

1 QUESTION: Of which year.

2 ANSWER: Of that year.

3 QUESTION: 2010.

4 ANSWER: Correct.

5 QUESTION: Who gave you the keys to the car.

6 ANSWER: My father.

7 QUESTION: And when was that approximately.

8 ANSWER: When I received the car which was a few
9 days prior to the incident accident."

10 MR. SHKOLNIK: No further reading, your Honor.

11 THE COURT: Thank you.

12 Call your next witness.

13 MR. SHKOLNIK: We're going to be calling Mr.
14 Calabrese to the stand.

15 I'll get him.

16 C H R I S T O P H E R C A L A B R E S E,
17 a witness called on behalf of the Plaintiff, after being duly
18 sworn, took the witness stand and testified as follows:

19 THE CLERK: State your name for the record, spell
20 your first and last name and state your address.

21 THE WITNESS: Christopher C-H-R-I-S-T-O-P-H-E-R
22 Calabrese C-A-L-A-B-R-E-S-E, address is One Saw Mill River
23 Parkway, Hawthorne, New York.

24 DIRECT EXAMINATION

25 BY MR. SHKOLNIK:

1 Q Mr. Calabrese, tell the Court and jury what you
2 current occupation is if you would?

3 A I'm a police officer with the County of Westchester.
4 Been a law enforcement officer for 38 years and I'm currently at
5 the rank of inspector, I was just currently promoted from
6 captain to inspector.

7 Q How long have you been a police officer?

8 A 38 years.

9 Q During the 38 years that you've been a police officer
10 has it been up in Westchester County the whole time?

11 A Six years in the City of Peekskill and then
12 transferred to the County of Westchester for that remaining
13 time.

14 Q As part of your work as a police officer did that
15 include developing any expertise in the area of investigating
16 accidents?

17 A Yes, it did.

18 Q Could you tell the Court and jury about that please?

19 A In 1979 I was initially trained as an accident
20 technician and that would be the skill set to be able to go out
21 into the roadway to investigate accidents and to recover the
22 scene evidence from either the roadway or from the cars we would
23 turn that over to other people to do the actual reconstruction.

24 Q Now is that something called accident investigation
25 divisions in police departments, tell the Court and jury.

1 A Yes, there is.

2 Q Tell the Court and jury if you would?

3 A After this 1979 I went to a New York State Department
4 of Criminal Justice system and had training and was certified as
5 a New York State accident reconstructionist so the
6 reconstruction takes the material and works it through and comes
7 up with causation and conclusions on what caused the accidents.

8 Q And you mention the a few moments ago that early on
9 you were the guy who was sent out there and learned to take the
10 measurements and get the information and it was given to
11 someone?

12 A Yes.

13 Q Was the accident reconstructionist the person it was
14 given to?

15 A Yes.

16 Q And at what point did you become a accident
17 reconstructionist?

18 A I believe it was 1994 initially I had initial that was
19 being certified by New York State Department of Criminal Justice
20 and then later on I was also certified by IPTM located in
21 Florida and affiliated with North Florida University and that
22 training was a four-week training and additional courses after
23 that and shortly thereafter that I believe in 1994 I applied to
24 take a certification test which is called ACTAR is which a
25 signal accident reconstruction certification it's the only one

1 that is given, so I was selected to take this test and
2 certification and I passed it and I was initially certified as a
3 accident reconstructionist through ACTAR and the year that I did
4 take that test it was a 70 percent failure rate.

5 Q And you passed it?

6 A Yes, I did.

7 Q And was there a period of time where you were
8 overseeing an accident investigation and reconstruction unit?

9 A Yes.

10 Q Tell the Court and jury about that please?

11 A I was sergeant working with the Westchester County
12 Police Department. Part of my duties was I was the commander of
13 our accident investigation and reconstruction unit. So the
14 county wide unit that would respond to serious accidents and
15 fatalities throughout the County of Westchester we would
16 investigate them for the local municipalities.

17 Q Tell the Court and jury your educational background if
18 you would?

19 A My personal education is of an Associate's in police
20 science, Bachelor's in police sciences and also an Associate's
21 Degree for the State University of New York in civil engineering
22 which included highway design, physics, surveying, structural
23 design, et cetera.

24 Q And is that something that you utilize as part of your
25 work as an accident reconstructionist or accident

1 reconstructionist for the Westchester County Police Department?

2 A Yes.

3 Q And over the years, have you had the opportunity to
4 perform accident reconstruction work through your job as a
5 police officer?

6 A Yes, I have.

7 Q How many have you investigated as a police officer or
8 as part of a team?

9 A Well I think my last estimate was well over 120
10 accident reconstructions and probably in a well over 2,000
11 actual on the scene accidents.

12 Q And when you say I think you said 100 and how many
13 accidents?

14 A 120 plus.

15 Q Are all accidents reconstructed?

16 A No.

17 Q Tell the Court and jury why some are and some aren't?

18 A Procedures controlling whether we would reconstruct an
19 accident or not would be determined by certain factors one of
20 which being if it was a fatality or going to be a fatality
21 supposedly going to be a fatality or high probability or of a
22 fatality or serious criminal charges that may be brought, we
23 would go through and do a full reconstruction on the accident.

24 Q What would be a full reconstruction of an accident
25 that you would perform under those circumstances?

1 A The basic procedure would be we would have technicians
2 and or reconstructionist respond to the scene. We would
3 measure, photograph, document the crime scene which would
4 include the vehicles, the interior of the vehicles, exterior of
5 the vehicles, the roadway itself and the things have progressed
6 now where there is a lot more detailed and electronic things
7 that we would do as far as CDR downloads, et cetera, et cetera.
8 That information would be -- all be that is commonly referred to
9 as a black box we would bring all that information back to our
10 lab setting and we would work all of those numbers through and
11 evaluate it have a viewed and decide evaluate it to decide what
12 would cause the accident whether we're going to bring criminal
13 charges whether enough information to bring criminal charges or
14 not.

15 Q Have you testified in court before in that capacity?

16 A Yes.

17 Q Let's focus primarily at the police officer function?

18 A Yes.

19 Q And on how many occasions have you testified as a
20 police accident reconstructionist?

21 A Probably about half a dozen times.

22 Q And do you have any oversight or supervision work with
23 respect to the criminal accident and forensic unit at the
24 Westchester County Police Department?

25 A Yes.

1 Q Tell the jury what it is?

2 A Part of the reconstruction accident of our accident
3 investigation unit is contained in our what we refer to our
4 forensic investigation unit, which is our crime lab where our
5 crime scene function is also contained so I would overview the
6 and review the particular cases that would come through that
7 unit before they would be approved and handed to outside
8 agencies whether it be a district attorney's office or whatever.

9 Q Have you attended any specialized accident
10 reconstruction training over your years as a police officer?

11 A Numerous times.

12 Q Can you give us a estimate on how many hours of that
13 time is spent in classes?

14 A I believe my last tally was somewhere over 1,100 hours
15 of specialized training in specific fields within the accident
16 investigation reconstruction field.

17 Q A give us an example of some of what would apply to
18 your testimony here today?

19 A Specifically NYSTARS is which is a New York State
20 reconstruction, I am a founding member and a board member, we
21 provide instruction four times a year to law enforcement, to
22 attorneys to engineers, et cetera and one of the ones that we
23 have recently done is involved bicycles with acceleration and
24 deceleration and human factors involved in operating a bicycle.

25 And I've had numerous, 4 or 5 different specific

1 classes on two wheeled vehicles, primarily motorcycle but with
2 portion of that also including bicycles and numerous training in
3 human factors. Human factors is how the person reacts and what
4 the person sees and what the person does during an accident
5 preceding an accident.

6 Q And do you have any responsibilities for teaching or
7 instruction of others?

8 A Yes.

9 Q Tell the Court and jury what your instruction
10 responsibilities are?

11 A In addition to the seminars that we put on for NYSTARS
12 through my capacity as a police officer, I instruct in the
13 police academy recruit school, the countywide in service
14 training program the new detectives, which is a our criminal
15 investigation course, our supervisor's course newly promoted
16 sergeants and then I also provide specialized training for the
17 Westchester County Medical Examiner's forensic lab specifically
18 for accident reconstruction.

19 Q Did you also have a business separate and apart from
20 your being a police officer as it relates to accident
21 reconstruction?

22 A Yes, I do.

23 Q I don't know if I said business, I don't know if
24 that's the right word, do you do it outside?

25 A Yes, I do. I have a business which is named

1 registered in the State of New York as Crash Vector which I do a
2 private reconstructions for attorneys and law firms, insurance
3 companies.

4 Q How many of those have you done over the years?

5 A Probably about 30 to 50 I would say.

6 Q And have you had to testify with respect to those?

7 A Yes, I have.

8 Q How many occasions have you done that?

9 A Probably about five different occasions.

10 Q And on those cases you charge an hourly rate as
11 opposed to when you're doing them for the police department they
12 just pay your salary?

13 A Yes, that's true.

14 Q Tell us what your hourly rate for that is?

15 A \$200 an hour.

16 Q Did there come a time when my office reached out to
17 you and asked you if you would be willing to look at the
18 information related this accident that occurred back in August
19 of 2010?

20 A Yes, I was contacted by an attorney with your firm
21 Nicholas Farnolo.

22 Q At that time were you provided information that an
23 accident reconstruction had been done by an expert on behalf of
24 the defendants and we wanted you to comment upon it?

25 A Yes.

1 Q And before you saw anything, you didn't have any
2 opinions, did you, sir?

3 A No, it's one of the downfalls as to doing something
4 where a preconceived opinion I did not have one.

5 Q Could you just tell us what information you required
6 in order to perform your accident reconstruction and what you
7 did, if you would?

8 A Initially as you would do with any case you need to go
9 to the scene to look at the scene. And you have to see what is
10 involved at the scene, document it via photographs. Measure it.
11 Look at site distances. Look at roadway characteristics. And
12 look at the whole topography of the scene before you can start
13 to do any type of reconstruction.

14 Q And did you in fact do that?

15 A Yes.

16 Q When was that you went out and took a look at the
17 scene and topography to get a feel for the accident site?

18 A I believe that was March 4th, 2015.

19 Q And that was shortly after the report of the
20 defendant's expert was provided to you?

21 A Yes, it was.

22 MR. SCAHILL: Objection, your Honor.

23 MR. SHKOLNIK: I can rephrase it.

24 THE COURT: Grounds.

25 MR. SCAHILL: He's asking about whether when the

1 defendant's expert report was provided to him.

2 THE COURT: Provided to him?

3 MR. SCAHILL: Yes.

4 THE COURT: Why was that objectionable?

5 MR. SCAHILL: What relevance does that have to
6 his conclusions?

7 THE COURT: Rephrase your question.

8 MR. SHKOLNIK: I'll rephrase it, your Honor.

9 BY MR. SHKOLNIK:

10 Q Were you ever provided with an accident reconstruction
11 that had been done recently on this very accident?

12 A Yes.

13 Q Was that something that you reviewed and analyzed as
14 part of your work you did in this case?

15 A Yes, it was.

16 Q In addition to this other accident reconstruction and
17 going to the scene checking out topography, et cetera, what else
18 did you do?

19 A We did measurements at the scene itself. We took
20 photographs. We also did an inspection of the bicycle, the
21 second vehicle that was involved.

22 The Ford Explorer was not available to be inspected,
23 so we did not have that availability.

24 We looked at distances, traveled site distances and
25 tried to come up with what we thought would be the most

1 appropriate time distance and time distance study.

2 Q And did you also look at photographs?

3 A Yes.

4 MR. SHKOLNIK: And we have in evidence a whole
5 bunch of pictures.

6 With the Court's approval, I would just like to
7 hand the all the pictures to the witness and have him
8 quickly look through it if we could.

9 THE COURT: Any objection?

10 MR. BARANOWICZ: No, your Honor.

11 (Whereupon, the items were shown to the witness.)

12 THE COURT: Take your time.

13 Q My question to you is have you had an opportunity to
14 see these pictures before among others?

15 A Most of those I have seen before some with the Ford
16 Explorer I don't believe I did see but I believe I did see one
17 of the Ford Explorer that showed the contact damage on the
18 passenger side.

19 Q As you briefly went through those additional views of
20 the same damage, is there anything about those that appear to be
21 different than the one version you saw?

22 A No.

23 Q With respect to the site scene pictures that are here
24 in evidence, I think the Defendant's A and B if I'm not
25 mistaken, I'm sorry A through -- I lost the number on that.

1 MR. BARANOWICZ: I think we went all the way to
2 Y.

3 Q Did you notice whether there was some pictures taken
4 when there was snow on the ground somewhere there was no leaves
5 on the trees but no snow on the ground, different times of year?

6 A Yes.

7 Q When you were out there in 2015, were any pictures
8 taken?

9 A Yes.

10 Q In looking at that group of pictures was there any
11 pictures that depict the conditions when you were out there with
12 the snow?

13 A Yes, some of photos that I took had snow on the edge
14 of the roadway and there are some here that also indicate there
15 is snow there.

16 Q And when you went out to the scene of the accident,
17 I'm sorry withdraw that.

18 Did you also have an opportunity to look at google
19 Earth to look at that intersection?

20 A Yes.

21 Q And we have here in evidence with the Court's approval
22 can I just put this up.

23 We have the google Earth is this a picture that you
24 also are familiar with?

25 A Yes.

1 Q Now, after by the way did you also have an opportunity
2 to read the testimony of the various witnesses?

3 A Yes, I did.

4 THE COURT: Which testimony?

5 MR. SHKOLNIK: I was about to say that.

6 Q Which not trial testimony, but deposition testimony?

7 A Yes.

8 Q Could you tell the Court and jury whose information or
9 testimony you read?

10 A I read the victim Mr. Budiansky if I'm saying that
11 correctly.

12 THE COURT: Budiansky.

13 A The driver of the Ford Explorer, Mike LoRusso the
14 witness Ruddy Heredia, I believe there was also testimony from
15 Mr. Budiansky's wife, Mr. LoRusso's father and I think that may
16 be.

17 Q Was there also testimony from the occupant of this
18 Explorer that you read?

19 A Yes.

20 Q In your understanding did that appear to be all the
21 people that were present who gave testimony -- withdrawn.

22 Did that appear to be the operators and the passenger
23 in the Explorer who testified?

24 A Yes.

25 Q The young man's father, you read his testimony?

1 A Yes.

2 Q Mr. Budiansky?

3 A Yes.

4 Q And you also had I think you said also Mr. Ruddy
5 Heredia?

6 A Yes.

7 Q You read his testimony?

8 A Yes.

9 Q Why did you read that testimony of the eyewitness?

10 A In any case I want all the information that I could
11 possibly get before attempting to reconstruct an accident.

12 Q Is any witness's testimony when you're doing accident
13 reconstruction is it important to read all the different
14 versions that you possibly can?

15 A Yes.

16 Q Why do you want to get different version opposite from
17 different viewpoints?

18 A They may contain a piece of factual evidence that I
19 didn't have if I didn't read it.

20 Q When you were viewing the information that the other
21 accident reconstructionist relied upon in his report, did you
22 see that he ever looked into -- read the testimony of that
23 eyewitness?

24 MR. SCAHILL: Objection, your Honor.

25 MR. SHKOLNIK: Mr. Heredia.

1 MR. SCAHILL: He's asking him to comment on.

2 MR. SHKOLNIK: I'll withdraw the --

3 MR. BARANOWICZ: Objection, your Honor.

4 MR. SHKOLNIK: I'll withdraw it.

5 Q After reviewing the testimony going to the scene, did
6 you do any other work before reaching any opinions?

7 A Yes, after gathering all the information and reading
8 all of the testimony that was available looking at the
9 photographs then I proceeded to start to work as a
10 reconstructionist to see where the causal factors may lie. And
11 the way I would do it and the way it would be done in an
12 accident like this, is we have to start with the things that we
13 actually know and work back from them.

14 So the one thing that we really do know initially is
15 the impact point on the car. So we know that the bicycle hit
16 the Ford Explorer we'll say in the rear quarter panel to be
17 general and that the driver Mr. Budiansky came over top and he
18 made contact with the glass that was present above the contact
19 area which would be normal for a head on collision with the
20 bicycle operator.

21 And we know via testimony where the vehicle was
22 located when this impact took place. So that is like our
23 starting point so everything you would do in that reconstruction
24 would start from that one known point.

25 Q Did you also take into consideration that after the

1 impact point that the vehicle continued for some distance before
2 it came to rest?

3 A Sure. It was not going to be an instantaneous stop by
4 any means so the vehicle will continue to move and actually so
5 will the bicycle and the bicycle rider even though it was be in
6 an altered direction because of the path of travel and force
7 that would be generated by the Ford Explorer.

8 Q And then what is the next thing you did after you
9 identified that those basic facts what is your next step in the
10 accident reconstruction?

11 A So now that we have a point where we know the accident
12 happened, we need to be able to back the people up into certain
13 times so how do we get a time from the bicycle and from the Ford
14 Explorer.

15 We know via testimony from Mr. LoRusso and also from
16 the witness that the Ford Explorer was in the left lane
17 westbound and was stopped before attempting to make a left hand
18 turn into the nursery. So we can place that vehicle there.

19 And then we know that this vehicle, the Ford that
20 Michael LoRusso accelerated that Ford is into the driveway of
21 the nursery.

22 So Ford Motor Company produces acceleration rates and
23 acceleration factors this would be based on the performance of
24 the vehicle. So using a -- and they put them out in a 0 to 30
25 and a 0 to 60.

1 Q Why two different types?

2 A Two different types of acceleration one would be from
3 0 to 60 and one would be the acceleration right and acceleration
4 factors are going to be different.

5 Not to try to confuse you, but when you're starting
6 from 0 and you're going to 30, you're kind of accelerating at a
7 faster rate than you are when you starting at 0 and going to 60
8 because at some point you're already accelerating so you can't
9 go that much faster. So 0 to 60 is a lower number and this 0 to
10 30 is a higher number and in this case the numbers that are
11 produced by Ford Motor Company is a 4.53 for the 0 to 30 and
12 4.35 to 0 to 60.

13 Q That's a lot of math there.

14 Tell us where that comes into play here.

15 THE COURT: Can I just stop you for one second.

16 It is almost 12:30, how much longer do you have?

17 MR. SHKOLNIK: I would think it's probably going
18 to be 20 minutes, I overestimated my speed before, your
19 Honor, about 20 more minutes.

20 THE COURT: Okay, so do any of the counsel have
21 an objection if I break now.

22 We finish direct after lunch, then you cross or
23 would you prefer we finish direct now?

24 MR. BARANOWICZ: I would prefer we break now.

25 I think it makes more sense.

1 THE COURT: I do too.

2 Before we start with all the figures, so
3 everybody will have a break.

4 MR. SHKOLNIK: Or eat and fall asleep and listen
5 to the numbers.

6 (Whereupon, the jury exited the courtroom.)

7 THE COURT: Yes.

8 MR. BARANOWICZ: Your Honor I appreciate it was
9 the appropriate time to break, but if the witness has a
10 folder with records that he prepared.

11 THE COURT: I was going to ask that he leave it
12 in the courtroom.

13 MR. BARANOWICZ: May we review it?

14 MR. SHKOLNIK: I have no problem.

15 THE COURT: Is that okay?

16 MR. BARANOWICZ: That's fine.

17 THE COURT: We're going to tell your witness
18 we're going to lock the courtroom if he wants to leave it
19 on the bench.

20 MR. BARANOWICZ: With the Court's permission, may
21 I remain behind to take a look through.

22 THE COURT: Do you have any objection?

23 MR. SHKOLNIK: I have no objection, thank you.

24 THE COURT: Should I let the witness see what is
25 in his folder first?

1 MR. SHKOLNIK: I think we're fine with that.
2 Can he make sure there is no personal items in
3 there.

4 THE COURT: He may have his receipt from
5 breakfast in there.

6 (Whereupon, a luncheon recess was taken at this
7 time.)

8 * * *

9 A F T E R N O O N S E S S I O N

10 * * *

11 (Whereupon, the jury entered the courtroom.)

12 MR. SHKOLNIK: Can we have the witness back up.

13 THE COURT: Please.

14 THE CLERK: Taking the stand Christopher
15 Calabrese.

16 You have been previously sworn under oath.

17 THE WITNESS: Yes.

18 THE COURT: You may proceed, counsel.

19 CONTINUED DIRECT EXAMINATION

20 BY MR. SHKOLNIK:

21 Q Mr. Calabrese, before the break we were starting to
22 talk about your analysis that you undertook and I think we left
23 off with telling us that you after doing your inspections and
24 reviewing the materials and establishing some certain basic
25 facts you took into consideration, acceleration testing done by

1 Ford about a 0 to 30-mile an hour and 0 to 60-mile an hour?

2 A Correct.

3 Q In reviewing testimony in preparation for your
4 testimony and giving your opinions, are you aware that there was
5 an eyewitness who suggested that the vehicle may have reached
6 45 miles an hour or in that speed?

7 MR. BARANOWICZ: Objection to the form.

8 THE COURT: Sustained.

9 Q I'd like you to assume there has been testimony that
10 from one witness that the vehicle from stopping, this Explorer
11 from stopping and making its left turn and traveling across the
12 two lanes of traffic where and then the impact occurring in this
13 shoulder was 4 to 5 miles an hour and that the defendant
14 testified under oath that he accelerated to 10 to 15 miles an
15 hour. Take both of those as an assumption. Given the distance
16 traveled and the testimony of either 4 to 5 or 10 to 15 which
17 would be the appropriate acceleration test that should be
18 utilized when reconstructing this accident over the distances
19 that we're talking about?

20 A Utilizing that information and the distance that is
21 involved and while reviewing the other expert's information he
22 was using, he was utilizing 36-foot travel distance which I
23 agree with and I will use that also, it would be much more
24 appropriate to use the 0 to 30 even though the vehicle itself
25 never got to 30 it would be using that acceleration in that

1 range as opposed to one where he's going to go to 60 miles an
2 hour because he's nowhere near there.

3 Q Given the fact that you only have 0 to 10 or 0 to 5
4 from an accident reconstruction perspective is it more
5 appropriate to use the 0 to 30?

6 A Yes.

7 Q Why?

8 A Because that is more appropriate for this particular
9 set of facts. Being that we know we did not even reach the
10 30 miles per hour and the short distance that's involved which
11 is the 36 feet.

12 Q And utilizing 0 to 60, et cetera and 0 to 30 in what
13 does that do in terms of the ultimate opinions that can be drawn
14 from the speed and distance?

15 A Okay to back up for a second what we're trying to do
16 is like I explained before we start from where impact was.

17 Now, we know that the Ford -- the Explorer is 36 feet
18 away so now we have to determine how long did it take the Ford
19 to go to impact. If you use the 0 to 30 acceleration rate it
20 takes approximately two seconds to get to impact.

21 Q Why is that important, first of all?

22 A We have to use that same time then once we establish
23 what it is and now move Mr. Budiansky, I apologize again.

24 Q Budiansky?

25 A Backwards that same time at his rate of speed so we

1 know where both cars both vehicles are when the turn is first
2 started and initiated.

3 Q And what would happen if you use the 0 to 60 instead
4 if you were going to whatever reason utilize that speed and
5 time?

6 A If we were to utilize 0 to 60 as opposed to 0 to 30
7 the time it would take the Ford to go from stop to impact would
8 increase from approximately two seconds to approximately
9 2.5 seconds which would in fact move the bicycle further back.

10 Q And how would that -- what would that do in terms of
11 reaction time, it's only half a second so?

12 A By using that reaction time instead of the 0 to 30
13 you're pushing the bicycle back further by pushing the bicycle
14 back further you're giving him more distance to be able to see
15 observe evaluate and take some type of action before impact.

16 Q So let me get right to the point here and we have up
17 here on the board some markings and with the Court's permission
18 can you come down and basically did you reach any opinions
19 within a reasonable degree of certainty, accident reconstruction
20 certainty as to the time the distance and the reaction time
21 after you did your review of the materials?

22 A Yes, I did.

23 Q And would you be able to come down here utilizing this
24 picture and tell the Court and jury exactly how you
25 reconstructed the accident and how which table you utilized from

1 Ford in terms of accelerations?

2 Mr. Calabrese, before you give that answer, I would
3 like you to assume for the purposes of your answers and your
4 opinions we have an X here that was made by Mr. Budiansky, you
5 see that and the second X over here depicts where the impact
6 where the impact was when you first saw until where the impact
7 was and we have markings from the eyewitness who was driving by
8 that place impact right about where this red X is on top and the
9 vehicle came to rest down here in the driveway?

10 A Okay.

11 Q Could you give us your opinions, please, with a
12 reasonable degree of certainty?

13 A Yes, so this is our double yellow looks like so we
14 have the Ford that is somewhere in this area here it's stopped
15 looking to make this left hand turn into here.

16 So from this stopped position using the 0 to 30
17 acceleration factor the 36 feet which would be to impact which
18 is here would take him two seconds.

19 So now, at this impact point the bicyclist is also
20 here, so what we want to do is move the bicycle back two seconds
21 to see where that bicycle was at the same time this truck
22 started to make the turn. So we know that the bicycle per
23 testimony was going 17.5 miles per hour. And that is a nice
24 training speed that people use to train and I think that is
25 probably the testimony that we got.

1 Q I'd like you to assume it was 17 to 17.5.

2 A Utilizing the 17.5 we want to find out how many
3 feet per second he's actually going so if we multiply the 17.5
4 times 1.466 that's the conversion where you go from miles per
5 hour to feet per second so that would put the bicycle moving at
6 a velocity of 25.65 feet per second. So for our purposes, let's
7 say he's moving at 26 feet. So if we move this bicycle back
8 from impact 2 seconds, 26 plus 26 he's back you know
9 approximately about 52 feet from impact.

10 When I did my calculations I think I used a up to
11 56 feet just to give a little bit of leeway because these are
12 not exact times these are the best we know this impact is
13 approximately 52 to 55 feet from impact.

14 Q A little over two-car lengths?

15 A Yes.

16 So from his mark here, I -- this is not mentioned out
17 but this is at least probably about 40 feet the impact seems to
18 be a little bit further this way than in the middle so this
19 distance that he is indicated is even shorter than the distance
20 that I had utilized to be able to do the calculations I put the
21 contact right in the middle here and so his distance from here
22 to the middle from this spot to the middle here that's probably
23 only somewhere in the area of 30 feet tops and I have him back
24 55 so that will make it shorter but based on the calculations
25 that I utilize he is say 52 to 55 feet away.

1 Now, if he's traveling at a constant speed or velocity
2 at say 26 and 26 so 26 feet per second just to generalized then
3 we need to know how long does it take him to be able to see what
4 is going on to observe it to identify it as a threat to evaluate
5 all of the different options that he has then decide which one
6 to do and then physically do it as an evasive maneuver so all of
7 these things take time?

8 Q Is that also called response time?

9 A Yes.

10 Response time can be used many different ways.

11 When I was a kid growing up and was taking driver
12 education we'd have a box in front of us sit on the desk you'd
13 sit on the brake and wait for it to turn red, you'd push it, you
14 call it reaction time that is a simplistic view of the
15 complexity of it there is simple reaction times this is a very
16 complex reaction time.

17 Q Why?

18 A Because all the variables that are contained here.
19 First of all the -- to back up one piece when people see when
20 every one of us here when we see something our main focal vision
21 we have three degrees inside that, approximate three degrees
22 that's where we can read that's where we see things very sharply
23 that's where we can identify things very quickly and we know
24 what they are and we react to them if you were to put your
25 finger out and you can do this, put your finger out in front of

1 | your face and you focus on it keep your eyes where they are but
2 | just move your finger out and the further you go you can't
3 | really make out any discernible factor see it at all that is the
4 | same thing so one of the important things that we have to take
5 | into consideration is Mr. Budiansky is looking straight ahead.
6 | And that was per his testimony. So his vision is straight
7 | ahead.

8 | The further you go off of that center view the less
9 | you're going to see you have less receptors in your eyes to be
10 | able to pick that up and when you do now to be able to see it
11 | even if you pick up the motion now you have to turn you have to
12 | turn your eyes, you have to turn your head to be able to focus
13 | on this to get that three-degree vision on that threat, we're
14 | talking about now is a threat so once he does that he's got to
15 | evaluate that as immediate threat or not immediate threat and
16 | was the threat expected or not expected.

17 | Obviously it takes a much less time to be able to
18 | react to a traffic light turning from green to red when it's in
19 | front of you see it, you're expected that at some point it's
20 | going to turn red, you put your foot on a brake simple reaction
21 | time completely different from this not expecting someone to
22 | take a left hand turn in front of him so when that movement does
23 | and he picks it up it might not have been right away, he's not
24 | looking at it or for it, he's already seen the truck and it
25 | wasn't a threat then and now it is.

1 MR. BARANOWICZ: Judge, I move to strike.

2 He might not have picked it up right away.

3 THE COURT: Sustained.

4 Q So?

5 A So taking all those things into consideration if
6 you -- if he evaluates this now and decides this is a threat,
7 now I have to do something, I have to take some kind of evasive
8 action, what type of evasive action do I take.

9 He has three possibilities available to him. Number
10 one is just brake. Number two would be turn to the left.
11 Number three would be turn to the right.

12 Now we have to realize if he is only 52 feet or
13 55 feet from impact a normal stopping distance for a bicycle is
14 probably in this situation at his mile per hour or feet per
15 second is probably about 26 feet to stop. That's very close to
16 what the federal standard is, New York standard is, he needs to
17 be able to lock up the brakes which during my inspection I
18 believe that would have happened.

19 The other expert agrees with the 26 feet, so it's not
20 in question. So 26 feet would be if there was no reaction time
21 he's automatically on the brakes, it would still take 26 feet so
22 his reaction time from the time he sees all of these things
23 going on and he's trying to make an evaluation if he goes left
24 he's going to go out into the travelled way of the roadway so
25 there are cars, he is putting himself in bigger peril even if he

1 can make that maneuver each one of these maneuvers take time.

2 If he goes to the right, this is the same way that the
3 Ford is going to -- he's going to be turning into the Ford he's
4 going to be going into the path of travel or at least staying in
5 the path of travel of the Explorer.

6 Plus on the side here there is a little bit of a
7 depression between the roadway and the road and the telephone
8 pole that is also here so some other threats that are there.
9 After doing all of that evaluation, his probable best bet is to
10 be able to brake. Now the issue is that after doing this
11 evaluation, all of these little pieces of things that he has
12 done an evaluation he has done takes time. I estimate his
13 perception reaction time to be between two and a quarter and
14 three seconds.

15 After two seconds, he's already at impact. He does
16 not have time to put the brakes on and stop. He does not have
17 time to make a lane change to the right, he does not have time
18 to take a lane change to the left.

19 Once this vehicle starts this left hand turn, there is
20 going to be an accident.

21 Q What do you base this 2 to 3 seconds, did I hear that
22 correct?

23 THE COURT: Are we done using the board?

24 THE WITNESS: I think we're done.

25 THE COURT: It's easier for the Court Reporter

1 and the jury to hear you sitting. And me.

2 Thank you.

3 Q You said that his reaction time was 2 to 3 seconds, I
4 think you said?

5 A 2.25 to 3 seconds.

6 Q And that would be from the point where you place him
7 at 55 feet back?

8 A Correct.

9 Q To the point of impact?

10 A Yes.

11 Q And that would be at 17 and a half miles an hour or
12 50 feet of traveling?

13 A Yes.

14 Q Already gone by?

15 A Yes.

16 Q More would have gone by?

17 A Yes, slightly.

18 Q What effect would it have had after he hit his brakes
19 after he had an impact?

20 A He's not going to be able to do that with that force
21 he is going to come over the handlebars which he did.

22 Q What did you base that two and a quarter to three
23 seconds on?

24 A These are all additions dependent upon the situation
25 that we have for this perception reaction and evasive action in

1 other words if the straight was straight ahead and not off an in
2 angle he probably would have seen it a little bit sooner. We
3 could take some of that time off if there was only one
4 particular evasive action that he could have taken, it wouldn't
5 be as complex, a thought process before starting the evasive
6 action and one thing I did even omit because it is kind of minor
7 is even after all of those things are decided and he decides on
8 which particular action to take which is best for him, now he
9 still has to do it.

10 So now you have the actual, the application of the
11 brakes which you know is not a whole lot of time probably I
12 think accepted is .2 to .3 seconds and another second in lag
13 time or latency in the system of the bike to actually brake, he
14 doesn't get that far, he doesn't have time to brake.

15 Q If someone utilized that 0 to 60 that we talked about
16 that Ford criteria 0 to 60 where would that place him in terms
17 of distance from this point of impact west along that shoulder
18 would it be closer to the driveway or further away?

19 A That would make him further away.

20 Approximately being that the 0 to 60 time is 2.5 and
21 the 0 to 30 time is 2, 2 seconds then that would be really a
22 half second that would put him back say nine feet.

23 THE COURT: Nine.

24 THE WITNESS: Nine.

25 THE COURT: Thank you.

1 Q What would that do in terms of his ability to react
2 and avoid the accident?

3 A It would give him another half a second to react but
4 in my computation it would not make any difference he would
5 still have impact with the Ford.

6 Q From your opinion, sir, within a reasonable degree of
7 certainty, was there anything Mr. Budiansky could have done to
8 avoid the impact with the right rear window of that vehicle
9 given the circumstances that were presented?

10 MR. SCAHILL: Objection.

11 MR. BARANOWICZ: Objection.

12 The ultimate question of fact for the jury.

13 THE COURT: Can you read back the question.

14 (Whereupon the record was read back by the Court
15 Reporter.)

16 THE COURT: Not a hypothetical and he's asking
17 for his opinion testimony.

18 Do you want to be heard?

19 MR. SHKOLNIK: Yes, your Honor.

20 That's exactly what experts are allowed to do to
21 give an accident reconstructionist of this type should be
22 allowed to give his opinion as to what were the options if
23 any, I could phrase the question that way what were the
24 options, if any, to avoid impact that is the same question
25 asked a different way. And he's allowed to do that as an

1 expert.

2 THE COURT: He already testified to that.

3 Rephrase your question.

4 Q Mr. Calabrese, as an accident reconstructionist who is
5 undertaking the work that you did and the calculations that you
6 performed, was there anything -- do you have an opinion with a
7 reasonable degree of certainty, was there any evasive action
8 available to Mr. Budiansky in the time he had during the --
9 while the vehicle was making the turn that could have prevented
10 this accident from occurring, meaning him coming in contact?

11 MR. BARANOWICZ: Same objection.

12 MR. SCAHILL: Objection.

13 THE COURT: I'm going to overrule your objection.

14 He's an expert.

15 He can offer his opinion.

16 A No.

17 As soon as the Ford Explorer started to make that left
18 hand turn, there was nothing he could do to avoid the accident.

19 THE COURT: Which is what the witness said four
20 times in response to four different questions that you
21 asked.

22 MR. SHKOLNIK: I'm sorry, your Honor.

23 THE COURT: I'm not saying it was asked and
24 answered.

25 I'm saying regarding the objection that that

1 answer was, I knew what the answer was going to be because
2 it was already given to respond to different questions.

3 MR. SHKOLNIK: Thank you very much.

4 I have no further questions.

5 Tender the witness.

6 MR. SCAHILL: Thank you, your Honor.

7 THE COURT: Do you need a moment to review your
8 notes, counsel?

9 MR. SCAHILL: No.

10 CROSS-EXAMINATION

11 BY MR. SCAHILL:

12 Q Good afternoon, Inspector.

13 A Good afternoon.

14 Q My name is Frank Scahill. I represent Michael
15 LoRusso, the driver of the car that was involved.

16 Sir, you are a full time police inspector with the
17 Westchester County Police Department?

18 A That's correct.

19 Q Prior to that, you were a captain with the Westchester
20 County Police Department?

21 A Yes.

22 Q This work that you do with litigation, that is a side
23 job that you have?

24 A Yes.

25 Q And I looked at your resume that was provided, you

1 have expertise in many different areas that deal with police
2 work, correct?

3 A Yes.

4 Q And in fact on your resume, your curriculum vitae, you
5 indicated you have expertise in police shootings?

6 A I've done those investigations, yes.

7 Q Robberies?

8 A Yes.

9 Q Organized crime?

10 A Yes.

11 Q Gambling?

12 A Yes.

13 Q Computer crime?

14 A Yes.

15 Q Serial murderers?

16 A Yes.

17 Q That is your everyday police work, correct?

18 A Yes.

19 Q And the time that you spent with the accident
20 investigation squad that was back from 1987 to 1990, correct?

21 A That is the amount of time where I was the CO of that
22 unit, yes.

23 Q After that time, you have listed from 2006 to present
24 you were the Commander of the Westchester County Detective
25 Division correct?

1 A Yes.

2 Q Where you were involved in a day to day basis with all
3 of these things that happen within the County of Westchester,
4 you're not investigating accidents on a daily basis, you're
5 doing normal police work, correct?

6 A Not totally if I could explain. The accident
7 reconstruction portion of the accident team is located in the
8 forensic investigation unit, our crime lab.

9 So when we have an accident that is going to be
10 prosecuted and go criminally, they get to reconstruct it. I
11 would review it and approve, disapprove or give suggestions on
12 what else should be done in those cases.

13 Q As the Commander of the Westchester County division
14 you had 75 detectives working under you, is that correct?

15 A Yes.

16 Q Only a small percentage were assigned to the accident
17 investigation squad?

18 A Yes.

19 Q On a day to day basis you're dealing with all of the
20 things that I spoke about that day to day police work, is that
21 accurate?

22 A We can break all of these units down into small
23 numbers of people that are in them I supervise all of them, yes.

24 Q So your police work is a full time year round, that's
25 your profession, that's what you do for a living?

1 A Yes.

2 Q This work is something you do on the side and you
3 started a company called Crash Vector, correct?

4 A Yes, but --

5 Q I just want to know yes or no is this something you do
6 on the side?

7 A Yes or no will really not describe it accurately.
8 I'll do it however we need to answer it.

9 Q I think that's a yes or no answer.

10 THE COURT: Just answer yes or no.

11 A Yes.

12 Q And besides this company Crash Vector, you're also
13 involved in something called Maximum Detection?

14 A Yes.

15 Q Those are two companies that you are involved with
16 that do work on the side, correct?

17 A Yes.

18 Q And Maximum Detection is a investigative agency?

19 A Yes.

20 Q It consists of police officers, police detectives that
21 are retired that do work on the side as investigators, is that
22 fair to say?

23 A That's not.

24 Q You have a website out there for Maximum Detection,
25 correct?

1 A Yes.

2 Q And that you advertise to lawyers your services?

3 A Yes.

4 Q Is that fair to say?

5 A Yes.

6 Q So you want lawyers to hire you on cases, litigation
7 cases like this, personal injury cases that's how you make your
8 money, is that fair to say?

9 A Yes.

10 Q And as part of Maximum Detection, by the way, do you
11 own that 100 percent?

12 A Yes.

13 Q And you also own Crash Vector 100 percent?

14 A Yes.

15 Q So everything that is in the website of both of those
16 companies are accurate and you reviewed it and made sure it is
17 correct?

18 A Well, I won't say yes to that, but probably so. I
19 haven't seen it in quite many months.

20 Q The Maximum Detection website notes that you handle
21 both plaintiff and defense work.

22 You're advertising to both sides of the bar, is that
23 fair to say?

24 A Yes.

25 Q And you say whether you need case enhancement or case

1 review for weaknesses, we have experienced investigators that
2 can get the job done.

3 Is that a fair statement?

4 A Yes.

5 Q Is that what you advertise, so if you have a weakness
6 in your case come to you at Maximum Detection and you can get
7 the job done, is that what you hold yourself out to the public
8 and the legal profession?

9 A I'm not sure of your question.

10 Q I just read what is on your website and I asked you is
11 that how you hold yourself out to the legal profession if you
12 have a weakness in your case come to you and you could get the
13 job done?

14 A If there is a case --

15 Q That's a yes or no?

16 A I don't believe it is because you're making it sound
17 like something other than what it is and I would like to
18 explain.

19 Q I'm reading from your own website, is this something
20 you authored?

21 A Yes.

22 Q So when you put on your own website, if you need case
23 enhancement or review of your case for weakness, come to us and
24 we can get the job done, you're holding yourself out to the
25 legal profession that you're the investigator that can get the

1 | job done if you have a weakness in your case, is that fair to
2 | say?

3 | A Yes. In a professional way, yes.

4 | Q So, in this case, when were you retained to do this
5 | accident investigation?

6 | A Sometime prior to March 4th, 2015.

7 | Q So you're investigating an accident that happened five
8 | years ago, correct?

9 | A Yes.

10 | Q One of the first things you did was ask for the police
11 | report?

12 | A Yes.

13 | Q And you wanted the police report because the police
14 | report in your professional opinion is an accurate recorder of
15 | what happened at the time and place of the event, is that fair
16 | to say?

17 | A Not in all cases, but in some cases yes.

18 | Q You're a supervisor and an instructor. You teach the
19 | officers under you at the academy to make sure that everything
20 | in that report is accurate, is that correct?

21 | A Everyone strives to have 100 percent accuracy, yes.

22 | Q You tell them how to fill this out and how to make
23 | this accurate?

24 | A Yes, but the Old Bay Brook Police Department does not
25 | work for me.

1 Q Do you have any reason to doubt the abilities of the
2 Police Officer Rosado who filled out the report that you
3 reviewed?

4 A No.

5 Q And did you rely on the report in coming to the
6 conclusions as an accident reconstruction expert?

7 A I relied on it. I evaluated it in that he did list a
8 causal action which was the failure to yield right of way for
9 the left hand turn and also listed that he had issued a summons,
10 local summons for that failure to yield right of way.

11 Q In fact, Mr. Calabrese, Inspector Calabrese, the
12 violation that was issued on the day of the accident was not for
13 failure to yield, it was something to do with the dealer plates
14 that were on that vehicle. It had nothing to do with how
15 Mr. LoRusso operated the vehicle. In fact if you look at the
16 violation section 4158 it has no correlation to what you just
17 talked about.

18 Am I accurate in giving you that information?

19 A I don't know that local section but just Box 9
20 indicates that driver one failing to yield.

21 Q You just --

22 MR. SHKOLNIK: Objection.

23 THE COURT: Let the witness answer.

24 You're talking over him and the Court Reporter
25 can't take both of you and then you can object.

1 MR. BARANOWICZ: Objection.

2 It's not in evidence and he's commenting on it.

3 THE COURT: Can you finish your answer again,
4 please.

5 A Thank you.

6 The Box 9 on a New York State motor vehicle accident
7 report lists that the driver which would be driver two, which
8 Mr. LoRusso failed to yield right of way, I don't know the local
9 sections for the whatever police department that was.

10 Q You just told the jury that a summons was issued to
11 the driver for failure to yield that is completely inaccurate,
12 is that correct?

13 A I still don't know the section based on what your
14 section. If summons was for something else, then yes.

15 MR. SCAHILL: Judge, can we have the police
16 report, two pages, marked for identification.

17 THE COURT: Okay.

18 (Whereupon, Defendant's Exhibit was marked for
19 identification, BB.)

20 THE COURT: Counsel, you had an objection.

21 MR. BARANOWICZ: Judge, since the document is not
22 in evidence, the witness should not be commenting on
23 information that may or may not be hearsay and may or may
24 not be admissible.

25 THE COURT: Then your objection is not to the

1 answer but it is -- should have been to the question.

2 MR. BARANOWICZ: I did.

3 I objected saying the document is not in evidence
4 and you're about to permit testimony with respect to
5 something that is not in evidence.

6 MR. SCAHILL: I'd be happy to offer it into
7 evidence.

8 MR. SHKOLNIK: I don't think police reports come
9 into evidence.

10 I think they're hearsay. There are other ways to
11 be dealing with this.

12 THE COURT: You mean it's not a business record,
13 is it certified?

14 MR. SCAHILL: No, I have the police officer here.

15 MR. SHKOLNIK: My objection is certain parts of
16 police report come in, certain parts don't in terms of
17 hearsay whether or not it's a government record.

18 THE COURT: That is not true.

19 That is incorrect.

20 If it's a certified record of the police officer
21 is with the document that is being offered, it will go in
22 as something kept in the ordinary course of business.

23 If there is hearsay components such as a
24 supporting deposition predicated on hearsay and out of
25 court statement between, we'll deal with it.

1 MR. SHKOLNIK: I object to the point until the
2 police officer comes in we can identify the parts that may
3 not be appropriate.

4 THE COURT: I'm going to allow the testimony
5 subject to connection.

6 MR. SCAHILL: Judge, the police officer is here.
7 She's my next -- I understand.

8 THE COURT: I understand.

9 Q Is that the report you reviewed in connection with
10 your accident investigation?

11 A Yes.

12 THE COURT: Can I stop for one second.

13 Being that the police officer is here, is she
14 here voluntarily?

15 MR. SCAHILL: Under subpoena.

16 THE COURT: Why don't we give you two seconds to
17 step outside and see if she has the original with her.

18 MR. SCAHILL: She does.

19 THE COURT: Why don't we offer the original into
20 evidence or a certified copy?

21 MR. SCAHILL: To move things along --

22 THE COURT: Do this subject to connection.

23 MR. SCAHILL: Use this and I'll substitute the
24 original.

25 THE COURT: I'll do it subject to connection and

1 we'll wait.

2 Q Is that the report you relied on in connection with
3 your investigation of this accident?

4 A This is the accident report that I reviewed, yes.

5 Q It's a two page document, correct?

6 A Yes.

7 Q It also contains a diagram made by the officer
8 following her field investigation, correct?

9 A Yes.

10 Q You talked about a field investigation that is
11 something that you teach officers how to do?

12 MR. SHKOLNIK: This I'm objecting to as to the
13 diagram what is in the diagram this is something that is
14 not -- should be addressed until the police officer is on
15 the witness stand.

16 THE COURT: I can't -- I will sustain the
17 objection insofar as that I permitted the questions
18 regarding impeachment purposes regarding Box 9 in a
19 statement that was made to show to inquire whether or not
20 Box 9 has to do with the summons issued to someone who did
21 not yield and that can be answered by the police officer,
22 but now we're in substantive area and you're not offering
23 the certified copy because you have the live copy to take
24 it now would be premature.

25 I don't know that I could let the whole report

1 in, I don't know what it consists of.

2 Q I ask you what's been marked for identification is
3 what you reviewed in the course of your investigation?

4 THE COURT: Is there a supporting deposition with
5 this or just the field report?

6 MR. SCAHILL: Just the field report.

7 THE COURT: So counsel is making representation
8 as an officer of the court that the witness pursuant to a
9 subpoena duces tecum has brought a record from the Old
10 Brookville Police Department with her to wit the report she
11 filled out do you have a problem using this as an original
12 document or do you want to see the original and compare and
13 take a recess?

14 MR. SHKOLNIK: I'm not -- that's not my
15 objection, your Honor.

16 It could be utilized as if it was the original,
17 could we talk to the Court outside the presence of the
18 jury.

19 THE COURT: Sure.

20 Could I ask him to step out please.

21 Sorry.

22 (Whereupon, the jury exited the courtroom.)

23 THE COURT: Tell me your specific objection.

24 MR. SHKOLNIK: My specific objection is to the
25 diagram that is attached.

1 This police officer was not there, the police
2 officer, there is no evidence --

3 MR. SCAHILL: I'm sorry, your Honor.

4 Could we ask the witness to step out.

5 THE COURT: Sorry.

6 Watch your step.

7 (Whereupon, at this time, the witness exited the
8 courtroom.)

9 THE COURT: It's always hard when the Court has a
10 document that is being objected to that they can't see.

11 But the witness is trying to, I know probably
12 what it is, but it's difficult, but moreover I don't
13 know -- well, I don't know if this is a report that
14 predicated his report on.

15 In other words, on direct the witness testified
16 to all of the documents and the information that he
17 gathered to form his report. If he based it on a copy and
18 his records, he has a copy of that in his records to
19 promulgate his report.

20 It's admissible that way too.

21 MR. SHKOLNIK: I don't think it may be something
22 he relies upon.

23 It may not be something that which goes into
24 evidence.

25 THE COURT: An expert's file that he brings into

1 court pursuant to a subpoena being retained or otherwise is
2 available for inspection and available to produce documents
3 there from during testimony.

4 If he relied on a report and it's asked for your
5 adversary to have it, he can have it.

6 MR. SHKOLNIK: I'm not saying he can't look at
7 it. It doesn't mean it's a document that is admitted into
8 evidence and the jury gets to see it.

9 THE COURT: It depends.

10 MR. SHKOLNIK: It depends if that document is
11 independently admissible.

12 THE COURT: No, not necessarily. If he relied on
13 it and in making it his report, it could be admitted into
14 evidence but be that as it may, we have the police officer,
15 we have the document and your objection is --

16 MR. SHKOLNIK: My objection is police officer's
17 reports come into evidence as a government record and as
18 the Court mentioned if there was a statement of someone in
19 there, that may not come into evidence.

20 THE COURT: It depends.

21 MR. SHKOLNIK: I think Johnson versus Lutz --

22 THE COURT: About the supporting deposition.

23 MR. SHKOLNIK: And that goes to anything that the
24 police officer did not observe.

25 We know the police officer was not there until

1 after that accident was over. We have a drawing here that
2 describes the accident.

3 THE COURT: That was made by the police officer.

4 MR. SHKOLNIK: Absolutely.

5 THE COURT: Predicated on hearsay by the people
6 that told her.

7 MR. SHKOLNIK: Exactly and my client being on the
8 floor injured is probably not the person giving his input
9 into this. It's just the defendant's.

10 THE COURT: There were eyewitnesses, four people.

11 MR. SHKOLNIK: There could be other people.

12 THE COURT: There were four people that were
13 there. Five including the passenger in the car.

14 MR. SHKOLNIK: Every one of those is hearsay and
15 if this diagram is based on the hearsay, it doesn't come --
16 it shouldn't come into evidence.

17 THE COURT: I don't know.

18 Counsel, you want to respond?

19 MR. SCAHILL: It's right for cross-examination,
20 he can cross-examine the police officer, but your Honor
21 correctly stated that I am going to offer Mr. Calabrese's
22 file in evidence as a business document which includes the
23 police report.

24 THE COURT: If it's there.

25 MR. SCAHILL: I can't see how he keeps it out.

1 MR. SHKOLNIK: I disagree and we'll bring case
2 law tomorrow, an expert's report does not per se become
3 everything in it does not become evidence.

4 You can impeach him on everything in there
5 everything is fair game but the material itself contained
6 in it --

7 THE COURT: Not all of it necessarily.

8 I said it could be.

9 MR. SHKOLNIK: If its not objected to.

10 THE COURT: It also depends on the source.

11 MR. SHKOLNIK: On the source, absolutely.

12 Here we're dealing with a specific item did you
13 take into consideration any diagram, you could be asking
14 that question.

15 THE COURT: Exactly.

16 MR. SHKOLNIK: It's fair game cross then I get to
17 cross the police officer.

18 THE COURT: You can ask about it but as far as
19 introducing, it's ID for purposes of questioning this
20 witness but I wouldn't offer it through this witness or
21 permit him to offer it.

22 It's not certified even though the original is
23 outside, counsel is entitled to voir dire the police
24 officer regarding the accuracy of what is contained
25 therein.

1 MR. SCAHILL: I'm still going to offer his file
2 into evidence.

3 THE COURT: I understand that.

4 I don't know what's in it.

5 You're, okay, rephrasing your questions on the
6 field report?

7 MR. SCAHILL: Sure.

8 THE COURT: Okay great.

9 (Whereupon, the jury entered the courtroom.)

10 MR. SHKOLNIK: Your Honor, there was an
11 objection.

12 Can that be ruled on in front of the jury.

13 THE COURT: I'm not going to, I don't remember
14 exactly what the question was but we're going to rephrase
15 the question, correct.

16 BY MR. SCAHILL:

17 Q Inspector Calabrese, you have many things in your file
18 that you brought with you to court, correct?

19 A Yes.

20 Q And in that file is what is marked for identification
21 the police accident report that was prepared by Officer Rosado
22 on the date of the accident?

23 A Yes.

24 Q And you used that report and relied upon it as part of
25 your investigation in this report?

1 A I read it and evaluated it.

2 Q As you did all of the materials?

3 A Yes.

4 Q And so when I said you used the report, all the
5 materials you read and evaluated it including the police report?

6 A Yes, but you said relied upon which was a little bit
7 different.

8 Q You also reviewed and evaluated the diagram that the
9 police officer made of the accident?

10 A Yes.

11 Q That shows the location of the vehicle at impact,
12 correct?

13 A Are you asking me if that is accurate or are you
14 asking me if that is what it shows.

15 Q I'm asking you the diagram that the police prepared
16 showed the location of the vehicle and the bicycle at impact,
17 correct?

18 A The diagram that I'm looking at is a rudimentary
19 generated diagram that really does not accurately depict
20 portions of the roadway or the entrance into the Martin Viette
21 Nursery. To say that I'm using this for location, I would never
22 do that.

23 Q You did an actual field inspection, you went out there
24 yourself?

25 A Yes.

1 Q So let me back up for a moment. I wanted to talk to
2 you about we were talking about your experience that a company
3 Crash Vector, the company Maximum Detection, you have any other
4 companies beside Crash Vector and Maximum Detection?

5 A The Crash Vector is not a private investigation
6 company that strictly does accident reconstruction and the
7 Maximum Detection is a licensed as a private investigation
8 agency in the State of New York partly because when I am --

9 Q I didn't ask you any of that. I asked you did you
10 have any other companies?

11 A No.

12 Q The answer to that was no.

13 So in terms of your background you told us about the
14 practical experience that you had as a police officer, correct?

15 A A police officer.

16 Q You also told us that you have a bachelor's?

17 MR. SHKOLNIK: He didn't let the witness answer
18 the question.

19 THE COURT: Sustained.

20 A As a police officer, as a sergeant, as a lieutenant
21 and as a captain.

22 Q You also told us that you have a bachelor's degree in
23 police science, correct?

24 A Correct.

25 Q And you told us that you have an Associate's Degree in

1 engineering, correct?

2 A Yes.

3 Q And the -- what you're basically doing is applying the
4 laws of physics to the vehicle involved and the bicycle
5 involved, correct?

6 A In some cases, yes.

7 Q In this case I'm talking about everything depends on
8 Newton's laws of physics here?

9 A Yes and also the testimony to be able to put into the
10 particular vehicles in particular locations before that can be
11 applied.

12 Q But the calculations, the science behind that, that is
13 engineering, correct?

14 A Yes.

15 Q And it's physics, correct?

16 A Yes.

17 Q So you talked in your direct testimony about the
18 defendant's expert, the defendant's expert is Dr. Joseph
19 McGowan (phon.) who someone who possesses a PhD in biomechanics
20 and engineering, you're aware of that?

21 A Yes.

22 Q And you're aware of what it takes to get a PhD, to get
23 a PhD in biomechanics and engineering?

24 A Not personally.

25 Q You have an Associate's Degree, would you agree with

1 me to get a PhD you would need four-year degree and then a
2 Master's degree and then doctoral studies?

3 A Yes.

4 Q Would you agree that Dr. McGowan's credentials in
5 engineering and biomechanical are more than yours?

6 A Yes.

7 Q By far?

8 A Yes.

9 Q And you agree with all of his calculations, everything
10 that he did in terms of his calculations to come to his
11 conclusions, correct?

12 A Not -- I do not.

13 Q You disagree with some of his calculations?

14 A Yes.

15 Q Part of your file is the calculations that you did,
16 correct?

17 A Yes.

18 Q And part of your file is case summaries, is that given
19 to you by counsel for the plaintiff or did you do that yourself?

20 A Could you ask again, please.

21 Q Part of your file is case summaries?

22 A Yes.

23 Q Is that something that you prepared yourself or that
24 was that given to you by counsel for the plaintiff?

25 A These were all notes I made for myself preparing for

1 court.

2 Q Both handwritten and typed notes?

3 A Yes.

4 Q And you also have photographs in your file, correct?

5 A Yes.

6 Q And that file that you have is kept in the ordinary
7 course of business for you as an accident reconstruction expert,
8 correct?

9 A These are rough work notes this is these are my hand
10 calculations prior to coming to court.

11 Q I understand that, but when you have a file, a legal
12 file that you're working on, you open up a file and you keep
13 documents in that file, you generate documents and you put them
14 in that file, correct?

15 A Yes.

16 Q And you're under a business duty to do that, correct?

17 A Yes.

18 Q So the records that you have in that file are kept in
19 the ordinary course of your business as an accident
20 reconstruction expert, is that fair to say?

21 A It would be fair to say that the ones that I will be
22 using would be, yes.

23 Q Everything that you brought to court is what you used,
24 correct?

25 A No.

1 Q What did you bring to court that you didn't use?

2 A In other words when I go through to do a calculation
3 it may have been done 15, 20 different ways using different
4 variables until I come up with something that is acceptable and
5 on point for a particular situation so the rest of the stuff is
6 really not usable.

7 Q That is part of your methodology, correct?

8 A It's part of the work.

9 Q When you say part of the work, there is a scientific
10 method involved in this?

11 A Yes.

12 Q That's part of your method you discard some of the
13 findings and you accept some of the findings?

14 A Yes.

15 Q These are all documents that you create or obtain in
16 the usual course of business as an accident reconstruction
17 expert, correct?

18 A Yes.

19 MR. SCAHILL: So I offer the entire file of Mr.
20 Calabrese into evidence, your Honor.

21 MR. SHKOLNIK: Objection.

22 THE COURT: The reason I will not allow it is
23 that these are not documents kept in the ordinary course of
24 business such as his retainer with the plaintiff or
25 plaintiff's counsel.

1 Such as his license says this is -- there is work
2 product in that file that is what the witness just
3 testified to so I would not allow his work product into
4 evidence.

5 MR. SCAHILL: I'll be happy to redact his work
6 product.

7 THE COURT: I don't know what else is in there.
8 There are things that he used that he didn't testify to
9 that would only be prejudicial they're not probative and it
10 could very much confuse the Court and the jury so unless
11 you're going to go item by item and give counsel an
12 opportunity to refute or object both counsel, I can't just
13 take a folder and say it's admitted into evidence.

14 MR. SCAHILL: I'll move on, Judge, that would
15 take too much time. I wanted to ask you about your
16 calculations.

17 Now, you indicated that Mr. Budiansky while
18 traveling along this roadway was going 26 feet per second.

19 THE COURT: The witness probably can't see.

20 MR. SCAHILL: This is the google Earth document.

21 Q You said he's going 26 feet?

22 A Approximately, yes.

23 Q You also indicated that the LoRusso car turning left
24 going into this driveway took two seconds to go across what you
25 said was 36 feet?

1 A An approximation, yes.

2 Q Let me back up a little bit and we'll talk about the
3 bicycle that Mr. Budiansky was using at the time.

4 You would agree that that is not an ordinary bicycle?

5 A Yes.

6 Q That's a high end bicycle that is used for
7 triathletes?

8 A Could be, yes.

9 Q When you say could be, it is a high end bicycle?

10 A I said yes for the high end bicycle.

11 Q Would you agree that bicyclists on the road need to
12 keep a proper lookout for approaching vehicles?

13 A I think every operator including bicyclists, yes.

14 Q I'm talking about Mr. Budiansky now?

15 A Sure.

16 Q Would you agree that he had a duty to keep a proper
17 lookout for approaching vehicles?

18 A Yes.

19 Q It was definitely in his interest to do that?

20 A Yes.

21 Q Would you agree that he had a duty to see what was
22 there to be seen in front of him?

23 A Yes.

24 Q Would you also agree that if a bicyclist such as
25 Mr. Budiansky is approaching an active driveway he should be

1 hypersensitive to vehicles coming in and out of that driveway?

2 MR. SHKOLNIK: Objection to form.

3 THE COURT: The form of or the term.

4 MR. SHKOLNIK: The form, the term.

5 THE COURT: Sustained.

6 Rephrase please, counsel.

7 Q Would you agree with that a bicyclist such as
8 Mr. Budiansky approaching an active driveway should be aware of
9 vehicles exiting and entering that driveway?

10 MR. SHKOLNIK: Objection.

11 Assuming there is an assumption in that question
12 objection to form being aware that the intersection is I
13 think the proper form of the question.

14 THE COURT: I'm sorry counsel, let me see if I
15 could clarify for myself.

16 Are you asking that he should be aware that there
17 is a driveway there and that there is a potential for
18 traffic in that driveway?

19 MR. SCAHILL: Correct.

20 MR. SHKOLNIK: I don't object to that question.

21 A Yes.

22 Q Would you agree that a bicyclist such as Mr. Budiansky
23 approaching an active driveway should not be driving his bicycle
24 with his head down?

25 A Correct.

1 Q Are you aware that Mr. Budiansky failed to brake
2 before this accident happened?

3 MR. SHKOLNIK: Objection, failed to brake.
4 Objection to the form failed to.

5 I think it's a bad form of the question.

6 THE COURT: I'm going to overrule your objection.

7 A He did not have an opportunity to brake.

8 Q May be semantics, you're saying didn't have an
9 opportunity, but the bottom line is that he didn't apply his
10 brakes, correct?

11 A Correct.

12 Q And would you agree that a bicyclist who fails to keep
13 a proper lookout is negligent in the operation of the bicycle?

14 MR. SHKOLNIK: Objection.

15 THE COURT: I will sustain the objection.

16 Q Now, are you also aware that there has been testimony
17 by Mr. Budiansky that he saw the LoRusso vehicle in the
18 westbound lane 25 to 50 yards away as he was approaching the
19 intersection?

20 A Yes.

21 Q So 50 yards would put him back 150 feet somewhere in
22 this area, correct?

23 A I don't know how far back but somewhere around
24 150 feet I don't know where that is on that particular drawing,
25 yes.

1 Q 25 yards would put him back here?

2 A I don't know what scale we're looking at here. I
3 don't want to give a point to your finger and say that's it but
4 somewhere in that area, yes.

5 Q So, on this roadway that is heading westbound 25A at
6 that location there is no reason to stop your vehicle in the
7 left westbound lane unless you're going to make a turn into this
8 driveway, is that fair to say?

9 A That would make sense, yes.

10 Q So it would also be fair to say that if a bicyclist is
11 approaching from 150 feet away and sees a stopped car, their
12 common sense would tell you it stopped to make a left hand turn
13 into that driveway, correct?

14 MR. SHKOLNIK: Objection, that sounds like
15 summation.

16 Form.

17 THE COURT: I'll sustain the objection.

18 You have to rephrase, that was not the testimony
19 of the plaintiff.

20 Q Would you also agree that Mr. Budiansky approaching
21 between 25 to 50 yards away seeing a stopped vehicle in that
22 westbound roadway should have been aware that that vehicle was
23 going to make a left turn into that driveway?

24 MR. SHKOLNIK: Objection.

25 THE COURT: Sustained for the same reason.

1 Q Do you think the bicyclist approaching at 50 to
2 25 yards away should have been aware that the car was going to
3 make a left turn?

4 MR. SHKOLNIK: Objection that he should know what
5 the car is going to do if there is a possibility.

6 I think it's the form, your Honor.

7 THE COURT: Well, the witness can testify as to
8 the operation of someone's mind number one and number two
9 is try rephrasing your question.

10 Q Would you agree with me on a hypothetical basis that
11 it's reasonable for the bicyclist approaching between 25 and
12 50 yards away if he saw a vehicle stopped in the westbound lane
13 at that location and that vehicle was going to make a left into
14 the driveway?

15 MR. SHKOLNIK: Objection to the form.

16 I withdraw.

17 THE COURT: The form is perfect.

18 Q Would you say that is reasonable?

19 A I would say it's a possibility. What would raise the
20 possibility greatly would be if there was a signalled light that
21 was being used to indicate the turn.

22 Q Did you read the it testimony of Keith Mansouri, the
23 passenger in the LoRusso vehicle at the time of the accident?

24 A Yes.

25 Q And specifically I'm referring to his testimony with

1 respect to the signal.

2 Did he testify that he heard the signal clicking and
3 that's why he knows it was on, was that part of the testimony
4 that you read?

5 A Yes, but I did not give that a high degree of
6 credibility.

7 Q Is that because of your advertised services when you
8 need case enhancement or you have weaknesses we can get the job
9 done?

10 A No.

11 Q Is that why you didn't give that a high degree?

12 MR. SHKOLNIK: Objection to form.

13 THE COURT: Sustained.

14 A No.

15 THE COURT: You don't have to answer it.

16 Q So you picked and choosed what you wanted to accept
17 from the testimony that you reviewed. You picked the testimony
18 that helped the plaintiff and you discarded the testimony that
19 did not help the plaintiff, is that a fair statement?

20 A It's not a fair statement.

21 Q That is a yes or no?

22 A You did not ask for a yes or no.

23 THE COURT: If you can answer yes or no just say
24 can't answer it.

25 A No, because I --

1 THE COURT: You can't do that yet.

2 You can say yes or no.

3 A No, it's not true.

4 Q But that specific testimony indicative that of the
5 fact that the LoRusso vehicle had a turn signal on for at least
6 five seconds before making the turn you discarded?

7 A That's not what I just said. I said that I gave it a
8 very low amount of credibility based on the fact that there was
9 another witness that did not see it. Mr. Budiansky did not see
10 it and the operator of the vehicle was playing a party mix only
11 his CD inside the vehicle and I know that the audio for a turn
12 signal and the Ford Explorer is extremely low. There is no way
13 it could be heard over top of the a CD that is playing inside
14 the vehicle.

15 MR. BARANOWICZ: Strike.

16 THE COURT: Overruled.

17 Q You knew or you came to deduce what the driver was
18 playing on the radio at the time of the accident?

19 A It was not a radio, he testified that he had his CD
20 party mix that he was playing at the time.

21 Q I believe he testified or he testified that he had a
22 CD that he made at home on his computer on at the time?

23 A Okay.

24 Q It could have been a Beethoven party mix?

25 A Could have been.

1 Q Could have been Chopin?

2 A Chopin.

3 Q It could have been the classical opera?

4 A Could have been Pavarotti.

5 Q And could he could have been playing it pretty low as
6 opposed to party mix you're talking about?

7 A Well everyone's party mix could be different but he
8 was playing a CD at the time.

9 Q If you were coming to court as a police inspector, you
10 could not hypothesize a statement you just did about the volume
11 of the radio, is that right?

12 A No, that's not true. I think that's very important.

13 Q Now, let's talk about the distance that Mr. LoRusso
14 was traveling those 36 feet.

15 You already told us that the bicycle was going 26 feet
16 per second, is that correct?

17 A That's correct.

18 Q You told us that it took two seconds for Mr. LoRusso
19 to travel the distance of 36 feet, approximately?

20 A Approximately yes.

21 Q He's coming from a stopped position?

22 A Yes.

23 Q And you used an acceleration rate of 0 to 30 to get
24 that two second time interval?

25 A Yes.

1 Q And that would indicate that he's flooring the gas to
2 make that turn to get to 0 to 30 in a two second interval, he'd
3 have to be flooring the gas to do that?

4 A It would be a big acceleration.

5 Q But the test that you relied on to make your
6 calculations is a vehicle that is being floored to get to 0 to
7 30 or 0 to 60 not a person making a left turn in the ordinary
8 course of driving, correct?

9 A There would be a difference in the degree of
10 acceleration used if there was traffic oncoming or traffic not
11 there at all.

12 Q Well, let's assume that there is no traffic that is
13 what Mr. Budiansky testified to?

14 A Mr. Budiansky is traffic.

15 Q I get that.

16 But there is no traffic on the roadway.

17 Mr. LoRusso is making a normal left turn, he's not
18 flooring the vehicle to get into the driveway.

19 You have no evidence to support that, correct?

20 A No, that is not true because Mr. LoRusso testified
21 that when he started to make the turn, he saw Mr. Budiansky in
22 his peripheral vision and he accelerated to try to get by him
23 and couldn't and the bike clipped the car.

24 Q Your making the misrepresentation that is when he was
25 already in the driveway?

1 A That is not how I read that at all.

2 Q Let's get back to the testimony that was been given by
3 from the witness stand by eyewitnesses.

4 You're aware that Mr. Heredia testified yesterday in
5 the case and you're aware that he testified that LoRusso is
6 turning at a speed of 5 to 6 miles per hour, is that correct?

7 A Yes.

8 Q So if he's turning at 5 to 6 miles per hour, how much
9 time would it take him to travel a distance of 36 feet?

10 A Four seconds.

11 Q And in that four seconds, Mr. Budiansky would be how
12 many feet down into the driveway?

13 A Mr. Budiansky because he would have to go back from
14 the -- to be equal to both vehicles you would have to put
15 Mr. Budiansky back four feet I mean sorry four seconds from that
16 particular impact point.

17 Q And that would bring him back how many feet?

18 A I'll go there that would bring him back over 104 feet
19 away from impact but the important part of this is that using
20 those calculations that vehicle would now pull into the driveway
21 and there would not be a collision.

22 Q I understand that, sir, but you're giving a theory to
23 the jury to how this accident happened.

24 I'm asking the questions based on the testimony of an
25 eyewitness. So the eyewitness testified that Mr. LoRusso was

1 turning at a speed of 5 to 6 miles per hour.

2 And it's your testimony at that speed it would take
3 him four seconds to get into that driveway, correct?

4 A Yes.

5 Q Now, you're indicating to the jury that that is not
6 correct because that would put Mr. Budiansky back four times 26,
7 it would push him back 104 feet?

8 A I'm not saying it's not correct, I'm just saying if
9 you apply that number of seconds or feet to one side you also
10 have to do it to the other to put them in equal corresponding
11 locations.

12 Q Isn't it certainly plausible that that in fact
13 occurred if Mr. Budiansky is riding with his head down not
14 looking to what is in front of him?

15 A He testified that he had his head up and was looking
16 straight ahead.

17 Q That is an issue of credibility, you would agree with
18 me on that, correct?

19 A Yes.

20 Q So if he is in fact driving with his -- riding his
21 bicycle with his head down not looking where he's going while I
22 just said to you could possibly been what happened in this case?

23 A I'll go back that the four seconds if you want to use
24 the four seconds and you want to move him back 104 feet the
25 vehicle, the Ford Explorer that is now accelerating at a lower

1 rate but more time to for the bicyclist to come to impact, that
2 Ford will be into the driveway and the accident will not happen
3 because he'll pass by afterwards.

4 Q Is it also true that the distance you know that
5 Mr. Budiansky marked when he first observed the Ford and where
6 the point of impact was?

7 A I did see that, yes.

8 Q And would you be able to say that this is a distance
9 of less than 26 feet?

10 A If you could move your hand for a second.

11 Q Yes.

12 From the beginning of the driveway to the middle of
13 the driveway less than 26 feet?

14 A Depends where you are. The mouth of that is obviously
15 much wider when it goes in but I would estimate that that
16 distance could be, you know, somewhere in the area of 20 to
17 30 feet it's hard to put a hard number on it.

18 Q Approximately 26 feet, is that fair to say?

19 A It's a possibility.

20 Q So is it also fair to say that if Mr. Budiansky
21 testified that he saw the Ford turning in front of him 26 feet
22 away that also is impossible that is not possible under the law
23 of physics?

24 A I don't know. I don't understand what you're trying
25 to say.

1 Q I'll -- I'll break it down for you. You said it took
2 two seconds for LoRusso to come across?

3 A He testified.

4 Q Budiansky testified that he came, saw him turn at
5 26 feet away at this location and then the point of impact
6 occurred a second later. That is impossible because based on
7 the law of physics it's going to take him two seconds to come
8 down in two seconds. Budiansky is traveling at 26 feet per
9 second is going to be 52 feet down the road, is that correct?

10 A From that location, correct.

11 Q So based on what you just told us, what Mr. Budiansky
12 told the jury, it's impossible for that to happen, correct?

13 A Yes.

14 For two seconds then that distance has to be too
15 short.

16 Q So if it's impossible for your own client -- if the
17 testimony that your own client gave was impossible is it in fact
18 true that your hypothesis is based on completely false
19 testimony?

20 MR. SHKOLNIK: Objection to form.

21 THE COURT: Sustained as to form.

22 Rephrase please counsel.

23 Q Are you basing your conclusions on what Mr. Budiansky
24 told you?

25 A Partially, yes.

1 Q And are you accepting what Mr. Budiansky told you as
2 true?

3 A The information that he gave prior to today would
4 indicate that he is further back which made sense for my
5 reconstruction.

6 Q I'd like you to assume what I just went through with
7 you is what he told you the jury that he saw the Ford turning
8 here and the contact took here, that's impossible?

9 A It's impossible if the vehicle is stopped and starting
10 from when he saw it.

11 If he looked up and or turned and glanced towards it
12 and it was already moving then that is a different scenario that
13 could be possible.

14 Q Did you ever speak to the police officer that
15 investigated this accident?

16 A No.

17 Q You had the opportunity to do that?

18 A Sure.

19 Q As inspector's a high rank?

20 A Yes.

21 Q The next thing above is chief?

22 A Yes.

23 Q That's a political appointment?

24 A We don't want that.

25 Q So if you call the Brookville Police Department and

1 | said can I talk to Officer Rosado and identified yourself as an
2 | Inspector for the Westchester County Police Department, you
3 | would expect that the police officer would speak to you about
4 | this?

5 | A First I would never approach that way.

6 | Q How would you approach it?

7 | A I would approach it I was investigating an accident.
8 | I want to talk to you period. My rank and what I do for a
9 | living would not come into play.

10 | Q But you failed to do that, right?

11 | A Yes.

12 | MR. SHKOLNIK: Objection to form.

13 | Failed.

14 | Someone didn't do it, failing is improper form.

15 | THE COURT: I'm going to allow it.

16 | Q Would you agree that your conclusions and analysis
17 | would have been enhanced if you had in fact spoken to the
18 | officer that was there on the scene?

19 | A I didn't believe so based on the information that was
20 | in the accident report, no.

21 | Q Do you have know where Mr. Budiansky landed?

22 | A Not specifically, no.

23 | Q Do you know if the police officer knows where Mr.
24 | Budiansky ended up?

25 | A No.

1 MR. SCAHILL: No further questions, your Honor.

2 THE COURT: Thank you counsel.

3 MR. BARANOWICZ: I have nothing, your Honor.

4 MR. SHKOLNIK: Redirect.

5 THE COURT: Redirect.

6 REDIRECT EXAMINATION

7 BY MR. SHKOLNIK:

8 Q You were reviewing the materials that defendant's
9 expert relied upon in rendering their opinions, did you not,
10 sir?

11 A Yes.

12 Q And they are listed in detail, are they not?

13 A Yes.

14 Q Did their expert ever speak to the police officer?

15 A No.

16 Q Did he fail to or was it necessary in your opinion?

17 A It didn't appear to be for him because he didn't talk
18 to him, her.

19 Q Now, would you be kind enough to come down here and
20 explain to the Court and jury what you mean about the four
21 seconds that counsel was talking about.

22 I know he wanted to focus on this four seconds, tell
23 us about that four seconds?

24 THE COURT: Counsel, you want to come around.

25 MR. BARANOWICZ: Thank you, your Honor.

1 A Hypothetically if you have the Ford Explorer now
2 instead of going this 36 feet in two seconds, hypothetically
3 time is now four seconds then the bicycle will now be back 104
4 plus feet back here.

5 Q Let's assume a car is 20 something feet?

6 A Back you know roughly here somewhere.

7 This vehicle now based on this four seconds and the
8 four seconds here this vehicle here while making this turn
9 should be able to accelerate through this intersection and this
10 bicycle being that far back should pass through with without any
11 collision.

12 Q And the fact there would be no need to make any change
13 in the operation of the bicycle at that point?

14 A No.

15 Q While you're still standing, one other question that
16 counsel asked you about in terms of what Mr. Budiansky said here
17 and you pointed out that if it was from a stop or a movement I
18 would like you to assume that Mr. Budiansky testified that when
19 he saw the vehicle, it was already moving. He had seen it in
20 the path in the distance and then he saw the sudden turn. When
21 he's looking up, it's moving.

22 How does that affect the testimony you just gave and
23 the cross-examinations questions?

24 A That would change it dramatically. Now we have a
25 vehicle that is here but not stopped. It's already starting in

1 motion so the hardest thing and the most energy that is needed
2 for a vehicle to move which when you first put your foot on the
3 gas, all of that energy to get it to start going once it goes it
4 can accelerate much faster. It's the beginning that is really,
5 really tough. So if a vehicle is not stopped and it is already
6 in motion, then the time for it when Mr. Budiansky sees it to
7 come to here is much shorter. I don't know because the
8 hypothetical but it would be much shorter and if he was in this
9 position, this position that he marked on had the board, this
10 short a distance than what I had worked with if this vehicle was
11 moved to be a shorter distance this collision could still take
12 place.

13 Q Before you sit down, you weren't asked anything about
14 the defendant's own testimony where he said he had accelerated
15 up to 10 to 15 miles an hour.

16 A Yes.

17 Q And as he started that turn from the stop, let's
18 assume that is accurate.

19 How does that come into play?

20 You weren't even asked that hypothetical?

21 A That indicated to me that there is a high degree of
22 acceleration from here from the beginning.

23 In other words, him going from 0 to --

24 Q 10 or 15.

25 A -- miles per hour in that a short period of time

1 indicates it's a very severe acceleration that in addition to
2 the fact that he testifies of testified that he did see him and
3 try to accelerate by that's why I used 0 to 30.

4 Q If you could take your seat for a second?

5 A Thank you.

6 Q You started to say something before in response to a
7 question and it was you described his acceleration.

8 And you were asked questions about oncoming traffic?

9 THE COURT: Who is he?

10 MR. SHKOLNIK: The witness.

11 THE COURT: The witness described his
12 acceleration.

13 MR. SHKOLNIK: I was thinking ahead of my
14 question.

15 THE COURT: That's okay.

16 MR. SHKOLNIK: I'll rephrase.

17 Q Mr. Calabrese, you talked about accelerations and how
18 the vehicle accelerated and you used the phrase oncoming
19 traffic.

20 You started to say something before and you were
21 specifically limited to cars I'd like you to assume that
22 Mr. Budiansky testified here today and I think you've already
23 seen that before as well that there was cars coming up behind
24 him at traffic speed on his left side from behind him and that
25 is why he couldn't if he wanted to go into the traffic lanes.

1 A Correct.

2 Q What is significant of that in terms of this turning
3 across two lanes of traffic and the shoulder when he was doing
4 that?

5 A If you were at a stopped position and there was
6 oncoming traffic and you wanted to make a left hand turn and
7 let's take Budiansky out of it say he doesn't see him you would
8 still have to accelerate shortly to be able to make that turn as
9 opposed to a very lackadaisical acceleration.

10 Q Should we also consider a bicyclist traffic on a road
11 when you're evaluating a left hand turn is that also someone you
12 should be considering as a operator?

13 A Yes, per New York State law the bike is a vehicle.
14 It's allowed on the roadway, allowed on the shoulder.

15 MR. BARANOWICZ: Objection, he's instructing the
16 jury on what the law in New York State.

17 THE COURT: What is in the obligation of the
18 bicyclist -- of the obligation of the operator of a motor
19 vehicle.

20 MR. BARANOWICZ: Either way, he's not the proper
21 party to instruct the jury on what the obligations were on
22 Mr. Budiansky or Mr. LoRusso.

23 That's up to the Court.

24 THE COURT: Rephrase your question.

25 MR. SHKOLNIK: I'll rephrase.

1 THE COURT: Thank you.

2 Q Is an oncoming bicycle towards a vehicle attempting to
3 make a left hand turn across two lanes of traffic and a shoulder
4 where traffic is traveling at a 50-mile per hour speed limit, is
5 that something that should also be considered?

6 A Yes.

7 Q Why?

8 A Because it's a vehicle on the roadway and we're trying
9 to avoid a collision.

10 Q Oncoming vehicles on 25A Northern Boulevard going
11 eastbound in the right hand lane at 50 miles per hour, do you
12 have an opinion, sir, assuming that based on the testimony of
13 Mr. Budiansky and what he heard on his shoulder over his
14 shoulder is that the type of traffic that would suggest someone
15 accelerating quickly to cross those two lanes of road?

16 MR. SCAHILL: Objection.

17 MR. BARANOWICZ: Objection.

18 THE COURT: I'll sustain those.

19 Rephrase.

20 Q As an accident reconstructionist, assuming a driver
21 wanted to cut across two lanes of traffic where there was
22 oncoming vehicles at 50 miles an hour, how would you suggest
23 they do it if they chose to cross?

24 A As questioningly as possible.

25 MR. SHKOLNIK: Thank you.

1 No further questions.

2 RE CROSS-EXAMINATION

3 BY MR. SCAHILL:

4 Q Inspector, is what you just testified about all that
5 is supposition, correct, you don't know any of that?

6 A I'm not sure what your question is.

7 Q About the cars that Mr. Shkolnik was talking about,
8 you don't know anything about that?

9 A I believe they were hypothetical questions.

10 Q It has nothing to do with this accident, they are
11 purely hypothetical questions?

12 MR. SHKOLNIK: I object.

13 My question was a hypothetical based on the
14 testimony in this courtroom that was just heard this
15 morning.

16 THE COURT: It was still hypothetical.

17 MR. SHKOLNIK: It was hypothetical but I think
18 the phraseology was that I kind of made this up.

19 Q It has nothing to do with this accident, just general
20 questions about vehicles on the road?

21 A I think the question was directed towards acceleration
22 so acceleration is part of this accident.

23 Q In a general sense?

24 A Very specific sense.

25 Q It's not the facts of the accident, it's just a theory

1 that you applied to the case?

2 THE COURT: Acceleration meaning?

3 MR. SCAHILL: Yes.

4 A We know there is acceleration because the vehicle
5 moved, so that's a fact.

6 Q Speaking of facts, are you aware that Mr. Budiansky
7 testified that he saw the LoRusso vehicle before it began to
8 turn?

9 A Yes.

10 Q And he saw it in the westbound left lane before it
11 began to turn?

12 A Yes.

13 Q So the time between when Mr. Budiansky saw the LoRusso
14 vehicle before it began to turn and the time of the collision is
15 approximately in your estimation how much time?

16 A I have no -- no idea because I have no idea where he
17 is when he sees it.

18 Q He said he saw it about 20 to 25 yards away. Would
19 you agree with me, Mr. Budiansky had sufficient time to slow or
20 stop his bicycle from 25 to 50 yards away to avoid this
21 collision?

22 MR. SHKOLNIK: Objection to the form.

23 At what point in time.

24 THE COURT: Sustained.

25 You're mischaracterizing the testimony.

1 Q In what way Mr. Budiansky testified that he saw the
2 LoRusso car 25 --

3 THE COURT: Traveling, not turning.

4 MR. SCAHILL: He said he saw it stopped in the
5 left hand lane.

6 THE COURT: You're reading the transcript from
7 yesterday?

8 MR. SCAHILL: Yes, no.

9 I'm reading his deposition transcript.

10 THE COURT: Exactly.

11 You're reading the deposition so you have to make
12 that clear. You say based on his testimony, the Court
13 heard his testimony.

14 MR. SCAHILL: I understand, your Honor.

15 Q I'd like you to assume for a moment that Mr. Budiansky
16 testified that he saw the LoRusso car when he was 25 to 50 yards
17 from where the accident happened, would you agree with me that
18 he had sufficient time to brake or stop his bicycle to avoid
19 this accident?

20 MR. SHKOLNIK: Your Honor, could we have the
21 question read back I think I have an objection to it, I
22 just --.

23 MR. SCAHILL: I'll state it again.

24 Q I'd like you to assume that Mr. Budiansky testified
25 that he saw the LoRusso vehicle between 25 and 50 yards before

1 | where the accident happened.

2 | Would you agree with me that Mr. Budiansky had
3 | sufficient time to brake or stop his vehicle, his bicycle, to
4 | avoid the accident.

5 | MR. SHKOLNIK: I object to this.

6 | THE COURT: Sustained based on that question
7 | you're saying when he saw the vehicle, he noticed the car.

8 | That question as posed to the witness says the
9 | car is traveling, not turning.

10 | Why would he brake if he saw the car traveling?

11 | MR. SCAHILL: I'm not asking him that.

12 | THE COURT: That was the question you said.

13 | Q 25 to 50 yards away from the intersection, Mr.
14 | Budiansky had sufficient time to brake or stop his bicycle,
15 | correct?

16 | A I'm sorry, distance again.

17 | Q 25 to 50 yards away he had sufficient time to brake or
18 | stop his bicycle to avoid the accident, correct?

19 | A If there was a need to stop at that point.

20 | Q If that was what?

21 | A A need to stop at that point, but the car is not
22 | making the turn at that point.

23 | MR. SCAHILL: No further questions, your Honor.

24 | MR. SHKOLNIK: I have no further questions, your
25 | Honor.