metal is the
9 frame of the vehicle.

10 Q. Okay.

11 A. The half circle you see in the upper part
12 of the photograph is where the body of the vehicle --
13 that's a rubber doughnut that's a shock absorbing
14 attachment so the body -- you don't feel the road as
15 much in the vehicles today as you used to. That's
16 where the body is mounted to the frame of the
17 vehicle. And if you look at that bracket that's on
18 the right hand side, it's bent to the left a little
19 bit. And if you go up roughly halfway, you see a
20 little piece of material that's moving back to the
21 right, I'm sorry, to the left. And that's the
22 material I'm talking about.

23 Q. I'm looking exactly. Looks like a little
24 fish gill or something.

25 A. That's what I'm talking about, yes. And if

1 you look in 200, you can see it from the other angle.
2 But it's not as prominent in 200 as it is in 201.

3 Q. And in 200 it looks like it extends the
4 exact length, a longer length going up that circular
5 position, and probably up where the doughnut is, and
6 it comes down pretty much halfway. Do you see that?

7 A. I see what you're talking about. I
8 wouldn't necessarily agree that there's a connection
9 between the two, but I see the upper part up there.

10 Q. Are you saying that top material near the
11 doughnut is different from the material along that
12 same edge surface at the bottom?

13 A. Based on what I see in 201, yes. Because
14 if you look in 201, it doesn't continue up beyond.
15 It's only a short piece in 201 in the photograph. I
16 was going to give you a measurement but we might have
17 them printed differently.

18 Q. I'm looking at the actual CD on a computer
19 right now.

20 A. What I'm getting to if you have it blown up
21 into the equivalent of an 11 by 12 and I'm looking 5
22 by 8, if I tell you it's an inch long, it doesn't
23 make sense. That's what I'm getting at. I wasn't
24 going to give you a real life measurement. I was
25 going to give you a measurement on a photograph. But

1 we can't do that.

2 Q. Okay. Well, just from our eye I'm looking
3 at that doughnut, and that doughnut that's on there,
4 what size you think that doughnut is -- about an inch
5 or two?

6 A. Two and a half to three inches in diameter.

7 Q. And are you saying that that material that
8 you see there at the top where the nut is is not a
9 continuous line with the material that's coming all
10 the way down?

11 A. No, because if you look at 201, you can
12 tell that it's not. Because in 201 you're looking at
13 the very bottom part that you're seeing in 200. And
14 you can see that there's just a short piece in there,
15 I don't know, maybe a quarter to half an inch in
16 length.

17 Q. Okay. Well, I'm very zoomed in. And it
18 looks like, first of all, there's a lot of dirt. And
19 it looks like a piece of metal. It's like rusted.
20 And then I see that little fish gill part to the
21 left, but you can't see based on the angle of the
22 photograph what's on the other side of that bent
23 piece of metal. Would you agree with that?

24 A. Yes, I would.

25 Q. And you're saying that that material that's

1 hanging off the side is human tissue?

2 A. In my opinion it probably is, yes.

3 Q. And you don't have any type of medical
4 training or anything like that to be able to make
5 that assessment?

6 A. Other than my 27 years of doing the
7 forensic engineering, no.

8 Q. And there were no other independent tests
9 done on that material either?

10 A. I agree.

11 Q. So based on your -- I mean do you have an
12 opinion, a general summarized opinion that you're
13 prepared to testify to with regard to your
14 investigation of this case?

15 A. General overall opinion would be it would
16 be my opinion that the vehicle driven by Shannon
17 Stephen was -- left the roadway, impacted the
18 witnesses on the west side of the vehicle, drug at
19 least one, if not both of them, down to the point H,
20 which would be approximately 130 feet south, before
21 the first pedestrian left the vehicle, and then
22 another 70 feet -- I'm sorry, another 30 feet south
23 where the second -- the first pedestrian came loose
24 from the vehicle from underneath. And the vehicle
25 then drove off after that approximately a mile from

1 the first impact where the engine seized. But the
2 driving from the final rest of the pedestrians to the
3 final rest of the vehicle was not at 47 miles an
4 hour.

5 Q. How certain are you about that opinion that
6 you just gave?

7 A. Within a reasonable degree of engineering
8 certainty I'm certain, yes.

9 Q. Part of that opinion included that the
10 vehicle driven by Shannon Stephen. What evidence did
11 you have that Shannon Stephen was driving this
12 vehicle?

13 A. Other than what's in the homicide report
14 that's it.

15 Q. Are you aware that no witness identified
16 Shannon Stephen as the driver of this vehicle at the
17 point of impact?

18 A. No, I wasn't.

19 Q. Would that change your opinion that you
20 just gave me that you were pretty certain about, as
21 to Shannon Stephen, not the rest?

22 A. I would -- given what you're saying at this
23 point I would leave the name of the driver off, but
24 everything else would stay the same.

25 MR. FOOTE: I have no further questions,

1 sir.

2 MR. JENSEN: No questions from the state.

3 A. I do not waive.

4 (The deposition was concluded at 4:50

5 p.m.)

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CERTIFICATE OF OATH

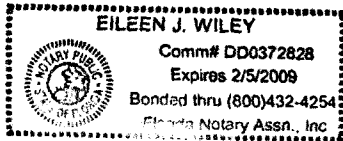
STATE OF FLORIDA)
 : SS
COUNTY OF ALACHUA)

I, the undersigned authority, certify that

JOHN MURDOCH personally appeared before me and

was duly sworn on June 3, 2008.

WITNESS my official seal this 10th day of
June, 2008.



Eileen J. Wiley

EILEEN J. WILEY

Florida Professional Reporter

Notary Public - State of Florida

My Commission No. DD 0372828

My Commission expires:

February 5, 2009

E R R A T A S H E E T

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IN RE: State v. Stephen
Deposition taken on June 3, 2008
Case No. 06-001591CFAWS

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Under penalties of perjury, I declare that I have read my deposition and that it is true and correct subject to any changes in form or substance entered herein.

(Date)

John Murdock

cc:

Ken Foote
Chris Jensen