

**DRILL KEY - LESSON 56**

**WEDNESDAY, JANUARY 6, 1999**

(Whereupon, the following partial proceedings were had and entered of record.)

MS. BERSAM: Thank you, Your Honor. At this time the State calls Highway Patrol Officer Scott Hoff to the stand.

Thereupon,

**SCOTT HOFF**

a witness of lawful age, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified upon his oath as follows:

**DIRECT EXAMINATION**

**BY MS. BERSAM**

Q Could you state your name for the record?

A Scott Hoff.

Q And what is your occupation?

A I'm a patrol officer for the Highway Patrol.

Q And how long have you been with the Highway Patrol?

A Just under four years.

Q And what do your duties consist of as a Highway Patrolman?

A Accident investigation, traffic enforcement.

Q Okay. And what type of training have you received to carry out these duties? A  
14 weeks of academy training that we go through and then updated training at least annually.

Q Okay. Now, does that training include accident investigation?

A Yes. Two full weeks of accident investigation.

Q Okay. Were you working on December 8th of 1994?

A I was.

Q Okay. And what shift were you working that day?

A That day would have been a 7 a.m. to 4 p.m. Shift.

Q Okay. And did -- did -- at some point in that day did you encounter the Defendant?

A I did.

Q And how did that come about?

A I was called to a two-vehicle injury accident that was -- that had occurred on Highway

10.

Q Okay. And do you recall what time of day that was?

A That was -- I was notified of the accident at 8:53 in the morning. Q

Okay. And what did you do when you first arrived at the scene?

A Well, the first thing I do at a scene is I secure the scene, make sure that -- that we aren't going to have traffic that's crashing into a crash, that type of thing.

Q Okay. So after you secured the scene, did you start some type of investigation or --  
A Yes. That's what I'll do from that point is I'll generally walk through the scene myself to get an idea in my mind as to what may have occurred. And then, in this case we had an injury, so --

MR. WEBER: Objection, Your Honor.

THE COURT: What grounds?

MR. WEBER: May I approach the bench?

THE COURT: You may.

(Whereupon, a discussion was held at the bench off the record out of the hearing of the jury.)

Q (BY MS. BERSAM) I believe the question I asked you was how did you begin your investigation?

A Well, in this particular accident there were injuries and medical personnel was already on scene when I arrived. I'll usually try to -- to look at the injuries, um, just real quickly, to try and assess in my mind how severe the injuries may be or could be, what they may have come from, that type of thing. The mechanism of injury is what I'm looking for.

Q Okay. And after you do that, what do you do next?

A Well, from there, if I have the parties involved with the accident, then I'll start asking questions about the accident and what happened.

Q Okay. Let me backtrack. You said that you walked around the scene?

A Yes.

Q Okay. Did you notice -- what did you notice about the scene? Could you describe the scene for us?

A Well, what we had was -- was a Ryder panel van, that it was -- it was actually facing south -- facing south just off of the -- off of Highway 10 into a private drive.

Q Excuse me. I'm sorry to interrupt.

MS. BERSAM: Your Honor, with your permission, I would ask that Officer Hoff be allowed to use the chalkboard to illustrate his testimony.

THE COURT: Any objection?

MR. WEBER: No, Your Honor.

THE COURT: Very well. If you can't see, ladies and gentlemen, why, just raise your hand.

THE WITNESS: Okay. This -- this is Highway 10. I will -- well, this is a double yellow. What I -- well, actually, this is actually westbound here, so north is going to be down this way (indicating).

And what I had when I arrived was a large red -- or yellow Ryder van. It was about that position (indicating), like this. And when I arrived, the other vehicle -- okay. This was on just a bit of an angle here. Okay. And then the other vehicle was in -- its final position was approximately this angle (indicating). And it's a smaller passenger car, a Subaru.

What I also had here was some skid marks going back this way (indicating). And when I

arrived, the -- the injured party was actually sitting here being treated by medical personnel. And the driver of the Ryder truck was still up at his truck.

Q (BY MS. BERSAM) Thanks. Okay. You mentioned that the next step you would take is to talk to the parties involved.

A That's correct.

Q Did you get a chance to talk with the Defendant?

A I did.

Q Okay. And what did you find out from the Defendant?

A Well, I asked for general information to begin with, like license and registration, proof of insurance, and then -- then I said, what happened.

Q Okay. What was his response?

A He told me, I just didn't see him.

Q Did he say anything else?

A No. At that point I pretty well seen what the wreck was and I don't -- it kind of concluded in my mind that would probably be the case in the end.

Q What was the Defendant's physical condition when you were speaking with him that you -- how did you perceive him?

A Um, normal, as near as I could tell.

Q I guess, did he seem injured as a result of the collision?

A Oh, no, no. And I asked if there were any injuries on his part --

Q Okay.

A -- and there were not.

Q What were the road conditions like that day?

A Bare and dry.

Q Okay. At some point in your investigation did you try to determine how fast Mr. Beyes was traveling at the time of the accident?

A I did, yes.

Q Okay. And did you come up with an opinion or a conclusion in that regard? A Yes. The skid marks that were left behind were a hundred and fifty-six feet long. And just the skid marks alone put his speed at 57.94 miles per hour. To that you would have to add the damage where the impact is made, and we -- in my experience it looked to be about a ten-mile-an-hour impact. And so at that point I figured his speed, 60 to 65 is what I come up with.

Q So you estimated that Tim Beyes was traveling 60 to 65 miles per hour?

A That's correct.

Q And what's the speed limit in that area?

A 55 miles per hour.

Q And you did not cite Mr. Beyes for speeding; is that correct?

A No, I did not.

Q Why is that?

A First of all, by our policy we don't cite for up to five miles per hour deviation in the speed.

And with what I had, we were guesstimating the -- the damage on the car, there probably wasn't enough for me to win in court if I were to cite for that anyhow.

And besides that, in my normal traffic patrol, I'll just barely start looking at speeds myself when they're ten miles an hour or over, in a higher speed zone like 55. Q Okay. At some point you were able to identify the driver of the Ryder truck?

A I was, yes.

Q Is that person in this courtroom today?

A Yes, he is.

Q Can you point him out to us?

A In the blue shirt right there (indicating).

Q You talked about skid marks and your estimated speed of Mr. Beyes. Do you have an estimation how far away Mr. Beyes was from the point of impact when he started -- when he first hit his brakes?

A It's a hundred and fifty-six feet.

Q A hundred and fifty -six feet?

A Yes.

Q Okay. And based on your observations and your training and experience, do you have an opinion whether or not Mr. Beyes' vehicle was so close to the intersection that it constituted an immediate hazard to someone who would be turning left at that intersection?

A There was really no question in my mind that that was the case, yeah.

Q Okay. And you subsequently issued a citation to the Defendant in this case; is that correct?

A I did.

Q And what did you issue that for?

A Failure to yield right-of-way to hazardous traffic when making a left-hand turn.

MS. BERSAM: I have no further questions at this time, Your Honor.

THE COURT: Cross-examination.

### **CROSS-EXAMINATION**

#### **BY MR. WEBER**

Q Officer Hoff, you said you've been with the force for about four years?

A Just under four years.

Q And you are trained by the academy in accident investigation?

A I am.

Q When you investigate an accident, do you fill out a report?

A I do.

MR. WEBER: May I approach the witness?

THE COURT: You may.

Q (BY MR. WEBER) I'm handing you a sheet of paper, which is marked as Defense Exhibit A. Can you tell me what that is?

A That's a State report for this particular accident.

Q And that's the report that you filled out?

A Yes, it is.

Q Okay. I have another copy of that if you need this.

A I've got one right here.

MR. WEBER: I would like to offer this report into evidence.

THE COURT: Any objection?

MS. BERSAM: Could I take a look at it real quick, Your Honor?

THE COURT: Surely.

MS. BERSAM: No objection, Your Honor.

THE COURT: It will be received without objection.

## EXHIBITS

(Defendant's Exhibit A received into evidence.)

Q (BY MR. WEBER) When you fill out a report, Officer Hoff, you would include all relevant information on the report?

A Yes, sir.

Q That's what you're trained to do?

A (Nods head.)

Q And on this report you included a small sketch of the accident?

A That's true.

Q Can I ask you for a minute to compare that sketch -- I want to clarify what you drew over here. Where on this drawing is the white fog line on the road?

A It -- well, generally your fog lines are about 18 inches out from the edge, so it would be more towards the center of the road, I guess, slightly off of where my line --

Q Would you get up here and be able to draw the approximate position?

A Sure. Um, okay. (Witness complies.) Like that.

Q Thank you. Now, you said when you got to the scene you got out and you walked around the scene and measured the skid marks?

A Well, when I got to the scene, I walked through the scene; I measured the skid marks later. But, yes.

Q And you used those skid marks to determine the speed of Tim Beyes' vehicle?

A I did.

Q Now, the length of the skid marks is relevant information in an automobile accident like this, isn't it?

A It is.

Q Is the length of the skid marks indicated anywhere on this report?

A No, but then again, you've got to understand the 1599 is a State report form that the insurance agencies use, and it's for documenting statistical information for the State. There's -- there's several things about this report from the State that would not be included on here.

Q Okay. Did you file any other reports?

A No. This is the only report form that's necessary with the State. I have my own notes.

Q Now, you said that by your assessment Tim Beyes -- you said he was going 57.94 miles per hour?

A Prior to impact, yes.

Q And I wasn't sure what you meant by there was a ten-mile-an-hour impact. Does that mean he was still going 10 miles an hour when he impacted?

A Yes. Roughly ten miles an hour worth of -- how can I say it -- damage on the vehicle, crushing damage. We can estimate speeds off of that crushing damage on the car, and in this case it's roughly ten miles an hour.

Q So the skid marks extended all the way from the beginning all the way to the point of impact?

A That's correct.

Q So if it's a ten-mile-an-hour impact, would that be added onto the speed that he was driving?

A Yes, it would.

Q So by your estimation then his speed would have been 67 miles per hour?

A That's correct.

Q 67.94.

When you approached the scene of the accident, you approached from the Mossimos side?

A That's correct.

Q Could you see the Ryder truck up ahead of you as you approached?

A I could.

Q Do you have any estimate of the distance between the private driveway he pulled into and the railroad underpass?

A It's about a thousand feet.

Q Did you talk to Mr. Beyes at the scene?

A Just enough to get some -- to make sure that he was a registered owner of the car so I could check driver's license and that kind of thing. Um, other than that, no. It was very limited.

Q Did you ever talk to him again after the accident?

A Yes. Actually we've talked several times since the accident.

Q When you were investigating the accident, did you have Mr. Cox sit in your car at any point?

A Yes, I did.

Q Did you -- did you make any statements to him concerning Mr. Beyes and his speed?

A I don't remember if I made any statements to him or not. I might have. Mr. Beyes himself said that his speed was 60 to 65 miles an hour.

Q You didn't see the impact, though?

A No, I did not.

Q So you don't really know what the position of the cars were before Sean started his left-hand turn?

A I can't say I do, no.

Q And your evaluation as to whether it was an immediate hazard or not is based upon your observation of the skid marks?

A That's correct. And reaction time and friction that's on the road surface. There's several things we look at. But, yes, I estimated that he had about three seconds' time before impact to actually go through reaction time, hit the brakes, and then hit the person turning in front of him.

Q Did you notice whether Mr. Beyes had anything in his hand when you first came to the scene of the accident?

A It seems like he did, but I honestly don't have any recollection of what it was.

Q Do you recall whether he was holding a coffee cup?

A No. I honestly don't remember what he had in his hand. It seems to me like it was gauze or something for the -- for the blood, but I'm not sure. I'm not sure.

Q You said on this -- on your accident report, this driveway was the private driveway going into John's Trucking?

A That's correct.

MR. WEBER: Okay. I have no further questions, Your Honor.

THE COURT: Redirect.

MS. BERSAM: Briefly, Your Honor.

### **REDIRECT EXAMINATION**

#### **BY MS. BERSAM**

Q Had you been to that scene before, Officer Hoff?

A Have I been to that scene before?

Q Yeah. Presuming you were in the position the Ryder truck was, before you take a left-hand turn at the intersection, how was the view westward?

A The Ryder truck would have had a view clear up to the Wye. I mean that road is --

Q How far away would you estimate that is?

A Jeez, almost over a half mile, I'd say.

Q Okay. And you said the weather that day was clear?

A Yes. Well, there was no adverse conditions. I believe it might have been overcast, but otherwise it was clear.

Q Okay. And --

A Just to reiterate, there is a partial blockage. If you folks know, that railroad overpass is right there --

MR. WEBER: Objection, Your Honor. There's no question before the witness. THE COURT: Well, it's overruled at this point. He's still responding to the question.

MS. BERSAM: Go ahead.

THE COURT: You may answer, Officer.

A There's the overpass right there. It's on Highway 10 out towards the Wye. And so there would be an obstruction if you're sitting there at John's, waiting to turn in. There's like a line that goes through Highway 10, so there would be an obstruction for maybe 50 feet at that distance way up the road because of that overcross -- that overpass. But that's the only obstruction there is.

MS. BERSAM: Okay. I have nothing further, Your Honor.

THE COURT: Recross examination.

MR. WEBER: Your Honor, may we have a recess at this point in time?

THE COURT: Surely.

(Whereupon, the hearing was in recess and subsequently reconvened and the following proceedings were had in the presence of the jurors and was entered of record.)

MS. BERSAM: Your Honor, may I approach the bench?

THE COURT: You may.

Let the record reflect that the jurors are all present.

(Whereupon, a discussion was held at the bench off the record out of the hearing of the jury.)

THE COURT: Do you wish to recall your witness, Ms. Bersam? As I recall, we were on recross.

MS. BERSAM: That's correct, Your Honor.

THE COURT: Officer, for the record, sir, you're still under oath.

MS. BERSAM: Your Honor, may we approach one more time briefly?

THE COURT: Surely.

(Whereupon, a discussion was held at the bench off the record out of the hearing of the jury.)

MR. WEBER: Your Honor, we have a stipulation with regard to Defense Exhibits B and C.

THE COURT: And those are, Counsel?

MR. WEBER: Those are photographs.

THE COURT: Will Counsel stipulate that they may be received by the Court?

MS. BERSAM: Yes, Your Honor.

THE COURT: B and C will be received on stipulation of counsel.

#### EXHIBITS

(Defendant's Exhibits B and C received into evidence.)

MR. WEBER: Thank you, Your Honor.

#### **RECROSS-EXAMINATION**

#### **BY MR. WEBER**

Q Officer Hoff, as we left you were briefly describing the scene and the geography of the accident itself.

MR. WEBER: May I approach the witness, Your Honor?

THE COURT: You may.

Q (BY MR. WEBER) I would like to let the record reflect that I am showing the Defendant -- or the witness -- this doesn't really move very well.

THE WITNESS: It's behind there.

MR. TIPPEN: Scott, please stand.

THE WITNESS: Sure.

Q (BY MR. WEBER) Officer Hoff, is this an aerial photograph of the area in which that accident occurred? Do you recognize this railroad crossing here?

A Okay. Yes, I do.

Q And the driveway entering into John's Construction -- or John's Trucking right here?

A I assume that's it.

Q Does it appear to be Highway 10 where the incident occurred?

A It does, yes.

Q You were describing that the incident occurred right at this driveway as it came in?

A That's correct.

Q At this point, I would like the record to reflect that I'm showing the witness Defense Exhibit C, which is a photograph.

Officer Hoff, does this appear to be a view of the scene approximately where the incident occurred, looking east down Highway 10?

A I would have to say west down highway --

Q Or west, I'm sorry.

A Yes.

MR. WEBER: Your Honor, may I publish this photograph to the jury?

THE COURT: You may.

MR. WEBER: This is -- you can take that and pass it around.

Q (BY MR. WEBER) And as your testimony -- your testimony was that you believe that from this point on you had a clear view of the roadway down, you said, almost to the Wye?

A That's correct.

Q That appears to be the case from these photographs?

A That's correct.

MR. WEBER: At this point I would like to show the witness what is marked as Defendant's Exhibit D. We have it marked --

Q (BY MR. WEBER) This is another photograph. Does this appear to be a photograph of the scene of the accident from approximately the driveway of John's Trucking, looking west again down the road?

A It looks to me like it is, yes.

MR. WEBER: May I publish it?

THE COURT: It hasn't been offered.

MR. WEBER: May I publish this as an exhibit?

THE COURT: It hasn't been offered.

MR. TIPPEN: Are you offering it?

MR. WEBER: Yes, I'm offering it.

THE COURT: It hasn't been received.

MS. BERSAM: No objection, Your Honor.

THE COURT: It will be received.

MR. WEBER: May I publish this to the jury?

THE COURT: You may.

## EXHIBITS

(Defendant's Exhibit D received into evidence.)

MR. TIPPEN: Your Honor, if we could, this might speed it up if you would allow me to lay foundation, if Ms. Bersam has no objection, on these photographs.

THE COURT: Any objection?

MS. BERSAM: No objection.

THE COURT: Very well, foundation only.

## VOIR DIRE EXAMINATION

**BY MR. TIPPEN:**

Q Good morning, Officer. We've met before, I believe. I'm going to hand you now what's been marked as Defense Exhibits E and F. First of all, just look at those photographs if you would.

Do they appear, after looking at them, to be photographs of the area where this incident occurred?

A Yes, these are facing back eastbound.

Q Taking a look at those photographs -- and you're familiar with the area that we're talking about?

A I am.

Q Do those photographs appear to depict a view from the railroad trestle, which is west of the point of the accident, facing eastbound?

A I would have to say so.

Q Does that accurately depict approximately how it looked on the day of the incident, with the exception of the condition of the roadway as far as the snow and the like goes?

A I would have to agree, yes.

MR. TIPPEN: Your Honor, we would move for the admission of Defendant's E and F.

MS. BERSAM: No objection.

THE COURT: They will be received.

EXHIBITS

(Defendant's Exhibits E and F received into evidence.)

Q (BY MR. TIPPEN) Officer Hoff, you testified earlier about a yellow Ryder truck that Mr. Cox was driving?

A Yes.

Q And was that a standard type Ryder truck you would rent from the Ryder truck company?

A I assume so. It had Ryder on the side of it, yes.

Q You've seen these trucks driving about town and the like?

A Yes.

Q They're big yellow trucks, aren't they?

A Yes.

Q I hand you what's been marked as Defendant's Exhibit G. Does that photograph fairly and accurately depict the color of the vehicle and the type of vehicle that Mr. Cox was driving when this incident occurred?

A Yes, it does.

MR. TIPPEN: Your Honor, I would move admission of Defendant's G.

MS. BERSAM: No objection.

THE COURT: It will be received.

MR. TIPPEN: Move to publish, Your Honor.

THE COURT: You may.

EXHIBITS

(Defendant's Exhibit G received into evidence.)

MR. TIPPEN: Then if I could hand it over to Mr. Weber, Your Honor.

MR. WEBER: May I approach the witness again, Your Honor?

THE COURT: You may.

**RECROSS-EXAMINATION (Resumed)**

**BY MR. WEBER**

Q Officer Hoff, when you investigated the scene of this accident, you indicated that the skid marks from Tim Beyes' vehicle started down a hundred and fifty-six feet from this driveway; is that correct?

A Well, from the point of impact, it would be actually on the east side of the driveway.

Q Right. The point of impact was right on the east side of the driveway?

A That's correct.

Q So in your experience and in investigating, you know that at least a hundred and fifty-six feet before the vehicle, Mr. Beyes saw the Ryder truck and applied his brakes?

A That's correct.

Q And you said that you figured it took him about three seconds to react?

A No, I didn't say three seconds to react. It takes about three-quarters of one second to react. The total of the distance, traveling at 60 to 65 miles per hour, you're traveling at 99 feet per second.

So overall, from the time that he perceives the problem, applies the brakes, skidding and crashing, we're looking, at the maximum, three seconds.

Q That was my mistake. Your investigation doesn't tell you whether Mr. Beyes saw that vehicle at any point before the skid marks occurred, though, does it?

A No, it does not.

Q So you don't know whether Mr. Beyes was able to see that or notice that Ryder truck when he was down here by the railroad trestle?

A Mr. Beyes did tell me that he saw the Ryder truck waiting to make a left-hand turn, and all at once the truck made the turn.

Q Do you know at what point along that road Mr. Beyes was when he saw that truck?

A No, I do not.

Q You can go ahead and sit down.

A (Witness complies.)

Q I have in my hand a copy of these notes of your investigation which you provided. When you take these notes of an accident, you make these right when the accident occurs or shortly thereafter?

A That's correct.

Q Within a few hours or a day after the accident?

A These notes -- the notes that you're referring to are taken at the scene.

Q Okay. And so the important facts that you discover about the accident would appear either on that accident report or on these notes?

A For the most part, yes.

Q Is there any markings or any indication on these notes of any statements made by any of the parties?

A No, there are not.

Q So when you are testifying to statements that Mr. Cox made, you're relying on your memory? A That's true.

Q And you've investigated probably quite a few accidents since a year ago, haven't you?

A That's true.

Q When you come to court to testify like this, you use these notes to refresh your memory, don't you?

A Generally speaking, yes.

Q And that's because it's hard to keep straight the facts of a hundred different accidents that you've investigated?

A It can be.

Q And you were trained at the academy to at least write down the things that you thought were very important at the scene?

A I was trained at the academy how to fill out a 1599.

Q Which is the other report that we had?

A That's the State report that we were talking about earlier.

Q And so is it just the policy of the Highway Patrol to fill out these forms?

A There's no policy from the Highway Patrol on filling out those forms. Those forms -- you can fill these out by hand, or they can be computer-generated like this one. And I prefer to do a computer-generated. Some officers fill them out right at the scene.

MR. WEBER: I have no further questions.

THE COURT: Now, pursuant to stipulation, do you have any objection if the State reopens its direct?

MR. TIPPEN: As to the photographs, no, Your Honor.

THE COURT: Very well.

### **DIRECT EXAMINATION (Reopened)**

#### **BY MS. BERSAM**

Q Officer Hoff, looking at this photo right here, can you estimate for us roughly -- and I know it's tough -- but can you estimate and point out on here where you believe the skid marks may have began?

A Yeah, that is kind of difficult.

Q I know it's just an estimate.

A I would have to say right in here (indicating).

Q Okay.

A But I'm not sure.

Q So based on your experience and your training and your observations and your investigation of this scene, do you have any doubt whatsoever that when the Ryder truck was turning left into John's Trucking that Mr. Beyes' vehicle was so close to the intersection as to constitute an immediate hazard?

MR. WEBER: Objection, that's an improper opinion.

THE COURT: You'll have to rephrase it, Counsel. Sustained.

Q (BY MS. BERSAM) Officer Hoff, based upon your experience, training, and observations and your investigation, do you have an opinion as to whether Mr. Beyes' vehicle was so close as to constitute an immediate hazard at that time?

A In my opinion, yes.

MR. WEBER: Objection, Your Honor, the witness --

MS. BERSAM: Your Honor, Rule 702 allows a layperson to give an opinion. THE

COURT: Well, it invades the province of the jury as far as the law, so it's sustained.

MS. BERSAM: I have nothing further, Your Honor.

THE COURT: Anything further of this witness?

MR. WEBER: No.

THE COURT: May the officer be excused?

MR. WEBER: Yes, Your Honor.

THE COURT: You're free to go, Officer.

THE WITNESS: Thank you, Your Honor.

\* \* \* \* \*

You are now ready to take the final exam, which will be a short notereading exercise, similar to this one. In the final exam you will be able to type the lines of text between the lines of steno, which makes it much easier. Please *do not delete the steno*. Just type between the lines.

Click on the link to download the file. You have an hour and a half to complete it which should be plenty of time. When you have finished the test, click on the link to upload your test to the website. (For some reason, these files don't always upload back to the site well, so keep a copy of this test on your computer in case you need to email it to me.) Good luck!